



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION
COMMITTEE

ESTIMATES

(Budget Estimates)

TUESDAY, 25 MAY 2010

CANBERRA

BY AUTHORITY OF THE SENATE

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SENATE LEGAL AND CONSTITUTIONAL AFFAIRS**LEGISLATION COMMITTEE****Tuesday, 25 May 2010**

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

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

Senators in attendance: Senators Barnett, Birmingham, Brandis, Bob Brown, Crossin, Feeney, Hanson-Young, Humphries, Hutchins, Ludlam, McLucas, Parry, Siewert, Trood and Xenophon

Committee met at 9.04 am**ATTORNEY-GENERAL PORTFOLIO**

Consideration resumed from 24 May.

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 Pople, 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

Mr 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 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 and Immigration and Citizenship portfolios. The committee must report to the Senate on 22 June 2009 and it has set 9 July 2010 as the date by which answers to questions on notice are to be returned. For those who are new to today's hearings, the date for return to the committee of answers to questions on notice is 9 July 2010.

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 we have copies if anyone needs them. I particularly want to draw the attention of witnesses to an order of the Senate dated 13 May 2009 specifying the process by which a claim of public interest immunity should be raised. I incorporate this in *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).

CHAIR—We will continue our examination of the Attorney-General's portfolio. Our program today is the Canberra-based agencies. Once we have finished we will go back to the Attorney-General's Department. I think we were still dealing with outcome 1, but that will not be until much later in the day. I welcome again for the second day Minister Senator the Hon. Penny Wong, representing the Attorney-General and the Minister for Home Affairs.

[9.06 am]

Australian Commission for Law Enforcement Integrity

CHAIR—I welcome Mr Moss and the office of the Australian Commission for Law Enforcement Integrity. Welcome this morning to our hearings. Do you want to commence with an opening statement?

Senator BARNETT—Madam Chair, I advise that yesterday I had some questions on cross-portfolio issues. I was seeking to establish whether Mr Wilkins has a response to a number of those questions, in particular the legal costs. I would like to check to see whether that answer has come back as yet. It has been 24 hours, so I thought you might have those figures with you.

Mr Wilkins—The legal costs question was answered yesterday.

Senator BARNETT—What was that figure?

Mr Wilkins—I think the officer made it clear—and I will check—that we do not have figures for this financial year. They will not be available until the end of the financial year. So we will have figures for this financial year by August. He quoted the figure for the previous financial year, which I think you already have.

Senator BARNETT—Which was \$555 million. Is that correct?

Mr Wilkins—I do not recall.

Senator BARNETT—What about for the six months to 31 December? Do you have those figures?

Mr Wilkins—We do not have those figures. That is what he said yesterday. We do not get them until the end of the financial year.

Senator BARNETT—I was here from about 9 am until 11 pm yesterday, so for a few minutes when I was out that may have been said, but I was not here and I did not hear it.

Mr Wilkins—Dr Popple certainly made that statement, but I am happy to do it again. As soon as he gets here we will make that statement again.

Senator BARNETT—All right. And you are advising the committee that you do not have the figures for the six months through to 31 December?

Mr Wilkins—That is my understanding, yes.

Senator BARNETT—Could double-check that? It is surprising that the second half of the financial year is not available in May.

Mr Wilkins—Yes, I will. Apparently the Legal Services Directions make it compulsory for departments and agencies to make that information available at the end of the financial year.

Senator BARNETT—Thank you for the feedback. It is surprising that you do not get quarterly updates, or at least six-monthly updates, for legal costs when the government's promise was to cut legal costs. I am sure the Attorney-General would be kept up to date because this is a promise that he made. I am sure that he would want to try to keep his promise. My other question relates to the legal aid funding for what is called the Melbourne terrorists' case. Last year you responded, and I thank you for responding, when you advised that over \$10 million in legal aid was spent on nine Sydney terrorists. At that time we discussed the Melbourne case where the terrorists were subject to a court case. I want to obtain an update on the costs for that particular court case. I realise that you might not have it with you right now, but I would like it sometime today.

Mr Wilkins—That is fine. I am trying to see whether I have it to hand but I do not think I do, so I will take that question on notice.

Senator BARNETT—Thank you very much.

CHAIR—Mr Moss, we will go back to you. Welcome to our estimates this morning.

Mr Wilkins—Sorry, Madam Chair—Senator Barnett, I might have the information.

CHAIR—I will ask you to table it then, Mr Wilkins. Mr Moss, do you have an opening statement that you wanted to commence with today?

Mr Moss—No, thank you.

CHAIR—Let us go to questions.

Senator BARNETT—Thank you very much, Mr Moss, for being here. Can you indicate the number of staff you have on hand at the moment?

Mr Moss—Yes. At present the Australian Commission for Law Enforcement Integrity, or ACLEI, has 17 ongoing staff and an additional five non-ongoing staff, some of whom are casual.

Senator BARNETT—How does that compare to 30 June last year?

Mr Moss—That date of 30 June last year compares with the ongoing staff of 12. So, as at 1 July last year, five more staff were available to ACLEI in the 2009-10 budget.

Senator BARNETT—Is that as a result of your increased workload?

Mr Moss—Yes, it is indeed.

Senator BARNETT—Can you just describe to the committee the workload commitments you have at the moment and whether you are meeting the commitments that are set for you by government?

Mr Moss—In the current financial year ACLEI has received 61 notifications and referrals of corruption issues, 10 more than for the entire previous financial year. So the count is still running for the present financial year on corruption issues, referred or notified. At the end of April this year ACLEI had a total of 81 current and open issues, 40 of which are with ACLEI and 41 of which are with the agencies themselves for investigation. You will know that under the framework provided by the legislation I decide how a corruption issue will be dealt with. One of the options available to me is to refer a corruption issue back to the agency for investigation and for reporting to me at the conclusion of that investigation.

Senator BARNETT—On the whole, where are the complaints coming from?

Mr Moss—They are coming mainly from the agencies themselves by way of notification but also from referrals, which is other agencies in the Commonwealth, or from individuals who might bring matters to me—members of the public or, indeed, increasingly members of law enforcement agencies themselves.

Senator BARNETT—I noted a report in March this year that you and your office were doing a joint investigation with the Victorian Office of Police Integrity into some antiterrorism operations. I presume it was in that state. Firstly, does that happen very often and, secondly, can you describe, without going too far, what it is about? It seems unusual.

Mr Moss—Let me take the question in the broad first. It is not uncommon for me to conduct joint investigations either with the two agencies I oversee—that is, the ACC and the AFP—or indeed with state equivalent integrity agencies. I have conducted joint investigations with, for instance, the Crime and Misconduct Commission in Queensland, the Police Integrity Commission in New South Wales and the Office of Police Integrity in Victoria. You asked specifically about the joint investigation with the Office of Police Integrity in Victoria. That arose out of corruption issues relating to what is called Operation Neath, a joint investigation involving, principally, the AFP and the Victoria Police, but also many other agencies. The issue there was whether the publication by the *Australian* newspaper of details of raids to be conducted on the morning of 4 August last year involved unauthorised disclosure by anyone in the Victoria Police or the Australian Federal Police. For that reason, OPI and ACLEI commenced a joint investigation.

Senator BARNETT—Did they ask you to be involved? How did that come about?

Mr Moss—It was not a question of OPI asking me to be involved; I decided that there needed to be an investigation of any federal aspect to that set of circumstances. So I used my own initiative power to commence an investigation. Under section 26 of the Law Enforcement Integrity Commissioner Act I am able to conduct a joint investigation, so I joined with the Office of Police Integrity for that purpose. We are covering two jurisdictions here, Victorian and federal.

Senator BARNETT—How often does your board meet and how often do you meet with the minister?

Mr Moss—I do not have a board. I account to the Parliamentary Joint Committee on ACLEI—and I acknowledge Senator Stephen Parry, a member of that committee who is here today. As to meeting with the minister, I meet with the minister on a regular but infrequent basis.

Senator BARNETT—An infrequent basis?

Mr Moss—Yes.

Senator BARNETT—Over the course of a year, broadly how many times would you meet with the minister?

Mr Moss—In those terms I meet with the minister, say, four times a year. But, of course, I am in touch with his office on a more frequent basis than that.

Senator BARNETT—You are aware of the legislation broadening the scope of your investigations and so on that is currently being considered. Are you in a position to meet the new responsibilities that are heading your way?

Mr Moss—I assume that you are referring to a recommendation by the Parliamentary Joint Committee on ACLEI that another agency, known as the Australian Customs and Border Protection Service, be added to the number of agencies ACLEI oversees. Is that correct?

Senator BARNETT—Yes.

Mr Moss—That recommendation has been made and the government is yet to respond to that recommendation.

Senator BARNETT—Thank you for that. I refer to consultancies and note that a strategic planning paper was done in 2008 and an organisational structure was done in 2008, and a review of employment matters and a review of investigation in 2009. I refer to the Blunn consultancy and to the review of investigation in 2009 for \$18,000. What was that about?

Mr Moss—I am required under legislation to report in brief terms on any investigation that I complete and on which I give a report to the minister. That was one of the matters that I reported in the 2008-09 annual report. The matter concerned allegations that there had been at a senior level in the ACC issues of perjury before a Commonwealth tribunal. I investigated those allegations and found there to be no substance to them. As an assurance that the report was comprehensive and thorough, I engaged Mr Blunn to review that report before I finalised it.

Senator BARNETT—And were you satisfied with the outcomes of the work of ACLEI?

Mr Moss—I was satisfied with the work of ACLEI, but I wanted to have that external assurance through Mr Blunn that the work was properly done.

Senator BARNETT—And you were assured?

Mr Moss—I was, yes.

Senator BARNETT—In your opening remarks you gave us the number of investigations. How many of those investigations related to law enforcement officers in either the ACC, the AFP, or other law enforcement agencies?

Mr Moss—Are we speaking generally now about the particular matter to which we just referred?

Senator BARNETT—Generally; I am moving to the general issues.

Mr Moss—Indeed, all my investigations relate to law enforcement officers through information or allegations that raise a corruption issue relating to the ACC or the AFP.

Senator BARNETT—Can you give a breakdown of those? Is that possible?

Mr Moss—Yes, I can give you a breakdown now. Referring to the total—we are talking about 61 here—12 relate to the Australian Crime Commission and 41 relate to the Australian Federal Police. In the category of ‘other’ there are eight, bringing the total to 61.

Senator BARNETT—What are the eight? If they are not ACC and AFP, what types of investigation are they?

Mr Moss—That might be a question for me to take on notice, if I may, to give you a full answer.

Senator BARNETT—That is okay. Finally, I had a question about Deloitte’s provision of internal audit services, which is being undertaken this year at a cost of \$70,000. Is that not the normal audit? It looks like a special audit. If so, can you describe the audit and its purpose? The report that I have states that it started in September 2007, goes until 31 July 2010 and cost \$70,000.

Mr Moss—Yes. That was a consultancy I engaged through Deloitte to again give me external assurance that ACLEI’s governance arrangements were in order. We are a relatively new agency and rather than rely on our own assessment of those arrangements I sought an external opinion and benefited from that. I am now in a position to say that, through this consultancy, our arrangements are in the best possible state that they can be.

Senator BARNETT—And have they delivered a report and recommendations?

Mr Moss—I believe that they have, yes.

Senator BARNETT—Could you take on notice and make available to the committee, where possible, the report and recommendations if you can? That would be of interest, I am sure, to the committee.

Mr Moss—Certainly, I will do that.

Senator BARNETT—Thank you.

Senator PARRY—Commissioner Moss, in the budget estimates and forward estimates an amount of \$400,000 was allocated from the Australian Federal Police budget into ACLEI’s budget. It indicates that it is to ‘assist or augment the assessment and reporting functions.’ Could you expand on what that \$400,000 will be used towards?

Mr Moss—Yes. That is an amount of \$1.6 million over the next four years in ACLEI’s budget. As you rightly point out, it is \$400,000 per annum. I will use that additional funding

to increase ACLEI's capacity to assess and review matters before it in a more timely way. As I indicated earlier, ACLEI's workload continues to grow in relation to corruption issues notified and referred to it. This additional funding for the 2010-11 financial year will be used in that assessment and review area, which I will strengthen with additional staff.

Senator PARRY—Thank you. I gather that the reason it is being appropriated from the Australian Federal Police budget is simply because your workload pertains, largely, to work supervising and the jurisdictional elements of the Australian Federal Police.

Mr Moss—I am not sure whether the link is that direct. I think it is a question of the normal budget process at work here. ACLEI was recognised for a need for the amount that we have referred to, and the offset has been found in the budget of the AFP.

Senator PARRY—I am sure they are very pleased about that. I move to the subject of integrity testing. Under outcome 1 one of the aims, in addition to other things, is improving the integrity of staff members. Has integrity testing—and integrity testing is a renowned worldwide concept of random and targeted integrity testing of which you are probably aware—been considered by the commission?

Mr Moss—At the moment the AFP is presently designing an integrity testing regime to meet its own integrity needs. ACLEI is part of a working group that is working on that particular project. At this point there is no further direct involvement of ACLEI, other than through that working group, although I have expressed views, when asked before the PJC on ACLEI about integrity testing and the AFP and the ACC, and perhaps even a broader application to other agencies in the Commonwealth. My opinion is that it should be targeted rather than random. By preference, it should be under legislation.

Senator PARRY—Just being mercenary for a moment, is the reason for targeted versus random because it is less expensive?

Mr Moss—That would be one reason, but also I regard it to be a fair arrangement and one likely to produce worthwhile results. You would know already that the AFP conducts regular testing of its members in relation to drug testing and they are subject to other standards in relation to recruitment, financial and other personal interests. So this would complement the range of measures that are already in place.

Senator PARRY—No doubt if I get an opportunity I will ask the AFP something of a similar nature. If the AFP develops a full-blown integrity testing regime do you see an oversight capability for ACLEI in relation to that?

Mr Moss—Yes, I do. I hope that ACLEI would be involved to some significant extent in any integrity testing regime that was developed for the AFP.

Senator PARRY—What about cost implications? Do you see additional resources required for that?

Mr Moss—It may be. It is a question of if there were additional resources that the normal budgetary process would apply, or indeed if the costing may be absorbed within the AFP itself. At this stage it is hard to tell.

Senator PARRY—Would you see a similar move towards the Australian Crime Commission as being a part of your jurisdiction?

Mr Moss—That would be a question for the ACC itself. It, like the AFP, is very focused on the integrity of its law enforcement staff. But I have not yet had any discussions on this topic with the ACC chief executive officer.

Senator PARRY—So you believe it should be agency led and agency driven with ACLEI oversight?

Mr Moss—Well, certainly ACLEI involvement, yes. All the other three I do agree with.

Senator PARRY—Thank you.

CHAIR—Mr Moss, thank you very much. We have finished our questions for this morning. Thank you for your attendance at our estimates. I now welcome officers from the Australian Crime Commission.

Mr Wilkins—While we are coming to the table I can provide Senator Barnett with the information that he was seeking. Would that be appropriate?

CHAIR—That is probably a good idea.

Mr Wilkins—You asked about the provision of legal aid in respect of the Sydney terrorism trials. Is that correct?

Senator BARNETT—Yes. We got that answer last time but I wanted to ask about the Melbourne terrorism trials.

Mr Wilkins—The Melbourne terrorism trials, okay.

Senator BARNETT—If you have updated figures on the Sydney trials I would certainly welcome those. I have seen an answer to a question on notice.

Mr Wilkins—There is no change to the Sydney ones, and apparently we are getting information on Melbourne for you.

Senator BARNETT—Thank you very much. So the Sydney ones are as per the answer to a question on notice. I do not have it in front of me.

Mr Wilkins—That is what I am advised, yes.

Senator BARNETT—Thank you.

[9.27 am]

Australian Crime Commission

CHAIR—Welcome. Mr Lawler, do you have an opening statement you want to begin with?

Mr Lawler—No, we do not have an opening statement this morning.

Senator PARRY—I might start where I left off. Mr Lawler, you probably heard my questioning of the Australian Commission for Law Enforcement Integrity in relation to integrity testing. Do you believe that an integrity testing regime should exist within the Crime Commission?

Mr Lawler—Integrity testing more broadly has a role in law enforcement and in agencies such as the Australian Crime Commission. It needs to be seen as part of a broader suite of anticorruption measures in a holistic context. Certainly on arriving at the Australian Crime

Commission, there was a range of other anticorruption strategies that in my view, and the view of executive of the ACC and in consultation with the integrity commissioner, deserved higher priority. Those matters included mandatory drug testing, declarations around financial statements, a more robust internal reporting regime and robust training around the values that are required to support anticorruption strategies.

I am pleased to report to the committee that those strategies have been put in place and, indeed, we have recently completed our first mandatory drug-testing regime for every person in the organisation, including myself. That relates to the high-risk staff working in the commission. I can report to the committee that there were no positive results in that context. But specifically around integrity testing, I think it does have a place. It is something I have not considered at this particular point in time for the reasons I have outlined. I would be happy to have discussions with the integrity commissioner in the fullness of time.

Senator PARRY—I gather from that answer there is no consideration of appropriation or additional funding for an integrity testing regime in addition to what you have outlined, which, while not insignificant, is a lower level form of integrity testing than is currently undertaken?

Mr Lawler—Indeed, that is right.

Senator PARRY—Can you explain the Australian Crime Commission's role and additional funding that may be required for the new criminal intelligence fusion centre?

Mr Lawler—For the establishment of the criminal intelligence fusion capability and centre there is provided \$14.461 million over four years. In the 2010-11 financial year, the total resourcing is \$3.484 million. I am particularly delighted with this funding that has been provided to the Australian Crime Commission for intelligence fusion.

I am particularly pleased that across the broad spectrum of national security agencies, including the department, there has been strong support for this need. It is my firm view that this particular funding will deliver very significant benefits to a range of Commonwealth agencies in reducing risks to Commonwealth programs, but additionally will identify high risk, or serious and organised crime penetration, of high revenue streams. The funding is welcome. Planning is well under way to have the centre and the capability stood up by 1 July 2010. I would be happy to talk to the committee, if they so desire, on the ACC's plans in that regard.

Senator PARRY—Is the ACC the lead agency?

Mr Lawler—Yes. The fusion capability will reside within the Australian Crime Commission, but will rely heavily on our already strong partnership arrangements with a range of Commonwealth and state agencies. The fusion of this intelligence provides the real benefit to the broader Australian community.

Senator PARRY—Do you believe the appropriation is significant enough to meet the demand and the intent and capability that the ACC has for the fusion centre?

Mr Lawler—Fusion capability has its genesis in the financial intelligence assessment team that is currently in operation within the ACC, of which you have some knowledge already. There is always an issue of scale. It was our judgment that it is best to solidify the capability.

If there is a demonstrated demand and need for that to be increased at a future point in time, of course we have the option to go to government and make the case at that particular point.

Senator PARRY—I turn now to staffing levels in the ACC. What is the current capability? What are the full-time equivalents in the ACC presently?

Mr Lawler—If I may, if we could talk in the context of headcount.

Senator PARRY—Yes.

Mr Lawler—We have some detailed figures here to help the committee around the staffing. The total headcount for the Australian Crime Commission is 640. But as I have indicated to this and other committees, the ACC has quite a unique and in some ways complex staffing arrangement because we work in close collaboration with state and Commonwealth agencies, and we have a number of arrangements around seconded staff—some of which are funded by the ACC, some of which are funded by the jurisdiction or agency concerned—and we have members of joint task forces. These are members who are not formally seconded but who are working on ACC outcomes and ACC priorities. If it would assist the committee, I could go through those five separate categories as of 30 April 2010—they are quite recent figures.

Senator PARRY—Thank you.

Mr Lawler—As far as Australian Public Service staff are concerned—that is ACC staff principally—the number is 540; contractors, 12; and seconded APS Act and ACC Act staff, 22. That is a total number funded by the ACC at 574. Seconded staff funded by the jurisdiction is 18 and members of joint operations funded by the jurisdiction is 48, which gives the total of 640. Since 30 June 2009, that is an increase of eight per cent or 49 staff. In times gone by, there has been a different picture in the Australian Crime Commission around reduction of staff. Through savings and other measures we have been able to slowly increase that number, which I am very pleased about.

Senator PARRY—In relation to the joint operations staff not funded by the ACC—the figure of 48—does that fluctuate on a monthly, weekly, or annual basis depending on the operational issues at hand?

Mr Lawler—Yes, it does. It fluctuates year to year and it can fluctuate between weeks and days, depending on the operation. To give you an example of that, we had a recent operation in New South Wales where, working with our partners the AFP and New South Wales Police, an additional 200 staff joined the ACC in its priorities to effect a particular resolution of an operation. The task force numbers are very variable. As I said, I have a history of members of joint operations funded by jurisdiction going back to 2004, if that is helpful.

Senator PARRY—The 48 was at that single point in time on 30 April. If I had asked you this question at the time of the other operation, it would have been 248 or whatever?

Mr Lawler—Exactly, which is why we used the headcount number—to marry up with the annual report.

Senator PARRY—What sort of functions do the 12 contracting staff fulfil?

Mr Lawler—They are principally around information technology. I will ask Ms Bailey to give you some more details and the specific contracts we have.

Ms Bailey—There is an increase in our IT. You may have gained the impression that some of our forces, through our modest capital program, are investing in some upgrades. Most of those are short term, under three months.

Senator PARRY—Thank you. Is the 22 seconded staff figure fairly static, or does it vary greatly?

Ms Bailey—It has gone up and down over time, but that represents the police who join us on a two-year or 18-month basis rather than people who come on for short-term task forces. It is probably not as high as it has been, but we are actively recruiting more in that space now and seeking to increase those numbers over the coming months as well.

Senator PARRY—Is the difficulty one of budget or one of state jurisdictions being willing to allow their officers to be seconded to the ACC for a two or so year period?

Mr Lawler—We have very strong cooperation from the state police jurisdictions. Indeed, as recently as March the board of the Australian Crime Commission, including all the state and territory police commissioners and key Commonwealth agencies, reaffirmed their support for secondments to the ACC. Indeed, the ACC could not perform its work if these secondments were not made available to the agency. It is through those secondments that the police powers are brought to the commission. That having been said, historically, and I suspect in the future, there have always been competing priorities, particularly where state jurisdictions have found it difficult to recruit staff, particularly in buoyant times. This is always something that requires management.

There are specialist skill sets that are in keen demand, particularly in the area of surveillance. It is a difficult skill set to recruit for. There is strong support from the jurisdictions and from the Commonwealth agencies, but some practical difficulties.

Senator PARRY—So you would be desirous of increasing. Without putting words into your mouth, I think you would agree that it is beneficial not only to the ACC but also the sponsoring agency with facilitating greater cooperation between a federal and a state jurisdiction. Having said that, you would be desirous of increasing that number, subject to availability from state jurisdictions?

Mr Lawler—We certainly would, subject to budget of course, given that they are funded by the ACC. Your point is quite right, there are benefits all the way around here from seconded staff and jurisdictions understanding and being involved in the work of the commission. We see it as one of those classic win-wins.

Senator BARNETT—Commissioner, thank you for being here. I will ask the AFP questions about proceeds of crime, but I thought you might be able to assist in terms of the unexplained wealth provisions. Have they been used since the Crimes Legislation Amendment (Serious and Organised Crime) Act 2010 received royal assent? Are you able to make an observation regarding that? And perhaps you could advise if you are involved in any activities regarding unexplained wealth?

Mr Lawler—The ACC is yet to be involved in applications for unexplained wealth orders, but we are considering them as an option in our ongoing work. We have some cases in which we are considering the use of the new legislation. We are actively working with the Commonwealth Director of Public Prosecutions and the Federal Police to ensure that those provisions are effectively applied in the particular cases. Of course, you would understand that these are important provisions. But they are provisions that of course need to be properly applied, particularly given the legislation is new.

Senator BARNETT—Indeed.

Mr Lawler—There have been no applications at this point in time, but we are hopeful in the not-too-distant future to have applied that particular power in an appropriate way.

Senator BARNETT—Thank you very much for that. This question may be more properly directed to Mr Wilkins or his officers. I will check with Mr Wilkins if that is possible. I would like to know the current balance of the confiscated assets account and how much revenue has been paid into the confiscated assets account for the financial year 2009-10?

Mr Wilkins—As of 30 April 2010, the Insolvency and Trustee Service Australia advise that the confiscated assets account held \$24,130,143.45 in distributable funds.

Senator BARNETT—That is greatly appreciated. Do you have a figure for 30 June last year?

Mr Wilkins—We can get it, but we do not have it here.

Senator BARNETT—How much revenue has been paid into the confiscated assets account for this financial year?

Mr Wilkins—We can get that.

Senator BARNETT—How much has been drawn from it for use under the Proceeds of Crimes Act for the same period?

Mr Wilkins—We will have to get that information for you.

Senator BARNETT—Have the unexplained wealth provisions been used since the Crimes Legislation Amendment (Serious and Organised Crime) Act received royal assent? If so, what is the approximate value of the criminal assets under the restraining order?

Mr Wilkins—To my knowledge, this was only commenced in February this year. Although there has been some preparatory work and strategy work, as the commissioner has pointed out, the AFP and AUSTRAC have been involved in some thinking about that. I do not think it has actually been utilised yet.

Senator BARNETT—If that could be confirmed, that would be great.

Mr Wilkins—Subject to what effect it might have on operational matters.

Senator BARNETT—Of course.

Senator PARRY—Would the proceeds from the new unexplained wealth provisions in the serious and organised crime bill also go into the confiscated assets account?

Ms Kelly—That is correct.

Senator BARNETT—Mr Lawler, there was a statement by the Minister for Home Affairs on 23 April regarding the government's next steps in the fight against money laundering and people smuggling with the release of a discussion paper. Commissioner, have you been involved in that? You have considerable expertise and activity in both money laundering and people smuggling. Is that correct; can you clarify that?

Mr Lawler—Certainly, the ACC has a very significant involvement and a longstanding expertise in money-laundering investigations. The commission's focus has been on the classic saying of following the money trail because it is our clear view that the greatest threats, serious and organised criminals, are the ones that are generating the most wealth. So it stands to reason that following the financial trails is an imperative.

That is a difficult endeavour and it is one we have a specific determination on. That has been approved by the board. It is our financial crimes determination. That is looking at a range of different money-laundering typologies. That is how the serious and organised criminals are moving their money.

Of course, a lot of serious and organised criminal activity is generating cash. Drugs are not bought with credit cards. As a result, that is the commission's focus. I need to say to the committee that we do not do that in isolation. We work in partnership with our agencies at a Commonwealth and state level.

The secretary has spoken about AUSTRAC, which is very important in the context of money-laundering. We work with them to ensure we have strong, robust, contemporary financial intelligence. We do not currently have a determination in relation to people smuggling, but we do know that serious and organised crime is active in the people-smuggling space. Of course, our intelligence covers a broad range of criminality. We do identify issues and money laundering and people smuggling and other criminality in this context.

Senator BARNETT—I would like to draw you out on a couple of those. One is financing of terrorism activity. You have touched on people smuggling. It is not a direct remit for you at the moment, but you are obviously aware of the concerns. To what extent is there financing in this country by Australians and perhaps people within Australia of terrorist activity? Do you have a feel for that? To what extent can you comment on the financing of people-smuggling activity that you are aware of? If you can comment, good; if not, that is fine.

Mr Lawler—There are other agencies better able to comment than the Australian Crime Commission for the reasons that you point out—we do not have a specific determination and our intelligence assets have not been directed particularly at the area of counterterrorism and particularly counterterrorism financing. Of course, ASIO and the Australian Federal Police are well placed to do that. I understand in a broader context they have done very considerable amounts of work in this particular area. It is a difficult area.

That having been said, as I indicated earlier, given the sort of work the commission does in targeting highest threat criminal entities we invariably come across money-laundering, people smuggling and other criminal activity that we do not have a specific remit or determination to advance. Where we do find it, of course the information is shared in a comprehensive way

with those agencies I have mentioned and others as the need arises. Of course, that is why ASIO is on the board of the Australian Crime Commission and why the AFP commissioner is the chair.

Senator BARNETT—I refer now to card skimming. I understand you have a relationship with the Australian Bankers Association and the Australian Retailers Association to combat card skimming. What is the extent? How bad is it in Australia? How serious a concern is it and what steps are being undertaken to combat it?

Mr Lawler—Card skimming is a serious problem in Australia. We know that serious and organised crime is targeting financial institutions and their customers in skimming their details and then fraudulently accessing their accounts.

You may be referring to a media release and press conference that the ACC had with the Australian Retailers Association and the Australian Bankers Association. There was a very specific reason for that—to alert retailers to the risk of card skimming and indeed the substitution of EFTPOS machines. We thought it was a very important step, an important engagement with industry and an important preventative strategy in making sure that the public, as best we can possibly do, and particularly the retailers, are alert to the threats that are posed.

Senator BARNETT—I get regular feedback from everyday consumers that they have been ripped off and had money taken out of their account, credit card or whatever. I see that you have estimated that this costs the Australian community \$100 million.

Mr Lawler—That is an ACC estimate.

Senator BARNETT—Can you corroborate that? Is it pretty common? How many Australians are being affected each year? Do you have any statistics to support these statements?

Mr Lawler—I am very confident with the statements that have been made and that we can substantiate them. We have strong intelligence to support the sort of figures you have just quoted. Indeed, it would be my judgement that that could well be a very significant underestimation of the extent of the problem. This is why it is so important to work with the industry. Of course, the information is not held by the commission.

We need the information from the banks and financial institutions to gather that picture, particularly in relation to specific groups that are targeting Australia. These groups are typically international in their nature. The problem of organised crimes is a global problem. Because of that connectivity recently the Attorney-General's Department brought together a serious and organised crime framework. The nature of the problem is beyond one jurisdiction and, indeed, beyond one country.

In summary, it is a very significant problem and it is ongoing. It is a problem that requires a range of treatments—some of them are law enforcement, some of them are in a preventive context relating to the customers and retailers, and some of them are around technology. We are in close dialogue on this particular issue with the Canadian authorities and the United Kingdom authorities. Indeed, we have them working at the commission at the moment looking at the global linkages that we are confronting.

Senator BARNETT—ATMs, pinching your PIN: I keep getting feedback from people who have lost their money. It is happening pretty regularly. ATMs are being used and abused. People can have their PINs pinched and then they lose their money. How prevalent is that? Is it a concern?

Mr Lawler—That is another form of card skimming. The skimming I have been referring to was the actual removal of the portable EFTPOS machines or the tampering with the portable EFTPOS machines. In relation to ATMs, there is a long history of those particular machines being tampered with and exploited by organised criminals.

Senator BARNETT—But it seems to be getting worse, not better.

Mr Lawler—The criminals are dynamic and they continue to change their methodologies. Technologies assist them. They are cooperating globally and accessing new technologies to exploit the development with these facilities that are open to our communities.

Senator BARNETT—Do you think it is getting worse?

Mr Lawler—Serious and organised crime is a big problem. In the context of getting worse, the fact that it is globalising and becoming more sophisticated means it is a more of a threat rather than getting worse.

Senator BARNETT—I move on now to the issue of cybercrime and the use of undercover agents. This is a question that I will ask the AFP, but I am not sure whether the ACC covers this area and I would like to know the extent of the problem and whether your remit goes to sex predators and to grooming on the internet. Do you, as the ACC, cover that in your remit to combat serious and organised crime?

Mr Lawler—No, we do not at the moment.

Senator BARNETT—Are you aware that there is significant trafficking and prostitution in Australia? Is part of your remit combating that, in the sense that serious and organised crime is involved in such a wretched industry?

Mr Lawler—Our remit extends to the extent of two areas. The first is in the area of the ACC's responsibility for preparing the organised crime threat assessment for Australia. We had the responsibility of preparing a highly classified document that details the organised crime threats to this country. Included amongst that, as you would expect, are material and intelligence around child sex offences and like predatory behaviour. We also, as we spoke of with terrorism and terrorism financing, in the course of our serious and organised crime broader work, come across such intelligence. Where we do, we have a strict dissemination arrangement and material is disseminated to like agencies.

The ACC did have an undercover capacity, but it is one area where I believe the commission and, in particular, the AFP were duplicating effort. There was not a need to have two capacities, and we have entered into an arrangement with the AFP whereby we can draw down on their undercover capacity as required. We have used that resource that we have freed up in other areas. This is all about working collaboratively with others. The AFP and other agencies in this particular space could come to the commission for access to our intelligence holdings or, indeed, our coercive powers, if the board felt that was appropriate for it.

Senator BARNETT—I will be asking the AFP more about those matters when it comes before the committee. You talked about threat assessments and so on. Are you involved with the forthcoming visit of the President of the United States of America in providing threat assessments?

Mr Lawler—No, we are not.

Senator BARNETT—I wanted to ask you about your legal fees and the consultancy document that I have with me. There is a substantial amount of legal fees. I can understand that you would need to have outside advice for the work that you do, as it is very important, but it seems significant. I am looking at it from 2007 through to 2010 and there are hundreds and thousands of dollars.

Mr Lawler—Indeed.

Senator BARNETT—I just wondered whether the ACC had given thought to the merit of in-house counsel and the extent to which that is used currently and whether it could be used a bit more to ensure that you gain some cost efficiencies, and keeping costs at a minimum.

Mr Lawler—Your point is absolutely correct. We do have very significant legal costs. Indeed we see it regularly as a strategy of organised criminals that they will use the legal system to frustrate and try to distract the commission from its work. Often we have multiple challenges across multiple jurisdictions to the commission's work, to its issuing of determinations and to the role of the board. We see that legal attack consolidated across organised crime groups and across jurisdictions where commonly very senior counsel are pitted against the commission to try to overturn or frustrate the legal basis on which the commission operates. We have undertaken some significant cost-cutting within the organisation, as is reflected in the budget statements. As a result of that cost-cutting, we have been able to employ more staff in the ACC. We have in-house counsel, and we have a strong legal team but, as you are probably—

Senator BARNETT—Can you tell us how many you have?

Ms Bailey—I think the team is of the order of about 19, but we can confirm that number.

Mr Lawler—Let me see whether I have a more precise figure for you. As at 31 December 2009, the legal unit comprised 24 out of staff of 640, which is quite a significant number. But in the context of legal litigation there are specialist areas, in particular around the application of the ACC Act, where we require specialist senior counsel to match up against the very formidable legal counsel that are brought against the ACC. I am confident that we have given sufficient administrative oversight to the legal unit and that, in fact, it represents good value for money.

Senator BARNETT—Fair enough. I just note that—and I do not want to target anyone in particular—it appears, based on these consultancy documents that I have, that you are paying over \$200,000 per year for individual legal counsel, which obviously is a significant amount of money for individual advice.

Mr Lawler—I know the particular line item to which you are referring, and that is the in-house senior legal counsel for the ACC, who is responsible, as I have indicated, for litigating on behalf of the ACC in these high-end legal challenges that we are facing.

Senator BARNETT—I presume it is a he?

Mr Lawler—It is not in actual fact.

Senator BARNETT—It is a she?

Mr Lawler—Yes.

Senator BARNETT—So she is full time at the ACC but as a consultant.

Mr Lawler—She is on a retainer and then an appearance fee.

Senator BARNETT—But she works within the ACC, or does she work outside the ACC?

Mr Lawler—She works outside the ACC. She is retained counsel. What we find with the challenges to the ACC is that they often turn on complex legal arguments. We have found it very beneficial, particularly when the legal arguments are repeated or are slightly altered, to have counsel that is familiar with how the ACC operates, how the board operates and what documentation is available. In actual fact it turns out to be an efficient way of conducting this form of litigation.

Senator BARNETT—Thank you. My final question relates to an answer to question on notice No. 134, regarding redundancy packages by the ACC. I notice that they have cost over \$1 million—\$1,045,000. I do not know what period that is for, but that is as at 31 December 2009. It seems to me to be a substantial amount. Can you advise what that relates to?

Mr Lawler—Yes, I can. I have that question before me. I think it relates to the question that you asked:

d. How many redundancies have there been since December 2007?

I think the answer is then prefaced as at 31 December 2009, so it covers that two-year period for that amount, \$1,045,106.06.

Senator BARNETT—Obviously you are happy with that figure.

Mr Lawler—Yes.

Senator BARNETT—Thank you.

Senator HUTCHINS—Referring to money, can you update the committee on what has been happening with Operation Wickenby and the outcomes there? Is Mr Brereton still in the country—anything like that?

Mr Lawler—Yes, I can. Might I say at the outset that both Operation Wickenby and the broader Project Wickenby have delivered some very positive benefits for the Australian community from the commission's perspective. The project is the broader multi-agency operation involving a range of agencies, including the Australian Taxation Office, the AFP, the Australian Securities and Investment Commission, the Attorney-General's Department, the Australian Government Solicitor, AUSTRAC and the Commonwealth DPP, and that joint agency approach has delivered, as I said, significant benefits.

I will take you to five key areas where Project Wickenby, as at 31 March 2010, has delivered for the Australian people: \$727 million in additional tax liabilities have been raised; actual tax collections are at \$177 million; there has been a beneficial compliance dividend of just on \$300 million; there are a number of civil audits underway—675 in total; and the

number of audits that have been completed are just on 1,200. And whilst I have been at pains to talk to committees not only in the context of people charged but in some much broader performance indicators in relation to the specific ACC operations, as at 30 April in this particular operation there have been 11 people charged; two people charged with ACC Act offences; a total of 25 charges preferred; 294 ACC examinations conducted—those examinations delivering high-quality intelligence to the tax office and others about how offshore tax havens are constructed; and 308 disseminations to partner agencies—those partner agencies that I have spoken about. In that particular operation the ACC's work supported \$308 million worth of tax assessments. That is against a total expenditure by the ACC on that project of \$37.42 million, so it is nearly a 10 times return on investment for the \$37 million invested by the Australian community.

I think it is a very strong and positive message for all agencies involved in Operation Wickenby and, as the major advertisements in the newspapers indicate, there is more to come.

Senator HUTCHINS—Senator Barnett referred to the two serious and organised crime bills that received royal assent. One of those bills allowed for increased powers for the examiners. To your knowledge, have they been used at this stage? Can you elaborate for the committee on what those increased powers will allow the examiners to do to assist us in combating serious and organised crime?

Mr Lawler—Thank you for the question. It was a point of significant frustration for the commission, particularly the board of the commission, that we were finding when serious and organised criminals were lawfully summonsed before the commission to answer questions—and we saw a large number of outlaw motorcycle gang members undertake this activity—they would refuse to co-operate with the commission. As I have said previously, effectively they were thumbing their noses at the commission. What would often happen following that is that there would be extensive litigation, as I have explained to Senator Barnett. Often many years would elapse before those matters were ultimately dealt with by the court. Indeed that delay frustrated the ACC's ability to gather the evidence in the manner in which it was required to do.

As you know as Chair of the Parliamentary Joint Committee on the ACC, the committee, after being briefed on this difficulty, was supportive of what are called contempt provisions. They allow for examiners, through an arrangement, to refer people who fail to cooperate with the commission to be referred to the superior courts. I am pleased to report that just the fact that the legislation is now in existence has had the effect of those people cooperating when the examiners have advised witnesses of this provision. It has had a deterrent effect already. As a result there has not been the need to date for any persons to be referred to the superior courts, but there has been significant work done by the commission with the courts in each of the jurisdictions, particularly with their registrars, to ensure that the appropriate process is in place, in the event that legislation is required to be utilised. That ensures that the courts are fully briefed on the legislation and that we understand the administrative arrangements for giving that practical effect.

Senator HUTCHINS—As part of the 2010-11 budget, it was announced that there will be a criminal intelligence fusion centre. Can you elaborate for the committee what this new centre will do, over and above what you already do? Can you describe how it will operate?

Mr Lawler—Yes, I can. As I indicated to Senator Barnett, I was very pleased with the announcement of this additional funding, and indeed with the support we received across the broad bureaucracy for the fusion centre, particularly from the Attorney-General's Department. I have some specific information before me on the fusion capability, but it is important to point out firstly that that was a key plank of the Commonwealth Organised Crime Strategic Framework. There was an acknowledgement that there needed to be enhancements to information sharing and the fusing of intelligence. That needed to be done within a strict regulatory and secrecy environment. The ACC has strict conditions around the release and dissemination of information, and it has very significant penalties indeed for ACC staff who do not comply with those provisions.

The new proposal provides for 18 ACC staff. The sort of staff we are talking about are investigational staff, but also specialist staff in the context of the management of financial data, data miners, data analysts and statisticians. This capability will allow a number of things to occur: it will allow agencies, properly authorised and lawfully, to access ACC holdings in the context of risk—this is serious and organised crime penetration of government programs and other revenue streams.

It will also allow us to fuse data around those serious and organised criminals making the most money. So AUSTRAC data, and being able to work with that data and match it against lists of serious and organised criminals who are known, will therefore generate lead information—target packages, or the irresistible intelligence I talk about—for our partner agencies. What we will see from the fusion capability is a lot more lead information, a lot more suspects identified and a lot more risk that is able to be treated within the range of Commonwealth government programs.

Senator HUTCHINS—Mr Lawler, I understand that the commission established a reconciliation plan in 2008. Can you advise the committee of the outcomes to date?

Mr Lawler—Yes, I can. Indeed the ACC's reconciliation action plan was released in October 2008. It is part of the agency's commitment to progressing reconciliation between Indigenous and non-Indigenous persons. The plan recognises the ACC as part of a whole-of-government response to closing the gap between Indigenous and non-Indigenous Australians. Indeed, I have just had the plan brought to my attention. I understand it is also on the ACC's website for viewing.

The action plan is due to be reviewed: it is a biannual plan. Work is already under way to refresh the plan. We are committed to increasing our Indigenous workforce by 2.7 per cent by 2015. We are participating in the whole of the Australian Public Service, sponsored by the Australian Public Service Commission, the Indigenous Pathways Program in 2010 to employ cadets and offer training.

Importantly, as part of our plan, the work of our National Indigenous Intelligence Task Force plays a key role. I will take you to a couple of the actions that highlight that. One of the actions was that the NIITF community visits contribute to increased intelligence and NIITF objectives. You would be aware of a high-quality report that has been produced by the ACC, with the help of its partner agencies, on the depiction of crime in Indigenous communities. It relied on sworn testimony from over 500 people, which provided a first-time picture of the

extent of crime in those communities. There has been very strong stakeholder feedback, both within government and from the Indigenous community, on the quality of that report.

It is not a pretty picture. But that having been said, it becomes a document that will assist in improving the disadvantage of Indigenous communities, particularly in the context of crime. At a practical organisational level, we are also involved in the welcome to country, which is part of our operating procedure. It is part of the procedure that the board adopts at each of its four meetings a year as part of that plan. A range of things is under way. I am pleased to report to the committee on the ACC's reconciliation action plan.

Senator HUTCHINS—Thank you, Mr Lawler. You have been on record in the past as saying that the criminal activities in Australia contribute about \$15 billion in turnover for serious and organised crime figures. Can you give us a snapshot of criminal activity in this country currently? Senator Barnett referred to areas that are concerning him, such as card skimming, prostitution, and cybercrime. Is the importation of illicit drugs still the major contributor to that \$15 billion profit that organised crime is making in this country?

Mr Lawler—The answer is yes. Illicit drugs are a significant proportion. It is difficult to have precise figures but we think that close to 50 per cent of revenue is generated through illicit drugs. Indeed, we are seeing—

Senator HUTCHINS—That would be a \$7.5 billion industry then, on that basis?

Mr Lawler—I think it is of that order. I do not know the exact figure. It is important for the committee to be aware that we are involved in a joint project with the Australian Institute of Criminology. I understand that Dr Adam Tomison is to appear before the committee today. We are doing some joint work to try to understand in more detail and depth the cost to the Australian community. The figures that the ACC has promulgated are figures based on the United Nations Office on Drugs and Crime figures around gross domestic product. They project between 1 per cent and 2 per cent of GDP is lost to serious and organised crime.

I think those figures are also supported more broadly by other institutions—for example, the World Bank. Based on Australia's GDP, which in 2009 was a little over \$1 trillion, that equates to between \$10 billion and \$15 billion if you took 1.5 per cent. Some countries, in particular the United Kingdom, believe that those figures are conservative.

That having been said, the work is under way. The spectrum of criminality is narcotics, identity crime, money laundering and key risks. Within narcotics we see cocaine as a potential rising threat and, in a broader context, fraud. This goes to Senator Barnett's earlier question: those areas where there are large amounts of money, large amounts of revenue and large amounts of savings are attractive to serious and organised crime. They are attractive because that is what they are looking for and that is what they want to benefit from.

Work in the area around those money flows—which goes back to the question of the fusion centre and the importance of that investment in that area—helps to protect the Australian community from serious organised fraud, investment fraud, superannuation fraud, and the credit card skimming that we spoke about earlier in the hearing.

Senator HUTCHINS—Thank you.

CHAIR—Thank you very much. We have no further questions for the Australian Crime Commission. Thank you for your time and assistance this morning, Mr Lawler and Ms Bailey.

Mr Lawler—Thank you.

Mr Wilkins—Could Dr Popple just repeat what he said about the costs issue?

CHAIR—We will do that and then take the morning tea break.

Dr Popple—Senator Barnett, I am afraid I was out of the room this morning when you asked your question again, and you might have missed the answer, which I gave yesterday just after lunch. You wanted to know the year-to-date figures for Commonwealth legal services. The way in which the process works is that agencies are required, under the legal services directions, to provide to us their annual figures within 60 days of the end of each financial year. So the short answer is we do not have year-to-date figures.

We will have the figures for this current financial year by the end of August this year. The figures you had—the ones we tabled at the October hearings last year—are the most recent figures we have and, of course, they relate to the 2008-09 financial year.

Senator BARNETT—At the figure of \$555 million?

Dr Popple—Yes.

Senator BARNETT—I would say, if I was the minister and I had made a promise to significantly reduce legal costs across the government, I would ensure either quarterly or six-monthly reports to ensure that those costs were being reduced. You are not the minister so you cannot answer that question or respond to it. It beggars belief that the minister does not have in his possession evidence to confirm that there has been a reduction in the cost of legal services across the government. I can accept at face value what you are telling me, and I have to accept that, so I thank you for answering the question. You are getting back to us on the Melbourne terrorists?

Dr Popple—Yes, we are preparing that.

Senator BARNETT—Thank you.

CHAIR—We will break for morning tea and come back at 10.45 am

Proceedings suspended from 10.28 am to 10.47 am

Australian Customs and Border Protection Service

CHAIR—I welcome officers from the Australian Customs and Border Protection Service.

Senator Wong—Chair, Mr Wilkins has a short statement.

Mr Wilkins—It is in relation to Customs and Border Protection. The AFP, I think, is going to appear after them.

CHAIR—So this is an opening statement from you rather than from Mr Carmody?

Mr Wilkins—It is a statement from me mainly because the Attorney-General's Department is responsible for overseeing and putting together the border security budget, which includes not only Customs and Border Protection and the AFP but a number of other agencies in other estimates committees. I thought it may be useful, before we get down into the details of the

particular agencies, to give a little bit of an overview of the government's position in relation to border security more generally.

CHAIR—Then go ahead, Mr Wilkins; that is fine.

Mr Wilkins—I will keep it brief as I possibly can. The process that was gone through was an important one in the sense that it was a holistic approach to the entire question of border security. It included aviation components, maritime components and intelligence components. It impacted on a number of agencies, as I have indicated: Customs and Border Security, who are with us now; the Australian Federal Police; the intelligence agencies, some of which you have already spoken to; this department; the department of transport; and the Department of Immigration and Citizenship. A whole range of departments were included in it, and it was a process which required us to look at unders and overs across the entire panoply of those agencies.

The outcome of it was to ensure that there was a holistic approach. There were a number of initiatives that the government put in place and a number of programs that were continued and there were funds moved around in the system to ensure that they were most relevantly deployed. The upshot was that in border and aviation security there was \$69.4 million made available over four years to introduce biometric checks of international passengers in overseas posts to strengthen Australia's capacity to verify and identify foreign nationals.

There was \$24.9 million for stage 2 of Enhanced Passenger Assessment and Clearance, known as EPAC, which Mr Carmody can certainly talk more about, to ensure a large number of passengers can be assessed faster and earlier and to ensure that travel histories can be collected for the purposes of identifying passengers who may pose security risks.

There was \$11.4 million over four years for the Next Generation Border Security Initiative to allow the Department of Immigration and Citizenship to undertake advanced data analysis and risk profiling to more effectively identify visa applicants who may represent national security risks for referral to ASIO. There was \$9.2 million over four years to continue to support and maintain a regional movement alert system, which enables automatic verification of passports issued by each participating country. There was \$17.8 million additional funding over four years to increase the number of Australian Federal Police firearms and explosive detector dogs at major international airports. There was a renewal of \$759.4 million over four years for continued policing at Australian airports as part of the government's commitment to strengthening aviation security.

No doubt you will want to talk to the AFP about some of the details of that expenditure. There was \$12.3 million additional funding for one year in 2010-11 for the Australian Federal Police at 11 major airports in line with the Beale review's recommendations on airport policing. Once again, that will be a matter that you may want to talk to the AFP about.

On border protection more specifically, there was a major investment in the purchase of eight new patrol vessels. Mr Carmody can talk about that. The government will also provide additional funding of around \$42.6 million over four years to meet project implementation and enhanced operating costs. There is \$163.2 million over four years to continue initiatives to combat illegal foreign fishing, \$32.9 million over four years for investment in work with Indonesia to better manage the issue of people smuggling within Indonesia and the region,

and \$15.7 million over two years to ensure the continued presence of a dedicated vessel on the Ashmore Reef. There was \$800,000 of additional funding over two years for the Commonwealth Ombudsman to ensure the fairness of detention immigration processes on Christmas Island.

You can see both upstream and downstream that there are a considerable number of initiatives. It is important to take a holistic view of that. That is the reason why I wanted to make this short statement. Obviously we can go down into the details and ask individual agencies about individual initiatives and the movement of the funds from one program to another. But I think it is important to understand that what the government attempted to do here—certainly the department—in putting together a border security package or budget was to look at it holistically and to look at issues of intelligence, on-the-ground interception at airports, ports, so to look both upstream and downstream. In that context, I leave the statement at that point. I will not go on any further.

CHAIR—Thank you. I welcome Mr Carmody and your team. Do you have an opening statement, Mr Carmody.

Mr Carmody—No, I do not.

CHAIR—I did not think you would.

Senator HUMPHRIES—I want to go to the question you have raised, Mr Wilkins, of expenditure within the budget on Customs. I see that the budget papers reveal a cut of \$146.3 million over four years. Are the various items of expenditure you have just read to the committee to be subtracted from that \$146.3 million or is that \$146.3 million a net figure?

Mr Wilkins—Where is the figure coming from?

Senator Wong—Where are you getting that figure, Senator?

Mr Carmody—It is the four-year savings. The \$146.3 million is over 2010 in the forward estimates period which basically relates to improved efficiencies that we have introduced—a range of risk based approaches that do not impact on our ability to provide effective service to the community. Indeed, in many cases they reflect the success we have had in managing border risk. That is a gross figure of savings for 2010-11 out to 2013-14. But that is only one side of the ledger if you are looking at our budget

Our budget is affected by a range of issues and they include some of the matters that Mr Wilkins referred to. On the other side of the coin you have things like the investment in replacement vessels with the significant contribution to increased operating costs over the four years, plus a capital budget which has not been disclosed for tendering purposes and growth in funding for a range of areas. To try to be as crisp as possible, that is a gross savings figure; it is not the net impact on our budget.

Senator HUMPHRIES—But that gross savings figure also entails the axing of some 250 staff—is that correct?

Mr Carmody—No. The staffing figures are as a result of a whole range of issues. Indeed, there are some staffing reductions associated with those programs but not very substantial at all.

Senator HUMPHRIES—Could you be more specific and tell me what the reductions are in staffing as a result of those efficiencies?

Mr Carmody—I do have the figures here somewhere. The ultimate impact on staff is a combination of a whole range of factors. There are specific savings measures which I can talk about; there are things such as workload growth in the passenger area, which adds staff; there are things like the net impact of the efficiency dividend; there are things such as the policies that have been in place for many years, under which organisations such as my own have to fund pay increases through internal efficiencies. All those things contribute to the net staffing position.

Senator HUMPHRIES—I understand that, Mr Carmody, but I am trying to bore down to what exactly is happening to the base line operations of Customs as a result of the efficiencies that are being demanded in the budget. I appreciate that there is money for a series of initiatives which presumably will entail some spending on staff. You need to have some staff for those things. Presumably those staff members will be dedicated to delivering the impact system or the biometric checks, or whatever; they will not be available for general operations of Customs.

Mr Carmody—Yes.

Senator HUMPHRIES—I have been told of a reduction of 250 staff over four years. That is a significant reduction in capacity, I would have thought, of an organisation that is probably more stretched today than it has ever been in its history. If 250 staff are not being cut can you satisfy me that it is a lesser figure and what that lesser figure might be?

Mr Carmody—Yes. These are dynamic figures. At the time of the preparation of the budget that was our estimate of the impact. Since then we have done further work and we have found ways to achieve further efficiencies in supply figures. We have found ways, for example, to achieve further efficiencies by reducing consultancies and converting them to staff and providing improvements. There are a range of efficiency measures which go to how we operate as a national organisation, and the move to that with the development of such initiatives as centres of expertise in tariff advice and so on, that are all going towards the contribution of improvements that we can make.

The bottom line for me is that I believe none of this impacts on our ability to provide an appropriate management of the border, and none of it is adversely impacting on our ability to do that. If you go to the macro numbers you will see that, as we continue our budgeting, I am sure we will continue to refine these figures. We are probably down to a projected difference at this stage of about 180 FTE rather than the 250 from some of the further improvements that I have mentioned. There are a range of things that go to that—there is the transfer of 27 staff to the ATO because of the transfer of functionality for managing excise equivalent goods. So that is 27 staff who have moved because the function is being performed by another agency.

I think there are 10 ASL because the government has said that the Department of Defence will do security vetting for the Commonwealth. Again, that is a reduction of 10 in our FTE but the function is being done elsewhere. In relation to some of the specific savings measures, there are 17 ASL from improved efficiency in our aircraft search operations, and that has come about because we will be able to deploy more detector dogs into that area. So, again, it

is just as good a functionality but done more efficiently. At a macro level in our planning we are probably about 180 FTE. I have challenged my people to find further efficiencies to further reduce that and there are those specific transfers where functions have moved, and that has led to a reduction in staff.

Mr Wilkins—Senator, could I just make the additional point: I assume you are looking at figures in table 2.1 of the budget?

Senator HUMPHRIES—I have not got the budget papers with me, but I assume that that is where it comes from. As I do not have the budget papers with me, I assume that this figure has been extracted from that point in the budget papers.

Mr Wilkins—I think that is probably where it has come from.

Senator BARNETT—What page is that Mr Wilkins?

Mr Wilkins—That is page 122 of the PBS. These figures that you work with in that type of table are purely notional figures. It is where the finance department simply puts an FTE figure there based on an extrapolation. It does not really mean that you necessarily will get rid of 250 people; it simply means that if you cashed out the types of savings that is what you would end up. I think what Mr Carmody is saying is that there might be a lot of ways to skin this particular cat. You might not need to down size staff. It is a sort of notional—

Senator HUMPHRIES—I heard what he was saying but I am still puzzled about the fact that two weeks ago when the budget was brought down, you postulated a figure of 250 FTEs, and that figure is now substantially smaller. Why was the work that was done in the last two weeks not done before the budget was handed down?

Mr Wilkins—We are all hoist on this petard, Senator. It is an accounting thing. People just multiply out the full-time equivalent employees.

Senator HUMPHRIES—I do not understand how that works. If Mr Carmody can tell us now that the measure will cost, at this stage, only 180 staff and not 250 staff, why could that figure not have been in the budget? Why was that work not done before the budget was produced?

Mr Wilkins—Because that is not the methodology that is used by finance departments, both in this jurisdiction and around Australia. They simply do a calculation based on dividing the amount of money that is spent notionally in relation to salaries and they just extrapolate a figure. That is why I am saying it is a purely notional figure.

Senator HUMPHRIES—How long did Customs have to produce that saving? How long before the budget was brought down was Customs asked to find a saving of that size?

Mr Wilkins—It has been part of the budget process over a considerable time. There have been lots of meetings and discussions about that over the budget process. For example, for the next budget, the process theoretically is starting now.

Senator HUMPHRIES—So you were not asked to find a saving in a very short time to meet a budget outcome, and you did not have the time to put the figures together?

Mr Carmody—No. Let me explain. There is nothing untoward or pressured in this at all; it is a product of our continuing refinement of our budget. Once we get the macro budget

through the budget process we go through a lot of detailed planning to allocate resources. During that the specific measures which were savings were: the re-engineering of aircraft search, which I have mentioned, which was 17 ASL; the transfer of the excise equivalent function to the ATO, which was 27; enhancement of our compliance assurance by introducing more prerelease examinations and targeting our full-blown audits to areas of significant risk, with a 24-ASL saving there; and the transfer of the security vetting function to the Department of Defence, which is 10. Those are the specific savings measures. The balance comes about as a result of our planning as we take our budget, which includes a number of other things that I have mentioned—workload growth, efficiency dividend, wage cost indexation figures and the requirement to fund pay rises out of our existing budget—and it is in that area that we have been continually refining as we get to the point of allocating budgets down to divisions and so on. That has enabled us to get to the figure that you have mentioned. The 250, as Mr Wilkins mentioned, is a broad macro figure that you prepare for the budget.

Senator HUMPHRIES—I assume that you can tell us in due course the figure that you get to?

Mr Carmody—Yes. That will be disclosed in additional estimates, and at the end of the year it will be disclosed. I think that, if you look at everyone's figures throughout the year, you will find that they vary as you get into your more detailed planning. As we go through the year I expect we will find further supply savings which will enable us to keep more staff.

Senator HUMPHRIES—You were referring just now to savings or efficiencies in order to enable you to compress that figure from 250 to a smaller number of job losses or reductions in the size of your workforce. But that figure of \$146.3 million does not change, does it? That will not be compressed or reduced?

Mr Carmody—No, that is savings from the budget.

Senator HUMPHRIES—So what are the measures and the efficiencies you are taking, to produce that figure?

Mr Carmody—The \$143 million?

Senator HUMPHRIES—The \$146.3 million.

Mr Carmody—As I mentioned, these can be put in the broad category of improved risk approaches and, in part, a product of the success of our operations. If you take the major contributing figure, which is \$72 million over the forward estimates period, it comes from efficiencies relating to illegal foreign fishing. In this committee we have mentioned on a number of occasions the success we have had in turning back the tide of illegal foreign fishing in around 2005-06 and so on, which was quite a flood into the country—if you will excuse all the mixed metaphors. We have had a range of success through a strong detection and apprehension approach and a communications campaign in Indonesia. That has resulted in an ability to offer up savings of \$72 million over that period.

Senator HUMPHRIES—You said that you have had success.

Mr Carmody—Yes.

Senator HUMPHRIES—That does not then entail you saying, ‘We have succeeded in reducing some previous levels of illegal fishing, and therefore we can now remove some of the measures that we took in order to achieve that result.’

Mr Carmody—No, not at all. The deterrence effect of our surveillance and patrol operations remains. All those front-line activities are there to continue that deterrence. The savings come from areas such as vessel towing and destruction, because vessels are not being apprehended; transfers of apprehended fishermen, who are not there and so are not being apprehended; rapid response investigation; and prosecutions. Because we have been successful in those downstream areas in markedly reducing the number of illegal foreign fishers, we do not need those. It is in those areas that the savings have been offered up, not in the front-line patrol and response areas.

Senator HUMPHRIES—Have you previously provided the committee with figures for the number of illegal fishing vessels intercepted in Australian waters?

Mr Carmody—Yes, we have. We provided it at the last hearing. I can update the figures at this hearing if you would like.

Senator HUMPHRIES—If you could, that would be good.

Mr Carmody—As the chair said, a lot of areas are covered, so I have lots of paper. In 2005-06, apprehensions were at a peak of 376. That has gradually declined to the point where, to the end of March, there were 19.

Senator HUMPHRIES—That is year to date this year?

Mr Carmody—Yes, in the nine months to March. As you would see, there are significant reductions, and there are matching significant reductions in sightings.

Senator HUMPHRIES—Do you have a postulated figure for the number of vessels you will have to deal with this year in order to produce that saving?

Mr Carmody—We are being very efficient. That was at the end of March. As at 11.15 am today it was 21.

Senator HUMPHRIES—Do you have a postulated figure for the number of vessels you will have to deal with next year in order to calculate the level of your savings?

Mr Carmody—I think it was 60.

Senator HUMPHRIES—You mentioned a figure of \$72 million, which was the largest part of that \$146 million. What other components are there?

Mr Carmody—Again, because of our success in the Southern Ocean patrol program, there are savings of \$29.3 million in that. As with the previous example, over the years we have got to a point where there has been no illegal fishing detection in our economic exclusion zone, and we believe that, with a combination of satellite surveillance and our cooperation with the French in joint patrolling, we can provide a continuing and effective deterrence effect with less sailing.

Senator HUMPHRIES—So that figure of \$72 million is for northern waters and—

Mr Carmody—Northern fishing.

Senator HUMPHRIES—And the \$29 million is for the Southern Ocean?

Mr Carmody—It is for the Southern Ocean. I mention briefly compliance assurance, which is \$8.1 million over the four-year period. Here again it is a matter of us appropriately targeting our resources into risk areas. In the past we have probably invested too much in extensive audit activity where the risk was not sufficiently high and that has been borne out by the result. However, what we are going to do, therefore, is target the intensive activity to those areas that are identified as high risk. However, we are also increasing our approach to the prerelease examination of things. Again, evidence has shown that that is a more efficient way of doing it. That is that one.

Senator HUMPHRIES—Perhaps you could take the other components of that question on notice, and give it to us later.

Mr Carmody—Certainly. But, as you can see, we are refining our risk approaches and in many ways we are building on our success.

Senator HUMPHRIES—I turn to another aspect of the budget, the program to replace the Bay class vessels.

Mr Carmody—Yes.

Senator HUMPHRIES—You have included a measure in the budget of \$42.6 million over four years to support the procurement, construction and commissioning process, crew training, anticipated additional crew, and vessel running costs for the new vessels. There is no capital cost, though, for the building or purchasing of new vessels, is there.

Mr Carmody—The government has agreed to the capital cost, but it was determined as not appropriate to publish it at this stage because we are going out to tender and we did not want to give the tenderers information about what we thought they might charge us, because we wanted them to address that in an open and competitive way.

Senator HUMPHRIES—But obviously the government will have to find that figure in its budget.

Mr Carmody—The government has agreed to and made provision for the capital cost of those vessels.

Senator HUMPHRIES—What stage is Customs up to with the procurement process?

Mr Carmody—We hope to have the RFT out in June and we are looking for that to be responses and evaluations starting in September.

Senator HUMPHRIES—Can you confirm that you will be purchasing rather than building vessels?

Mr Carmody—When you say purchase rather than build, I am not quite sure of the distinction.

Senator HUMPHRIES—I am not familiar with the way in which these vessels are supplied. Can you get one off the shelf from somewhere else or do you have to build them here in Australia?

Mr Carmody—I suspect that, at the end of the day, they will be built for us.

Senator HUMPHRIES—But you do not know yet?

Mr Carmody—Customs and Border Protection Command can build them, and they will be in commercial supply. That is I why I was hesitating.

Senator HUMPHRIES—I am glad to hear that.

Mr Carmody—I know that we have many and varied capabilities.

Senator Wong—He is good, but he is not that good.

Senator HUMPHRIES—And obviously you cannot give us any figures on what you estimate to be the cost to build each vessel?

Mr Carmody—I do not want to give those to keep the process competitive, Senator.

Senator HUMPHRIES—Are you still looking at eight new vessels?

Mr Carmody—Eight vessels have been agreed to by the government. The government has also agreed that they will have significantly enhanced capability over the existing bay class fee vessels.

Senator HUMPHRIES—How many bay class vessels are there at the moment?

Mr Carmody—There are eight.

Senator HUMPHRIES—The fact that we are providing money for running costs in the budget, but no money to acquire the vessels that we are going to run—

Senator Wong—That is not correct. What you just said is not correct. It is not consistent with the evidence that was given.

Senator HUMPHRIES—The budget states that you are providing \$42.6 million to support the procurement, construction and commissioning process, and vessel running costs.

Senator Wong—Yes. The evidence that the committee has been given is that there is provision in the budget for the capital expenditure but it is not disclosed.

Mr Carmody—It is held in a contingency reserve and will be disclosed once we have—

Senator Wong—For commercial reasons.

Senator HUMPHRIES—So the money is in the budget?

Senator Wong—It is provisioned. The evidence was that it is provisioned in the budget.

Senator HUMPHRIES—Good. I refer to some of the unauthorised arrivals with which customs has had to deal in conjunction with other agencies in recent times. I refer, in particular, to the incident that was first reported by the Minister for Home Affairs on 8 May, in which five Australian bound asylum seekers perished at sea when they tried to find a passing ship to rescue them. Can you provide the committee with a time line of when customs became aware that this vessel was in need of interception?

Mr Carmody—Senator the AFP is conducting an investigation on behalf of the coroner so I want to be a bit careful about how far I go. I hope you will understand that. Information was put on the public record in the lead-up to this incident, before we had knowledge of the suspicion that five people had perished. I will give you a broad time line, but it will need to be in that context. My colleagues will correct me if I am wrong but on 30 April Border

Protection Command received calls, including from London, relaying the fact that they had a friend on the vessel that they were concerned was in difficulties.

Not long after that we approached the Australian Maritime Safety Agency, which accepted co-ordination of the management of the situation. AMSA, then in accordance with its standard practices, contacted vessels in the region within an hour or so. A couple of hours after that a vessel was said to have responded and located the vessel that was said to be in distress. My understanding is that at that stage they provided food, water and fuel, and a report to AMSA was then that they had met the requests of the vessel in distress and I think they indicated that the people on the vessel had indicated they were heading towards Christmas Island. So having met their responsibilities under maritime law, the commercial vessel then left the site.

Senator HUMPHRIES—Was this a Panamanian merchant vessel?

Mr Carmody—*TH Symphony*, yes. so far as we understood it, the situation had been dealt with appropriately. Our officers then estimated the time at which they should be arriving at Christmas Island, given our understanding of their location. As that time approached we decided to task defence to do a surveillance flight, and that was around 5 May. Nothing could be located then so we contacted AMSA again on 5 May, and it coordinated a further search and a number of aircraft were assigned, including defence, and Border Protection Command aircraft. On 6 May the vessel was located in the evening.

Senator HUMPHRIES—Where, sorry?

Mr Carmody—On the evening of 6 May. The vessel was there late that night and then a larger vessel or an additional vehicle arrived at 11.00 am the following morning. Because of the sea conditions they decided to transfer a limited number of people but they decided it would be best just to escort the vessel back to Cocos Island. It was around that time that statements were received that five people were missing, that they had boarded tyres taped together and the people on the original vessel had lost sight of them. As a result, an Orion aircraft was sent out to search. It is my understanding that they reported on one passing that there was what appeared to be a body on one of the tubes. The initial report was that the body was motionless. That was unable to be confirmed in subsequent visual sightings. AMSA then arranged for vessels in the area to continue the search but nobody was located. That is the sequence of events as I understand it at this stage, Senator.

Senator HUMPHRIES—Thank you. Can you tell us whether a call was received by Customs from a person in London who had been rung by someone on the vessel?

Mr Carmody—Sorry?

Senator HUMPHRIES—Can you confirm that Customs received a phone call—I assume that this was around 30 April?

Mr Carmody—Yes, from someone in London who had received a call from a friend on the vessel.

Senator HUMPHRIES—Is this the first time that phone calls had been received by Customs from third parties in forming you of events?

Mr Carmody—No, it is not.

Senator HUMPHRIES—Is it a frequent occurrence?

Mr Carmody—I think Customs, defence and AMSA have received calls at varying stages from people on vessels or from people in other countries.

Senator HUMPHRIES—Do you know what supplies were transferred from the Panamanian vessel to the vessel in question?

Mr Carmody—There was food, water and fuel. Those were the three items that were supplied.

Senator HUMPHRIES—I understand that although that transfer took place, when the vessel was intercepted on 6 May, those supplies were no longer there, nor was the GPS or the satellite phone on the vessel that had been used to make the call to London. Can you confirm that?

Mr Carmody—That is my understanding, but I am a bit hesitant to go too much further if there is an inquiry conducted by the AFP for coronial purposes, because that is then starting to deal with what may have caused the loss of life. While that investigation is going on, I am not sure it is appropriate for me to go into further detail.

Senator HUMPHRIES—All right. Can you tell me who determined that the Cocos Islands was the closest port to take the distressed vessel to?

Mr Carmody—I am not sure of that, but it would have been in discussions between the master of the rescuing vessel and the Australian Maritime Safety Authority. I think I could confirm that it was the closest port.

Senator HUMPHRIES—It was the closest port?

Mr Carmody—Yes.

Senator HUMPHRIES—In such situations, when does a vessel in this position become the responsibility of Australian authorities?

Mr Carmody—It was in Australia's search and rescue zone. That is why I say we transfer to the Australian Maritime Safety Authority.

Senator HUMPHRIES—When you say it was in the safety rescue zone—

Mr Carmody—The Australian search and rescue zone. The world is divided into search and rescue zones, where primary responsibility is allocated to particular organisations. In this case the incidents occurred in the Australian search and rescue zone. That is why AMSA took responsibility for coordinating the search.

Senator HUMPHRIES—But was it in the search and rescue zone on 30 April when it was first identified?

Mr Carmody—Yes, it was in Australia's search and rescue zone.

Senator HUMPHRIES—You said you would confirm who made the decision to direct the vessel to the Cocos Islands.

Mr Carmody—I would say it would be in discussion between the master and AMSA. If there is anything different I will advise you.

Senator HUMPHRIES—Is there a protocol for border protection command officers to inspect whether boats are genuinely in distress?

Mr Carmody—I am not quite sure of the question. If someone calls and they are in distress, you cannot just ignore it.

Senator HUMPHRIES—I am not suggesting that you do. I gather your answer is no, there is no protocol.

Mr Carmody—Indeed. In a case like this, where they are referred to AMSA, I cannot answer for AMSA, but our responsibilities are to respond to them. AMSA would be able to provide the full protocols. I am not privy to that.

Senator HUMPHRIES—Since August 2008 have there been any instances where passengers have been found to have sabotaged their own vessel prior to putting out a distress call?

Senator Wong—Prior to?

Senator HUMPHRIES—Since August 2008. Have there been any instances where people have been found to have sabotaged their own vessel prior to putting out a distress call?

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

Senator HUMPHRIES—I am not asking for the number of such instances. I am just asking whether there are any instances that you are aware of.

Senator Wong—Mr Carmody has taken the question on notice.

Senator HUMPHRIES—I heard him say that, but perhaps he misunderstood my question. Surely, as the head of this organisation he would know whether there were any cases where there had been such instances.

Mr Carmody—Sometimes there have been situations, but I do not want to rely on giving you an answer on that; I would have to have it examined. I will take that on notice.

Mr Wilkins—It requires us to reach a conclusion as to causation, which may be a contentious matter.

Senator HUMPHRIES—It may be. Presumably officers would do those things, would they not? They would make assessments of these things and they would report those things, would they not?

Mr Carmody—I want to answer your question accurately. To do that I wish to take it on notice.

Senator HUMPHRIES—How many instances have there been since August 2008 where unauthorised vessels have made direct calls, either by them or through a contact overseas to customs or AMSA?

Mr Carmody—I do not know the precise number. I will take it on notice. But there have been instances. However, the exact number I would have to take on notice.

Senator HUMPHRIES—A few isolated instances or a large number of instances?

Mr Carmody—A definition of a few is hard to give. That is why I will take it on notice.

Senator HUMPHRIES—Are there any indications from the instances that you referred to that those making the calls have knowledge of the correct procedures and protocols before making a distress call or a direct call to customs or AMSA?

Mr Carmody—What do you mean by protocols? There have instances where they obviously know the number to call.

Senator HUMPHRIES—Are there any other indications that they know there is a procedure that Australian authorities use to intercept vessels in these circumstances?

Mr Carmody—I am sure they would be aware of the general requirements for safety of life at sea in dealing with issues of vessels in distress. That is not peculiar to Australia; that is an international code.

Senator HUMPHRIES—Are you saying that there are indications that they have some knowledge of correct procedures and protocols?

Senator Wong—He gave the answer he gave. If you want to characterise it, that is a matter for you. But he gave the answer he gave.

Senator HUMPHRIES—I am just trying to clarify.

Mr Wilkins—I think he is saying that obligations and the 1982 United Nations law of the sea search and rescue convention, the safety of life at sea convention, are general knowledge. A lot of people understand that.

CHAIR—We have an arrangement that we will go to Senator Hanson-Young.

Senator HUMPHRIES—Understood.

Senator HANSON-YOUNG—Mr Carmody, can you outline the process for when a boat is found to be in distress and has reached Australian waters. When is the decision made to intercept a boat? Can you take us through the process.

Mr Carmody—Are you talking about a people-smuggling venture?

Senator HANSON-YOUNG—Any of the SIEVs, yes.

Mr Carmody—The general position is that they can be boarded once they reach Australia's contiguous zone, which I think is 24 nautical miles around Australian territory. But obviously, if there are circumstances where there are concerns as to safety or where there is a formal SOLAS incident, clearly we have talked about those. If there are indications of concerns about safety, we would also operate in that area to intercept.

Senator HANSON-YOUNG—When a boat is not necessarily deemed at risk—you have not received a distress call or the air surveillance has not seen it—you may make a judgment as to whether it seems safe or not. How long do you let the boat go before you reach it?

Mr Carmody—Generally the position is that unless there are concerns for safety—and we exercise extreme caution and concern in those cases; but let us put those aside—we board when they reach the contiguous zone.

Senator HANSON-YOUNG—In the coroner's report from the SIEV 36 boat explosion and the inquest that was carried out, Coroner Cavanagh spoke specifically about the warning notice given. I will read it briefly so you know what I am referring to in his report. It is at

point 40 on page 19, 'The warning notice'. He notes that upon boarding the vessel it was important to identify the master of the vessel, and there were two crew, neither of whom spoke much, if any, English.

However, Tahir was treated as the master because he had a better understanding of directions from the boarding party members. In accordance with the practice, he was given two notices. One was a detention notice under the Migration Act and the other a warning notice, which included the words:

You should now consider immediately returning to Indonesia with your passengers and not enter Australian Territory.

Throughout the evidence that was given in this inquiry and further through his report, Coroner Cavanagh notes that he was told that the warning notice was deemed to be inappropriate and incorrectly used. I accept that. I think his report indicates that perhaps it was not given inappropriately and incorrectly. Perhaps there may have been an avoidance of the tragedy. But he notes in point 44 on page 20:

Importantly, I note that Standing Orders have changed and the Warning Notice is no longer to be issued.

Could you go through what is now said to passengers when a boat is intercepted and personnel board a vessel?

Mr Carmody—At this level of detail, I will ask Rear Admiral Tim Barrett, Commander, Border Protection Command, to assist.

Rear Adm. Barrett—The warning notice is no longer issued. Currently the notices that are issued are a set of cards. They are not given to passengers; they are explained by the boarding party. They explain what will occur and the obligations of the patrol boat boarding party. They are available in different languages and the patrol boat crews now tell individuals that they will be taken to Australian officials at Christmas Island for further processing.

Senator HANSON-YOUNG—So they are told they will be taken to Christmas Island?

Rear Adm. Barrett—Yes.

Senator HANSON-YOUNG—Do the cards look like flash cards? Do they just have different languages on them? Can we have a copy of them? Are you able to table a copy of them?

Rear Adm. Barrett—They were tabled through the inquiry, but we can provide them.

Senator HANSON-YOUNG—That would be great. In terms of communication from that moment, are the passengers on board allocated with somebody specific that they talk to if they are concerned or if they do not understand that communication? They may understand the idea of an Australian official, but they may not understand the idea of Christmas Island or vice versa. How is that managed and what is the protocol for dealing with the anxiety that they may still feel, given that they do not understand where they are going?

Rear Adm. Barrett—The boarding party will look for acknowledgment of someone who has English language skills, preferably. Then communication is made through that person. That is a practice that is considered. Failing that, we will use the cards to try to explain as best we can in the language. But I make the point that we do not physically hand the cards over for

their use. We explain what is in the cards. If we cannot get the message across, we will use the card itself to try to talk through the specifics. That is what we do today. The issue, I guess, is that someone is not specifically set aside in most cases. In the proximity of the patrol boat, it is relatively small, be it a Navy or a Customs vessel. There is proximity to the boarding party and the passengers at all times, given the nature of how much room is available.

Senator HANSON-YOUNG—When did the use of these cards come about and when was it decided that the warning notice would no longer be used?

Rear Adm. Barrett—The cards have been around in some form or another for quite some time. They are not only used for people smuggling; we use cards to interpret our actions for illegal fishermen and any other event like that. They were updated immediately after the SIEV36 incident—not after the coroner’s inquest, but after that particular incident. We have a regime in place where they are now considered and updated as required to ensure they are contemporary and also consistent across both Navy vessels and Customs vessels. The warning notice itself, in my understanding, was something that was introduced to provide, as it states, a warning to those who might seek to breach an Australian act with a view that they might not attempt to land. That was still being used and I think both defence and Customs acknowledge that it is no longer appropriate, because it was written at a time when we were looking specifically at people moving to Indonesia. Straight after the event it was decided that it should no longer be issued. It was no longer used after April 2009.

Senator HANSON-YOUNG—I will go to a specific case and ask you to help me with some information. There has been for some time now some talk of a boat that left Indonesia on 2 October carrying some 100 people. In fact, I vaguely mentioned it in the February estimates and not much information was able to be provided then. Of course, there has been continued talk about this boat. I want to confirm, firstly, that Customs and Border Protection know about the boat that I am referring to.

Mr Carmody—Yes, we do.

Senator HANSON-YOUNG—So it did exist on 2 October?

Mr Carmody—There were reports.

Senator HANSON-YOUNG—It has been reported that the Home Affairs Minister Brendan O’Connor at the time said that there was credible information that the boat was not in distress. What happened there? Was there a call? Were you notified by the Indonesian government? What would have made Minister O’Connor make that kind the statement?

Mr Carmody—Our knowledge of this vessel goes to a range of intelligence sources. So it is difficult for me publicly, in public hearings, to talk about the exact nature of the information we had. The information we had on this vessel was gathered from piecing together intelligence. It was not of the other type we have talked about, so we had intelligence that was pieced together on the initial day. That was a case where we did not have a precise location, but we had an understanding on the best interpretation of the intelligence where vessel was. It was in the Indonesian search and rescue zone.

As we have discussed, AMSA was approached and in accordance with normal protocols they then approached the Indonesian search and rescue coordinating authority, which is

BASARNAS. Regarding the information that you are referring to, there is a combination of factors. Firstly, BASARNAS then notified back that they had not been able to identify any vessel in distress in the relevant area. Subsequently, as part of the general intelligence sweep we had, which I cannot go into the detail of, there was reporting that the vessel was on its way again. That was the basis.

Senator HANSON-YOUNG—If this information is all part of surveillance and some type of security investigation, you would also be aware that the boat reported never actually reached Australia.

Mr Carmody—I am not suggesting we had surveillance of this boat. If we had surveillance of it there would be a different situation. It was in the Indonesian search and rescue zone. There was intelligence, but I cannot go into that—

Senator HANSON-YOUNG—You did say ‘intelligence’ rather than ‘surveillance’. That is my mistake.

Mr Carmody—We had the intelligence suggesting that the vessel, if it existed, was making its way to Christmas Island. So we did conduct surveillance sweeps on the approach to Christmas Island around that time, but it did not arrive. All government agencies take these initiatives with concern. Perhaps this is more appropriate for the Department of Immigration and Citizenship, or DIAC, but there were further approaches from people requesting that we do something about this vessel and the people on it. I think interviews were conducted on Christmas Island to determine if any of the people identified had arrived. To the best of my knowledge, there has not been any evidence of that.

Senator HANSON-YOUNG—Is it in existence? What has happened to this boat? Is there a continual investigation by Customs and Border Protection?

Mr Carmody—I do not think there is anything more we can do. This was in October 2009 and it all occurred in Indonesian waters.

Senator HANSON-YOUNG—Are you aware of any other Australian government agencies that may be investigating this situation?

Mr Carmody—No. As far as I know, there was follow-up through DIAC on questions of whether people arrived, but no further investigation.

Senator HANSON-YOUNG—In a case like this it is obviously a joint effort because of the issue in relation to the boat being in Indonesian waters, the intelligence of the boat leaving Indonesia, and simply because it was heading towards Australia and, of course, Christmas Island. What is the process for keeping abreast of that information from Customs? Do you just wait until it gets to the Australian zone and then you carry forward your interception process or do you ‘mandatorially’ keep in contact with the Indonesian government and their agencies to keep abreast of where a boat is and whether or not it has disappeared?

Mr Carmody—At a general level we have discussed before that we receive a wide range of intelligence. Some of it proves accurate, and some of it does not, about potential ventures and movement of vessels. Australian agencies will then often be in contact with their counterpart agencies in Indonesia. We have discussed before the working operation between

the AFP and other agencies with their counterparts in Indonesia. We attempt to keep as good an intelligence picture as we can of possible ventures and departures.

Senator HANSON-YOUNG—In this case there were 100 people on board a boat. There were some reports of it being in distress and that could not be confirmed. There has been no reported sighting of the boat since then and we assume that the boat in fact has sunk or disappeared. Is that the opinion of Border Protection and Customs?

Mr Carmody—We do not know what happened to the vessel.

Senator HANSON-YOUNG—It does not just vanish. When you say there is nothing much more we can do, what assumptions have you made about the existence of the boat?

Mr Carmody—I am sure you did not mean that, but we did everything we could possibly and responsibly do in this situation. If there is any message out of this it is about the behaviour of people smugglers and the concern that people should exercise in dealing with people smugglers. But as far as Australia and Australian government agencies are concerned, as soon as we got a level of intelligence on this we reported it to AMSA and they reported it to the Indonesian authority. The Indonesian authority was unable to identify any such vessel. Then we got further intelligence suggesting that it had gone away. In the meantime, we kept up sweep flights. So, in the circumstances, in my view we did everything we could responsibly do.

Senator HANSON-YOUNG—I am not suggesting that you did not.

Mr Carmody—Thank you.

Senator HANSON-YOUNG—I am not suggesting that you did not at all. When you said you had done everything you could, you obviously made that decision based on the assumption that the boat was not there.

Mr Carmody—The boat is not there, but I cannot be sure what happened. The venture might have turned back to Indonesian waters. People might have got off and we did not hear from them again. It might have sunk. I do not know.

Senator HANSON-YOUNG—Was there any further follow up with the Indonesians about whether the boat did arrive back in Indonesia?

Mr Pezzullo—Perhaps I can assist. I chair the people-smuggling operation committee that deals with these matters and to the extent that they involve BPC, the Admiral can assist me in that. Following the non-arrival of the vessel, particularly after a reasonable period of time, by coordinating through the auspices of that operation experience we did a search of all of our holdings. We passed all of the leads we had on the matter back to the Indonesians through various agency-to-agency contacts, including through the immigration department and the Federal Police.

Obviously, one of the scenarios applicable here is, as Mr Carmody said, that the vessel had turned back and the people had got back off onto land. We have shared all of the leads that we have on this matter with the Indonesians with a view to them also checking their intelligence holdings to see if persons fitting that description, or perhaps associated with some of the relatives who have come forward, have come to light. I know from our liaison that these agencies have had and reported back to me that the Indonesians, like us, sadly and regrettably

have basically drawn a blank page. In other words, relatives have come forward, as I think you stated at our last appearance. We have run all those leads down and passed that information back. Whether the relatives have come forward to Customs or Immigration, or the Federal Police, we have each been in contact with our counterparts. As I said, regrettably all those leads have come to nought.

Senator HANSON-YOUNG—That is really sad. There were 100 people on that boat. That is an absolute tragedy

Mr Carmody—We share your feelings in terms of any loss of life. I repeat, I do not know where anger comes from, but my anger would be directed in this situation at the people smugglers who take advantage of people in difficult circumstances.

Mr Pezzullo—If I could amplify Mr Carmody's remark—because I was chairing the operation committee at the time—we worked on this problem day and night. We were quite concerned about the fate of these persons. The Indonesians responded in very quick turnaround as well. They were similarly concerned. We threw absolutely everything at that. We ensured that all the relevant leads were passed across before the incident was resolved and in the months subsequent to that.

Senator HANSON-YOUNG—Is this type of scenario just a one-off? How often would you get information that a boat has left Indonesia and it does not come up in your surveillance?

Mr Pezzullo—Periodically we and the Indonesians exchange information about leads that we have on possible departures and we attempt to reconcile departures with arrivals. But certainly it is my experience in the last year or so, in managing this process on a daily basis, that this case stands out in terms of the number of persons involved. There is nothing in quite the same league.

Senator HANSON-YOUNG—What about boats with fewer people?

Mr Pezzullo—In terms of the precise number of times we get reports of departures that do not quite reconcile with arrivals, I would have to take that on notice.

Senator HANSON-YOUNG—Could you.

Mr Pezzullo—As I said, there are instances similar to this particular case.

Senator HANSON-YOUNG—If you could take that question on notice, it would be helpful.

Mr Pezzullo—Sure.

Senator HANSON-YOUNG—We can only be thankful that it is not a regular occurrence.

Mr Carmody—I exercise a word of caution. I know that we have taken that question on notice. The fact that we get some intelligence that a vessel may have departed for Australia and it does not come does not mean that it has necessarily been a loss at sea. Often there are cases where boasts are made about ventures that people are organising and things like that. We have to be careful about what conclusions we draw.

Senator HANSON-YOUNG—Absolutely. Thank you.

CHAIR—Senator Humphries, we will go back to you.

Senator HUMPHRIES—I might defer to Senator Barnett, if I may, on another issue.

Senator BARNETT—Thank you, Mr Carmody, for being here. This relates to a company called Seahorse Australia, a company based in Launceston, Tasmania. It has done everything right. It is in the business of growing seahorses and exporting seahorses that are very special.

Senator Wong—Sorry, Senator. Before you ask the question, we are trying to find information and the right officer.

Senator BARNETT—There was a front page story in the *Examiner* newspaper yesterday, Monday, 24 May 2010, highlighting this issue. I have been talking to both Craig and Rachelle Hawkins, who operate Seahorse Australia—who are very fine citizens and who do a wonderful job. They are hardworking small business people in northern Tasmania. They have been doing everything right, but unfortunately the customs official in Launceston who did the paperwork was not able to 100 per cent correctly fill out the paperwork. Subsequently the seahorses—some 326 of them—which are endangered seahorses, went to Miami in the USA, to a regular customer. They have sent a similar number of seahorses to that customer on previous occasions. They export to different countries around the world but in particular to the USA. They have a very successful business. They sent six boxes of these seahorses and, as a result of a minor error on the paperwork completed in Launceston, unfortunately by the time it got to Miami—and I can advise that it went to the US Fish and Wildlife Service—they advised that it was an illegal import in the USA and not able to be validly received by the customer. I am advised that, as a result, the seahorses have now been forwarded to public aquariums in the USA, which puts a whole new slant on the US-Australia Free Trade Agreement. So they are happily swimming at public aquariums in the USA, but our constituents in Tasmania, who have done nothing wrong, have lost out to the tune of around \$4,500 for the package, not to mention the cost of their time and effort in following up on this.

I commend the efforts of various people to rectify this matter, including Duncan Cole from Austrade in Atlanta and Michelle Scott and Peter Easton of Environment. I understand others from the environment department were very helpful in trying to rectify this matter by advising the US Fish and Wildlife Service that this was an oversight by the customs official in Launceston. I also commend the efforts of Simon Smalley from the Washington Austrade office, Peter Brennan from Austrade and countless others who have attempted to rectify this matter. I know that Senator Colbeck has raised this matter in another committee—I think agriculture—and I would like to know whether Customs would be willing to provide compensation to the business. Is there a policy of providing compensation to a business when there is an oversight or incorrect paperwork has been completed? Will the people who are concerned, who are decent and hard-working small business people, get their money back and/or have this matter rectified?

Senator Wong—I assume you are referring to the article in which Senator Milne is quoted in relation to this issue?

Senator BARNETT—Yes.

Senator Wong—That was on the front page of yesterday's paper.

Senator BARNETT—That is what I have said, yes.

Senator Wong—We are happy to try to assist but we might need to make some inquiries. It is a little unclear from the article, and I and the officers at the table do not have a detailed knowledge of this. Are you asserting that there was an error in customs paperwork that led to this?

Senator BARNETT—Correct.

Senator Wong—Do you have any more detail than that?

Senator BARNETT—Yes, I do, and I am happy to provide it.

Senator Wong—If you are able to take us through it I will ask Mr Mann whether he could try over the lunch break to obtain more details about this issue and also to liaise with AQIS and possibly Environment on this issue. We will endeavour to do that over the lunch break.

Senator BARNETT—Yes, okay.

Senator Wong—Are you able to give us the details?

Senator BARNETT—Yes, I can.

Senator Wong—Could you do that?

Senator BARNETT—The district manager for customs in Launceston is Stuart Heslop, and he will certainly give you a full briefing on the matter, and he will confirm that the clients, the small business people, have been doing this regularly and have had two previous shipments to the same customer with no problem whatsoever. There was a small paperwork error by the customs official. He then subsequently put every effort into rectifying the matter. He contacted the US Fish and Wildlife Service, for which we are very thankful, but unfortunately the US Fish and Wildlife Service, according to my constituents, were pigheaded and did nothing. As a result, it has caused this grave disservice to this small business. They offered the customer in the USA an opportunity to pay \$7,000 as a fine to get the seahorses. Obviously that was not going to happen, because they had already ensured that the money was to be forwarded to our small business in Tasmania. The other option was to make the seahorses available to public aquariums in the USA, which is where I understand these seahorses are now happily swimming. It is bizarre that the US officials would act in such a way. I wonder whether there is more to it. I do not know whether Mr Carmody can find out whether there have been some bungles or whether there are some concerns with paperwork in the past and the US officials are now taking it out on these small business operators in northern Tasmania—or is there something more to it? I would like to see whether you can get to the bottom of it, Mr Carmody. Finally, I would certainly like this small business to be properly and fairly compensated for their costs and the expenses incurred in this mishap.

Senator Wong—Senator, do you have any more detail about the nature of the paperwork error?

Senator BARNETT—Yes. I talked to Craig and Rachelle this morning and they have advised me that it was signed ‘confirmed’ on the paperwork rather than indicating the number of seahorses. They should have written ‘326 seahorses’ rather than ‘confirmed’. You might think it was a small error but it was an error and the US Fish and Wildlife Service said, ‘No,

this is not meeting our requirements.' But you will be fully informed once you speak to Mr Heslop and other customs officials. I have mentioned the names of the Environment officials who have been very helpful in trying to assist in this matter, as has Sally Chandler, an operator for the Tasmanian Chamber of Commerce and industry. I also commend Sally.

Mr Carmody—Thank you, Senator. We will endeavour to obtain as much information as we can over lunch and provide that information to you. If we cannot get it today we will certainly provide full details on notice. Once we have the facts we will need to consider the other issues that you have raised.

Senator BARNETT—What is the customs policy with respect to mishaps or inappropriate paperwork? What happens? Is there compensation?

Mr Carmody—There are standard Commonwealth approaches to this, including for maladministration and other issues. I do not know whether this fits under that category. Obviously we will consider that when we look at it.

Senator BARNETT—I am no longer asking about this category; I am asking whether Customs provides compensation when a mistake is made?

Mr Carmody—We provide compensation under the Commonwealth agreed schemes in cases.

Senator BARNETT—You have done so in the past?

Mr Carmody—In the past we have provided compensation.

Senator BARNETT—In certain cases? Can you describe the cases? Give us a broad outline Mr Carmody and tell us how it works.

Mr Carmody—You are going to a level of detail that I probably do not know.

Senator BARNETT—Just give me a two-minute summary of how compensation works for errors by Customs officers.

Mr Carmody—I think the Attorney-General's Department might, provide a better summary on that.

Mr Wilkins—I think we had better take that question on notice. There is a statutory scheme administered by the department of finance. There is also some capacity for ex gratia payments in certain circumstances. If you would like further details of that we can obtain them for you and take you through the scheme. It will take us a little while to dig it out.

Senator BARNETT—My point is that this customer, a small business owner, through no fault of its own, has done everything right and it is prejudiced in some way or it loses its money. I would like to know whether a system is in place and whether they can be compensated.

Mr Wilkins—There is a system in place. Part of it is the ordinary law. If somebody has done something wrong, obviously you can use the courts and the ordinary law. Part of it is through the administrative compensation scheme. If the Ombudsman says that there has been maladministration or something, or there is some other way of deciding that that has happened, there is a capacity to get authorisation for that. Finally, there are ex gratia schemes that are used rarely, but in certain circumstances where circumstances are not defined. There

are quite a lot of avenues of redress for people who feel they have been wrongly done by, or where we can determine that there has been some sort of problem.

Senator BARNETT—If you could advise on that I would very much appreciate it. I must say that I was quite surprised when talking to Craig and Rachelle because they had not had any contact from Senator Milne as of today, and they are keen to get to the bottom of this. Senator Colbeck and I, on behalf of the Senate Liberal team, likewise would like to get to the bottom of it as quickly as possible.

Mr Carmody—As would we, Senator. We will do what we can.

Senator BARNETT—Thank you.

Mr Wilkins—Senator Barnett, the name of the scheme is the Commonwealth Scheme for Compensation for Detriment caused by Defective Administration, and it does allow ex gratia payment for proven maladministration.

Senator BARNETT—Do you have an application form there that we can pass over?

Mr Wilkins—I do not think it works quite like that.

Senator BARNETT—Be assured; these are small businesses. We do not want 50,000 pages of forms to fill out; we want an application form that can simply be filled out to get the money back.

Mr Wilkins—We can give you some further details on what the rules of that scheme might be.

Senator BARNETT—Thank you, and an application form would be great.

Mr Wilkins—We might have to invent one.

Senator XENOPHON—Mr Carmody, I want to ask you some questions about two issues. The first issue relates to the Wheeler report—a question that I ask at every estimates that relates to Mr Kessing's prosecution. One of the Wheeler recommendations was for integrated CCTV systems to be expanded and improved at Australian airports. You provided answers following the last estimates about Brisbane, Sydney and Melbourne airports. What is the status of Adelaide airport? I see that Senator Wong is smiling. Obviously she is concerned also about security at Adelaide airport.

Senator Wong—A vested interest, Senator.

Senator XENOPHON—A vested interest; that is right.

Mr Carmody—Someone is trying to look at that level of detail. If she finds it in her briefing we will get it to you as soon as we can.

Senator XENOPHON—Sure. Perhaps that question could be taken on notice.

Mr Carmody—We will take that question on notice if we cannot do it.

Senator XENOPHON—Of the 17 recommendations, how many have now been implemented?

Mr Carmody—I think only one is waiting that requires a legislative change. I will get people to assist you.

Senator XENOPHON—This is the Wheeler report into airport security.

Mr Carmody—I thought we had provided answers to this question previously, Senator.

Senator XENOPHON—You did, and these are supplementary to those answers.

Mr Carmody—I thought we had covered the number of recommendations that had been implemented though, in previous hearings.

Senator XENOPHON—I am happy for you to take this question on notice.

Senator Wong—Could we please have reference to the question on notice answer that you are now seeking to amplify?

Senator XENOPHON—Sure.

Senator Wong—It might expedite things.

Senator XENOPHON—Minister, I am happy for these issues to be taken on notice.

Mr Carmody—We will take them on notice.

Senator Wong—If we can deal with them now it would be useful, otherwise we will have a lot on notice. Is it answer No. 101, Senator?

Senator XENOPHON—I am trying to dig it up in all my other material.

Mr Carmody—My understanding is that the only matter of the recommendations that has not been implemented is referred to in answer 101, in the second and third dot points. That is the only outstanding matter.

Senator XENOPHON—Right.

Mr Carmody—And that is the only outstanding matter.

Senator XENOPHON—And that needs legislative change?

Mr Carmody—Yes, that is right, and a legislative bid has been put in.

Senator XENOPHON—So that is something that is likely to occur in the next few months?

Senator Wong—Senator, I do not necessarily hold you entirely responsible for this but, as you would know, we have a very substantial legislative backlog in the Senate.

Senator XENOPHON—And I am happy to sit more days. I just want to put that on the record.

Mr Carmody—Just to be clear, the two dot points refer, first, to a regulation that needs to be made and steps are in place to try to achieve that; and, second, to a legislative matter where the bid has been put in. Those are the two that are outstanding.

Senator XENOPHON—Thank you. Can I just go to the next issue and to what was raised at the last estimates with respect to the dumping of toilet paper into the Australian market? According to a Customs booklet on anti-dumping duties, injury is generally categorised as a loss of sales volume, loss of market share, and/or a reduction in profits. Can you indicate whether Customs is considering expanding the criteria to include impact on local jobs, environmental impacts of source materials, and also future losses? I guess it is a question that

could reasonably be put to the minister as well to establish whether the criteria for anti-dumping duties ought to be expanded beyond the categories that are now considered.

Mr Carmody—Senator, I do not know whether we can help you directly, but that particular matter is before the Federal Court, the particular case that we discussed at the last hearings. So that will be resolved there. I am not sure that I can help you with the question of whether there should be any policy changes.

Senator XENOPHON—Perhaps I could ask the minister. At the moment the criteria looks at issues such as sales volume loss, loss of market share, and/or a reduction in profit. Is the government looking at expanding the criteria to include an impact, for instance, on local jobs of the environmental impacts of source materials and also potential future losses?

Senator Wong—I will have to throw it to Mr Wilkins as I do not have an answer to that issue at my fingertips.

Mr Wilkins—There has been considerable thinking about some of the policy issues that you raised at the last estimates. On this particular issue, as you know, the Productivity Commission is about to release a report on this. I think that would give us an opportunity to look at some of the issues you raised relating to the triggers and the criteria as well as the processes involved in assessing these sorts of cases. All those things are now under consideration. We are waiting to see more precisely what the Productivity Commission suggests. I understand that that report is due to be tabled on 27 May.

Senator XENOPHON—So it is imminent?

Mr Carmody—It is imminent, yes.

Senator Wong—Senator, I might also be of assistance. I do not know whether Mr Campbell can usefully add anything about the current legal proceedings which might be relevant.

Mr Campbell—As Mr Carmody has alluded to, there are legal proceedings, as you are probably aware, Senator, in the Federal Court relating to the toilet paper matter where the setting aside of the dumping duty has been challenged.

The only other thing I can add to this is that I do not know the answer to your question. However, another factor to be considered is the content of the WTO antidumping treaty, which might have some bearing on the issue that you have raised. I do not know whether it does, but it could.

Senator XENOPHON—That was quite useful. Perhaps you could take that question on notice and establish the potential impact of the WTO antidumping duty. Finally in relation to this issue, in cases of reinvestigations I understand the current framework means that the Trade Measures Review Officer is not able to consider new submissions; rather it can look only at the information provided to the initial investigation. Is it your understanding, Mr Wilkins, that the Productivity Commission is looking at that issue of process to give consideration to reviewing this framework to provide Australian companies with a further opportunity to argue their position based on new information? That was one of the complaints raised by the local manufacturers, as I understand it.

Mr Wilkins—There are a variety of issues about the process, and that is one of them. There were other issues in my mind after we went through it at the last estimates. It is a relatively old-fashioned system and I wonder whether we should not revamp it. That is certainly one of the issues that you have enunciated. The other is the expertise of the people undertaking these reviews and whether or not they need to have specific expertise in the markets and the areas concerned.

Senator XENOPHON—Is it your view—you referred to it as being old-fashioned—that there is scope for improvements and reform? On the issue of the expertise of people looking at those issues, should they be looking at markets so there is scope for improvement?

Mr Wilkins—I think we should be reviewing it. Obviously the decision is a policy decision for government, but there are some signs from the consideration of this case that suggests that it needs a revamp.

Senator XENOPHON—Given that Mr Wilkins referred to the process as being old-fashioned and given that there is scope for officers who are looking at the markets to have greater expertise in relation to these markets, is that something at which the government is looking?

Mr Wilkins—I am saying specific markets.

Senator XENOPHON—Specific markets, that is right; I wanted to clarify that. Is that something that the government is looking at, given the concern and the angst? I note the Kimberley-Clark plant in the south-east of South Australia.

Senator Wong—As Mr Wilkins has said, that is an issue that the government would consider in the context of receiving the Productivity Commission's report to which Mr Wilkins alluded. I know that this is a significant issue but through other portfolios, notably Minister Carr's portfolio, we are providing support to the pulp and paper industry through other mechanisms. There are a number of recommendations in a strategy report that Minister Carr released last month which obviously the government will also consider. I know that the portfolio and the minister are aware of this issue. I am sure that the Productivity Commission report will give us an opportunity to consider the issue.

Senator XENOPHON—Although arguably the pulp and paper industry may not need that support. I think that this has also been put by the union. If products were not being dumped in the country in the first place I guess there is that broader argument.

Senator Wong—I do not really want to get into a long debate as I do not think the government has a fixed view on this issue. We had a discussion at the previous estimates about the legal process which was undertaken and you have raised some issues about the nature of the review process. We have understood that. Mr Wilkins outlined the consideration by the Productivity Commission. The matter is also before the Federal Court. These issues will enable the government to consider what you have put.

Senator XENOPHON—Thank you.

Senator McLUCAS—I wondered whether Mr Carmody could give the committee an understanding of international passenger numbers compared to forecast numbers. I asked this question at the last estimates but I do not know how far I can drill down on this issue.

Mr Carmody—I might ask Mr Mann, the deputy with responsibility for passengers, amongst other issues, to answer your question. I am sure he will have the detail for you.

Mr Mann—We did see a significant downturn in passenger numbers following the global financial crisis. But we have seen a strong return, in particular in the number of departing passengers—Australians travelling abroad on the back of the strong Australian dollar.

Senator McLUCAS—That is a shame, coming from Cairns.

Mr Mann—But there is also an increase in incoming travellers. So there is an increase in both those streams. Let me get some figures for you. For example, if we look the just at this year's estimates, what we are seeing for the March year to date is a 3.8 per cent increase for arriving international passengers and 4.1 per cent in departing international passengers. So you can see that there is strong growth in both those areas. The forecast for the year 2010-11 is 13.617 million arriving passengers compared to the additional estimates forecast for this year of 12.736 million. The forecast for the coming year on departing passengers is 13.974 million compared to the estimate in the additional estimates for this year of 12.342 million. As I said before, the numbers will end up being higher than forecast at additional estimates for this year based on that 3.8 per cent growth in arriving passengers and 4.1 per cent growth in departing passengers.

What has contributed to that is continued airfare discounting, particularly by low-cost carriers, which is stimulating demand, in particular for outbound international travel, combined with what has been, up until now, a continued rise in the value of the Australian dollar. I guess, as our value strengthens, more Australians travel overseas. If our dollar weakens, more international tourists seem to arrive on our shores.

Senator McLUCAS—It is better if we do not remind them, Mr Mann. We have a great product in Australia; we have to keep them home. However, my purpose in asking this question was to talk about processing times and what has happened as a result at the various airports around the country.

Mr Mann—Despite that strong growth in numbers, the facilitation figures are still holding up above the performance expectation that is set internationally of 95 per cent of arriving passengers processed within 30 minutes of joining an inwards queue. As at March this year, the national rate has remained steady at 97.7 per cent. So, in that sense, the average clearance time is holding up well in response to that growth in passenger numbers. If I look at particular airports for this year I see a range of performance, including Sydney, 97.4 per cent, and Cairns, 99.1 per cent.

Senator McLUCAS—That is another reason to come to Canberra. So, related to that is SmartGate. Can you give the committee an understanding of how that is progressing and how it has been used?

Mr Mann—SmartGate is currently operational at seven Australian airports, starting with Brisbane, Cairns was next, followed by Melbourne, Adelaide, Perth and Sydney on 1 July last year, and most recently the Gold Coast. We have also reconfigured to improve the service in Brisbane, which was also done last year. More than 1.5 million travellers have now used SmartGate. So, 48 per cent of eligible passport holders are choosing to use SmartGate, and the satisfaction rate through the surveys that we indicate is that 98 per cent of people who have

used SmartGate agree that it makes the arrivals process easier; 97 per cent agree that they are extremely likely to use SmartGate again in the future; and 96 per cent agree that they are extremely likely to recommend SmartGate to other people they know.

A key development over the last year has been the work we have been doing with New Zealand. We started in September 2008 to put our SmartGate kiosks at Auckland International Airport so that the first step of clearing border could be undertaken before departing New Zealand. All that remained for a passenger on arrival in Australia was basically to use the facial recognition gate and walk past the primary line. Since then, New Zealand has implemented the same technology at Auckland airport in December last year for their inwards processing, and it is continuing to roll that out to other airports. We have work underway as part of the announcements between our prime ministers to further explore into building on that initial start to better integrate the Trans-Tasman use of SmartGate.

So we will over the course of this coming financial year be undertaking two studies. One is a pre-clearance study to say are there models beyond SmartGate that might facilitate Trans-Tasman travel. In addition to that, however, we continue to look for ways to better build on the work that has been done between the two countries. Part of that will be looking at New Zealand's development of an outwards SmartGate. At the moment it is for passengers coming into a country. The next step that we are looking at with New Zealand is how that might work for passengers departing the country. One of the things we are keen to explore is whether or not between our two countries that we could basically share one process for clearing both the outgoing and arrivals process. Even beyond that, we are looking with industry to embed some of this in the check-in process by airlines so that there is one interaction to clear the border rather than multiple interactions with airlines and border agencies.

CHAIR—Thank you, Mr Mann. We will break for lunch and we will be back here at 1.30 pm.

Proceedings suspended from 12.31 pm to 1.33 pm

Senator McLUCAS—Mr Mann, we were talking about the uptake of SmartGate. I think you talked in your earlier comments about the number of people who were eligible to use SmartGate who were using it. My recollection was that you said about 50 per cent of people who are eligible are using SmartGate.

Mr Mann—At this stage, SmartGate its available to be used by Australian and New Zealand passport holders who have an e-passport who are over the age of 18. Of that group, currently we have about 48 per cent of eligible passengers choosing to use the automated border process through SmartGate.

Senator McLUCAS—But your satisfaction level is huge, massive. Other than the fantastic advertising and community understanding that will undoubtedly come out of this estimates hearing, what else are we doing to try to inform that 52 per cent of eligible customers that it is fantastic?

Mr Mann—Airlines have cooperated with us to produce in-flight videos promoting the use of SmartGate so that on arrival in our seven airports that are equipped with SmartGate there is some familiarisation. As you said, word of mouth marketing is one of the most effective tools here and over time we believe that that will be an effective way of promoting it.

Once you have travelled used it, you are certainly going to do it again, plus tell others that they should give it a go. Also on arrival at airports there is clear navigation towards our SmartGate, and our officers also from time to time will marshal people towards them and ask them if they have had an opportunity to try the system. So we are actively looking to promote the use of SmartGate within our airports as well.

The airports in Australia have been very cooperative in working with us on the positioning and in terms of signage to assist passengers find the gates. When they arrive in the arrivals area they can see no queues at our kiosks and gates versus joining longer passenger queues. In some ways there is a very clear incentive to move over towards the SmartGate kiosks.

Senator McLUCAS—Is the usage tracking up at a level that you are happy with?

Mr Mann—Yes, we have certainly seen percentage of uptake grow over the last two years. I do not have detailed figures with me, but that rate of growth is certainly achieving the kinds of efficiencies that we were looking to by moving to that automate border system because it takes pressure off not just our staff resources but also the capital infrastructure of airports.

If we did not have SmartGate, airports would be required to extend their infrastructure to accommodate more and more border officials. This is proving to be an effective way of minimising the rate of growth of infrastructure. That level of 48 per cent uptake and growing is on track with our expectations.

Senator McLUCAS—That is pleasing. I will probably ask you next time as well to see how we are going in terms of that tracking up.

Mr Mann—Next time I will come better prepared with the growth of uptake.

Senator McLUCAS—Thank you. I refer back to your earlier comments about passenger numbers. I want to go to the Cairns airport, if that is okay. How are we going, given we have had a fairly major downturn of arrivals into Cairns in the last two years? I am concerned that our capacity does not change at Cairns airport in terms of staffing ability to cope with what we hope will happen in the next two months—that is, a great increase in the number of arrivals.

We had some positive news with arrivals into the Cairns airport, particularly from Asia. Can you give me an understanding of our staffing levels and how they are going, and I suppose some confirmation that the downturn in our industry is not going to affect our potential growth in the next six months.

Mr Mann—If we just looked at what has happened in the arrivals in Cairns over the last year or so, last year—2008-09—was a tough year for the industry. I think there was on average just under one per cent growth nationally in numbers of arrivals. But if you looked at Cairns, it was a 22 per cent reduction. So there were a number of flight routes cancelled—Japan to Cairns in particular. This year that trend is unfortunately still, as at this time of the year, at the same level of reduction.

However, as you say, there has been some promising indication of perhaps some resumption of flights. We operate at eight international airports around the country and we are very conscious of making sure that we resource those airports to be able to balance our border

protection role in terms of looking for illicit drugs and other regulated goods and undertaking our immigration function, and also maintaining a high level of facilitation.

On inward we have a standard 95 per cent of passengers clearing our inwards process within 30 minutes. At the moment, even though it is little ahead of the international average, 95 per cent of passengers are clearing our outwards processing in 10 minutes. We resource each airport to achieve those outcomes. Over the last couple of years that has meant our staff being asked in some cases to either move from other functions in Customs in the airport if it is growing or moving out of an airport to other functions, or even to another airport in a different location to make the best use of their skills and capabilities. It is a constant monitoring.

We try to factor in the projected growth or reduction in expected numbers with our recruitment strategy that typically come in the airports first to make sure we always have adequate staffing to maintain those facilitation rates. We would clearly be watching to see if there is an upswing at Cairns and making provision for increasing resources if required.

Senator McLUCAS—So you do see forward projects around the flights that we are now projecting to come back and a range of staffing around that level?

Mr Mann—Yes. We basically resource on a 15-minute interval at every airport. So we are matching our rostering and staffing levels against the number of passengers we want to intervene with and facilitation rates. Our job is to make sure we can always predict in time to get those resources in place.

Senator McLUCAS—Thank you. That is much appreciated. I have one further issue that I want to progress.

CHAIR—That is fine.

Senator McLUCAS—There was a pretty unfortunate incident that a woman by the name of a Maria Cecilia Silva had with Customs. She unfortunately was arrested and spent five days in custody after she imported what now is evidently iced tea into the country. Can you explain to the committee what actually happened? I only have a media report. I think it would be useful to have on the record what in fact occurred.

Mr Carmody—On arrival Ms Silva was selected for examination because of some factors that I do not think it is appropriate to go into. There was a range of presumptive testing done using various technologies on what turned out to be iced tea. I should point out that iced tea has on previous occasions been used to conceal drugs.

Senator McLUCAS—That is the sort of information—

Mr Carmody—It is not universal but it has occurred. There has also been some false negatives with iced tea. On reasonable grounds, they did their testing. The officers did a range of testing and they assessed that testing as being presumptive of methamphetamines or amphetamines. Then, as is normal practice, Australian Federal Police were called in and, as a result of that, she was charged. Then, again as is I think usual practice, there was more detailed—we use presumptive testing tools—testing done by the AFP, which was not conclusive that it was iced tea, not drugs. There were no drugs concealed in the iced tea. As soon as that was determined, Ms Silva was released.

Clearly, this is an unfortunate situation. I wrote personally to Ms Silva apologising for the distress caused. As a result of this, we have even commissioned a former head of Attorney-Generals, Mr Skehill, to review the case to see if there was anything we could have done better, were the tests done appropriately, and to provide us with advice to make sure that we do everything we can to ensure this does not occur again.

Senator McLUCAS—Just to go into that detail, it seems that she spent a long time in prison between your suspicion of her having amphetamines in the iced tea.

Mr Carmody—It was a plastic-type bag or packet.

Senator McLUCAS—What is presumptive testing?

Mr Carmody—A range of tests is done using a range of technologies. A detector dog was taken over the suitcase with the package in it. A couple of those technologies were interpreted and assessed by the officers concerned as being positive for the existence of methamphetamines or amphetamines. We have reviewed the case and it is because we were not absolutely certain of the full facts as to how this occurred and as to the use of the technology and how those results of that technology should have been interpreted that we have engaged Mr Skehill to go through all our procedures in this sort of case and provide us with any advice on what, if anything, could have been done better.

Senator McLUCAS—Why did it take so long from the—

Mr Carmody—I am not sure I can answer that.

Senator McLUCAS—It is more of a question for the AFP?

Mr Carmody—Yes.

Senator McLUCAS—And the review that you are doing, is that a joint review between Customs and AFP?

Mr Carmody—I understand that Mr Skehill is reviewing all the circumstances.

Senator McLUCAS—I suppose once she moves into the AFP's hands, Customs have no further role. Is that correct?

Mr Carmody—That is correct. The matter is brought before the courts by the AFP. Ms Silva was at the airport and was passed to the AFP.

Senator McLUCAS—I understand that \$5,000 has been paid in court costs. That would have been done by the AFP, I assume.

Mr Carmody—When the case was dismissed that was just the normal process. You can ask the AFP, but my understanding is that that is just normal acceptance of costs.

Mr Mann—On the day of her arrest, she was remanded in custody to appear at the Melbourne Magistrates Court. So she was basically on remand on the eighteenth, which were the five days in custody.

Senator McLUCAS—But she was in custody for that period.

Mr Carmody—Yes, she was.

Senator McLUCAS—Has there been a compensation claim? Is there an issue of compensation that you can talk about?

Mr Mann—We have received notice from lawyers acting on behalf of Ms Silva that a claim for compensation may be made.

Senator McLUCAS—May be made. So there is no point in pursuing that until there is actually something to talk about. When do you expect the review to be completed, Mr Carmody?

Mr Carmody—I understand that it is expected next month.

Senator McLUCAS—What happens then? I know it will depend on what the review says.

Mr Carmody—It will depend on what the review says. As I said, a variety of results, some conflicting, were interpreted by my officers legitimately—they believed that to be case. But now we are in a situation where Mr Skehill is going to objectively look at it. If there is anything we can do to improve our approaches, you can be guaranteed that we will do that.

Senator McLUCAS—The sniffer dog quite rightly identified a problem. We know that they are not absolutely accurate. But it is important that we use them as a first line of defence. Can I say how lovely they are?

Mr Carmody—I agree they are lovely, but they do a very important job.

Senator McLUCAS—Absolutely.

Mr Carmody—Do not be fooled by that lovely face.

Senator McLUCAS—No. It is always helpful when they smile at you when they sniff your bag.

Mr Carmody—If they smile too much and sit next to you, be very worried.

Senator McLUCAS—So the sniffer dog says this might be a problem. What physically happens then?

Mr Carmody—Again, because there is potential compensation and I am awaiting Mr Skehill's report, I do not want to go into too much detail. However, in the general run, typically what we do is combine a number of tests. If a dog were to sit next to you that would be presumptive and typically you would be taken aside, your bags would be examined and we would employ other technology to test and confirm.

Mr Mann—Based on that range of tests and questioning, and the examination results, an officer may or may not form a suspicion that a person is carrying illicit drugs. If that is their belief or suspicion at that time, they make a referral to the AFP for further questioning.

Senator McLUCAS—Please understand this line of questioning is not in any way designed to diminish the importance of protecting our borders.

Mr Carmody—I understand that. But it is important that if there is anything to be learnt from this that we do learn that and that is what we are going to do.

Senator PARRY—I want to move on to Customs in relation to shipping arrivals in Australia. Is it a requirement for a Customs officer to greet every ship when its first port of call from an overseas destination is in Australia?

Mr Carmody—Is it a requirement to board?

Senator PARRY—To greet, to be present, to conduct any form of inspection?

Mr Carmody—Not on first arrival. We do a program that combines a number of risk factors to determine the number of boardings that we will do.

Senator PARRY—What about a formal greeting of each vessel that arrives at its first destination from an overseas port?

Ms Grant—We do a risk assessed approach to our boarding of first port vessels arriving in Australia. On the basis of the risk assessment we determine which vessels will be boarded, and low-risk ones will not always be boarded.

Senator PARRY—I will just leave the boarding question to one side. Do you need to formally greet or have any official involvement with the arrival of every ship when it first arrives from an overseas destination?

Ms Grant—There is a pre-arrival reporting regime and there is an arrival report required to be provided to us. But that can all be done electronically.

Senator PARRY—So there is no physical greeting of every ship that arrives in Australia?

Ms Grant—That is correct.

Senator PARRY—Can you provide a percentage? An approximation will be sufficient. I am happy for you to take on notice how many vessels would be formally greeted—again, forget a boarding of a ship, just a formal greeting of a ship by Customs officials.

Ms Grant—Of all the vessels that come into Australia each year, we will definitely greet in the order of 6,450 vessels.

Senator PARRY—Out of a total of how many arrivals? Do you have that information?

Ms Grant—I will take it on notice because I do not have the full year figures before me. I have only part-year figures.

Senator PARRY—Do the figures in front of indicate whether it would be greater or less than 50 per cent of all vessels?

Ms Grant—We will take that on notice and confirm the exact percentage for you.

Senator PARRY—That is fine. Out of those 6,450 vessels that have some Customs official that has some formal interaction with either the master, the captain or an official from the vessel, how many would be formally boarded?

Ms Grant—That is the number that will be formally boarded.

Senator PARRY—6,450?

Ms Grant—Yes.

Senator PARRY—Out of the total number of vessels, which we do not have, and the 6,450, is there another level of interception or interaction with the master or official of the vessel that does not require boarding of the vessel?

Ms Grant—As I said, there is pre-arrival reporting.

Senator PARRY—No, this is a formal Customs official having some formal interaction with someone from the vessel, in person.

Ms Grant—The interaction with the vessel is on arrival, though we could also do a departure clearance or an intermediate port visit depending on the risk assessment of the vessels or the circumstances presented by particular vessels. We might go on board for high-risk customs purposes like concerns about the migration status of some of the crew on board the vessel. There are a range of factors for why we would have an interest in an interaction with the master or crew of the vessel.

Senator PARRY—Is there a formal Customs office or presence at every port in Australia which is a first destination of international arrivals?

Ms Grant—There are number of proclaimed international ports around Australia. Some of those are permanently manned ports, and some of those are unmanned ports. We do a risk assessment on every vessel arriving in Australia. We determine which of the unmanned ports we need to deploy a boarding team to if a vessel is coming into one of those proclaimed ports.

Senator PARRY—Do you have a breakdown—or, again, can you provide it on notice—of the manned and unmanned ports in Australia?

Ms Grant—Yes. I will take that on notice, as I do not have the list with me.

Senator PARRY—that is fine. I presume that, apart from the major ports, you would be looking at substantial regional ports as having a manned presence?

Ms Grant—That is correct. We have a manned presence in places like Port Hedland, Dampier, Bundaberg, Townsville, Cairns—places right around the coastline of Australia. Equally there are proclaimed ports there that do not have a permanent presence.

Senator PARRY—By ‘proclaimed ports’ you mean it is a port that would officially receive vessels from international destinations.

Ms Grant—By a proclaimed port I mean a port that has been proclaimed as an international seaport under section 15 of the Customs Act. A vessel is not able to come to other ports in Australia without specifically having permission, which we would grant under a different section of the Customs Act, if we were to agree to an arrival outside of the permanently proclaimed international ports. Further to my comments, I should also say we have closed circuit television coverage at all of our proclaimed ports around Australia, both manned and unmanned ports.

Senator PARRY—That is centrally monitored in Melbourne. Is that correct?

Ms Grant—We are able to monitor the CCTV from the actual location, the capital city of the state that that remote port is in and all of those cameras from a central location in Melbourne as well.

Senator PARRY—Has there been an increase or reduction in the number of officers at the proclaimed ports or where you currently have officers or a presence at those ports? That can either be a calendar year or a financial years; it does not really matter.

Ms Grant—We identified some savings in the 2009-10 budget around first-port boarding. We went to a more risk based approach for our first-port boarding. There was a small

reduction in some of the district officers around Australia as a result of reducing the number of vessels they would board.

Senator PARRY—So that means a reduction in personnel?

Ms Grant—That took effect in the 2009-10 financial year. There has been no further reduction beyond that one-off adjustment.

Senator PARRY—Was there any increase in personnel to offset the reduction in personnel at port locations to enable a more targeted approach with more personnel?

Mr Carmody—We had discussions about that particular saving at a previous Senate estimates hearing in relation to the previous budget in which we pointed out that, when we analysed the first-port boardings we had done, there were a wide number of vessels that were regularly coming into Australia with the same crew members. We were boarding them regularly and there was nothing—no concerns.

As part of the previous budget, we identified a better risk based approach to doing that. That was a specific savings initiative that was not offset by anything else at that time. However, I would say that as we continue to monitor the operation of the first port boarding, we are continuing to question whether we could perhaps do not quite as many early first-port boardings. Even though we do not give you the percentages, the number we board is large relative to regular arrivals. In that context we are looking at whether we could redeploy staff to other issues around the ports environment.

Senator PARRY—Do you have anything in the way of a task force or a dedicated group that would fly or move to a port at short notice should you have a large operation to conduct?

Ms Grant—That would be part of our normal operating procedures. If we had a significant operation, we would run it on a national basis. We would appoint a national operation chief and then we would set up the resources where we needed to deal with the particular operation. In a large capital city, we probably would be able to manage with the staffing within that location. But if it was in one of our smaller offices, and this was an unusually large operation, we would certainly supplement their numbers to deal with the situation.

Senator PARRY—The number of boardings that would be undertaken by Customs officials may have decreased, but are more targeted. Would that be a fair comment?

Ms Grant—Yes, it would.

Mr Carmody—They are on a more risk-based approach. That is right.

Senator PARRY—I want to localise this now to the state of Tasmania. Are there any plans to reduce the number of personnel in Hobart, Bell Bay or Burnie?

Ms Grant—No.

Senator PARRY—Are there plans to increase the numbers in Hobart, Bell Bay or Burnie?

Mr Carmody—I doubt it.

Senator PARRY—The status quo.

Senator Wong—You get brownie points for trying, though!

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

CHAIR—Just before I go back to Senator Humphries, do we want to take the update on the seahorses issue?

Senator Wong—We are happy to do that.

CHAIR—When are we expecting Senator Barnett back?

Mr Lawler—I am not quite sure, Madam Chair.

Senator HUMPHRIES—Shortly, I understand.

CHAIR—We will leave it until he comes.

Senator Wong—It is up to you.

CHAIR—He will only ask questions about it anyway and, in his absence, you will have to repeat what you say.

Senator Wong—I could not possibly discern what he is going to do with it. I am in your hands, Madam Chair.

CHAIR—I am sure he will ask you what is happening.

Senator PARRY—I ask for Senator Barnett to return. I know he will be coming back.

CHAIR—All right. Senator Humphries, we will go to you now.

Senator HUMPHRIES—Thank you very much, Madam Chair. I want to ask about media releases that came out from Customs and Border Protection media on 17 and 19 May. That announced that there had been further interceptions of suspected irregular entry vessels in northern waters. I notice that up until approximately that time, such media releases had been issued under the name of the minister. But as far as I can see, for the first time these were issued simply by Customs and Border Protection. What is the reason for the apparent change in policy?

Mr Carmody—It was purely that the minister was travelling in circumstances in which he was unavailable. We were asked to just issue those. That was just for that period, Senator.

Senator HUMPHRIES—The minister was uncontactable because he was travelling?

Mr Carmody—Yes.

Senator HUMPHRIES—Two releases were issued on 17 May. The second one came under an email that stated:

Please note there was an error on the previous documents. Attached is the correct version.

The two media releases in fact were identical. There were only three sentences in each. But on the first email there was an attachment which was headed, 'Clearance and Consulted Agencies'. Can I take it that the procedure outlined in that attachment indicates the kind of procedure that such media releases pass through, not just in circumstances in which the minister is uncontactable, but in general when such releases are issued?

Mr Carmody—I do not have that specific media release, but it is quite normal for us. We act to some extent as a coordinating agency in this issue. It is quite normal for us, in clearing media releases, to have a clearance process for a range of agencies. The objective is to get an accurate release.

Senator Wong—Senator, if you are going to ask questions on the document, we probably would want to see the document.

Senator HUMPHRIES—I am sorry, I cannot hear you.

Senator Wong—If you are going to ask detailed questions from the document, it would be good for us to have a copy of the document.

Senator HUMPHRIES—All right. I am happy to make a copy available, if you wish.

Senator Wong—I just do not have one in my brief, that is all. From what Mr Carmody said, I do not think he is carrying one, either.

Senator HUMPHRIES—I am not sure you need the document, but I am happy to make a copy available for you. While that is being copied, I might ask you some other questions about staffing levels within Customs. Can you give me what the current staffing level is within Customs, please?

Mr Carmody—FTE is 5,437.

CHAIR—I thought you were just guessing there—was it five, was it four, was it three?

Mr Carmody—I got pretty close.

CHAIR—Yes.

Mr Carmody—It was a lucky call.

CHAIR—Yes, you did. It is actually a combination of those numbers, is it? Sorry—just a bit of frivolity.

Senator HUMPHRIES—So it is 5,437.

Mr Carmody—That is my understanding.

Senator HUMPHRIES—Full-time equivalents.

Mr Carmody—Yes.

Senator HUMPHRIES—Can you provide a breakdown on the areas where Customs staff are located?

Mr Carmody—Can I take that on notice?

Senator HUMPHRIES—You will need to take that on notice, obviously. Can you also take on notice whether staff have been reallocated to certain areas within the last 12 months?

Mr Carmody—We can talk about broad directions, but I think it would be pretty hard to go down to a particular FTE at a particular time. But we can talk about the broad directions of allocation of staffing.

Senator HUMPHRIES—Thank you. Before lunch I was asking about the way in which the department was making the efficiencies to reach that \$146.3 million figure.

Mr Carmody—Yes.

Senator HUMPHRIES—I said that because there had been some success in discouraging illegal fishing in Australian waters, was it likely that you were therefore going to reduce vigilance or relax the measures being taken in those waters because you had had some success

in deterring illegal fishers? I thought you said to me that, no, there would be no such relaxation of effort. You can correct me if I have misunderstood that. I notice in the portfolio budget statement at page 136 it states that the Southern Ocean vessel surveillance will be reduced from 280 days in 2009-10 to 200 days in 2010-11, and only 120 patrol days for the forward years of 2011 to 2014. That would suggest to me some reduction in effort and intensity of patrolling.

Mr Carmody—We had two discussions: one was in relation to northern foreign fishing. The savings I quote were in transfer fishers and prosecutions, and so on. My answer in response to the question you were posing was that our surveillance and patrols will continue: there is no diminution in that. In fact, they are working at high intensity. They cover all risks in the same threat area as maritime people smuggling, et cetera.

When it came to the Southern Ocean, I am happy to check *Hansard*, but I believe I said that the saving was because of the success we had, and we could reduce sailing days because we were able to operate in conjunction with the French. There will be continued satellite surveillance. In that context, I hope I said, and I think I did, that the saving was coming from reduced sailing days.

Senator HUMPHRIES—Okay. Specifically, why is it possible to reduce the number of sailing days in the southern oceans without risking an increase in illegal fishing? I assume that is what you would maintain, but you do not do the same thing in respect of northern waters.

Mr Carmody—There are two reasons for that. First of all, in relation to the Southern Ocean, as I mentioned, over a number of years there have been no sightings in the Southern Ocean exclusive zone, or no evidence of illegal fishing, in those zones. As I said, we coordinate patrols with the French and we have satellite coverage there. It is our assessment, given the long period of intensive patrols, that the same deterrence can be effected to continue under the arrangements I have talked about.

In the northern waters, there are two factors at work as well as those I have just mentioned. The same approach areas are relevant for maritime people smuggling. You would appreciate that we are not going to reduce our effort there. The other thing is that we have clear evidence from sightings that the illegal foreign fishing vessels are massed, if you like, just north of the relevant zones. Faced with that evidence, that provides a different scenario that we need to take account of.

Senator HUMPHRIES—When you say there has been no evidence of vessels fishing illegally in those areas, I assume you do not include those ‘research vessels’ that the Japanese dispatch?

Mr Carmody—I do not think they have been in those areas.

Senator HUMPHRIES—They are not in the same areas?

Mr Carmody—Not in those areas, no.

Senator HUMPHRIES—Are you saying that the areas that you patrol, with respect to the Southern Ocean patrol, are different to the areas in which the Japanese boats are hunting for whales?

Mr Carmody—That is my understanding, yes. There is co-operation with the French. You need to take that into account in relation to their zones, but we are mainly concerned with the Southern Ocean and economic exclusion of zones around Heard Island, McDonald Islands and Macquarie Island.

Senator HUMPHRIES—It might be useful if you were able to provide us with a map that illustrates the difference between these two zones.

Mr Carmody—We will provide that on notice, Senator.

Senator HUMPHRIES—I have finished on the Southern Ocean patrols. I see in a media report of 5 May that a contract has been signed that is worth \$157 million for a vessel to patrol the Southern Ocean—a 106-metre vessel and it will be renamed the *Ocean Protector*. How long is the contract for that vessel's use?

Ms Grant—The contract will go until June 2014.

Senator HUMPHRIES—Is that \$157 million for a three-year or a four-year contract?

Ms Grant—We have just signed the contract this year, so a four-year contract.

Senator HUMPHRIES—Okay. What would be the cost of purchasing a vessel of that size as opposed to having it leased, as it were?

Ms Grant—We do not have that information available.

Senator HUMPHRIES—Okay. The vessel will be renamed; what was its original name?

Ms Grant—I understand that the vessel's name that will be changed is *Skandi Bergen*, which is a company name. The owner of the company uses those words.

Senator HUMPHRIES—I return to the media release of which you now have a copy, with attachments indicating clearance and consulted agencies. I see that there was clearance by five different agencies or departments. Can you tell me whether the references there are to staff within the departments concerned, or staff within the offices of the ministers over the departments concerned?

Mr Carmody—I understand they are the departments concerned.

Senator HUMPHRIES—According to this, the release had been drafted by someone at Border Protection Command. Is that the way you would read that?

Ms Grant—The release is drafted by one of our officers who does media within the Customs and Border Protection Service.

Senator HUMPHRIES—So it is then cleared by the Director-General Border Protection Operations?

Ms Grant—That is the Deputy Commander Border Protection Command, who is a Customs and Border Protection Officer serving in that position.

Senator HUMPHRIES—So all these officers within the departments have cleared the release, but nobody in any minister's office has cleared the release—is that how you would read that document?

Ms Grant—That is correct. Our process is to undertake the whole-of-government communication function. We have, as a standard procedure, clearance through the relevant agencies at the department and agency level. Once the draft media release has been cleared through that process a final product from the point of view of the agencies and departments concerned is then provided. If it were a release to the minister's office that office would then use that as it saw fit. In this case the normal clearance process went through, but it was a release that was put out by Customs and Border Protection Service.

Senator HUMPHRIES—I am just curious as to why the responsible minister's office does not get to know about this until, effectively, the release has been issued. They would be separately advised of the arrival of a boat in the waters, I assume?

Ms Grant—In this instance the release was provided to the minister's office in the normal way, so the minister's office had an opportunity to clear the words before Customs and Border Protection put it out. We were putting it out in the absence of the minister, while he was unavailable to get the communication about this release. The normal clearance boxes were left on the back of that. What you see there is the normal clearances en route to a ministerial media release. In this instance, the same template was used when it was converted back to an agency media release.

Senator HUMPHRIES—Okay. This would have been cleared by the minister's office, in effect, and the other agencies' offices within the departments before being issued but, apart from the minister's office, it would not customarily go—this particular release presumably has not gone—to other ministers' offices before release?

Ms Grant—Not to my knowledge, but our procedures are that we provide a draft order to the office of the Minister for Home Affairs and that office releases the media release. What further clearance they may or may not undertake I could not comment on.

Senator HUMPHRIES—Okay. I am curious because there was also a media release issued on 13 May, of which you may be aware, in which not only was the release issued but also previous correspondence relating to the release. That included, apparently, input from a number of people, including one Lachlan Harris. I assume it is the same Lachlan Harris who is in the office of the Prime Minister. Indeed, the previous correspondence includes an email from somebody in the Prime Minister's office—not Lachlan Harris but somebody else in the Prime Minister's office—in which this person states: 'Hi, Belinda, a couple of things for me,' then some points are made about the media release:

This is day after budget. Maybe could you please include one/all of our BP spends? Perhaps investment in new Customs vessels is good one for this situation.

Why would a release have been run past the Prime Minister's office on 12 May for release on 13 May, and not other releases of this kind?

Ms Grant—As I said in one of my previous answers, our standard operating procedure is to provide a draft release to the minister's office when it is going to be a release issued under his name. What clearance processes his office goes through from that point on, I do not have knowledge about to provide to you. The correspondence that you have just read out was from beyond the Customs and Border Protection Service.

Senator HUMPHRIES—I see. But you would surely be aware whether people in other offices were usually being consulted. Would you not be aware of such discussions? Surely officers from time to time would come back to your agency for questions about processes or details of fact?

Ms Grant—No. Departments and agencies certainly consult at department and agency level, then we respond to requests from our minister's office. In my experience, if requests have come from other ministers' offices, they are channelled back to us by our own minister's office.

Senator HUMPHRIES—Can you give me an idea of what the usual lag time is between the interception of a vessel and the issuing of the media release so that the public in general knows?

Mr Carmody—That question was asked at the last hearings. There is an answer that has been provided, I believe.

Senator HUMPHRIES—Okay. I will look for that answer. I will finish my questions with a question about interception of illegal tobacco trading. Are the officers able to answer that question, or do you need other officers at the table?

Mr Carmody—Marion Grant will be able to help you.

Senator HUMPHRIES—Thank you. I see that on 29 April there was an announcement of an increase in tobacco excise of 25 per cent. Was customs involved in any way in assessing the impact of this measure on the trade in illegal tobacco of the kind that customs would be tasked to intercept and prevent?

Mr Carmody—Different question, maybe a different office. I will need to check whether we have that information. The short answer is that we were not asked and did not provide any analysis.

Senator HUMPHRIES—You are not aware whether any analysis was conducted; you have not seen any analysis?

Mr Carmody—We were not formally asked and have not provided any formal analysis. That is the extent of our position.

Senator HUMPHRIES—My question is slightly different to that. My question is: are you aware that an analysis has been done within the government?

Mr Carmody—I am not aware, but do not take anything from that. I am sure a lot of analysis is done that I am not aware of. I am not aware, but maybe my colleague is. It seems that we did not provide any detailed analysis and were not asked for any detailed analysis, but an observation was provided that there may be an impact. That is the extent of our involvement. If there is anything more I will let you know on notice, but that is the extent of my knowledge at the moment. I apologise for the first answer.

Senator HUMPHRIES—I would have thought that with a 25 per cent increase in tobacco excise that there may be an impact is probably a major understatement. Would you not agree?

Mr Carmody—We did not go into the detailed analysis; we merely pointed to the potential for an impact.

Senator HUMPHRIES—I suppose what I am asking you now is not what you provided previously but whether you expect an increase of 25 per cent in the tobacco excise to have a major impact on illegal trading in cigarettes or tobacco.

Mr Carmody—We have not done any detailed analysis, so it would be inappropriate for me to answer your question in any way other than to note that we have not done that analysis.

Senator BARNETT—Have you done any analysis?

Mr Carmody—We have not done that analysis.

Senator HUMPHRIES—Are you preparing any measures to respond to what I put to you would be a reasonable person's expectation that a dramatic increase in tobacco taxes might lead to more illegal trading in tobacco?

Mr Carmody—I cannot add any more than what I have said. We have not done a detailed analysis and you need to do a detailed analysis to determine the extent of any impact. All we did was point to the potential. So we have done the analysis, so it would be—

Senator HUMPHRIES—I do not think you understood my question. I have gone beyond that question. I asked you whether you are putting any measures in place. Are you taking any steps to respond to an increase in illegal trading?

Mr Carmody—Over recent years there have been significant detections of tobacco leaf and cigarettes. We continue to refine our risk analysis and approaches to those detections. We can give you an idea of the magnitude of the detections, which have been very significant.

Senator HUMPHRIES—I am sure they have, but that is not the question I am asking. My question is: with this change of policy, have you got any measures in place to deal with any significant increase in the scale of illegal tobacco trading between Australia and other countries?

Mr Carmody—Measures that we have in place now to deal with illegal imports of tobacco leaf and cigarettes will apply equally to any base level or any potential increase. We have done extensive work in identifying risk areas and people involved in this trade. We have had significant success in making those detections, and all of those factors will continue to apply and would be appropriate to address whatever level of attempts may be occurring at the moment.

Senator HUMPHRIES—Surely, Mr Carmody, the nature of the task remains very much the same but the scale of the exercise surely is going to become larger as a result of this decision. I am asking you whether you have any plans—and this is surely susceptible to a yes or no answer—to divert resources into the task of intercepting any greater volume of illegal trading in tobacco?

Mr Carmody—We continue to have plans to detect on a risk basis attempts to bring tobacco illegally into the country. Whatever level we detect we will deal with.

Senator HUMPHRIES—So it is the same plans you had last year and the year before that.

Mr Carmody—Because they are appropriate to the type of attempts that are made irrespective of the volume.

Senator HUMPHRIES—I am sure they are, but they might not be appropriate to the volume of such attempts, might they?

Senator Wong—Mr Carmody has outlined his answer. You have a range of speculative and hypothetical questions, which I do not think Mr Carmody can assist you with. He has given his answer about what measures are in place. You have your views about whether they are adequate or not. But I do not think he can assist you any further in relation to those questions.

Senator HUMPHRIES—We might differ on that.

Mr Carmody—If I can give an example, Senator.

Senator HUMPHRIES—An example of what, Mr Carmody?

Mr Carmody—Of what I am talking about.

Senator HUMPHRIES—With respect, I am sure you have very good measures in place to deal with the interception of illegal trading in tobacco. You are very vigilant about that; your officers are alert to that and so forth. The question is not the quality at this time or the measures that you have in place; it is about the quantity of measures.

Mr Carmody—And I wanted to go to that and illustrate that over the past few years those approaches have been able to manage large flows, increases and decreases in the attempts to bring illegal tobacco into the country. We have had years when we have handled 285 tonnes of tobacco leaf and 94 million sticks.

Senator HUMPHRIES—Can you give me the years in which those interceptions occurred?

Mr Carmody—In 2007 we had 284 tonnes of tobacco and 94 million sticks. The next year, 2008, we had 116 tonne and 62 million sticks. The last full year, 2009, we had 315 tonne and 61 million sticks. The point I am trying to make is that the approaches we make move with what we are detecting. The volume will not be an issue with the approaches we are taking.

Senator HUMPHRIES—So you are confident that if the volume of illegal trading increases and more efforts are opened up by illegal traders that to circumvent this significant tax hike you will be just as effective in being able to intercept such trading without any additional resources?

Mr Carmody—It might be, when you detect things you bring officers into deal with it.

Senator HUMPHRIES—Once you have detected it?

Mr Carmody—It is not a static situation that we have this person looking at cargo for the purpose of tobacco and only dealing with tobacco. We risk profile, including for factors to do with tobacco, but for a range of things. It is not officer A deals solely with tobacco and officer B deals with something else. We risk profile and we use intelligence to target consignments and containers. If we find our suspicions are justified and we find tobacco leaf or tobacco then we deal with it.

Senator HUMPHRIES—Is your budget in this area predicated on a postulated level of seizure each year?

Mr Carmody—Not at the level we are talking about budgets for tobacco, no.

Senator McLUCAS—By what method do people illegally bring tobacco and cigarettes into our country?

Mr Carmody—Typically in sea containers. Sometimes there are attempts to conceal them with front loads of genuine goods and sometimes they are quite blatantly included in containers.

Senator McLUCAS—That is the point I am making: that you will do a risk assessment of every container that comes into this country.

Mr Carmody—That is right.

Senator McLUCAS—If it has amphetamines or tobacco, you are going to get them.

Mr Carmody—Based on our risk assessment.

Senator HUMPHRIES—Did you say you are going to get them?

Senator McLUCAS—No, I said it; I have great faith in Customs.

Senator HUMPHRIES—You are not suggesting in answering that question positively that you are going to intercept all the containers containing illegal shipments?

Mr Carmody—I am not that brave.

Senator McLUCAS—I am just being a cheer squad.

Senator HUMPHRIES—You have a clear interest in this matter.

Senator McLUCAS—Not at all. I want to follow up on Senator Humphries' questions about fishing, if that is appropriate now. I was recently in Normanton at a forum and the issue of illegal fishing in the Gulf of Carpentaria was raised. I would like an update on levels of detection, of particularly Indonesian fishers, or other fishers in the gulf. They are usually Indonesian from that hiatus that we had in the midpart of the decade to what is happening now.

Mr Carmody—I did provide an answer to that question earlier in the hearing, when I gave a range of detections and the dramatic fall-off over the past few years.

Senator McLUCAS—I will check *Hansard*. In one sentence—

Mr Carmody—They were not in the Gulf of Carpentaria solely.

Senator McLUCAS—I am looking at the gulf in particular.

Mr Carmody—I do not have that information with me.

Ms Grant—The good news story is that they have left the Gulf of Carpentaria in years gone by. In the 2005-06 era we had significant incursions right down in the Gulf of Carpentaria. As Mr Carmody said in his earlier answer, the foreign fishing vessels have now moved right out to the edge—200 nautical miles into the exclusive economic zone. Our surveillance and response efforts have been successful in pushing foreign fishing vessels from close in. But it has just changed the dynamics of that task of ensuring that they do not start creeping back closer to Australia.

Senator McLUCAS—But the level of surveillance is maintained at a level that I can be comfortable we do not have undetected illegal fishers in that area?

Mr Carmody—As I pointed out, aerial surveillance covers all maritime areas, including people smuggling and whatever. But in those high risk areas, if anything it has been increasing over the last couple of years—

Ms Grant—And we do have regular surveillance in the gulf area.

Senator McLUCAS—It was put to me that it is not well understood—and I am saying it was put to me and I do not know that this is accurate—what community members and Australian fishers should do if they observe a suspected illegal foreign fisher. What do you do about advising communities like Normanton, Pormpuraaw, Karumba Kowanyama or Weipa about what to do if they see someone who they think should not be there? What is your campaign of information in those quite remote areas?

Ms Grant—We have a customs program called our hotline program. Staff from our district offices have a program of community visits to go and explain to communities exactly those sorts of things. If you see something suspicious, watch out for Australia and report it to our 1800 number.

On those hotline education visits the communities are advised of what sort of indicators might suggest some suspicious activity and they are encouraged to report anything to us, much like some of the other hotlines in operation. Those reports are all taken seriously and we will mount an inquiry and respond where appropriate to such reports.

Senator McLUCAS—In the last 24 months, how many hotline contacts would you have had from the Gulf of Carpentaria area?

Ms Grant—I would need to take that on notice.

Senator McLUCAS—I am sure you do not have that detail in your folder.

CHAIR—Senator Barnett is back, Minister. Do we have a response about the seahorses?

Senator Wong—Mr Carmody has a response on seahorses and Mr Wilkins has a response on the additional issue that Senator Barnett raised.

Mr Carmody—The chronology is very much as you pointed out, Senator Barnett. But Seahorse Australia did attend our offices on Friday 14 May and presented the Department of Environment, Water, Heritage and Arts a permit for 326 seahorses to be exported to the USA. The district manager undertook the usual process of checking the export declaration notice in our integrated cargo system to ensure that the number of items for export detailed in the notice matched that written on the permit. This was done and the word ‘confirmed’ was written on the permit—the intention being to verify that there were 326 seahorses as detailed in the permit. That was then signed and dated and the customs stamp placed next to the district manager’s signature.

I am advised that the United States requires the number of specimens exported to be written, certified by stamp or seal and the signature of the authority that carried out the inspection. Even though the details were on it, they require that it be written. It has been pointed out to us that several previous exports have been completed using only the word

'confirm' with the right number of specimens without objection from the US. However, on that occasion the US rejected the paperwork. To correct that omission, the Customs and Border Protection officer in Tasmania sent a confirmation email to the US Fish and Wildlife Service confirming that the export was correct as described on the export permits.

Senator BARNETT—When was that sent? Do you know?

Mr Carmody—I am sorry, Senator. I assume it was sent as soon as they were contacted. The US has not replied to the email to the best of our knowledge and it appears that they will not accept such changes by email. It is a fact that under the Convention on International Trade in Endangered Species, the validation process for exports to the US requires the Customs and Border Protection officer to stamp, sign and note the total quantity exported, which must match the notice.

That advice was in fact circulated to our staff on 2 June 2008. So the circumstances are as I have outlined. Having faced the situation, my officer attempted to address it by the email, but that was unsuccessful. You asked about compensation, and Mr Wilkins will talk about that. However, at a more general level we will approach the people involved to discuss what is possible.

Senator BARNETT—Which people, those in the US?

Mr Carmody—No, I am talking about Seahorse Australia. We will contact them and explain to them what is possible under compensation or other claims.

Senator BARNETT—Thank you.

Mr Carmody—The email went on 17 May.

Mr Wilkins—Senator Barnett, it might be useful if I get Dr Popple to take you through the compensation options for commonwealth agencies. We do have the guidelines here. I am delighted to say there is an application form.

Senator BARNETT—That is good news.

Mr Wilkins—I will get Dr Popple to explain how the scheme works.

Senator BARNETT—Maybe we can fill it out and send it off.

Mr Wilkins—I am sure we can.

Senator Wong—I think we can sign for them, Senator.

Dr Popple—There are three mechanisms under which the commonwealth has discretion to provide compensation: act of grace payments; a scheme called the Compensation for Detriment caused by Defective Administration scheme—the CDDA scheme—and also ex gratia payments. All these mechanisms are discretionary; there is no automatic entitlement to payment. The payments are made on the basis that there is a moral rather than a legal obligation to the person who is making the claim. This information and more is in a document called Finance Circular 2006/05.

Act of grace payments are made under section 33 of the Financial Management and Accountability Act. That act authorises the finance minister to approve act of grace payments.

Senator BARNETT—What section?

Dr Popple—Section 33.

Senator BARNETT—Thank you.

Dr Popple—Act of grace payments are made where loss is incurred as a direct result of the involvement of an Australian government agency or the application of Commonwealth legislation and there is an unintended, inequitable or anomalous effect. Under the CDDA scheme, the Compensation for detriment caused by Defective Administration scheme, authority to make payments comes from the executive power of the Commonwealth, which is under section 61 of the Constitution.

The purpose of that scheme is to compensate individuals or other bodies who have experienced loss caused by an agency's defective administration. The aim of the payment is to restore a person to the position that they would have been in if there had been no defective administration. Applications are made to the relevant agency. As the secretary has pointed out, there was a template form in the finance circular. We can hand that up as well if you would like.

Senator BARNETT—Absolutely, yes.

Dr Popple—For completeness, there are also ex gratia payments. The authority to make ex gratia payments is also under the executive power of the Commonwealth in section 61. These are usually made by the Prime Minister and/or cabinet. Usually they are only considered under circumstances where all other available schemes, including legislative schemes, have been considered.

Senator BARNETT—Can you table those relevant documents and the application form? Can you table the financial circular 2005 as well the one you referred to?

Dr Popple—No, it was 2006/05.

Senator BARNETT—Can you table that as well?

Dr Popple—Yes.

Mr Wilkins—They are the relevant guidelines.

Senator BARNETT—Thank you very much for that. It is greatly appreciated that you pulled that together over lunchtime. Likewise, Mr Carmody, thank you very much for the feedback. I think we could probably solve that all now if you are happy to confirm on the record that a payment will be made for the sum of \$4,300 or more to the small business Seahorse Australia and this matter will be settled. Can you put that on the record, Mr Carmody?

Senator Wong—You cannot expect him to do that. It would not be appropriate. We have attempted to be as helpful as possible on this issue, but any issue in relation to the legislation, policies and guidelines that Dr Popple has gone through would require Mr Carmody to make certain judgments about what has occurred and following the appropriate process. It is not appropriate for him to make that judgment and give you an answer in an estimates hearing on the basis of having heard about it only today.

Senator BARNETT—Minister, would you be willing to sign a letter of support for the application that I could attach to the form so that we can put that forward with your support?

Senator Wong—I do not think it is very sensible for you to play politics with that. There are appropriate procedures in place. If the application is made in the way in which Dr Popple outlined, I am sure that the relevant minister—and I think from memory it is in fact the Minister for Finance and Deregulation—will exercise his discretion in accordance with the legislation, which is as it should be. If you wish to advocate on behalf of your constituent, you are entirely free to do so.

Senator BARNETT—Of course, I am doing that.

Senator Wong—As the minister representing, I will refer you and the applicant to the appropriate procedure and I am sure that the minister for finance, if he is seized of an application will make a decision, as I said, in accordance with the legislation or the guidelines.

Senator BARNETT—I have two questions for Mr Carmody. Now that we are aware of the circumstances that you have outlined to the committee, will you be following up with the US Fish and Wildlife Service to advise them of your disappointment and any measures that need to be put in place so that this never happens again?

Mr Carmody—The requirements in the convention are as I have said and the step we will be taking—which would be most appropriate—is to ensure that they are met in all future cases.

Senator BARNETT—So it is more a matter for Customs than the US, or is it both?

Mr Carmody—The quickest and most effective way of dealing with this, given the convention requirements, is for us to reinforce with our officers, using this case as an example, the requirement to appropriately complete the form.

Senator BARNETT—The US and Australia have a very good relationship and we have done for many years. I used to work over there and I know the importance of the Australia-US Free Trade Agreement. In terms of our relationship with the US, you do not think it has been impacted negatively in any way shape or form as a result of this incident?

Mr Carmody—I would hope not. I do not expect it to be.

Senator BARNETT—Based on the evidence you have just put to the committee, and you have outlined the concerns, the mishap and the fact that there was improper completion of the form at the Customs end, would you be willing to support an application for an ex gratia payment?

Mr Carmody—As the minister said, it is not appropriate for me to do that. My office will be deciding that and it will be done on the facts. We have been quite open about the facts and we will deal with those facts.

Senator BARNETT—I remain hopeful and I appreciate you getting back to us on that and allowing swift action. I hope that the application is dealt with swiftly. I thank you again.

Mr Carmody—Thank you.

Senator BARNETT—I also thank department.

CHAIR—Do we have further questions of customs?

Senator BRANDIS—I will ask you about one particular case. You might have to take a lot of these questions on notice. Are you familiar with a compliance audit that the Australian Customs and Border Protection Service undertook between January and July 2009 on a company called Catalyst Chemicals Pty Limited?

Senator Wong—Capitalist?

Senator BRANDIS—Catalyst.

Senator Wong—Oh, catalyst. I thought it sounded very odd.

Senator BRANDIS—I know your thoughts always defer to the class war.

Senator Wong—There are some people about whom you can say that; I suspect I am not one of them.

Senator BRANDIS—Is there an officer who can help on this?

Mr Carmody—There is, indeed.

Ms Pitman—I have been assisting the chief executive officer in dealing with this issue.

Mr Carmody—Oh, I am aware of it! It has just come back to me.

CHAIR—Mr Carmody, estimates has a habit of doing that to people.

Senator BRANDIS—Does that mean you were responsible for the conduct of the audit?

Ms Pitman—At the time, I was the national director and I was not aware of the conduct of the audit and I was not aware of any concerns about the audit per se. I am aware of the issues that arose from it.

Senator BRANDIS—Is it correct that one of the findings of the audit was that, in the opinion of Customs, Catalyst Chemicals Pty Limited's classification of Kocosol-150/solvent 150 and isohexane was incorrect?

Ms Pitman—Yes, that is correct.

Senator BRANDIS—Is it correct to say that Customs is now seeking Customs fuel duty and GST going back four years in an amount totalling \$881,232.93? There may be some more recent interest in that figure.

Ms Pitman—I have a figure of 95c. It is significant.

Senator BRANDIS—So it is \$881,232.95?

Ms Pitman—Yes, that is correct.

Senator BRANDIS—Does Customs accept that this is revenue neutral for the Commonwealth—that is, importers pay .38143c per litre when the product lands in Australia to Customs. Importers then invoice customers accordingly and in turn customers claim the full .38143c per litre back from the Australian tax office as a fuel tax credit on their monthly BAS statement?

Mr Carmody—We are aware that there is that interaction between the two schemes. The exact amount is not exactly clear, but broadly what you have outlined is our understanding.

Senator BRANDIS—So your understanding is that it is revenue neutral. In the circumstances, would Customs, faced with the same or similar circumstances, raise this debt again given that there is no benefit to the Commonwealth, and there are costs involved in the conduct of the audit?

Mr Carmody—It is not uncommon for two acts to interact in that way. In this case the schemes are there. This is not the only case in which this situation would arise. However, what has arisen here is because of the audit and the fact that changing the classification gave rise to this situation. In that case I sought legal advice as to what options were available to me. I wondered whether I could somehow enter into an acceptance of offsetting one or the other. However, that legal advice, which I believe to be correct, was based on separate legislation. I could not just waive the debt or exclude the debt based on another act, which, it has to be remembered, was available to other people. We have a liability on some people and a rebate, or whatever it is, on other people.

Given the circumstances of this case, I wondered whether administratively I could find a solution based on the broad assumption that, even though they are different parties, and even if the other parties were to confirm that they would not claim the rebate because they would be entitled to it, that was another thing I had to be concerned about. In some sense, if I waived the original customs debt, the other people would still have an entitlement to claim that. In the end event you would understand that I am a prudent and a cautious person and it would be inappropriate, and legally unavailable to me, to offset it. However, we have raised the prospect that this is a circumstance of the kind that has been discussed in relation to another issue: whether it would be appropriate to approach the minister for finance as to whether there should be an ex gratia waiver of that debt.

Senator BRANDIS—When you corrected yourself just a moment ago you meant waiver rather than ex gratia payment? Is that right?

Mr Carmody—I used language not in its defined terms. The question that I faced administratively was on the basis of the facts and the complications: Could I accept not pursuing the debt? The advice to me was that I did not have appropriate grounds not to pursue the debt. But then we explored it and we believe that the appropriate course in this circumstance is for a case to be put to the minister for finance to determine whether there is a case for a waiver of the debt against the overall Commonwealth position.

Senator BRANDIS—You do have a discretion though, do you not? I know you said a moment ago, Mr Carmody, that you took legal advice, but dare I say that the legal advice was not that you could not but perhaps that you ought not to. You do have a discretion to waive and you have a discretion to superintend the enforcement of the act, do you not, as to whether or not to pursue a case like this?

Mr Carmody—The debt was substantial and there were no grounds, legally, for me not to pursue it.

Senator BRANDIS—Other than the fact that there was no net benefit to the revenue, given the offsetting circumstances. A lot of costs were being incurred by your agency and by a taxpayer which, in this case, was a small business that was being forced to incur an enormous

number of costs at no benefit to it because the offsetting circumstance was going to arise anyhow.

Mr Carmody—You would be aware that there are many acts in which these circumstances arise and the legislative scheme is for a payment and, in this case, for other people to claim credits. That occurs all the time. I have given you the position and the steps that we have taken to try to resolve it on a practical basis.

Senator BRANDIS—Have you made a recommendation to the minister for finance? Is that what you said?

Mr Carmody—We have.

Senator BRANDIS—When was that recommendation made?

Mr Carmody—We sent it to the department. We sent the matter to the department of finance.

Senator BRANDIS—I just asked when.

Mr Carmody—On 19 May we referred the matter to the Department of Finance and Deregulation, requesting that the Minister for Finance and Deregulation consider waiving the debt.

Senator BRANDIS—Are you able to table that document?

Mr Carmody—I do not know. I would have to take that question on notice.

Senator BRANDIS—By all means, but can I ask you to table it and if you want to consider whether it is a proper—

Mr Carmody—I will take that question on notice and determine whether I can appropriately do that.

Senator BRANDIS—All right.

Mr Carmody—But the facts are as I have outlined.

Senator BRANDIS—Given that this matter began in January 2009, and it has been going on now for more than 16 months, do you accept that in view of the revenue neutrality of this issue from the Commonwealth's point of view, an impressive way to treat a small company is to subject it to all the costs associated with a compliance audit when there is no benefit to the Commonwealth in the end? Your own ultimate conclusion has been that the debt ought to be waived.

Mr Carmody—I would not accept that we were in any way attempting to be oppressive. While I am aware of the facts, I do not have all the facts as to when the full details and the potential were available. In fact, my officers, certainly at a senior level, have been instrumental in trying to find an appropriate solution to this.

Senator BRANDIS—Given that you or your appropriate officer reached a conclusion that it was appropriate to waive the debt—hence you sought the indulgence of the finance department to do so—how long ago was it that you came to the view that you ought to seek the waiver of the debt from the finance department?

Mr Carmody—That was a meeting held in my office only a couple of weeks ago, or somewhere in that territory. But for a period my officers, again going back to what had been an application of the law, accepted that there were circumstances in this case. My officers have done everything they could to find an appropriate mechanism to resolve it.

Senator BRANDIS—We seem to be arriving at a somewhat similar conclusion, given that you have written to the Department of Finance and Deregulation suggesting that the debt ought to be waived. But it does strike me as rather harsh that this step was taken, you say, only a few weeks ago. So presumably for 12 months this company was suffering the costs and the disruption of a compliance audit for no net benefit to the Commonwealth in circumstances in which you yourself ultimately concluded that a waiver was appropriate.

Mr Carmody—Again, I do not have the fine detail of the full facts as we understand them. Remember you are dealing with separate people and separate organisations. I am not sure whether that was available at the start of the audit. Anyway, our officers sought to apply the law. The debt has not been paid. We deferred hearings before the AAT, I understand, to enable the case to be appropriately resolved. This arose because a member of parliament, Ms Kelly O'Dwyer, contacted my office in early April and, as a result of that contact, I asked my people to look at it—people who I guess have a broader understanding of lost potential when I push them, and people who have come to what I believe is an appropriate approach to this. But my officers throughout were simply applying the law.

Senator BRANDIS—I am pleased that you acknowledge it was because of Ms Kelly O'Dwyer's intervention that there is a prospect of a satisfactory outcome for her constituent. I wonder whether, given that Catalyst Chemicals Pty Ltd has presumably incurred substantial professional costs and outlays in this compliance audit, you might consider also an ex gratia payment towards those costs?

Mr Carmody—If they want to make that application I am sure it will be considered. I just repeat that my officers throughout were applying the law to the particular circumstances.

Senator BRANDIS—Nobody is suggesting that your officers were not enforcing the law, but I think we both know that there are discretionary considerations, particularly in revenue matters, that sometimes arise. There is a gentleman putting a note before you. Is it relevant?

Mr Carmody—It is just confirming what I said.

Senator BRANDIS—That is good. Thank you. Self-corroboration is great.

Senator HUTCHINS—Mr Carmody, in the last few days there has been a series of reports in the *Sydney Morning Herald*, the *Sunday Canberra Times*, the *Age* and the *Herald Sun*. I do not have copies of those newspapers but I can read out the headlines and you will probably get an idea where my questions are leading: 'Customs porn inquiry upsets Sex Party', 'Pornography question on forms slammed', 'Customs porn rule comes with heavy baggage critics' and 'Any porn to declare, sir?' Can you explain to us what the situation is, if indeed you are the person in charge of pornography? I am not sure whether you are. Mr Mann, are you the pornographic person?

Mr Mann—I might address my remarks to your earlier question.

CHAIR—I might get you to withdraw that, Senator.

Mr Mann—Put simply, an addition was made to question No. 1 on the incoming passenger card to make specific reference to the fact that some forms of pornography may be prohibited or restricted along with other goods such as some medicines and illicit drugs, asking passengers to indicate on that card whether they may be carrying those goods into the country. This decision was made following a noticeable increase in the detection of objectionable material at the border. There were even comments by defence counsel in a prosecution to the effect that it was unfortunate that his client did not have the benefit of warnings on the incoming passenger card.

We thought it would be appropriate to provide greater education to the community about how some forms of pornography that are objectionable material are prohibited and to put them on notice, just as we do for a range of other prohibited or restricted goods. On that advice the cards were changed and circulated towards the end of last year—I think on 8 October, I think that disallowable instrument gave effect to that change. We were contacted by Ms Patten on 3 May, but I believe we had not received any complaints of any kind until that time.

Senator HUTCHINS—You said that there was an increase in material and you mentioned defence counsel clearly in certain cases. Why was it important to include pornography on the incoming passenger card? I think you need to elaborate for us why it was necessary.

Mr Mann—Here is some information to give you some context. In the 2008-09 year, 889 detections of prohibited or restricted material were made by the Customs and Border Protection Service. Of those, 32 cases were prosecuted, including 26 cases of child pornography, of which all but one were successful. In the 2009-10 year to date, 1,110 detections of prohibited or restricted material were made. Of those, 45 cases were prosecuted, including 39 cases of child pornography, with all but three cases successful. Around half of all those detections were made in the passenger environment.

Senator BARNETT—How many were successful in 2008-09? You said that 32 cases were prosecuted. How many were successful.

Mr Mann—Twenty-five of the 26 cases of child pornography detections.

Senator BARNETT—But you said that 32 cases were prosecuted.

Mr Mann—Which would be for other categories of objectionable material.

Senator BARNETT—Pornographic objectionable material?

Mr Mann—This explains the reason why the word ‘pornography’ was used. It was considered that ‘objectionable material’ was not a commonly used phrase and that a much more common word that people generally would understand was pornography—it is not just child pornography but also other forms of pornography that are restricted. The view was that that was the most sensible word, noting that the question makes it clear that it may be prohibited or restricted. Just as the word ‘medicines’ is on that same question, that is why the word ‘pornography’ was used.

Senator HUTCHINS—Clearly, from your evidence, the sort of pornography you are referring to is child pornography. You have answered Senator Barnett’s questions. Are there other forms of pornography and could you tell us the category of that pornography?

Mr Mann—Yes. We are talking about what is classed as objectionable material which, clearly, is material that is highly offensive. It includes child pornography but also bestiality, explicit sexual violence and graphic degradation.

Senator HUTCHINS—Is there a restriction on all forms of pornography being brought into Australia, or is it just what you have referred to as objectionable material?

Mr Mann—Customs and Border Protection does not seize all forms of pornography, only material assessed as prohibited under the customs regulations. Assessments of adult material basically give effect to classifications that have either been made or refused under the classification code that relates to objectionable material. We are trained by the Classifications Operations Branch of the Attorney-General's Department to identify illegal material, and the standard for determining what is objectionable mirrors the refused classification standard under the National Classification Code.

Senator HUTCHINS—So there is a National Classification Code and you have officers trained to interpret the code. Is that correct?

Mr Mann—Yes, to distinguish between what is prohibited under customs regulations and what may be lawfully brought into the country.

Senator HUTCHINS—Earlier you quoted figures and said that 800 people have been—

Mr Mann—Yes, there were 889 detections of prohibited or restricted material in 2008-09, of which 26 were child pornography cases. So the majority of cases are in categories other than child pornography. I do not know the breakdown of the 889, I am sorry. The 26 cases were cases that were serious enough to warrant prosecution.

Senator HUTCHINS—So the other objectionable material relates clearly to bestiality, violence—

Mr Mann—Explicit sexual violence or graphic degradation.

Senator HUTCHINS—Seriously, what sort of training takes place? Are all customs officers trained in this area, or is there a branch that deals with this area?

Mr Mann—As I said before, we are trained by experts in the Attorney-General's Department. There is also concern for the officers involved in this work, so clearly there are occupational health and safety issues, debriefing issues, and management issues on how to deal with officers being exposed to such abhorrent material.

Senator HUTCHINS—With the incoming passenger card, do you have to tick a box that states you are carrying pornography?

Mr Mann—I would compare what we are asking people to do with what we expect in relation to persons carrying medicines. Basically, we are inviting the passenger to make a decision that pornography within his or her possession is not of the prohibited or restricted type. If the passenger has that knowledge—for example, if the passenger has confidence that it is a material freely available to adults that can be purchased at a newsagent—we would not expect the passenger to declare that. Clearly, we would expect a person who knowingly is carrying such material that is objectionable to make such a declaration. We would agree that

there may be cases where people are uncertain, and this gives those passengers an opportunity to seek our advice before importing the goods into the country.

Senator HUTCHINS—What sort of volume are we talking about—a magazine or a DVD or a suitcase load of DVDs? Is that what happens?

Mr Mann—I can give you a breakdown of how this material is being brought into the country. Of the 1,110 detections that I have referred to so far in the 2009-10 financial year, 692 of those detections were material on DVDs; 180 were on electronic storage media of different kinds; 104 were in an electronic game, I believe; 71 were on a computer hard drive; and 29 were on a mobile phone. So you can see that in fact the minority are in the form of a publication—27 were in publication form.

Senator HUTCHINS—I am wondering whether some scoundrel is bringing in a whole caseload of DVDs from South-East Asia or somewhere like that, or does this relate only to a handful of DVDs or electronic media?

Mr Mann—Given that around half of these detections are made in the passenger stream, by and large we are talking about items that are being brought in for individual rather than commercial use. However, amendments were undertaken in 2009 to include commercial quantities of objectionable goods under the regulations as tier 1 goods. In addition to the existing fines of up to \$110,000, penalties for any offences involving commercial quantities of objectionable material now also include up to five years imprisonment.

Senator HUTCHINS—As you would have heard from those newspaper headlines to which I referred earlier, Sex Party member Ms Patten is concerned that couples returning from overseas may have to turn over personal photographs or videos. Is that the case?

Mr Mann—Our officers are trained to act with tact and discretion. They are not interested in inconveniencing legitimate passengers. If such material is clearly not illegal there is no need to declare that. That is the situation we are talking about. We would not expect people to declare such images unless they crossed the line of being offensive.

Senator HUTCHINS—Have you had discussions with Ms Patten—not you personally but your officers?

Mr Mann—I understand that at the beginning of May we explained to her the change via an email. I have not had further conversations with her directly, and I am not aware of any further approaches by her to our organisation since that email exchange.

Senator HUTCHINS—Are you aware that Hetty Johnston, who heads up the child protection group Bravehearts, has also expressed concern? She is quoted in one article in the *Canberra Times* as saying that the question is too broad and it should apply only to illegal pornography. Have you had any communication with Ms Johnston?

Mr Mann—No, there has not been any direct contact with Ms Johnston.

Senator HUTCHINS—Are some of these concerns a bit of a beat-up?

Mr Mann—These views were discussed at the time that we thought it was appropriate to make reference, as we do, for a number of prohibited or restricted goods on the passenger card. But this was an omission. We were getting large numbers of detections so we thought it

was appropriate to include some reference. We then debated what would be the best term and we came down to a broad term that most travellers would understand. If we say 'illegal pornography', one might question that and say, 'How do I know what is illegal?' This is saying: 'If you know it's legal then you don't need to declare it. If you know it is illegal we expect you to declare it and, if you are unsure, you have an opportunity to seek guidance before you import the material into the country.'

Senator HUTCHINS—I cannot recall whether passengers are advised. Do you have a copy? If so, could you read out what the form states that you are expected to complete?

Mr Mann—We publish a document, a guide for travellers, entitled 'Know before you go' which makes reference to the fact that offensive pornography is prohibited and provides travellers with options for seeking further information or clarification. To some extent, if people are looking to import material, the kind about which they have concerns, there is advice to that effect through this leaflet and also on our website. We provide, if you like, a linkage to the national classification guidelines.

If you really want to go into it, you would be able to find out that way. The form provides travellers with options for seeking further information. They can ring our call centre, write to us or email us before they travel if they have any concerns about whether or not they may or may not be required to declare certain goods when they arrive in the country.

Senator HUTCHINS—Does the form that you fill out when you come back into Australia now have on it offensive material?

Mr Mann—The incoming passenger card?

Senator HUTCHINS—Yes.

Mr Mann—Yes. Would you like me to read the question?

Senator HUTCHINS—Yes.

Mr Mann—Question (1) now reads:

You must answer every question. If unsure, cross yes. Are you bringing into Australia:

goods that may be prohibited or subject to restrictions such as medicines, steroids, pornography, firearms, weapons or illicit drugs ...

Senator HUTCHINS—And that is the question? Pornography has been added to that since what date?

Mr Mann—On 8 October 2009 that was approved as the new question (1) on the incoming passenger card.

Senator HUTCHINS—So people like the Australian Sex Party—and you said that your office had had communication with it—

Mr Mann—I did ask whether we had had any complaints registered since that time, and we have not had any formal complaints. I also asked our airport managers whether they had noticed any increased level of irritation from incoming travellers and they did not believe that there had been any noticeable disruption caused to passengers as a result of this change.

Senator HUTCHINS—So there have been no complaints and no disruption at the airport, and only a few newspaper articles?

Mr Mann—Until an email was sent to us on 3 May, it had not registered as an issue of concern to us.

Senator BARNETT—I have questions on the same issue. I think Senator Hutchins covered many of the areas that I wanted to cover. I think it is important that Customs does this sort of work in its objective of ensuring that illegal and offensive prohibited content and material is stopped from entering this country. I think that is important.

You have outlined measures against bestiality, explicit sexual violence, graphic degradation and obviously paedophilia and child pornography—extremely important measures. The work that you and your officers do is greatly appreciated. I just want that on the record at the outset. In the nine months to the 2009-10 year obviously you have seen a significant increase—1,110 detections. You outlined what they comprised. I would like to establish whether that was up until today, up until the last few weeks, or up to 31 March, as obviously it is a significant increase.

Mr Mann—My advice is 31 March. If that is not correct I will provide an update.

Senator BARNETT—You will let us know. If that is the case it is a more significant increase than first thought and it highlights the importance of what you are doing. You said that there were 45 prosecutions out of that 1,110. What happened to the other 1,000 prosecutions? Was the material confiscated? What happens to this material if it is deemed to be appropriate and not prohibited? Those were the detections, but what happened to the remainder?

Mr Mann—When detected at the border, if these items are not of the kind that would necessarily warrant prosecution and they have been declared, then on occasions the traveller is allowed to surrender those goods and they are destroyed. Other kinds will proceed to an investigation. I might ask Ms Grant to add to that.

Ms Grant—Of the 1,110 detections, for the purposes of illustrating the reason for amending the incoming passenger card we have pulled out the prosecutions we have undertaken specifically relating to child pornography. There would be other prosecutions above the 45 out of that 1,110 for other forms of the prohibited material. We would need to take that on notice.

Senator BARNETT—You do not know how many other prosecutions there are in addition to the 45 for child pornography?

Ms Grant—I will correct the record: we have prosecuted only 45 of those 1,110 cases. But with any detections of this material, there is always a seizure and a warning letter to the people bringing in that material.

Senator BARNETT—Let us drill down a little bit. How many of the 45 relate to child pornography?

Ms Grant—39.

Senator BARNETT—And those prosecutions have proceeded. Have any of them concluded?

Ms Grant—Yes, they have concluded, with findings for the Commonwealth in 36 of those cases. We did not win three of the cases.

Senator BARNETT—That is a good percentage. So 39 are child pornography cases?

Ms Grant—Yes.

Senator BARNETT—I want to know what happens to the other ones. You have indicated, Mr Mann, that some of them are seized and some are destroyed.

Mr Mann—Goods are seized and destroyed and the person importing the goods is given a warning letter. Clearly, they are on notice and if there were a repeat but no seizure we would expect there is a greater likelihood of proceeding to prosecution.

Senator BARNETT—So you have to make a judgment there as to whether you let them go with a caution or whether you say, ‘Look, this is beyond the pale and we are going to proceed to prosecution.’ How do you determine that?

Ms Grant—When we make a detection at the border—whether it is in the passenger area or something in a cargo area—we refer the matter to the investigations branch. The investigations branch receives many more referrals of matters than it could investigate and prosecute. So it has an investigation priority model that determines which of the referrals will proceed to an investigation. Then of course what evidence you find during investigation determines what will ultimately go for a full prosecution.

Senator BARNETT—Obviously the question is: are you adequately resourced to undertake investigations to ensure that prosecutions occur where they should occur?

Ms Grant—We consider that with our risk based model for accepting cases we have sufficient resources to undertake those investigations. I am sure that the investigations branches around Australia would say that they would always welcome more investigators, because the more we have in the force the more investigations they could undertake. But then you have to make a judgment as to whether some of the issues would warrant a prosecution. We operate under the prosecution guidelines of the Commonwealth, where a prosecution is not always the answer. There is quite a prescribed process that you go through to work out if there are alternative remedies. So a detection is not an automatic ‘we must prosecute’. We look for alternative remedies, and in some cases people are bringing some of this material in not understanding that it is breaching Australia’s laws. So seizing their material, warning them—

Senator BARNETT—I understand that, but what I am asking is: if there is a reasonable prospect of a successful prosecution are there cases in which Customs do not proceed based on a lack of resources and a lack of investigators?

Ms Grant—No. If we believed there was a reasonable prospect of a successful prosecution, we would be pursuing the matter—if prosecution is the appropriate outcome in the matter.

Senator BARNETT—In light of the cuts to Customs flowing through over the coming years, is that an area that is likely to be cut back, or do you understand, to the best of your knowledge, that the resources will remain adequate to meet the task at hand?

Ms Grant—The investigation resources will remain adequate to meet the task at hand.

Senator PARRY—Do any of 39 prosecutions involve more than one person? Is organised crime indicated in any of those 39 prosecutions?

Ms Grant—Can we take that on notice? We believe that it is not organised, but we will take it on notice to be definitive in our advice.

Senator PARRY—I just want to get a clear picture that these are individuals or not individuals coming in. Following on from Senator Barnett, with the discretion used by officers, I assume that child pornography would not fall within the discretion regime, that it would be an automatic prosecution point?

Ms Grant—I think our record in relation to child pornography would show we take that sort of objectionable material very seriously. If we accept such referrals, they meet the case priority model and then we pursue those matters and then the evidence will determine what the outcome is.

Senator PARRY—Would you be able to table a case priority model—the documentation or the policy document you use for that?

Mr Carmody—Can we take that on notice?

Senator PARRY—Certainly.

Mr Carmody—We need to be careful about disclosing too much of our techniques to people who we probably do not want to know the techniques.

Senator PARRY—That is fine. Providing it is not operationally sensitive, that is fine.

Senator Wong—If there are no other questions of Customs, there are a couple of explanations we could finalise.

Mr Carmody—I would like to clarify and complete some information. We were asked about Adelaide airport and Wheeler. First, Adelaide airport has its full required, necessary complement of CCTV. In addition, and this is on top of the Wheeler recommendations, we will be moving to 100 per cent recording by the end of June 2010.

We were asked about the decision to take the SIEV 143 to Cocos Island. I can confirm that it was decided with AMSA in consultation with the master of the vessel. On the question of instances of sabotage, I am able to say, on the information available to me, that there have been no instances of search and rescue operations arising from sabotage since August 2008.

Just to clarify in case I was not completely clear in relation to the line of questioning on the Catalyst case, the two powers were a decision not to pursue a debt, as I indicated, following consideration of legal advice. I decided that that was not appropriate in this case. It is worth noting that deciding not to pursue does not in fact expunge the debt and it could be raised at a later time. As I indicated, it is only the Minister for Finance who can agree to waiver of a debt under the FMA Act.

Proceedings suspended from 3.31 pm to 3.47 pm

Australian Federal Police

CHAIR—I welcome Mr Negus and officers from the Australia Federal Police. Mr Negus, do you wish to make an opening statement?

Mr Negus—No.

CHAIR—Mr Wilkins, do you wish to make an opening statement?

Mr Wilkins—Senator Barnett has been after information on the cost of those Victorian terrorism trials. Perhaps Dr Pople could inform the committee at this juncture.

CHAIR—I think we should wait because we know Senator Barnett will be coming back. We will proceed with questions.

Senator BRANDIS—Mr Negus, I begin by taking you to page 177 of the portfolio budget statement. It deals with program 1.3, Operations—policing. Why has the conviction rate been dropped as a key performance indicator? Were you aware of that?

Mr Negus—I would have to read that.

Senator BRANDIS—Let me direct you to the second box on page 177, ‘Program 1.3 key performance indicators’. The introductory sentence says that there has been a review of key performance indicators and the last sentence of the first paragraph of that box says:

The conviction rate measure (percentage of cases resulting in a conviction, of those reaching court) has also been dropped because the final conviction status can be affected by factors outside the realm of the investigation.

Mr Negus—It was not something I was overtly aware of.

Senator BRANDIS—You were not aware of it. Does it surprise you?

Mr Negus—It does not in the context of how it is written. I think what it is representing is the fact that, once the matters are actually taken to court, the prosecution elements of it are handled by a range of agencies, including the Commonwealth Director of Public Prosecutions. Obviously conviction rates are something we would monitor. I suggest that internally we would still monitor them. It is a recognition of the broader responsibility in the conviction of offenders across agencies.

Senator BRANDIS—These words are all waffle. For as long as key performance indicators have been identified by that term, the conviction rate has been treated by the Australian Federal Police as one of the key performance indicators of the performance of its policing function. Now it is not. Why was it a key performance indicator for all those years up to now, but now it is not?

Mr Negus—As long as I have been in this organisation the AFP has considered that, once a matter has been taken to court and a person has been committed for trial, then the AFP’s commitment to this process has been fulfilled. What happens in court, as you would be well aware, is something that is really a matter for the courts and for the Director of Public Prosecutions.

Senator BRANDIS—I am perfectly aware of that, as are we all. However with respect, that is not the point. I think the Australian public would be rather shocked to know that the Australian Federal Police no longer regard the conviction rate—the number of crooks arrested

by them who get convicted by the courts—is no longer a key indicator of the performance of its policing function.

Mr Negus—I can assure you within the organisation it would be monitored as a performance measure.

Senator BRANDIS—If it is monitored internally as a performance measure, you must consider that it is a performance measure. If you consider that it is a performance measure, why is it no longer a key performance indicator?

Mr Negus—In the recent review conducted by Mr Roger Beale, he recognised that this was not a good measure of policing efficiency or performance and that advice was taken accordingly.

Senator BRANDIS—You said in answer to my initial question that you were not overtly aware that the conviction rate had been dropped as a KPI. I assume that we can disregard the adjective there. Having regard to the fact that you just told me that internally you still regard this as a performance measure, or as a measure of performance, would you care to revisit and reconsider the decision to abandon the conviction rate as a key indicator of the performance of the Australian Federal Police?

Mr Negus—I certainly would.

Senator BRANDIS—Thank you.

Mr Negus—If you look at ‘Program 1.3 key performance indicators’ in the PBS, you will see that the first line states:

A performance framework is under development for the new program ...

Senator BRANDIS—Indeed, it does say that. But the sentence to which I have directed you reports on a conclusion—a decision that has already been made—hence the use of the past tense:

The conviction rate measure ... has also been dropped ...

That might have got past you, with all due respect, but it is not a decision that should have been made. If I may say so, you seem a little troubled by it. I welcome your assurance that you will revisit that decision.

Mr Negus—I am happy to revisit it in the context of the recommendations made by the estimates hearing.

Senator BRANDIS—Thank you very much. I take you then to Budget Paper No. 2, the budget measures document, and to page 106, item 2, or the second item on the page, as they are not numbered: ‘National Security—Australian Federal Police—efficiencies to fund key law enforcement initiatives’. You will see that the author of this document has stated:

The Government has identified savings of \$23.5 million over four years from the Australian Federal Police (AFP) through efficiencies from implementing the recommendations of the *Federal Audit of Police Capabilities*.

In laymen’s language that means that the \$23.5 million identified there will be stripped from the AFP budget. That is right, is it not?

Mr Negus—That refers back to the review I just mentioned by Roger Beale. Most of those savings are as a result of the all-in model moving into aviation, where the AFP would take over responsibility for community policing at airports, from what is the current position where states and territories second officers to the AFP for a period of two years. There are substantial costs associated with that which we pay to the states and territories in training and turnover of staff. In Mr Beale's review he has identified savings. Those savings are to be retained by the AFP and reinvested into other components—that is, increasing our staffing numbers.

Senator Wong—Senator, if it was as you were postulating, the numbers would appear differently in the measure—that is, as a negative number. I also refer you to the third paragraph of the measure which is as Mr Negus just outlined.

Senator BRANDIS—I will pursue this in my own way, thank you.

Senator Wong—I am assisting you.

Senator BRANDIS—I do not need your assistance, nor do I need you to try to run interference on opposition questions.

Senator Wong—I am the minister at the table and I am pointing out to you—if you wish me to be blunt—that, clearly, you do not know how to read a budget paper.

Senator BRANDIS—Had you been here late yesterday afternoon you would have appreciated—

Senator Wong—I was here until 11 o'clock last night.

Senator BRANDIS—Late yesterday afternoon Senator Stephens was at the table. It has become so obscure as a result of the deliberate policies of the Rudd government to conceal information from the Australian people that it requires estimates hearings and questions like this to get to the bottom of issues and to reveal the truth, a fact that Mr Wilkins effectively conceded yesterday afternoon in your absence, although not in those somewhat rhetorical words. But he did say that the information which we were seeking was not apparent from the budget papers but required responses to questions of the kind that opposition senators were asking.

Senator Wong—Senator, when you have finished—

CHAIR—Minister and Senator Brandis!

Senator BRANDIS—In any event, Minister, my questions are directed to the commissioner, and not to you.

Senator Wong—I am the minister at the table, Senator.

CHAIR—Order! I call you both to order.

Senator Wong—I am the minister at the table and I am simply referring the—

Senator BRANDIS—I know you are in charge of the cover-up, Senator Wong.

Senator Wong—Excuse me, Senator—

CHAIR—Senator Brandis—

Senator Wong—I have not finished. I am the minister at the table and I am referring you to the words of the budget paper which you conveniently glossed over. There is no need for you to be quite so rude.

Senator BRANDIS—I know you are in charge of a cover-up, Senator Wong, but I will ask my questions of the officers.

CHAIR—Senator Brandis, order! I am seeking order.

Senator Wong—What is the allegation?

CHAIR—Senator Brandis and Minister, I am seeking order.

Senator Wong—I would like to know what the Senator means by that. You just accused me of something, Senator. Would you like to explain it?

Senator BRANDIS—Senator Wong, you appear before this committee not as a member of it but as a witness before it.

Senator Wong—Senator, would you like to explain what you mean by that accusation?

Senator BRANDIS—We will ask the questions please.

Senator Wong—Or would you like to withdraw it?

Senator BRANDIS—Neither.

Senator Wong—I ask that you withdraw it.

Senator BRANDIS—You are the minister at the table in charge of obscuring these figures from the public.

CHAIR—Senator Brandis!

Senator Wong—You have accused me of a cover-up. Would you like to—

Senator BRANDIS—I am characterising your role in this committee.

Senator Wong—You are accusing me of a cover-up. I ask you to withdraw.

CHAIR—Senator Brandis and Minister!

Senator Wong—I ask you to withdraw.

CHAIR—Minister, thank you. Senator Brandis, you have been asked to withdraw that comment.

Senator BRANDIS—I am not aware that to say to a minister that he or she is in charge of a cover-up is unparliamentary, Madam Chair. If you rule that it is unparliamentary, I will withdraw.

CHAIR—It is a reflection.

Senator BRANDIS—I would submit—

CHAIR—It is a reflection on the Minister.

Senator BRANDIS—I would submit that it is not.

CHAIR—I am the chair and I am saying that it is.

Senator BRANDIS—Okay, if that is your ruling I withdraw.

CHAIR—Before I call you for further questioning can I just remind you that, if I recall correctly, it was Ms Leon who answered those questions yesterday relating to the figures in the budget. The *Hansard* record will stand as a fine example of Ms Leon trying to explain those budget figures to members at this table. If we want to go into lecturing, as chair I take this opportunity to remind people that for 11 long years we sat in exactly the same position that you are sitting in, Senator Brandis.

Senator BRANDIS—Is this a political speech by any chance?

CHAIR—No, this is the same rebuttal that you put us through. Now you can hear my reply. For 11 long years we trolled through the budget papers looking for the fine print, looking for cross references, looking for explanations of expenditure and cuts.

Senator PARRY—Point of order—

CHAIR—As you were told yesterday—and Senator Parry you will listen until I am finished—

Senator BRANDIS—It is a point of order. You have to take a point of order.

CHAIR—The department of finance puts together the budget portfolio statements. If you have an issue about how the information is collated that is the area to which you should take those concerns. Senator Parry?

Senator PARRY—Madam Chair, I have been very supportive of your impartial chairmanship until now. I think you have become very partial and political. I ask that you become partial once again.

CHAIR—I will not stand criticism of people. For the past 2½ days people on the other side of the table have to assist with answers and to clarify answers. I recall that many questions have been taken on notice. People have gone out of their way to try to assist and provide you with information. Let us get back to questioning the Australian Federal Police.

Senator BRANDIS—Yes, let us do that.

CHAIR—That is the reason why they are here. Senator Brandis, if you have questions of Mr Negus—

Senator BRANDIS—I have many questions.

CHAIR—Before you go, the minister has something to say.

Senator BRANDIS—Madam Chair—

CHAIR—No, Senator Brandis. I have recognised the minister's call.

Senator BRANDIS—I want to take a point of order, Madam Chair.

CHAIR—Senator Brandis, I have just—

Senator Wong—Senator, just before you do, if you just give me the courtesy—

CHAIR—I have just recognised the minister's call.

Senator Wong—I am just indicating that Ms Leon has something she wishes to respond to as a result of Senator Brandis's intervention.

CHAIR—Ms Leon?

Ms Leon—Madam Chair, at present I am in the chair on behalf of the secretary, Mr Wilkins. I feel that I must simply set the record straight. I do not believe Mr Wilkins yesterday made a concession of the form that Senator Brandis suggested to the effect that it was not possible to ascertain what was in the budget papers without having estimates questions asked of them. I would just like to reserve the right for Mr Wilkins to correct the record when he returns.

CHAIR—Thank you Ms Leon. Senator Brandis? Do you have questions of the Australian Federal Police?

Senator BRANDIS—Madam Chair, let me make it very clear that I have no criticism of any answer or response that I have received from Commissioner Negus or any of the other officers at the table. I am sure that they are perfectly well able to respond to questions and to take appropriate objections. May I request that you, Madam Chair, ensure that the question and answer style of this committee, when senators put questions through a minister to officers, is respected by the minister at the table. Commissioner Negus, I want to take you back to page 106 please.

CHAIR—I think the question is actually through me, as chair, Senator Brandis, to the relevant officers at the table.

Senator BRANDIS—Commissioner Negus, I want to take you back to that item on page 106 of budget statement No. 2. Where do you say the \$23.5 million identified there as ‘efficiencies’ has gone?

Mr Negus—It has not gone anywhere at the moment. It is over four years to start with.

Senator BRANDIS—I am sorry, where is it to go?

Mr Negus—Senator, as I said, the review by Roger Beale which is quoted in the *Federal Audit of Police Capabilities* looked extensively at the airport setup. At the moment the situation is that after the Wheeler review some years ago we seconded state and territory police officers to work for the AFP at the respective airports—the 11 designated airports around the country.

Mr Beale’s estimation is that there will be savings in the magnitude listed here through the AFP taking over that responsibility and filling those roles with sworn AFP officers. There will also be changes to the counterterrorism first response efforts at airports. Again there will be a homogenised workforce of all sworn police officers rather than differentiating between protective services officers and sworn police officers.

Senator BRANDIS—Just pausing there, I do not want to cut you off but I want to ask you more particular questions arising from this information that you are giving the committee. In the second paragraph under the table, three categories are listed—new model for delivering police presence at airports, which is what you are addressing now; rationalisation of drug investigation processes at airports, which I assume is also part of what you are addressing now; and improvements to the AFPs corporate service delivery. May we take it that all the \$23.5 million of efficiencies are to be found within those three headings?

Mr Negus—That is correct, yes.

Senator BRANDIS—In relation to the first—that is, the airport efficiencies arising from the Beale report—can you explain to us please, Commissioner Negus, a little more fully, how it is that this money will be saved? For example, when you talked about officers from state and territory police forces, is money proposed to be saved because outlays made by the AFP towards the salaries of those co-opted state and territory officers will now no longer have to be paid, for example?

Mr Negus—That is part of it, yes. Obviously we still have to pay the salaries of the people who work there. They will be AFP officers, not seconded state and territory offices. But, as I said, there are substantial training costs in bringing people from the states and territories into an AFP role where the AFP normally will now provide those from within their own ranks. They will be trained once and not every year or two years, so there are savings there. Things as simple as uniforms and accoutrements again have to be provided to the state and territory police, whereas now they will be contained within the AFP. The other thing is that we pay a premium for access to state and territory police.

Senator BRANDIS—Sorry, just explain that.

Mr Negus—Because the states and territories then have to recruit and backfill against their own numbers, for instance, in New South Wales there are over 100 people, we pay costs associated with the recruitment and backfilling into the New South Wales police to allow them to provide staff to the AFP at those airports. So we no longer have to pay those costs on a two-yearly basis.

Senator BRANDIS—Commissioner Negus, just follow me in relation to this. I fully understand that there will be costs associated with the co-option of officers from other police forces. If those officers are no longer going to be co-opted because the job is being done by AFP badged personnel, the relevant costs of which you are speaking would have to be costs that are net of the salaries of the AFP personnel, would they not?

Mr Negus—That is right.

Senator BRANDIS—So these AFP personnel who are replacing the co-opted officers are either going to be new officers or they are going to be officers reassigned from other duties. Which is it, or is it both?

Mr Negus—Predominantly they will be new officers. They may well be reassigned from other duties but they would be filled from other locations.

Senator BRANDIS—If they are new officers would I be right in surmising that the most substantial cost component would be their salary. What you are doing is paying as salary to new AFP officers most of what you are paying as outlays to other police forces for co-opted officers?

Mr Negus—That is certainly a component of it.

Senator BRANDIS—It is the largest component, is it not?

Mr Negus—Mr Beale considered all those elements in his review, and these are the figures that were arrived at so far as the review goes.

Senator BRANDIS—That is exactly where I wanted to go with you, Commissioner Negus. How is this \$23.5 million derived? At risk of incurring the wrath of Senator Wong, may I say that it is not apparent anywhere in the budget papers where it comes from? Are you able to locate for us, Commissioner Negus, or any of the officers who are at the table with you, where in the budget papers this \$23.5 million comes from, or do we have to look elsewhere?

Mr Negus—Senator, one of the things that I think would assist you—and this was certainly made clear in Mr Beale’s report, so I am not telling you anything new—

Senator BRANDIS—But that is not part of the budget though, is it?

Mr Negus—No, it is but I think it is where you are heading. In Mr Beale’s opinion policing at airports could be done more efficiently.

Senator BRANDIS—I understand that.

Mr Negus—We are saying that there potentially will be 12 per cent less staffing numbers at those airports because of the multiple roles that will now be performed by sworn police officers rather than counterterrorism first response officers.

Senator BRANDIS—Pausing there, you say potentially up to 12 per cent. Is the 12 per cent the high end?

Mr Negus—The 12 per cent is the figure that Mr Beale came to. Obviously, as we move through this—and there is a three-year to five year implementation plan, which we are now preparing for the minister—those figures will have to be validated. But that is his assessment.

Senator BRANDIS—All right. Does the \$23.5 million figure over four years come from Mr Beale?

Mr Negus—Predominantly it comes from savings within the aviation sector through the implementation of a new model.

Senator BRANDIS—You made it perfectly clear, Commissioner Negus in what areas you expect these efficiencies to be achieved. I just want to know how we get to the \$23.5 million figure because it is not apparent from the budget.

Mr Negus—Well, Senator, the \$23.5 million is money that is already allocated to the AFP and will be saved over that four-year period.

Senator BRANDIS—I understand that; that is perfectly clear. That is what it states.

Mr Negus—I am not sure whether I understand your question.

Senator BRANDIS—My question is that I want to know how that \$23.5 million is derived. This is a headline figure. There must be more particular identified savings that add up to \$23.5 million over four years. They are not in the budget so far as I can see, and if I am wrong, please correct me. I would like to know where they come from.

Mr Negus—They would come from Mr Beale’s report.

Senator BRANDIS—From Mr Beale’s report. Okay. You might need to take this question on notice, or perhaps one of your officers is able to tell me quickly now whether you can locate for me in Mr Beale’s report the \$23.5 million figure, and its derivation?

Mr Negus—We can take that question on notice, Senator but it is actually contained on the Attorney-General's website, if you would like to look it up.

Senator BRANDIS—Actually, the parliament has these proceedings so that we can ask you more particular questions.

Mr Negus—I am happy to provide it.

Senator BRANDIS—With all due respect, I know you were not trying to be rude, Commissioner Negus, but 'look at the departmental website' is not a satisfactory answer.

Mr Negus—I accept that.

Senator BRANDIS—Going to the third paragraph—

Senator Wong—Just give me a minute, Senator Brandis.

Senator BRANDIS—I was, Senator Wong, going to do this methodically and in my own way when you interrupted before. Going to the third paragraph under this item on page 106 of Budget Paper No. 2, we learn:

The savings will be retained by the AFP to enable work on high-impact criminal investigations relating to transnational and domestic crime, counter-terrorism, high-tech crime, fraud, money laundering, people smuggling, drug trafficking, and child sex exploitation.

Does that mean, Commissioner Negus, that this is existing money currently within the AFP budget that is being spent on these areas rather than new money?

Mr Negus—Senator, perhaps I could give you some context. As part of Mr Beale's review we also looked at the government's pledge of 500 new officers for the AFP over five years.

Senator BRANDIS—I will get to that.

Mr Negus—It is actually quite material in the answer I will have to give you. What he did was identify that there was a shortfall in the money that had been provided to get to the 500 officers.

Senator BRANDIS—Just pausing there, when you say 'he identified a shortfall' you mean that less money was allocated than was expected to be received. Is that right?

Mr Negus—For the AFP to make the target of 500, they required additional money.

Senator BRANDIS—How much additional money?

Mr Negus—It was around \$30 million.

Senator BRANDIS—And in what year, or across what years, did the shortfall emerge?

Mr Negus—It was since the pledge was made, which is three years ago. We are on track and in fact in front of those targets in our recruitment. But to get to the 500 number he identified that there were higher costs associated with that, and we would require supplementation to reach that.

Senator BRANDIS—So you were \$30 million short, according to Mr Beale, in reaching the 500 promised by the Prime Minister, or then opposition leader Rudd in 2007. So that \$30 million is being found elsewhere in the AFP budget.

Mr Negus—Mr Beale recommended that the \$23 million in savings from the airports would be reinvested into the AFP to allow us to substantially reach that target.

Senator BRANDIS—So we are taking this money away from airports through what are described as efficiencies in order to fund a promise that was not being delivered on because there was, to use your words, a shortfall of \$30 million. Is that right?

Mr Negus—Efficiencies that had been realised through better practice were being reinvested in the AFP.

Senator BRANDIS—Sure. I understand that, Commissioner Negus. You will never get an argument from the Liberal Party that it is not good that agencies and departments are run efficiently and not wastefully. But you have been around a long time, Commissioner Negus, and you know as well as I do that it is the oldest trick in the book to describe cutbacks as efficiencies.

I gather from your evidence that there was a \$30 million shortfall because the 500 extra police target was not being reached and was not going to be reached. So this money was taken out of other AFP functions, in particular, airports and are what are described in Mr Beale's language as 'efficiencies'.

Senator Wong—That is what he said.

Mr Negus—Senator, I think the two processes were quite unrelated.

Senator BRANDIS—Unrelated were they?

Mr Negus—Through Mr Beale's assessment it seemed quite sensible to reinvest those savings, which was an issue that we discussed with him, backing the AFP to allow us to reach those targets. As you have said, we would certainly appreciate additional staff to be able to meet the targets that we had set.

Senator BRANDIS—Yes. Through these efficiencies—I appreciate that this is a work in progress—when these so-called efficiencies are fully implemented in accordance with what is described in Budget Paper No. 2, how many fewer badged police officers will there be at airports in aggregate? Taking both the AFP and co-opted officers who are there at the moment and the AFP officers who will have replaced the co-opted officers at the end of this process, how many fewer badged officers will there be?

Mr Negus—I will have to seek a bit of clarification on your question because police officers and badged officers in the current environment are two different things. We do have sworn police officers who have full police powers, and we also have protective service officers who are sworn but do not maintain the same powers or authorities that sworn police do. So far as I am concerned, Mr Beale's review has identified a better way of delivering protective security services at airports.

It is a more efficient way as well, which is a bonus, and the savings are being reinvested back into the AFP to give us more staff to do serious organised crime work, which again is a bonus to the organisation. So there has been no money taken out of airports to supplement something else. In fact, as I said, the two were quite unrelated. However, they both were undertaken under Mr Beale's review.

Senator BRANDIS—Thank you. At the moment there are two categories—sworn police officers and protective service officers. All police officers at airports fall into one of those two categories, do they?

Mr Negus—Again, I do not want to be technical, but the protective service officers are not police officers.

Senator BRANDIS—All right.

Mr Negus—The police officers perform community policing services, as you would see at any shopping centre or any public street around the country. The protective service officers provide a security presence and do what we call counterterrorism first response, so it is cordon and contain at airports. What Mr Beale has proposed, and what has been agreed by the government, is that that be homogenised into all sworn police officers with full powers at airports performing both roles.

Senator BRANDIS—We are talking about bodies—we are talking about numbers of people, who you have helpfully identified as falling into one of those two categories. At the moment some of the officers in one or both of those categories are co-opted from the states and territories?

Mr Negus—Into the sworn police officer status.

Senator BRANDIS—At the moment we have sworn police officers who comprise AFP officers and co-opted officers, is that right?

Mr Negus—That is right.

Senator BRANDIS—And as well we have protective service officers who are not sworn police officers but are counterterrorism first response officials who are employees, but not sworn officers, of the AFP?

Mr Negus—Employees of the AFP; they are sworn in but they do not classify themselves as police officers.

Senator BRANDIS—And nobody is co-opted from the states into that second category?

Mr Negus—No.

Senator BRANDIS—All right. When we move to the model that you have adopted, or which the government proposes to adopt, two things will have happened. First of all, there will be no co-opted state and territory officers in category one?

Mr Negus—That is right.

Senator BRANDIS—And secondly, to use your word—or perhaps Mr Beale’s word—the protective service officers will be ‘homogenised’ with the sworn police officers?

Mr Negus—There will be no protective service officers at airports. Those rights will be taken up by sworn police.

Senator BRANDIS—So instead of three categories of persons, that is, AFP sworn officers, co-opted sworn officers and protective services officers, there will be one category of persons, namely, sworn AFP officers who will perform all of the functions previously performed by the three categories, correct?

Mr Negus—That is right.

Senator BRANDIS—At the moment how many people are there—taking it as equivalent full-time positions—in each of those three categories: AFP officers, co-opted officers, and protective services officers?

Mr Negus—We have the numbers here but, perhaps to pre-empt your next question, as I said before, there will be 12 per cent fewer of those under the new model.

Senator BRANDIS—Twelve per cent fewer of all categories or of the first category?

Mr Negus—Across the categories—in toto.

Senator BRANDIS—Twelve per cent fewer?

Mr Negus—That is the estimate of Mr Beale, based on his assessment.

Senator BRANDIS—I like going about this in my own way, so can you just follow me? I would like the numbers—

Senator Wong—He is actually allowed to answer the question the way he wants to.

Senator BRANDIS—And I am allowed to ask the question I want to.

Senator Wong—You are not in charge of everything. He is allowed to answer the question as he sees fit.

Senator BRANDIS—When I have a witness say to me, let me pre-empt your next question, I think I may be forgiven for considering that to be a non-answer.

Senator Wong—He is allowed to answer the question in the way he sees fit.

CHAIR—I am sure Mr Negus is only trying to be helpful here.

Mr Negus—It was just waffle, looking for the right answer.

Senator BRANDIS—I know Mr Negus. You are not trying to be unhelpful; I appreciate your forthrightness. Let us deal with each of the three categories now. How many sworn AFP police officers are there at the moment? Equivalent full-time positions are probably the best measure.

Mr Negus—We might have to take that component on notice. I think we can give you seconded state officers and protective service officers.

Senator BRANDIS—Okay.

Mr Negus—What happens is that predominantly everyone performing community policing at airports is a seconded state police officer.

Senator BRANDIS—Okay.

Mr Negus—We do have AFP officers in intelligence and investigative roles around airports, and that is a little more difficult to categorise.

Senator BRANDIS—While the number of sworn AFP officers is being looked for, can you tell me the number of seconded state officers in equivalent full-time positions?

Mr Drennan—The airport uniformed police deployed as at April this year were 298.

Senator BRANDIS—How about protective service officers?

Mr Drennan—The airport uniformed police are the state and territory police. The counterterrorism first response numbers, which are the protective services officers, is 439.

Senator BRANDIS—So, 298 seconded, 439 protective service counter-terrorism first response officers—

Mr Drennan—And part of the additional PSO, protective service officer numbers, are the canine handlers, which are 33. So they are part—

Senator BRANDIS—Do we add the 33 to the 439, or is that within the 439?

Mr Drennan—We add those together.

Senator BRANDIS—So it is 33, plus 439, which is 472.

Mr Negus—Perhaps I can add something to that answer?

Senator BRANDIS—Yes.

Mr Negus—The 12 per cent would be taken off the target figure for policing at airports, which I am relatively certain has never been reached. As the state and territories come on board, some of them have struggled to meet their commitments in those areas. As of the end of April, we have 30 vacancies across Australia at those airports. The 12 per cent figure would be off the total figure, which would be the number you have plus 30, so 12 per cent less of a number which has not been achieved.

Senator BRANDIS—The last number I need is the sworn police officers. Do you have that yet?

Mr Negus—No. I think we will have to take that on notice, because they are contained within investigative teams, not necessarily working at airports all the time. They are back and forth between—

Senator BRANDIS—Do you have an aggregate figure of all three categories?

Mr Drennan—This may be helpful: there are 17 people who are classified as airport liaison officers—they are AFP members deployed across the airports; there is an additional 34 members, who are a mixture of both AFP and state and territory police who work in joint airport investigation intelligence groups; and an additional 46 people who are state and territory and AFP officers who work in the joint airport intelligence teams.

Senator BRANDIS—Thank you, but what I was after was an aggregate figure. If I may say so, Commissioner Negus's evidence is very easy to follow. It is perfectly clear that we have these different identified categories and there must be an aggregate number. We have been told what two of the three components are—

Mr Negus—Whilst they are doing that—manually adding it up—I would like to make it clear that under Mr Beale's new model, the last three groups that Deputy Commissioner Drennan just—

Senator BRANDIS—I have a pocket calculator here. Would that be helpful?

Mr Negus—I think we will handle that. Those last three groups, which are a mixture of state and territory police in intelligence groups and investigation groups, will remain so. They will not all be taken over because it is important in those airport environments that we

actually have representatives from the state or territory working with us in intelligence and investigations.

Senator BRANDIS—The 12 per cent reduction that you have identified of the aggregate number of officers, what figure does that get you? Do you have a figure of the end point of this process which reflects the 12 per cent reduction?

Mr Negus—I do not have that at my fingertips. I am sure they could work it out, if you are prepared to wait.

Senator BRANDIS—Can that be identified as well, please?

Mr Negus—Yes.

Senator BRANDIS—While that is being done, I will move on to another issue. Let me take you to this issue of the 500 extra police that Mr Kevin Rudd promised in 2007. I do not want to engage in some sort of exercise of classifying, reclassifying and rebranding people as one thing or another. I want to cut to the chase here: Mr Rudd promised 500 extra Australian Federal Police over five years by 2012—correct?

Mr Negus—That is right, and it is quite easy because they are sworn police officers.

Senator BRANDIS—That is 500 extra sworn police officers by 2012. How many of those extra positions have we now recruited?

Mr Negus—It was staged over the five years.

Senator BRANDIS—Yes.

Mr Negus—There were 30 in the first year, 30 in the second year, 40 in the third year, then 200 in the fourth year and 200 in the fifth year.

Senator BRANDIS—It is always in the out years with old Kevin Rudd.

CHAIR—I think if you are going to refer to the Prime Minister perhaps you should do that in an appropriate way, as you would in the chamber.

Senator BRANDIS—Of course I will. It is always in the out years with the old Prime Minister.

CHAIR—‘Old Prime Minister,’ that could refer to anybody, I suppose. But keep going with your question.

Senator BRANDIS—Of the 500 who were promised by 2012, at 60 per cent of the way into the program there were going to be 100. Then the final tranche of 200 each were going to be post the 2010 election. Is that right? I can see you smiling there.

Mr Negus—That is correct.

Senator BRANDIS—In the first year did you get those 30?

Mr Negus—Yes, we did.

Senator BRANDIS—In the second year, did you get those 30?

Mr Negus—Yes, we did.

Senator BRANDIS—What about this year, did you get the 40?

Mr Negus—The third year is actually next financial year, so we are on track to do that.

Senator BRANDIS—It is the 2010-11 financial year?

Mr Negus—That is right.

Senator BRANDIS—But the comment was about 2012. Has that been interpreted to mean by the 2012-13 financial year?

Mr Negus—I am told that it has never changed from the PBS. That was the extended period of time in which it was to be done.

Senator BRANDIS—So, how many of 40 do we have? None?

Mr Negus—That will be next financial year. But planning is well underway for that.

Senator BRANDIS—The plan is well underway—how often have we heard that?

Senator BRANDIS—So of the 500 promised we have 60; is that right—30 plus 30 adds up to 60?

Mr Negus—I hesitate because the 60 have been obtained, but we have also managed to recruit more people than we had expected and we are actually well ahead of our targets.

Senator BRANDIS—In fairness, I should ask you to tell me about those figures.

Mr Negus—We have managed to make savings across the organisation in our supply costs and reinvested those back into sworn officers. We are about 181 staff ahead of the targets and where we thought we would be.

Senator BRANDIS—But the promise made by Mr Rudd in 2007 was not to fund these 500 extra officers from efficiencies, was it? The promise was just to recruit 500 extra officers, all other things being equal?

Mr Negus—No, and I apologise if I perhaps misled you. Certainly, 500 will be funded from the component of funding provided to the AFP over five years and the top-up identified by Mr Beale.

Senator BRANDIS—Of those 500, we have now had 60.

Mr Negus—That is right, as was predicted.

Senator BRANDIS—Thank you. I turn to an entirely different matter. The Australian Federal Police is responsible, is it not, for personal protection of senior politicians?

Mr Negus—Yes, certain senior politicians.

Senator BRANDIS—You have a detachment for the personal protection service. ‘Detachment’ is probably the wrong word. You have an element of the Australian Federal Police that is responsible for personal protection.

Mr Negus—That is right.

Senator BRANDIS—At any given time, which members of parliament receive personal protection?

Mr Negus—I am not sure whether it would be appropriate to answer that in a public forum, given that part of this goes to the capability of the organisation to protect those certain politicians.

Senator BRANDIS—That is fair enough. I think we know that the Prime Minister does. There are others as well on a needs basis, are there not?

Mr Negus—That is right. Based on a risk assessment, including representation from ASIO, the Attorney-General's Department and ourselves?

Senator BRANDIS—But the only senior politician who as a matter of course, ex officio as it were, who has personal protection officers is the Prime Minister or the acting Prime Minister?

Mr Negus—As a matter of course, and, of course, the Governor General is part of that responsibility as well, but she does not in the category—

Senator BRANDIS—I am going to confine myself to political officers rather than ceremonial officers.

Mr Negus—But on a needs basis reviews are done on various politicians and, of course, at present the Deputy Prime Minister does have some needs based coverage.

Senator BRANDIS—May I take it that the officers who are assigned to the protection of a senior politician maintain a log as a matter of routine?

Mr Negus—You would have to more specific.

Senator BRANDIS—I will try to be as specific as I can be. May I take it that the officers—can I use the word 'detached' or 'assigned'?

Mr Negus—For the purposes of the conversation, yes.

Senator BRANDIS—Officers who are assigned to a particular protection task or function keep a record, as a matter of routine, of who they were assigned to and where they went on any given day?

Mr Negus—Each of them would have a notebook and a diary. Of course, the way we manage the AFP is that we have a computer system called PROMIS. Each of those tasks would have a PROMIS log identifier—a number specific to each of the tasks that they would perform—like any drug investigation or other responsibility would have. They would be required to acquit time and other things against that PROMIS log.

Senator BRANDIS—Is that word 'promise'?

Mr Negus—It is an acronym for Police Real-time Online Management Information System.

Senator BRANDIS—That is a very good acronym. And the notebook presumably is maintained by the officers in handwriting and the PROMIS log is a computer system, as you have told me. Do the officers record in the computer system all relevant information and data in relation to the fulfilment of one of these protective service tasks?

Mr Negus—It is a long time since I have done any of that sort of work. We would have to double check. But, yes, they have a responsibility to log their time and performance of their functions—where they go, what they do and what happened.

Senator BRANDIS—So, where they go and what they do and presumably—and this should be uncontroversial—the date?

Mr Negus—Yes.

Senator BRANDIS—May I also take it that in the event of an incident, the fact of the incident would be recorded as well?

Mr Negus—That is right.

Senator BRANDIS—And depending on the seriousness of the incident, there may well be a fuller or a briefer record. If a person under protection were the subject of a serious attempted assault, that would be very thoroughly documented. If there were a disruption which turned out ultimately to be of a non-threatening nature, that would be noted but perhaps not as fully as an assault. Would that be a fair surmise?

Mr Negus—I think that is a fair summation, yes.

Senator BRANDIS—The Prime Minister was accompanied by protective service officers on 30 March this year. You may want to take some of these questions on notice, by the way. The Prime Minister was accompanied by protective services officers on 30 more this year when he was in Melbourne. Is that right?

Mr Negus—I do not know specifically about a particular date. But if he was in Melbourne he would have been accompanied by protective service officers, yes.

Senator BRANDIS—I invite you to take each of these questions on notice, please. I do not expect you have the facts at your fingertips. I am going to ask you about a particular event and I am also going to ask you to provide a document. You might wish to consider whether or not you object to providing that document. Alright?

Mr Negus—Yes.

Senator BRANDIS—On the evening of 30 March, the Prime Minister attended a private dinner in the private dining room of a Japanese restaurant at the Crown Casino called Nobu. Can you check that for me, please?

Mr Negus—Yes.

Senator BRANDIS—He was accompanied by protective service officers. Commissioner Negus, perhaps you can respond without needing to take this question on notice. We know that dinner was hosted by the editor of the *Herald Sun* and included the Prime Minister, senior editors and journalists. Would the people attending, or the identity of the people attending, a small private function ordinarily be recorded in the log or the diary?

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

Senator BRANDIS—I am now asking you about a matter of practice rather than about a particular, specific occasion. If the Prime Minister, accompanied by protect service officers, goes to a small private dinner, would the names of the other people attending the dinner be

something that the AFP or the protective officers would ordinarily be made aware of or make a note of?

Mr Negus—I do not really know. I would have to check that. It would depend on the security assessment done before the event whether that material was available. There is a range of things. I would have to take that on notice.

Senator BRANDIS—You prompt me to ask you a question I should already have asked. In advance of a visit from the Prime Minister or another person under protections, a risk assessment would be done as a matter of course.

Mr Negus—Yes, that is the usual course.

Senator BRANDIS—If the occasion is as commonplace as a small private dinner, would the identity of the other people attending dinner be something that would be ascertained by the officers?

Mr Negus—It would depend on the circumstances. Again, I could not answer one way or another.

Senator BRANDIS—Would you be good enough to tell me whether or not, in relation to the Prime Minister's dinner at the Nobu Japanese restaurant on the evening of 30 March 2010, that was done?

Mr Negus—We will take that on notice.

Senator BRANDIS—Thank you. It has been reported by the journalist Katharine Murphy in the *Melbourne Age* on 22 April this year that those present at the dinner on that occasion included Mr Simon Pristel, the editor of the *Herald Sun*, Mr Phil Gardner, the editor-in-chief of the *Herald Sun*, and Peter Blunden, the managing director of the *Herald* and *Weekly Times*. I am reliably told that there were others there as well. Can you check whether the assessment includes the names and identities of those people specifically, please?

Senator Wong—I have not intervened for some time because I assumed at some point there would be a question relevant to estimates or to the AFP's functions. But I flag that this appears to be becoming an exercise in outlining aspects of the Prime Minister's diary through an estimates process. If Senator Brandis has questions for the Prime Minister, he is in the wrong estimates hearing. I fail to see, unless he gets to the point very soon, what relevance these questions have for the Australian Federal Police.

Senator BRANDIS—They are relevant and it will be very apparent to you that they are directly relevant to the Australian Federal Police as I proceed. Commissioner Negus, during the course of the evening—I will ask you to take this question on notice—there was an incident, was there not, at the Nobu restaurant, which precipitated an intervention by officers who were assigned to the Prime Minister's personal protection squad?

Mr Negus—I am unaware of any incident.

Senator BRANDIS—I will put these propositions to you and ask you to take them on notice and get back to me. The nature of the incident involved an altercation in which officers standing outside the private dining room heard the Prime Minister yelling at such volume that they were concerned that an incident affecting him or potentially his safety was taking place

within, and they entered the room to make sure that he was all right. Can you verify that for me and come back to me on that?

Mr Negus—Again, I agree to take it on notice and will consider whether it is appropriate to respond.

Senator BRANDIS—Of course. In fact, when the officers—

CHAIR—Are you asking a question, Senator Brandis?

Senator BRANDIS—Yes, I am.

Senator Wong—You are not. Senator and Chair, Commissioner Negus has said he has no knowledge of the event. So I fail to see how it is appropriate to continue asking him questions about it in these circumstances.

Senator BRANDIS—He is taking them on notice. They are proper questions and he is taking them on notice.

Senator Wong—What do they relate to?

Senator BRANDIS—They relate to what the Australian Federal police officers did on this occasion.

Senator Wong—They appear to relate to security associated with the Prime Minister, not the budget estimates.

CHAIR—Senator Brandis and Minister Wong, as chair I ask Mr Negus whether or not the nature of these questions actually compromises the overall security that is provided to the Prime Minister in this country, no matter who that person is and whether or not they are in fact appropriate to be asked publicly and responded to publicly?

Senator BRANDIS—I will ask the questions—

CHAIR—I am not asking you, Senator Brandis; I am putting that question to Commissioner Negus.

Mr Negus—I would have grave concerns about divulging the methodology or the activities of how we may or may not respond to particular incidents. As I said earlier, I have agreed to take the questions on notice, but that would involve considerable consideration about whether it would be appropriate to respond to each of these questions.

Senator BRANDIS—I perfectly understand that.

CHAIR—Senator Brandis, I will call you in a moment. Would this line of questioning and your responses reveal how the Australian Federal Police ensure that any prime minister in this country is secure in the undertaking of his diary matters or where he goes?

Mr Negus—It may well, yes.

CHAIR—Senator Brandis, I ask you then to proceed with caution.

Senator BRANDIS—I will proceed with great caution, Madam Chair, as I always do. Commissioner Negus, is it not the case—and I understand you will need to take this question on notice—that when the Australian Federal Police officers entered the private dining room

they found that there was no threat to the Prime Minister's security, but that the incident that had alarmed them consisted merely of the Prime Minister yelling uncontrollably?

Senator Wong—This is really an abuse of process.

CHAIR—It is all right, Minister. I am going to rule that question out of order. Senator Brandis, I ask you to move on to other questions you may have of the Australian Federal Police.

Senator BRANDIS—Commissioner Negus, in the event that an incident of the kind I have described—that is, when members of the personal protection service were sufficiently alarmed by voluble screaming that they entered a private room only to discover that there was no actual threat to the security of the person whom they were protecting—would it be recorded as an incident on the PROMIS log identifier or in the notebooks or diaries of the officers?

CHAIR—I have ruled that question out of order.

Senator BRANDIS—I am asking a question about practice.

CHAIR—There is no response required. I have ruled that question out of order.

Senator BRANDIS—Then let me express the question in a slightly more general way. This is a hypothetical case. This is a hypothetical question and it does not relate to the incident at the Nobu restaurant on 30 March.

Senator Wong—I think you might make sure this is not hypothetical, at least in impression.

Senator BRANDIS—When personal protection officers are sufficiently alarmed at an incident that they move to more closely ascertain what is going on and they satisfy themselves at once that the personal security of the person to whom they are assigned is not at risk, would the practice nevertheless be to record the incident as an incident in the register, diary or log?

Mr Negus—Again, that would be down to the judgment of the officers on the ground. It would be impossible to answer a hypothetical question like that.

Senator BRANDIS—Is there a protocol or a practice in relation to the level of seriousness of an incident before it has to be recorded in the log, or is it merely, as you say, just a question for the officer on the spot?

Mr Negus—There is certainly training on this issue. But, again, it would be up to the judgment of the officer on the spot.

Senator BRANDIS—It would have to be, would it not, extremely voluble yelling for officers to intervene in a private dining room?

CHAIR—This is out of order. If you want to go out—

Senator Wong—Senator Brandis, why do you not go outside and make these allegations rather than abusing the estimates process?

CHAIR—Senator and Minister, I have ruled those questions out of order. I am now going to go to the Greens. I understand they have questions of the Australian Federal Police. Senator Brown and Senator Ludlam, we will go to you for your questions.

Senator BRANDIS—Am I not being permitted to ask any more questions?

CHAIR—We will come back to you, but it is time that we—

Senator BRANDIS—Are the sensitivities too great?

CHAIR—No. We have shared time all day between you and the other party, which is the Greens. You have been part of that. It is now the Greens' turn.

Senator BRANDIS—I am happy to yield to Senator Brown at the moment.

CHAIR—We will come back to you at a later stage.

Senator BOB BROWN—I have two matters. The first relates to investigations into the Sea Shepherd ships that were engaged in protecting whales in the last whaling season. The second is in regard to matters raised on the *Four Corners* program last night about the firm Securrency. In relation to the first issue, we know that police officers were involved in going aboard the Sea Shepherd ships when they returned to Hobart earlier this year after the whaling season and confiscated certain materials. I understand that was as a result of a request from Japan that an investigation take place. Can you tell the committee who made that request from Japan and in what way it was conveyed and by whom to the Australian Federal Police? How was the decision made then to go aboard the Sea Shepherd ships and search for that information?

Mr Negus—My notes are very broad, unfortunately. They say that 'Japanese authorities' referred the matters to the Australian Federal Police. I am not sure whether any of my colleagues have more information on that.

Senator BOB BROWN—Can you tell me which authorities?

Ms Newton—The Japanese embassy contacted the Department of Foreign Affairs and Trade and spoke to them in regard to a referral. That was also confirmed information from the police liaison officers to the Australian Federal Police.

Senator BOB BROWN—What was the nature of that request? It led to police becoming involved and going aboard the ship.

Ms Newton—On 29 January 2010, Japanese authorities referred a number of incidents, which allegedly occurred between 17 December 2009 and 9 January 2010, between the Sea Shepherd Conservation Society's marine vessels and Japanese whaling vessels to the AFP. Japanese authorities subsequently advised of additional incidents, which allegedly occurred between 16 January and 21 February 2010. They asked the AFP to consider these additional allegations of incidents as part of the initial referral. So they were treated as a singular referral. They involved a number of matters. Preliminary inquiries into the allegations against the Sea Shepherd Conservation Society were in accordance with Australia's obligations under the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, the SUA convention. On 6 March, in conjunction with and with the assistance of the Australian Customs and Border Protection Service, AFP officers boarded and executed search warrants on the MV *Steve Irwin* and the MV *Bob Barker* as a result of information that we had received and the identification of relevant items and information that we were able to swear out warrants on.

Senator BOB BROWN—The Prime Minister has publicly made it clear that Australia believes legal action is in the offing against the Japanese whaling operations in the Southern Ocean. Was the AFP able to ascertain whether Japan had been involved in illegal activities at the time those incidents took place?

Ms Newton—This matter is still under investigation at this time. The Japanese whaling vessels have not entered Australia's jurisdiction and, therefore, the investigation that has been undertaken is as a result of the referrals made to the Australian Federal Police by the Japanese.

Senator BOB BROWN—Have the police been able to ascertain that the Japanese were acting legally in killing whales and undertaking whaling activity south of Australia?

Mr Negus—We have only really made preliminary inquiries about this under our obligations under the act that Deputy Commissioner Newton mentioned. We have not got very far; the investigation is still underway. But there are international conventions under which we are obliged to undertake preliminary action to seize material and do things in a way that may assist future investigations or future decisions on this matter. We are still in those stages.

Senator BOB BROWN—One of those acts was the deliberate running down of the ship *Ady Gil*, which had six men aboard, by the Japanese ship *Shonan Maru 2* on the high seas, the *Ady Gil* having left an Australian port to go to the whaling area. Has the Australian Federal Police sought a reciprocal investigation of records by the *Shonan Maru 2* and the Japanese whaling fleet that would help it to come to a fair assessment of the behaviour of the *Shonan Maru 2* in the running down the *Ady Gil* on the high seas?

Mr Negus—Under international law, the flag states of the vessels involved have primary jurisdiction over those vessels when they are on the high seas. As with the first issue, the AFP has conducted some preliminary inquiries in relation to the collision in accordance with the SUA convention. But we have been informed that both New Zealand and the Japanese authorities are conducting investigations into the collision themselves. The AFP will not conduct further inquiries into the incident, but we have offered to assist New Zealand and Japan with their investigations should they require that.

Senator BOB BROWN—Could you tell me where under international law the primary responsibility is to the nations they are flagging?

Mr Negus—This is where I may have to go to the Attorney-General's Department for advice

Mr Wilkins—Senator, it might be helpful if I can get, Mr Campbell, who is the head of the Office of International Law in the Attorney-General's Department to take you through that issue.

Mr Campbell—Senator, the flag state of a vessel has primary responsibility for the management of that vessel. It also has responsibility for investigating incidents involving that vessel.

Senator BOB BROWN—Is there anything under that convention to stop Australia investigating the ramming of the *Ady Gil* by the *Shonan Maru 2*?

Mr Campbell—I am not accepting how you characterise it necessarily, but there is nothing in the law of the sea convention that prevents Australia from conducting its own investigation into such an incident. But, of course, you have to bear in mind that it does not have primary jurisdiction over the vessels concerned and there may be difficulties in conducting such an investigation. My understanding is also—

Senator BOB BROWN—Could I just ask you what those difficulties would be?

Mr Campbell—Having access to the evidence and to the persons on board both vessels.

Senator BOB BROWN—But if there is no request to get access to those records of the *Shonan Maru 2* in Japan or the persons involved, how do you know that that is an impediment to getting information?

Mr Campbell—I was about to move on to the fact that the Australian Maritime Safety Authority did conduct—I am not quite sure how you characterise it—an investigation into the incident, even though we are not the flag state of any of the vessels. I believe that it issued a report relating to its inquiry. But it also pointed out that the countries with primary responsibility for investigating the incidents were the flag states of the vessels involved.

Senator BOB BROWN—There are two things. Firstly, have you seen that report from AMSA?

Mr Campbell—I have not read it in detail.

Senator BOB BROWN—You have seen it?

Mr Campbell—I have seen the report, yes.

Senator BOB BROWN—Do you know whether it has been published?

Mr Campbell—My understanding is that it has been published.

Senator BOB BROWN—When you say ‘primary responsibility’, what is the impediment to Australia investigating the ramming of the *Ady Gil*?

Mr Campbell—I just said that AMSA conducted an inquiry into it. So in one sense it did investigate it, and it issued a report. But, I say again: the primary responsibility for such an investigation rests with the flag states of the vessel.

Senator BOB BROWN—But let us make this clear. There is no impediment to Australia holding an inquiry if it wishes to do so?

Mr Campbell—Australia has already conducted an inquiry through AMSA and it has issued a report.

Senator BOB BROWN—Could you explain to the committee why Australia conducted an inquiry through AMSA but facilitated a Japanese request for an inquiry utilising the Australian Federal Police?

Mr Campbell—I can explain that, Senator. As I think was mentioned by the commissioner, both Australia and Japan are parties to the conventions dealing with the suppression of unlawful acts on vessels and we have certain obligations under that convention. One of the conditions for exercising certain obligations under that convention is if a vessel which may be involved in an incident that might be covered by that convention

comes into an Australian port. I think we tabled a paper on the convention and our obligations under that convention in estimates on 23 February 2009, which set out in detail what our obligations are under that convention.

Senator BOB BROWN—The point that I am getting to Mr Campbell, or to which I am trying to get an answer, is whether there is an impediment to Australia undertaking an inquiry into the ramming of the *Ady Gil* by the *Shonan Maru 2*?

Mr Campbell—Senator, I have already answered that question and said that AMSA has conducted an inquiry and issued a report.

Senator BOB BROWN—Then, can you tell me this: in issuing that report and having conducted that inquiry, did AMSA request any information whatever from the Japanese authorities?

Mr Campbell—My understanding is that the report states that they did seek material from the Japanese authorities.

Senator BOB BROWN—And?

Mr Campbell—And the Japanese authorities did not hand over the information because they said it could prejudice—I cannot quite recall the terminology—either their own cases or their own inquiry.

Senator BOB BROWN—So we established here that a request was made to Japan for material relating to that collision which Japan refused to respond to by giving material information. But a request was made to Australia by the Japanese for information relating to that material, and that led to the Australian Federal Police acting by going aboard the Sea Shepherd ships, taking information and conveying that to Japan. How can this imbalance occur?

Mr Campbell—I can say how this occurred because, as I mentioned earlier, Australia and Japan are a party to the so-called SUA convention, the suppression of unlawful acts convention, which requires Australia to take certain actions, which it did take. But there is no requirement on Japan to provide material to the AMSA inquiry.

Senator Wong—Could I have a minute? I was just seeking clarification, Senator, because as I understand the evidence, and I am not an international lawyer, there are two different legal scenarios, one of which involved what AMSA did. But in relation to what Mr Campbell describes as the SUA convention, Australia, as I understand it, was responding to a request from Japanese authorities. No such request under that convention, as I am advised, was made by New Zealand and the actions that were taken by the AFP were pursuant to that convention as opposed to the actions taken by AMSA. I flag that if I have said something wrong perhaps an officer could correct me.

Ms Newton—In regard to the Japanese embassy referring this matter to the Australian Federal Police, the allegations that were made included attempts to foul the propeller of the Japanese whaling vessels contrary to section 12 of the Crimes (Ships and Fixed Platforms) Act. The crew of the *MV Steve Irwin* threw butyric acid at the Japanese whaling vessels, contrary to section 28B of the Crimes Act and by virtue of section 6 of the Crimes at Sea Act. The offences extended beyond the SUA convention.

Senator BOB BROWN—In Australia, under the Crimes (Ships and Fixed Platforms) Act 1992 it is illegal to ram and sink another ship on the high seas. But we have not requested information from Japan to investigate that matter.

Ms Newton—Senator, the Australian Federal Police did go back to the Japanese embassy and requested additional information in regard to the allegations that they made, so that we had adequate information to determine whether or not we could commence an investigation or the evaluation that took place.

Senator BOB BROWN—And did the Japanese furnish that information?

Ms Newton—They provided additional information at the time to clarify what their requests were. Of course, this is an ongoing investigation and has not been completed at this time.

Senator BOB BROWN—Did they furnish from the *Shonan Maru 2* one ship involved in the collision—the video evidence and log evidence et cetera, equivalent to that which the AFP requisitioned from the Sea Shepherd ships in Hobart in relation to the *Ady Gil*, the other ship that was sunk?

Mr Negus—Senator, the difficulty there is that those ships have not had Australian jurisdiction. Whilst we have obligations under the SUA convention to go and collect material, the Japanese and the New Zealand authorities can then make representations through appropriate channels to seek that material to work out the details.

Senator BOB BROWN—But the *Ady Gil* left Hobart, an Australian port when last I looked. Therefore it brings into play the Crimes (Ships and Fixed Platforms) Act 1992, which enables Australia to investigate that matter and to require Japan, if the request is made, to provide information about an investigation as to whether a crime has been committed by a Japanese ship against the *Ady Gil* on the high seas after the *Ady Gil* left an Australian port.

Mr Negus—Senator, I appreciate that but from our position the New Zealand authorities have indicated that they are investigating the matter. We have offered to support the New Zealand authorities in the appropriate way. Again, rather than having dual investigations going on both sides of the Tasman, we are prepared to provide information under the normal processes to the New Zealanders and the Japanese for them to investigate the matter.

Senator BOB BROWN—When the request was made to Australia for the AFP to be brought into play to go aboard the ships in Hobart did you respond by saying that you should make that request to the New Zealand authorities as they are the people who should handle it?

Mr Negus—No, because of the jurisdiction issues. Under the SUA convention we are obliged to make what we call preliminary inquiries—not to conduct a full investigation but to go and identify material that may well be used later in any particular criminal case in a particular jurisdiction. We do that and then make it available to the respective jurisdiction, whether it is the Japanese and/or the New Zealanders at a time when they would finalise their investigation.

Senator BOB BROWN—Is there anything under the SUA convention that would prevent you, the Australian Federal Police, having made a request to the Japanese police, to get the information from the *Shonan Maru 2* that was involved in that incident?

Mr Negus—No, not under the convention, Senator, but in the fact that the New Zealand authorities had already launched an investigation and the Japanese authorities had launched an investigation. We were caught in the middle of this by having the material in our jurisdiction. So we are providing that support and again each of those jurisdictions can quite lawfully apply through a mutual assistance request to get access to that material to sort out the matter.

Senator BOB BROWN—Did the AFP hold any conversation or have any communication with the Australian government in relation to this matter during this course of events?

Ms Newton—Yes, Senator, we had a number of discussions in conjunction with partner agencies, including the Department of Foreign Affairs and Trade, the chair, and a committee meeting group in regard to whaling matters.

Senator BOB BROWN—Are there minutes of those meetings available for the committee?

Ms Newton—I would have to refer that to the Department of Foreign Affairs and Trade.

Senator BOB BROWN—Would you please?

Ms Newton—Yes.

Senator BOB BROWN—I want to move on to Securrency. Have the members who are represented here seen the *Four Corners* program relating to Securrency?

Mr Negus—Some have, Senator. Unfortunately, I did not see it. I was preparing for this estimates committee.

Senator BOB BROWN—That would have been good preparation too. Let me then come to that matter, because it involves very serious allegations of bribery by the firm Securrency, which is half owned and managed by the Reserve Bank of Australia. Securrency is a note printing firm which does business around the world. Very serious allegations have been made about bribery relating to that firm in the public arena, including through the *Age* and *Sydney Morning Herald* newspapers in recent times. Amongst the claims made on the *Four Corners* program was a claim that a complainant went to the Australian Federal Police in 2008 with details of potential corruption, including bribery, but it was not until a year later that the police started acting on the matter. Can you explain to me whether, in fact, that complainant did go to the AFP and what action was taken in that 12-month period, after that complaint was made?

Mr Negus—Yes, Senator, I can confirm that that complainant did go to the AFP in April 2008 where certain allegations were made involving the broad range of matters to which you have just referred. There was an initial assessment done of that material at that time and over the coming months it was decided that there was insufficient material to launch an investigation. Obviously, with the benefit of hindsight, looking back, more could have been done at that time to look further and deeper into the issue. At a later stage, more material was provided to the Australian Crime Commission, which was again provided to the AFP. Another assessment was done at about that time and the matter was formally referred to us by the RBA, after the matter was featured in the *Age* newspaper.

Senator BOB BROWN—Just going back to the hindsight situation, what evidence was sought by the AFP in the wake of the very serious accusations being made to corroborate or to enable the AFP to make an independent assessment that those claims were not correct?

Mr Negus—I do not have the details of all the inquiries, but certainly over a number of months an assessment was done of the material that was provided. Certain checks were done but, again, in the context of what we now know, I think that could have gone further at the time. I have had that reviewed to have a look at how that process was undertaken. As you have said, it is a very serious matter. Currently, we have up to 20 investigators working on this full time now in a number of countries around the world. What I would not want to do is discuss in any detail the context of what material was assessed and what evidence has been gleaned at this stage because it may well impact upon the ongoing investigation.

Senator BOB BROWN—I appreciate that, thank you. However, quite a lot of material is available in the public arena and nationally—and that means internationally. Of course, one of the concerns I as a Senator have—and I am sure some of my colleagues at least will share those concerns—is that the allegations about bribery go back over a decade at least. Over that period it has been illegal in this country for businesses operating overseas to offer or provide a bribe. Is there any case with which you can acquaint the committee in which anybody has been convicted under that section of Australian law for offering or giving a bribe overseas?

Mr Negus—My officers are telling me that they have not at this time. We have run a number of investigations over the past few years but at this stage no-one has been convicted.

Senator BOB BROWN—Can you tell me how many investigations have been run over those years into allegations of bribery occurring overseas?

Mr Negus—I would have to take that question on notice, Senator. We do have that material available but it is not here with us today.

Senator BOB BROWN—Would you please? So far as is reasonably practicable would you indicate what those matters were? For example, if they have been in the public arena at some time it would be appropriate for us to be informed about that. The claims relating to Securrency—

Ms Newton—Senator, I can give you some of that material. As at 21 May 2010 the AFP has received 20 referrals relating to allegations of bribery of foreign public officials since the inception of the legislation. The status of referrals is as follows. There are three active investigations, one matter under evaluation, six not accepted after evaluation, and 10 of those have been finalised. Of course, at this point in time, there have been no prosecutions that have commenced in relation to those matters.

Senator BOB BROWN—Thank you very much, Commander Newton. In relation to that matter, how is an evaluation done? I have asked this question because obviously the person brought the information about Securrency, an evaluation of that information was done and no further action was taken. I am interested to know how the police conduct an evaluation and where you go to obtain corroboration and what other evidence is sought at the point of an accusation being made?

Mr Negus—Senator, we have a formula, if you like, called a case categorisation and prioritisation model, which we apply across the organisation. Again it helps us to sort which matters are high priority and of more significance to the Australian community than others. This would have been put through that process. It looks at things such as the importance to the Australian community, the sufficiency of corroborating evidence, and whether or not a prosecution is likely. Those sorts of things would be assessed. It is difficult to be specific because each of the cases would fall into different categories. But I can assure you that bribery of foreign officials is very high on the threshold of importance to cases to the Australian community. Therefore, they are important on our list.

If the matter was not accepted, which it clearly was not in the first instance—I am just being told it is essentially high, which is the second tier on the index because very high is the highest—then it was assessed as having some deficiency, if you like, in the likelihood of being able to prosecute the matter or obtain the evidence in foreign jurisdictions and those sorts of things.

Senator BOB BROWN—You mentioned bribery of foreign officials. Do you include in that officials of corporations overseas?

Mr Negus—Yes, that would be covered under the legislation.

Senator Wong—Senator, can I also just indicate to you that I understand—and you might recall this going through—that in fact the government has increased penalties for both domestic and foreign bribery offences. In fact, it is the case that Australia has one of the strictest bribery offence regimes in the world. An Australian individual who pays a bribe or a domestic official who accepts one can be jailed for up to 10 years and/or fined \$1.1 million.

A company that pays a bribe may be fined \$11 million, 10 per cent of the company's annual turnover, or three times the value of the benefit obtained. The increase in these penalties ensures that Australia has taken action to implement all 22 recommendations made by the OECD working group on Bribery and International Business Transactions.

Mr Negus—Senator, before you respond, I wish to correct the record. I have just been told that certainly the foreign official must be a government official and not a private citizen for the legislation to apply. So I apologise for that; I got it wrong.

Senator BOB BROWN—In the matter of Securrency, government officials have been flagged as being involved in Vietnam, in Indonesia, in Nigeria, potentially in Nepal, South Africa and Cambodia and a number of other countries. Could you tell the committee whether or not somebody like the son of a Head of State is an official? How do you work that one out?

Ms Newton—Senator, one of the most difficult components of a foreign bribery investigation is the identification of a person as being a public official and getting adequate evidence to confirm that that person is a public official. In conjunction with that one of the other obstacles is about showing that a payment had taken place between the parties of that public official as well as the person making the payment.

In the current investigation of Securrency, we are working with the Serious Fraud Office in the United Kingdom that is also actively investigating this matter in conjunction with the AFP. They have a component of the investigation associated with Innovia being dual ownership of

Secrecy. We are assisting one another in the investigation, whereby there are principals in the United Kingdom who are witnesses or to whom we would like to speak between agencies.

One of the components of this is about ensuring that we have adequate evidence that we can draw into Australia for a prosecution identifying those people as officials.

Mr Negus—Senator, just to add to that, whilst there has been quite a bit of this in the public arena, principally through the newspapers and obviously last night's program, we have to be very mindful that we are collecting evidence and that needs to be presented to a court. Comments by the investigating officials or the agency investigating this matter may well prejudice us down the track. We just want to be very careful about the sorts of comments we make about this matter, as important as it is.

Senator BOB BROWN—I appreciate that. You said that 20 or so officers were engaged in this matter at the moment. Can you tell the committee how many countries those investigations are encompassing?

Ms Newton—At this point in time I do not have that at hand. We could certainly provide it. We do have mutual assistance requests with a range of countries in regard to the investigation.

Mr Negus—And, again, I think that would sort of delve into the area—if it was in the public arena—of maybe telegraphing our punches so far as the investigation goes because there may well be areas that people in the public are not aware of.

Senator BOB BROWN—I have already flagged a large number of countries—

Mr Negus—I think those ones are already in the public arena. Again, to confirm or deny that may well just give information that we would not normally give in this regard.

Senator BOB BROWN—Can you tell the committee how long you think this investigation may take?

Mr Negus—That is a very good question. It is a very complex matter and, as we have said, there are already some issues around making sure that we get sufficient evidence to prosecute the case. I do not expect it will be over any time in the near future. There are a range of inquiries to be undertaken. It is very difficult to look at this and to give a definite time frame.

Senator BOB BROWN—I may be back here asking about this in 12 months time, with due respect.

Mr Negus—I was just going to say: rest assured that, with between 16 and 20 people working on this full time, the AFP is giving it considerable priority. Some of these do involve mutual assistance requests and other long-term legal processes to obtain evidence and have that brought back to Australia. Again, some of this is outside our control as well as the time frames around which we may be able to bring this to finality.

Ms Newton—Whilst there are a large number of countries, those are not all countries where there are allegations made of foreign bribery. We also have to make inquiries in countries where money may have transited and other inquiries that are relevant to the investigation.

Senator BOB BROWN—Can you tell me, as a layperson, if there is sufficient evidence to make a prosecution in the police assessment related to one of these series of allegations,

would that then lead to a prosecution or would you hold off on that matter until the allegations in other countries had been investigated?

Mr Negus—It would just depend whether being public in arresting a particular official would perhaps give other people an opportunity to destroy evidence and those sorts of things. It is a case-by-case decision to be made by the investigators as to whether that might compromise the ongoing investigation or not. It would not necessarily. In many matters we would arrest people, given that it is quite public, and then continue the investigation past that into other areas of the process.

Senator BOB BROWN—I am obliged to ask this question: do you think the delay in getting an investigation underway may have indeed allowed some evidence to have been destroyed or removed from reach?

Mr Negus—It is a question I have asked. Given that some of these issues go back 10 years, as you have already identified, my best advice to you is that I do not think it has. I think that we certainly got onto the trail quickly enough. There have been a range of things that have now been captured, and we have seen no indication that anything had been destroyed or tampered with during that period in which the material gained momentum to then be accepted for an investigation by the AFP.

Senator BOB BROWN—The upper house of the Nigerian parliament has investigated claims about corruption and the payment of bribes to Nigerian officials—very senior banking officials in that country—by Securrency. I just ask this question: With the well-charted history of separating police investigations from parliamentary investigations, can you see any impediment to a parliamentary inquiry into this matter here in Australia?

Mr Negus—It is very difficult for me to comment on. Again, what I would say is that we do not even discuss these matters publicly whilst an investigation is underway. We have actually gone a bit further because much of it is in the public domain as you have suggested. But it is very difficult for me to comment.

Senator BOB BROWN—Finally, I come back to the difficult question of how long will this take. As a parliamentarian I have a worry that sometimes investigations seem to go for an interminably long time without there being any end point. In the meantime the parliament and the people who are anxious about this have to wait. Do you think that any component of these investigations and allegations of bribery and other matters of corruption will be completed within the next 12 months?

Mr Negus—Again, it is very difficult for me to answer that question. I can assure you that it has been given priority within the AFP. The fact I have asked for personal briefings on this matter periodically, which does not happen in all investigations—where you come and brief the commissioner on how the investigation is going—demonstrates that I treat it with such seriousness. That has happened and it will continue to happen in the future.

Senator BOB BROWN—There was a claim in today's papers about a visiting official being provided with the services of a prostitute. Is that a matter of interest to the AFP?

Mr Negus—Again, it would be part of the broad investigation and we would look at all things of relevance that come up. But I would not like to comment particularly on that matter.

Senator PARRY—I will ask some questions in relation to Afghanistan. Firstly, how many officers from the AFP are currently deployed there?

Mr Negus—We have 28 officers deployed there at the moment.

Senator PARRY—This time last year there were 22; is that correct?

Mr Negus—That is right.

Senator PARRY—That is an increase of six. What is the primary role of the officers in Afghanistan?

Mr Negus—Their primary role is training Afghani national police officers in Tarin Kowt, which is in the Oruzgan province. We also have officers in Kandahar and Kabul who are providing assistance at a strategic level about the direction, training and capacity development of Afghani national police.

Senator PARRY—So it is primarily all relating to capacity building in the Afghani police?

Mr Negus—That is right. I think the final number will be 21; I could not tell you exactly how many are there today. But they are on the ground in Tarin Kowt, dealing with predominantly training of Afghani national police. In fact, I was there last week to witness the excellent work of the officers on the ground.

Senator PARRY—What type of training is given to the Afghani police?

Mr Negus—These are basic policing skills. We are starting from a very low base in Afghanistan where there is around 10 per cent literacy among police. That gives you an indication of some of the challenges facing our officers on the ground. But, the training is in basic police skills and looking to have them integrate into the community as a police force and to restore the rule of law in that country, particularly in the Oruzgan province.

Senator PARRY—Is a mentoring role post training part of the role of the AFP?

Mr Negus—The immediate security situation such that it is very difficult for our people to go outside the wire at Tarin Kowt. In fact, there was a rocket attack only a few weeks ago which hit the compound in which our people are living. That gives you an indication of the security situation. But they do have ongoing mentoring roles, where the Afghani police from that region will come back into the centre and talk to our officers about cases that they are investigating and seek guidance and advice. We are certainly talking with the military and others about potentially mentoring these officers at forward operating bases where the military has secured a particular area. We may well be able to go out and assist them in that regard.

Senator PARRY—Is there an intention to increase the numbers from 28 to a higher number this financial year or the next?

Mr Negus—The government has just provided additional funding over two years to go up to 28. That will be the threshold unless the circumstances change.

Senator PARRY—I am not sure, but I understand that in the budget papers there was a note about an additional 50 staff. Is that incorrect, or am I correct in assuming that?

Mr Negus—We are trying to clarify that. The FTE levels across the organisation are 50 more than were in the PBS. That is a reference to '50'. But as far as Afghanistan goes there is a redefinition of the role there towards capacity building. It had been primarily counternarcotics. But for capacity building there is, again, only an additional six.

Senator PARRY—Has that increase and the new measure been instigated by the National Security Committee of Cabinet? Maybe the minister can answer that.

Senator Wong—I will take that on notice. I also indicate that I will be unlikely to answer it.

Senator PARRY—You have indicated that you will take it on notice, so thank you. I appreciate the sensitivities. What is the cost of the additional six officers?

Mr Negus—We will have those figures.

Senator PARRY—I am happy for you to take that on notice if you do not have them at hand.

Mr Negus—It is worth mentioning that we originally had 22 officers. There were two operations with, I think—again, I will correct the record if I am wrong—12 officers involved in training and 10 officers involved in counternarcotics work under two separate allocations of funding. One of those was due to finish at the end of this financial year. The whole lot has been rolled up into a new program of one allocation which covers the 28.

Senator PARRY—Rebundled into one?

Mr Negus—It is an addition of six, but in fact the funding shows it is an addition of 18, because the funding was due to finish in June this year.

Senator PARRY—Do the AFP personnel going undertake additional training in relation to any other IDG deployment?

Mr Negus—Yes, they do.

Senator PARRY—Is that additional training done here in Australia or elsewhere?

Mr Negus—Primarily here in Australia, but it also includes work with the ADF to make sure that they are acutely aware of the circumstances they are going into and they are provided with the skills that they require to do the job.

Senator PARRY—Does the budget allocation allow for that additional training as well as salaries and other on-costs?

Mr Negus—Yes, it does.

Senator PARRY—Has the AFP undertaken a risk assessment of the area where AFP are deployed?

Mr Negus—Yes, we have done regular and updated risk assessments as the situation has moved one way or the other to ensure that our people are in secure accommodation. As I said, whilst some rockets did hit the compound in which they were staying, the protection in place in the premises meant that there was minimal or no damage to the inside of the building.

Senator PARRY—In light of an earlier answer and a question I have in front of me, do the AFP not accompany trainees outside of the community where they are housed because of the security risk?

Mr Negus—That is right.

Senator PARRY—I understand the Prime Minister made an announcement of the additional funding some time ago. Were the AFP aware of the additional funding and additional deployment prior to the announcement?

Mr Negus—There had been some discussion about increasing numbers and we were consulted in that process.

Senator BRANDIS—You will want to take this on notice no doubt, Commissioner Negus, and consider your response, but I would like you to produce the relevant notebooks, diaries, logs and reports of the security detail attached to the Prime Minister on the evening of 30 March 2010. I think that is all I have on the Nobu restaurant affair. Will you take that question on notice?

Mr Negus—Yes. We will take that on notice and consider our response.

Senator BRANDIS—Of course. I understand that there are sensitivities here and you would wish to consider your response. I want to give you every opportunity to do that. How much does a new sworn officer cost to train?

Mr Negus—It is not something we would have at our fingertips.

Senator BRANDIS—Roughly?

Mr Negus—No, I would not hazard a guess. Our training program goes for about six months—20 weeks. But there are a range of recruitment and other costs attached to that before they even hit the door. Obviously there is development and other things after they leave the recruit college. So, to give you a proper answer we would have to do an assessment.

Senator BRANDIS—Thank you very much. What AFP remuneration band do new sworn officers commence at?

Mr Andrew Wood—I will correct the record if I do not get this right, but it is AFP band 2.3.

Senator BRANDIS—What is the remuneration for an AFP band 2.3 officer?

Mr Andrew Wood—My recollection is that it is around \$45,000 per annum.

Senator BRANDIS—How long does it take to train a new recruit?

Mr Andrew Wood—The commissioner has just mentioned that. The training process is a six-month course.

Senator BRANDIS—Have there been further redundancies taken by AFP personnel since February 2010, or since the last estimates?

Mr Andrew Wood—I do not have the figures since February; I have the figures for the financial year to date.

Senator BRANDIS—Can you give us those figures and take the other question on notice?

Mr Andrew Wood—Certainly. As at 29 April 2010, there have been 20 redundancies during the financial year 2009-10, all of which have been one-off type decisions. None of them have been part of a particular campaign or major restructure.

Senator BRANDIS—What is the total cost of redundancies that have come out of the AFP's operating budget since December 2007?

Mr Andrew Wood—I will take that on notice.

Senator BRANDIS—Can you tell us roughly?

Senator Wong—He has taken it on notice.

Senator BRANDIS—I heard him. But that does not mean that I cannot ask him to respond, if he is able and only if he is able, by offering an approximate figure. If he is not able to offer an approximate figure, he is not. Are you?

Mr Andrew Wood—It would be more than \$1 million but it would be less than \$10 million, I would think. I cannot be any more accurate than that.

Senator BRANDIS—Thank you very much, I appreciate that. I turn to the question of unexplained wealth legislation. Have the unexplained wealth provisions been used since the Crimes Legislation Amendment (Serious and Organised Crime) Act 2010 came into operation?

Mr Negus—No, they have not.

Senator PARRY—I would like to follow up from Senator Brandis in relation to unexplained wealth provisions. Whilst nothing has eventuated in relation to that, are there ongoing investigations, or have investigations commenced, that may yield results from the new provisions of unexplained wealth legislation?

Mr Negus—Yes, they have. We are in discussions with both the Australian Crime Commission and the Commonwealth Director of Public Prosecutions in looking at matters which may well fall into the category.

Senator PARRY—Is the legislation adequate for your operational needs?

Mr Negus—At this stage, yes, it is. Again, these matters will have to be tested in court, being new legislation. But we are very excited at the prospect of this legislation being available to us to provide another mechanism with which to attack organised crime.

Senator PARRY—Thank you.

Senator BRANDIS—Is there a balance standing to the credit of the confiscation of assets account?

Mr Negus—That might be a matter for AGDs—

Mr Wilkins—This is what we answered Senator Barnett this morning.

Senator BRANDIS—I am sorry.

Mr Wilkins—Now that you raise it, Senator Barnett was after the further and better particulars.

Senator BRANDIS—Why do we not have them now? That would be good.

Ms Kelly—I believe, Senator Barnett, your questions were about the balance as at 30 June 2009. That figure is \$21,488,878.36. You then asked for the receipts between July 2009 and 30 April this year. The total of receipts is \$28,345,092.79. You also asked for payments out of the fund during that period—July 2009 to 30 April 2010. That figure is \$21,478,827.70. There is a further \$4,225,000 of funds committed but not yet paid out of the fund; that is, not available for distribution but not yet paid out. That leaves the distributable balance of the fund as at 30 April of \$24,130,143.45.

I believe you also asked for confirmation that there had been no applications for restraining orders under the new unexplained wealth provisions. We have confirmed that amount with the Commonwealth Director of Public Prosecutions and they confirmed that there are no restraining orders in place in relation to the act. I think the final question you asked was the total estimated value of a property restrained. The total estimated value, up to 31 March 2010, was \$271.577 million. That is for the period 1 January 2003 to 31 March 2010.

Senator BARNETT—Have you done a breakdown in the last 12-month period for the total value of property restrained?

Ms Kelly—No, I do not have that, but I can try to find that figure.

Senator BARNETT—Could you, on notice, give us a breakdown from the 2003 period on a financial year basis up until now?

Ms Kelly—Yes. It is important to note that the Commonwealth Director of Public Prosecutions has asked us to emphasise that figure is a somewhat rubbery figure because it is an estimate, not the value at the time it was restrained. The amount realised from the property in the event that it is ultimately confiscated might be significantly less.

Senator BARNETT—Do you have anything further at this stage?

Ms Kelly—No.

Senator BARNETT—Can you give us a breakdown of the payments made and to whom, on notice?

Ms Kelly—Over what the period?

Senator BRANDIS—You said it was \$21 million over the last 12 months. There was \$4 million committed. Have you done a breakdown of where those payments went and to whom they were made?

Ms Kelly—I do not have it broken down for that period. I have it for the entire amount of the fund, but I do not have it for that period.

Senator BARNETT—Can you provide that on notice?

Ms Kelly—Yes.

Senator BARNETT—Thank you very much. That is much appreciated.

Mr Wilkins—We are taking it on notice, I do not have any details here.

Senator BARNETT—That is fine. Do you have the details regarding the—unless I missed it while I was out—Melbourne terrorist case and the legal aid funding for that case? Do you have that figure while we have break?

Mr Wilkins—We do. I will ask Dr Popple to take you through that.

Dr Popple—Total expenditure on the Victorian terrorism trials was \$9.764 million.

Senator BARNETT—How many were accused and over what period of time was this payment made? I would like a breakdown of the payments.

Dr Popple—There were 13 defendants funded by legal aid. Ten were arrested and charged in November 2005 and three were arrested and charged in March 2006. I do not have with me a breakdown per defendant, I am afraid.

Senator BARNETT—How have you got it broken down to \$9.764 million?

Dr Popple—I only have the details about the changes made and the period of time, which I have just given you.

Senator BARNETT—Can you take on notice and give us a breakdown per defendant, as you did with the Sydney terrorist case? Can you advise the status of the case?

Dr Popple—The status of the case?

Senator BARNETT—They were arrested and charged. Where is it up to?

Mr McDonald—We need to take that question on notice about the individuals. There are certain constraints and we need to take it on notice if you do not mind.

Senator BARNETT—Okay. You can advise which court they are currently appearing? Is that a constraint?

Mr Wilkins—Can I ask you to repeat the question?

Senator BARNETT—Which court?

Mr Wilkins—Which court what?

Senator BARNETT—Do they appear in?

Mr McDonald—The trial is in the Supreme Court of Victoria.

Senator BARNETT—When was the trial?

Mr Wilkins—You might want to take this up when the Director of Public Prosecutions appears a bit later. We are not necessarily experts on all the details of this. There are reasons why we should not go too far in canvassing this.

Senator BARNETT—Okay. Mr McDonald, are you responding or have you concluded your response?

Mr McDonald—I have concluded, thank you.

Senator BRANDIS—The 2010-11 budget revealed that the AFP will be axing the AFP liaison officer who has been in Jakarta to save \$1.5 million. The budget statement states:

The function assists countries in deterring illegal foreign fishing ...

Can you confirm that the AFP liaison officer in Jakarta is being axed and explain to us the reason for the axing of the position and what the effect of it will be on the AFP's functions, particularly in relation to illegal foreign fishing?

Senator Wong—‘Axing’ is not the most neutral term.

Mr Negus—The position itself will go, but as far as the person in the role is concerned—who now deals with foreign fishing—he will remain, to be subsumed into the people smuggling unit in Indonesia. The person is not returning home; their role is changing.

Senator BRANDIS—And their finance is disappearing?

Mr Negus—The function is disappearing.

Senator BRANDIS—Where will the \$1.5 million saved be spent? Will it be absorbed or is it money that the AFP will not receive?

Mr Negus—I will get Mr Wood to explain it to you. There are savings measures issues which have been identified. It is probably easier if he explains that to you in the content of the whole budget.

Mr Wood—The money is returned to the central budget.

Senator BRANDIS—Of the AFP or consolidated revenue?

Mr Wood—Consolidate revenue. As the PBS clearly indicates, by putting them in brackets, it is coming out of the AFP's budget. In terms of where within the AFP's budget it is coming from, we are in the process of allocating the budget for 2010-11 on the basis of the decisions on budget night. Amounts such as this particular savings measures we have simply taken off the top budget for the AFP rather than specifically taking it out of, say, our offshore operations. We will then allocate the residual budget to the functions of the organisation.

Senator BRANDIS—I turn to the air marshal program. In the 2009-10 budget it was stated that funding arrangements for the Air Security Officer Program, otherwise known as the air marshal program, would be reviewed in the 2010-11 budget. I can find no mention of the Air Security Officer Program in the 2010-11 budget. Can you confirm whether the government has scrapped this program and, if so, when did it or will it end?

Mr Negus—I can confirm that the air marshal program is alive and well and is continuing on the same funding it had last year. We are just looking for where it is contained in the budget. It was part of that omnibus submission that may well have aggregated a number of aviation components, up to about \$758 million, if my memory serves me correctly, but it is certainly there. It has not been reduced and is continuing its efforts of the last several years.

Senator BRANDIS—How many personnel are deployed in the Air Security Officer Program at the moment?

Mr Negus—As we have said in previous committee hearings, we do not disclose the number of personnel involved in that process due to the operational sensitivities and the discreet nature of the program.

Senator BRANDIS—What is the percentage of the current staff establishment of the program by comparison with what it was in whatever financial year it was largest? In other words, by what percentage has it been cut?

Mr Negus—Without going back through the numbers, I can tell you that it is roughly the same as it has been for the a number of years. In fact, something I read the other day told me it is about two or three off where it was supposed to be. That is as far as its establishment goes

because of the attrition rates and training and other things that come in. There are actually more people in there than its establishment.

Senator BRANDIS—I turn to illegal boat arrivals. How many AFP officers are currently being deployed on are being rotated through Christmas Island?

Mr Negus—As of 24 May, that is, yesterday, we have an 11-member team assigned to people smuggling duties deployed to Christmas Island. We have 10 members performing community policing functions on Christmas Island as well. That is 21. The AFP has temporarily deployed 13 members of our international deployment group to Christmas Island to respond to any adverse reaction as a result of the recent announcements about the changes in Australia's immigration processing regime.

Senator BRANDIS—So there are 24 there at the moment?

Mr Negus—That is right.

Senator BRANDIS—I am assuming that these officers are deployed there for a period of time and then are rotated back to Australia and replaced. How many other officers are part of that cycle?

Mr Negus—If they were replaced they would go back into different roles. So that is the standing commitment.

Senator BRANDIS—34?

Mr Negus—The 13-member team is only a temporary deployment and we will continue to monitor the security situation. I expect those people to be returned unless there is some adverse reaction in the near future.

Senator BRANDIS—That was the position on 24 May 2010. What were the equivalent figures 12 months before that?

Mr Negus—I am not sure we have those with us. We can take it on notice. But I can give you a rough estimate. There are around six members doing community policing and people-smuggling duties, which is the people-smuggling strike team. Over the last 12 months they have moved up and down, but there is roughly 10 to 12 people there at any one time doing interviews and assisting in investigations.

Senator BRANDIS—There would not have been 10 to 12 people there in May 2008, before the Rudd government weakened the country's border protection policies because the level of unauthorised boat arrivals was very low. What was the number in May 2008?

Mr Negus—I would have to go back and look at the disruptions month by month. As I said, I will have to take it on notice. But over the last 12 months I think you will find that there have been roughly 10 or 12 people continually going back and forward to Christmas Island to do people-smuggling-type investigations.

Senator BRANDIS—How many individual unauthorised arrivals has the AFP interviewed on Christmas Island this year?

Ms Newton—Whilst I cannot give you the figure of full interviews—

Senator BRANDIS—Sorry, I will check myself; I want to know the number of individuals interviewed. I understand that there will be some individuals who may have been reinterviewed.

Ms Newton—Federal Police have arrested 132 alleged crew members, five alleged Australian based organisers—so they are not all on Christmas Island—one alleged organiser who has been extradited to Indonesia and there are five extraditions being projected in two overseas countries. Then there are 155 crew currently in detention on Christmas Island and on the Australian mainland that the Australian Federal Police are going through the process of interviewing as well as interviewing witnesses.

Senator BRANDIS—Are those the figures since the beginning of this calendar year?

Ms Newton—From September 2008.

Senator BRANDIS—Oh, I see; from September 2008 to the present. Are you able to give us a more recent breakdown of the figures? Can you take that question on notice?

Ms Newton—Perhaps you would like to give us the time period in which you would like that information.

Senator BRANDIS—Do we not do it on a quarterly basis? You started this sequence I think you said in September 2008. Presumably, you did that because that was the month when the Rudd government weakened the border protection policies of the previous government.

CHAIR—Senator Brandis, that is your view.

Senator BRANDIS—The numbers have escalated since, as we know.

CHAIR—Senator Brandis, that is your view.

Senator BRANDIS—Yes, it is my view. It is also the view of the public.

CHAIR—The Australian Federal Police officers just need your questions.

Senator Wong—You are lecturing people with your questions.

Senator BRANDIS—Madam Chair, with respect, you have permitted the minister, who is not even a member of this committee, to editorialise extensively.

CHAIR—Senator Brandis, your questions to the Australian Federal Police officers, please.

Senator BRANDIS—Can we start on a quarterly basis—let us say from the last quarter of 2008 up to the present? What about the unauthorised arrivals themselves, leaving to one side the crew and the organisers. Has the Australian Federal Police arrested any of them?

Mr Negus—No. The crews are processed through the immigration processing.

Senator BRANDIS—So the AFP has no role with the so-called asylum seekers?

Mr Negus—We would interview them and look to gain intelligence and evidence from them because again they are a part of this process. But none of the passengers have been arrested by the Australian Federal Police.

Senator BRANDIS—On how many occasions since September 2008 have AFP officers been called in to assist in disturbances at the Christmas Island detention centre?

Ms Newton—I would have to take that question on notice. At least on one occasion we have been called in to assist and on a number of occasions we have assisted Serco and Immigration.

Senator BRANDIS—Serco is the contractor?

Ms Newton—Serco is the contractor. We have assisted in minor issues associated with people in detention on Christmas Island.

Mr Negus—As we said, we perform the community policing role on Christmas Island completely outside the immigration detention facility. Those police are there to keep the peace and to do the normal policing responsibilities that you would find anywhere else.

Senator BRANDIS—Sure. In the one incident, Assistant Commissioner Newton, which you have described, can you give us a slightly fuller description of that incident—when it happened and what took place?

Ms Newton—I do not have all those details with me at this point in time.

Senator BRANDIS—Just in general, roughly when it was, which month and basically what took place. Was it a riot, or was it an assault? What sort of event was it?

Ms Newton—My understanding is that it was a public order matter, I believe in November last year, when the Australian Federal Police assisted both Serco and Immigration in resolving the matter of public order within the detention centre.

Senator BRANDIS—Were people hurt during the course of this event?

Ms Newton—I think it would be best to ask Immigration that question. The AFP does not have all the details of the ongoing activity because we do not have the responsibility for the detention centre.

Senator BRANDIS—Was anyone prosecuted as a result of this public order event?

Ms Newton—The AFP has investigated matters associated with that event.

Senator BRANDIS—Has any prosecution been brought to date?

Ms Newton—My recollection at this time, and I will clarify it on the record, is that we have not finalised any prosecutions.

Senator BRANDIS—So there are still possible prosecutions under consideration—is that right?

Mr Negus—I think we have some details.

Senator BRANDIS—Ms Kelly?

Ms Kelly—If I can assist. Eleven persons have been charged in relation to that incident.

Senator BRANDIS—Eleven persons have been charged? And with what offences have they been charged?

Ms Kelly—I am sorry, I do not have that detail but the Commonwealth DPP will be here later in the evening and he can provide that.

Senator BRANDIS—Perhaps I will ask them. Are you able to tell me, Ms Kelly, whether anyone was physically harmed during this public order event—what most people would call a riot?

Ms Kelly—No, I am afraid I am not able to tell you.

Mr Negus—We might add that these matters are before the court too, and whether or not people were injured obviously will be the subject of evidence put before that court.

Senator BRANDIS—Of course. Understandably, I am not speculating on guilt or innocence; I just want to know what happened.

Mr Negus—The actions of the individuals concerned may well contribute to their guilt or innocence.

Senator BRANDIS—Indeed, but not every question bearing upon what individuals may have done is inclusive of or necessarily bears upon guilt or innocence. It might, but it might not. The federal government announced in the budget that it would be cutting \$2.8 million from the Child Sexual Exploitation Team. That is right, is it not?

Mr Negus—Sorry, it is very difficult to hear you down here.

Senator BRANDIS—I am sorry. I am not often accused of being hard to hear! The Rudd government announced in the budget that it would be cutting \$2.8 million from the Child Sexual Exploitation Team within the Australian Federal Police. Is that right?

Senator Wong—Could you refer us to what you are reading from?

Senator BRANDIS—No. I am reading a question. Is it the case that \$2.8 million is being cut from the Child Sexual Exploitation Team in this year's budget?

Mr Wood—The adjustment to the budget for that activity relates to changes in the calculation of the corporate support to functions across the AFP and, in particular, as a result of the sunlight program from the Department of Finance and Deregulation—the removal of moneys for depreciation out of individual budgets. So rather than the AFP receiving the moneys for depreciation we bid for future capital programs that might otherwise have been funded by the depreciation. So to cut to the chase, the operational money to run the function has not been reduced and the number of FTE for the function has not been reduced.

Senator BRANDIS—But \$2.8 million nevertheless has come out of the budget, through whatever accounting device—

Senator Wong—It is not an accounting device.

Senator BRANDIS—Excuse me, Minister; may I finish my question please?

Senator Wong—Well you could—

Senator BRANDIS—Excuse me, Minister; may I finish my question please?

Senator Wong—You consistently misstate the evidence.

Senator BRANDIS—If you have an objection to the question, state it, but presumably you will wait until I have finished asking my question before you start interrupting.

Senator Wong—Senator Brandis, you consistently misstate the evidence.

CHAIR—Order!

Senator Wong—You misstate the evidence, Senator. You say things that are not true.

CHAIR—Minister Wong, order please.

Senator Wong—I am not withdrawing that because you just did. It is not an accounting device. The explanation was given.

Senator BRANDIS—I understand, Minister, that you are very sensitive.

Senator Wong—I am just tired of listening to you misstate the evidence.

Senator BRANDIS—A few months before an election, you are sensitive about having these matters exposed, including the cutting of \$2.8 million from the budget of the Child Sex Exploitation Team.

Senator Wong—No, Senator. I am tired of—

CHAIR—Order! Senator Brandis and Minister Wong! I am calling you both to order.

Senator Wong—You consistently misstate the evidence of witnesses. I think it is rude.

Senator BRANDIS—I understand your sensitivity. I understand that you have been sent here to cover up some of these matters, Senator Wong.

CHAIR—Minister Wong and Senator Brandis! I am repeatedly calling you to order. Senator Brandis, proceed with your questions please.

Senator BRANDIS—Mr Wood, I understand that there are various ways and various accounting devices whereby the movement of funds can be characterised or placed in various silos or whatever. But it is the case though, is it not—as, for example, the *Sydney Morning Herald* reported on 15 May—that \$2.8 million has been taken away from this program? It might talk about operational and depreciation but it is the case that \$2.8 million has been taken away from this program, is it not?

Mr Wilkins—Can I intervene? This is a sector-wide policy.

Senator BRANDIS—Sure.

Mr Wilkins—It is not decreasing the amount of money going to the program; it is moving it into the Department of Finance. The money will be provided by finance.

Senator BRANDIS—So finance will do the paedophile case?

CHAIR—Senator Brandis, can you let Mr Wilkins finish and then you will get the full picture.

Mr Wilkins—It is not simply an accounting device; it is saying that, from now on, depreciation will be handled by the Department of Finance. Capital bids will now be made as a matter of course through the budget process and provided by the Department of Finance. It is not a device for cutting operational budgets. You could look at any agency across all these Commonwealth programs and say they have all been cut in that case—every one of them.

Senator BRANDIS—Thank you. Has the staff allocation to the Child Sexual Exploitation Team been reduced or have any staff been reassigned, Mr Wood?

Mr Wood—In my previous answer I said that this did not affect the number of staff working on this program. I repeat that this change did not affect the number of staff working on the program.

Senator BRANDIS—Thank you. Do you understand why I am suspicious?

Mr Wood—No, I do not.

Senator BRANDIS—Is it the case that the same number of staff are assigned full-time to this program now as were there 12 months ago?

Mr Wood—To the best of my knowledge, yes.

Senator BRANDIS—Can you take that question on notice and check for me please?

Mr Wood—I will correct the record if I am incorrect.

Senator BRANDIS—No, I would like you to take that question on notice and provide me with a written answer please.

Mr Wood—Yes.

Senator BRANDIS—How many staff are deployed full-time on this team at the moment, by the way?

Mr Wood—I do not have that figure. Since nobody is rushing towards me I think I will have to take that question on notice as well.

Senator BRANDIS—Approximately?

Mr Wood—We do have some statistics on person hours but not the actual numbers of individual officers.

Senator BRANDIS—Well, do as well as you can on the basis of the statistics that have just been drawn to your attention—

Mr Wood—I will see whether we can provide a figure during the hearing.

Senator BRANDIS—I do not think we will be finished by 6.30 pm, so can you come back with that figure after the dinner adjournment. Has there been a reallocation of staff or resources other than staff from the Child Sexual Exploitation Team to work on the internet filter?

Mr Wood—I can take that question on notice.

Ms Newton—I might be able to answer that question. Investigators across Australia in our investigator pools in our regional offices undertake duties in the area of child exploitation and a number of staff that are cross-skilled are utilised over and above those that work in that specific area in the organisation. So currently they are utilising more resources and undertaking more investigative hours than you would normally have funded against the measures for which we have been funded.

Senator BRANDIS—Does that mean that there are officers or staff involved in child sexual exploitation protection work who were previously engaged in actual investigative work and who are now engaged in the development of the internet filter and related activities? In

other words, have the numbers of officers, as it were, on the beat in this area, been reduced by the allocation of some of those officers to work on the internet filter program?

Ms Newton—It is a different skill set, so in relation to the internet filter we do not necessarily use sworn staff for all those responsibilities.

Senator BRANDIS—But that being as it may though, is it nevertheless the case that there are some people who were previously involved in investigative activities concerning child sexual exploitation who have now been allocated to working on the internet filter program?

Mr Negus—We are just trying to find out some details for you. Our involvement in any work that may have been and taken on the internet filter would be minute by comparison to what would be done by that internet child exploitation team. If we have provided advice in relation to policy development I am not aware of it and it is certainly not material in affecting whether we would take resources away from serious child exploitation work to provide work around this internet filter. We will get you some advice on what our involvement has been, but it is not something that even the executive here is aware of in relation to our commitment.

Senator BRANDIS—Thank you. I turn, Commissioner Negus, to the AFP officers who investigate child abuse and domestic violence in the Northern Territory. That has been funded over the past two years to the extent of \$6.6 million. Has that funding been renewed in the budget?

Mr Negus—I will just find some details here, Senator.

Mr Wood—Senator, I draw your attention to page 162 of the portfolio budget statement. The second measure in the table on page 162 provides for two further years of funding. The two further years of 2010-11 and 2011-12 are scaled down over the period—

Senator BRANDIS—Is that the item described as—

Senator Wong—Senator, I do not think he had finished his answer.

Senator BRANDIS—Sorry, I am just trying to establish—

Senator Wong—No, Senator, I do not think he had finished his answer.

Senator BRANDIS—Since the officer has kindly and helpfully referred me to a document I am merely trying to identify where on the page he is referring me to, Minister. You are very, very sensitive tonight.

Senator Wong—No, Senator, I just think you are rude.

CHAIR—Senator Brandis and Minister Wong!

Senator Wong—I am trying to inject some courtesy back into these proceedings, despite your efforts to the contrary.

Senator BRANDIS—Commissioner Negus, is what you are referring me to the item described as ‘Northern Territory policing presence—staged transition’?

Mr Wood—Correct, Senator, together with footnote 7.

Senator BRANDIS—I am just having a look at footnote 7.

Mr Wood—Which is on page 163.

Senator BRANDIS—Thank you for drawing that to my attention. I had not seen it. That tells me that in the current budget there will be \$7.76 million but that in the following year that program will be scaled back about fivefold to \$1.41 million and it will expire, and there is no allocation in the outyears 2012-13 and 2013-14. Why is that? Is it expected that child abuse in the Northern Territory will have been eliminated by the year after next?

Mr Negus—Senator, as I am sure you would recall, when the previous government implemented the Northern Territory Emergency Response, the AFP responded within about 10 days and had people on the ground to assist.

Senator BRANDIS—Yes.

Mr Negus—It was always planned that there would be a transition back to the Northern Territory Police and that AFP officers would be there for the time that they were required to be there and allow the Northern Territory Police to assume responsibilities, as is quite rightly the case. When our people are allocated to go to the Northern Territory they wear Northern Territory uniforms and come under the command structure of the Northern Territory Police. This is simply a draw-down back to the responsibility of the Northern Territory Police, and the AFP's role will diminish over time accordingly with that.

Senator BRANDIS—I understand that. That makes perfect sense to me, I must say, but it then begs the question whether or not the assumptions that underlie it are sound assumptions.

Mr Negus—Senator, there was no surprise in the funding and the draw-down because this has been planned for a number of years, going back to the previous government.

Senator BRANDIS—So effectively it will fall off the cliff next year by going from more than \$7 million to slightly more than \$1 million?

CHAIR—Senator Brandis, are you assuming that the Northern Territory Police do not have the capacity to perform the functions that have been performed by the Australian Federal Police? Or is there some comment about the incompetency of the Northern Territory police force here?

Senator BRANDIS—Madam Chair, I am merely asking questions.

CHAIR—You were making an assertion about the Northern Territory Police, and I am wondering whether Mr Negus wants to make a comment about that.

Senator BRANDIS—Madam Chair, if I can be helpful, as I always try to be, we could simply deal with it by me asking this: are you satisfied with the retransition arrangements that are underway at the moment, Commissioner?

Mr Negus—Yes, I am, Senator. If I can just read to you from page 112 of budget paper No. 2, the final sentence of the top paragraph states:

This deployment is an interim arrangement while Northern Territory Police officers are recruited and trained to assume the role.

Senator BRANDIS—Thank you.

Senator Wong—As I understand Mr Negus's evidence, this is what was laid out under the previous government. I assume you are not implying anything from your questions, Senator.

But, in case you are, I would have thought that every senator in this place would have the same view regarding issues of child sexual abuse.

Senator BRANDIS—Oh please, Senator Wong! We are just asking questions to try to understand these budget figures. We do not need any pieties from you.

Senator Wong—It is not a piety; it is a deeply held view, Senator. I find some of the inferences in the nature of the questioning on this issue and on the previous issue, frankly, quite offensive. I do not think anybody in this Senate or in this parliament would have a different view about the abhorrence of child sexual abuse.

Senator BRANDIS—We are merely asking about the budget estimates, Senator Wong.

Senator Wong—You know the game you were playing previously and the comments you were making.

Senator BRANDIS—Madam Chair, do we really have to put up with this? This is an estimates committee at which senators are asking questions of agencies about the budget estimates.

CHAIR—All right, but can I say as chair that you did make a comment earlier—and the *Hansard* will show this—when you inferred that the reduction of the Australian Federal Police meant there would be a reduction in the attempt to combat child sexual abuse. That is not correct. Commissioner Negus has confirmed that it is simply part of the handover back to the Northern Territory Police of the same level of commitment and requirement that is needed. Senator Brandis, further questions of the AFP please.

Senator BRANDIS—I will yield to Senator Barnett.

CHAIR—Before you do we will go to Senator Ludlam.

Senator BARNETT—It was on the same issue and it was one question.

CHAIR—If you just have one question I will entertain one question and then we will go to Senator Ludlam.

Senator BARNETT—Commissioner Negus, are you aware of the views of the Australian Institute of Criminology with respect to its concerns that opportunities to sexually exploit children through the internet have increased? Are you aware of that and do you accept it?

Mr Negus—I accept that with the wider usage of the internet. I think that is a reasonable assumption.

Senator LUDLAM—I have a couple of quick questions that relate to the portfolio budget statement and then I will ask one or two more substantive questions, time permitting. An amount of \$12.3 million for the AFP presence at airports is listed for the AFP to maintain its community policing presence at the major airports. I would not have characterised that as community policing, but would you describe for us what your role is at the nation's airports?

Mr Negus—Senator, our role at the nation's airports is a multifaceted role. A part of it is security, but we certainly do community policing, so thefts from airport shops, assaults, public order issues—all of those sorts of things—are catered for within the airport environment by sworn police officers. We were talking about it earlier, but I am not sure whether you were in the room. The Roger Beale review has recategorised that now. The AFP will take over all

those roles, because currently we have state police seconded to the AFP wearing our uniforms, but they are state police all the same, working at each of those airports. But the AFP will assume that role over the next three to five years in a transition.

Senator LUDLAM—And is that part of your recruitment drive that we were discussing before for new AFP officers who will be drawn from that?

Mr Negus—No, it is in addition to that because it replaces people for whom we are already paying in the state police. We will recruit against those positions and replace them with the AFP. I might just add that the \$12.8 million is a one-year top-up. There is an omnibus submission which is \$758 million, which encompasses all the aviation security needs, and the \$12.8 million is really just to top up for one year a shortfall that had been identified in the cost of providing that service.

Senator LUDLAM—And that is right across 11 major Australian airports?

Mr Negus—That is right.

Senator LUDLAM—There are also indications that you will save \$23 million over four years in the budget. There are eight different programs listed with an apportionment of the \$23½ million in funding that you are saving. Can you provide a breakdown for us of where those savings were made?

Mr Negus—Again, Senator, we went through this briefly before. The Roger Beale review of airports has identified around \$23 million worth of savings over the next four years. That is because we are transitioning to an all-AFP workforce. We pay a premium for the state and territory police to come on board and work with us. We also pay for some backfilling arrangements and retraining issues, uniforms and other things that we will save over the next period. A breakdown of where those savings are is predominantly, as I said, at airports.

We are homogenising the workforce—a word I used before. We will go from having protective service officers and sworn police at airports to just having sworn police. So they will perform both roles and there will be a 12 per cent reduction, we think, in the numbers required to do that, given that they will be multiskilled in those environments. The unit costs for state and territory police are higher than for the AFP, as a rule. Also, there are a range of administration costs around training, recruitment, backfilling, relocation and uniforms, as I have mentioned, that make up that \$23 million. The \$23 million has been agreed by government to be reinvested back into the AFP so we can recruit more officers in the serious investigations areas of organised crime.

Senator LUDLAM—There is a little bit of detail in the budget on where it will go, but can you break down for us, in a more fine grained way, where that \$23 million will be apportioned in future?

Mr Negus—I think that is probably as good as we can do at the moment, but we certainly have a commitment to reinvigorate the investigations component of the AFP into serious and organised crime. Those are the broad areas, some of which are listed, in which we will look to recruit over the next three to five years as we transition away from the model we currently have at airports.

Senator LUDLAM—You must have some idea of priorities, though. There are six or seven different responsibilities listed there, from counterterrorism to high-tech crime and so on. You must have some idea of where you are proposing to apportion the budget.

Mr Negus—It is difficult because we have a very flexible model and because of the fact that we move people to where the need is. We do not put them in roles for two years, for instance, and say, ‘That’s where you’re staying.’ It will be around organised crime and we are trying to attack that in a more holistic way—organised crime, money laundering, child sexual offences and counterterrorism as required—but again there is a standing force in the counterterrorism area. I think it will be the emerging areas that we see over the next few years that we allocate those resources to. Again, there is plenty of scope within that organised crime capability, money laundering and those sorts of areas where there is a need for us to apply resources.

Senator LUDLAM—Thank you. I have spent some of the day out of the room, so I do not know whether you have addressed this in detail, but I am interested in the unit that you have that polices trafficking of pornography, and particularly child sexual material online. Has that been addressed much tonight?

Mr Negus—No, it has not.

Senator LUDLAM—I am wondering whether you can break down for us what happened to that unit in the last budget. Put them in your corporate tree for us and let me know where they are, and I will ask a couple of follow-on questions after that.

Mr Negus—We are just in the final processes of allocating our final internal budget within the organisation. I can tell you that the internet policing team—the ones who do the online tracking of child predators and those sorts of things—has eight officers but it does have a surge capacity. We can bring people into it. We are planning as part of our internal budget reallocation to increase that number. I am not sure whether we have any final numbers on that yet, but that will grow over the coming year. I should say that I know eight does not sound very many, but we have 350 people working in our high-tech crime operations area, and all of them in some way contribute towards those people doing their jobs.

Senator LUDLAM—But they are the specialists.

Mr Negus—They are the specialists who are doing the undercover work online and those sorts of things.

Senator LUDLAM—I know from second-hand experience, I suppose, that some of that work is pretty horrific. What is the churn rate and the turnover rate for the officers working in the field?

Mr Negus—It is pretty good. It is less than you might think. We have fairly significant psych testing before people go in there and we have a psych that works within the unit and has regular interaction with the people and closely monitors their actions, their behaviour and their performance. We make welfare services available to all of these people, and their supervisors are very closely attuned to the OH&S liabilities and other issues around dealing with this sort of material. I have to say—and you are quite welcome to come and have a look at the unit whenever you like—

Senator LUDLAM—I will take you up on that offer.

Mr Negus—the people working in this unit are some of the most dedicated people you would find anywhere and they really see their role as being absolutely instrumental in tracking down these child predators. Again, they look at it from the perspective that the images they view are quite horrific on occasion but they do it in the sense that they are saving children's lives eventually down the track.

It is worth mentioning that we are currently working with a number of other agencies on a project called ANVIL, which is the Australian National Victim Image Library. When it is complete it will stop our officers having to look at a whole range of images over and over again. It searches using technology and it identifies new images or new pictures that have been put up on the internet which might be child pornography or something like that. Rather than trawling through 1,000 images to find three new ones, it will spit out the three new ones and that is all they will have to do. So we are looking at technology to shield our own people from having to view this sort of material as regularly as they have in the past.

Senator LUDLAM—I think you mentioned that briefly last time we discussed this. I am interested to know what happens when you get referrals from the ACMA. Under our complaints based system, if a member of the Australian public refers something to them and they assesses it instantly as being unlawful, they refer it to you and it goes to that unit. Can you talk us through what happens then if that site is hosted overseas and not on an Australian server?

Mr Negus—Again, it is very difficult to step through all of the details because it changes every other week. But certainly ACMA can do work here in Australia. When it is overseas we have relationships with a range of international law enforcement agencies, predominantly the FBI and others in the US, where some of these sites might be hosted. When you are in eastern Europe and parts of that area it becomes far more difficult, of course. But, where possible, we use those international links to try to take down those sites where we can. But I have to be honest with you and say that it is more difficult when it is overseas for us to be effective in that environment.

Senator LUDLAM—I will certainly take you up on your offer to visit to unit. I would appreciate that opportunity. I want to shift to a different part of the world. We spoke last time, I think, about the AFP's role in assisting policing in Burma. Can you give us an update in the content of the current budget, if you like, on what our commitment to policing in Burma is at this stage?

Mr Negus—It continues just to be one officer based in Rangoon who, as I mentioned last time, continues to assist in police matters and particularly narcotic trafficking. Nothing has really changed since that time.

Senator LUDLAM—DFAT would be aware, as acknowledged, that the police apparatus in Burma is effectively part of the military. There is not really any formal separation as there is in Australia between civil policing and the military. I am wondering if you have reevaluated that since the last time we spoke, in the last couple of months.

Mr Negus—Our officer who is stationed there is under very strict instructions about involvement and the sorts of matters that they can become involved in. They take that

responsibility very seriously. I am comfortable that they are drawing distinctions between the sorts of people they would deal with in a policing sense versus those who may be involved in the military. I know that line, as you have just mentioned, can become blurred at some stage.

Senator LUDLAM—There is not really a line. DFAT do not believe there is a line at all.

Mr Negus—In talking to the officers who have worked there, they believe that they are able to work within the policing environment without stepping into the military environment. Again, there are substantial narcotics coming out of that part of the world which affect Australia's interests. If we can assist the Burmese police in countering those narcotics, or identifying links to Australia, that is the person's role. It is not to get involved in the domestic politics or otherwise.

Senator LUDLAM—But the regime has been implicated in exactly that trade. This is one of the most corrupt regimes on earth, as you will obviously be aware, and the regime is directly implicated in facilitating that traffic. It is not something that they are unaware of, that they are trying to stamp out corruption. They are implicated at the very highest levels. How do we maintain a presence there doing counter-narcotics work with their police force, which is directly linked with the regime that is assisting, enabling and facilitating that trade? I do not understand how we maintain that presence.

Mr Negus—There have been some significant operational outcomes coming out of there where there have been direct results which will affect Australia. If we had not been there, there would have been narcotics shipped to this country which would have made it onto the streets. We rely heavily on the integrity and judgment of our people on the ground to make good choices about who they deal with and what they do. I cannot really put it any more simply than that. But the assessment from the AFP's perspective is that we are better off being there, being involved in the process and monitoring what is happening as closely as we can, rather than not being there.

Senator LUDLAM—I want to ask you about something that happened on 13 May. Police and emergency services workers were called to the CFMEU headquarters in Lidcombe in Sydney to investigate a fire and when they got there they discovered a car in the building burning. It had rammed through the front windows. Emergency service workers and police on the scene put the fire out and later discovered that the car was packed with drums of petrol and probably would have killed everybody on the scene if it had gone off. I am wondering whether the AFP has a role in that investigation or whether that is being treated as a matter for the New South Wales police.

Mr Negus—I am just checking. New South Wales would have primacy in that investigation. In those sorts of matters, where it could have wider implications, they would usually consult with us or we would be aware of that. But they would have primacy in that investigation. It is not one that we have picked up and are actively involved in. They would usually consult just as a matter of courtesy to see whether we had anything to contribute.

Senator LUDLAM—Some of your most dedicated work is dealing with counterterrorism activities. Would an actual car bombing in New South Wales not qualify as a terrorist act in Australia?

Mr Negus—We were just discussing whether that would qualify, but certainly the counterterrorism teams would be notified of that event and they would make an assessment of whether this was something which would put itself in the realm of a counterterrorism incident or some other state based offence.

Senator LUDLAM—Counterterrorism teams of the New South Wales police or of the AFP?

Mr Negus—It is a combination; it is a joint counterterrorism team that works out of AFP headquarters in Sydney. With something like that, they would have been notified and I suspect the wider national counterterrorism committee would have been brought in, or at least notified of the incident, to see whether it had any implications anywhere else.

Senator LUDLAM—You are speaking hypothetically, as according to the process that would normally roll out. Would you be able to assist us in finding out exactly if they were notified and when? I find it quite extraordinary. This is an act, as far as I can tell, of politically motivated violence. It is not every day that somebody ignites a car bomb in metropolitan Sydney. It seems somewhat remarkable that you are only now weighing up whether that would be an act of terrorism. If the counter-terrorism laws in Australia are not for being enlivened by events such as this, what are they for exactly?

Mr Negus—I will have to check. I do not have the details specifically of that. Given my recent travels, I do not have any briefings on that either. Can you give me the date again that it occurred?

Senator LUDLAM—In the evening of 13 May. I have a number of questions. If you like, I can come back after dinner and see if there is any more information to be tendered. This is one of the more serious acts of political violence that has occurred in Australia to my reckoning; I do not know if you would agree. I share the concerns of some commentators that it seems to have just gone completely under the radar. Perhaps we will come back with some questions after dinner if you like.

Mr Negus—I would like to add something to that before we do break. My deputy commissioner in charge of national security advises that the AFP were advised of it. There was a decision made that it was not politically motivated. The New South Wales Police would have primacy in the investigation and would draw on our resources as required. If the investigation was to uncover that sort of evidence, there may well be more involvement by the AFP down the track. But we certainly were not asked to be involved in the process given the original information that was provided.

Senator LUDLAM—The assessment that was done was that a car bombing at a union headquarters was not politically motivated; it is just a regular criminal car bombing?

Mr Drennan—I am not sure it is actually a car bombing as opposed to an attempted—

Senator LUDLAM—An attempted car bombing?

Mr Drennan—Yes, which is very different.

Senator LUDLAM—It was good fortune, I think, rather than anything else that saved a number of lives.

Mr Drennan—Perhaps a little bit more than that. However, you are correct, it was an attempted bombing, or an attempt to ignite and explode the car and the material in it. All the information we have is that it was not politically motivated. We can attempt to ascertain from the New South Wales Police what the motivation may have been. But if you have something that is contrary to that, please let us know as well.

Senator LUDLAM—I do not have anything more than is on the public record. Among the facts is that the CFMEU had passed quite a strong resolution on peace in the Middle East and on the rights of Palestinian people to live free of violence within a couple of days of the car bombing. That is one thing that I am aware of that is on the public record. I do not have access, and you are also telling me those assessments might have been done by the New South Wales Police, as to whether particular motives have been assessed, but I do not understand how you could rule out it being politically motivated when it is at a union headquarters. I would have thought that simply ruling it out at this stage, there must obviously be some intelligence that that says it is just an ordinary criminal act.

Mr Drennan—Yes, again, I am recalling when the incident occurred. We were briefed, as we would be in any matter which potentially or is suspected could go down the counter-terrorism road. The definitive advice we got from the New South Wales Police was that it was not a matter which was politically motivated or terrorist related.

Senator LUDLAM—I will follow that up with my New South Wales colleagues. Can I ask you to return after the dinner break with any other information that you might have?

Mr Drennan—Certainly.

Mr Negus—It sounds like an assessment was made and we were provided with that advice from the New South Wales Police. I am not sure how much more we will be able to get in the short time.

Senator LUDLAM—If they are the lead agency, you will stand back unless you are called on?

Mr Negus—We are certainly ready to assist them whenever they require it. But when these decisions are made they are made with the facts at hand. Again, whilst there may be a deal of public information out there, I am sure there is a range—

Senator LUDLAM—Not a great deal.

Mr Negus—What I am saying is that I am sure there is a range of forensic and other material that the New South Wales Police would rely to make that decision in consultation with our people in Sydney. We will try to find out, but we will see where we go.

Senator LUDLAM—I would appreciate that.

CHAIR—Commissioner Negus, thank you. The Australian Government Solicitor—we want to know if the department can answer the question about—

Senator BARNETT—About the total government spending on legal services for external legal advice. In an answer to a question on notice it was 63 per cent. I would like that figure updated. Otherwise we will need the Australian Government Solicitor. If you have that figure—

Mr Wilkins—That is all you need on legal services?

Senator BARNETT—If you can get that answer to me tonight then we do not need the Australian Government Solicitor.

CHAIR—There is a possibility. It is your hands.

Mr Wilkins—So I have power over whether or not they have to turn up.

CHAIR—Yes.

Mr Wilkins—As I told you earlier today, I am sorry we do not have figures for this financial year. The answer is that I cannot provide an update. But their staying here is not going to help provide figures that simply do not exist at this point in time.

Senator BARNETT—On that basis we will let them go.

Proceedings suspended from 6.34 pm to 8.00 pm

CHAIR—I now reconvene the Senate Legal and Constitutional Affairs Legislation Committee to continue our consideration of the estimates. We have the Australian Federal Police with us. We will continue questioning with Senator Ludlam.

Mr Andrew Wood—Chair, I want to report on a situation we clarified during the dinner break. I wonder whether you want to do that now.

CHAIR—Yes, this is a good time to do that.

Mr Andrew Wood—Or would you rather wait until the end?

CHAIR—I think we will do that now. People tend to look for those answers at the resumption after the break.

Mr Negus—In response to Senator Brandis's question about the child protection operations, I can assure the committee that staffing remains the same at approximately 91 staff. AFP funds or people have not been diverted to work on the Internet filter program. The reason I did not know anything about it is the fact that the AFP has had minimal or no involvement, contrary to the media report of 15 May. So that report was incorrect. We have had minimal or no involvement in that particular program. I will hand to Deputy Commissioner Drennan, who had some other information about Senator Ludlam's matter.

Mr Drennan—Senator Ludlam, in relation to the issue that you were asking questions on prior to the break, on 13 May there were actually two incidents in Sydney. One was in relation to the CFMEU office. That has been investigated by the New South Wales police state crime command. It has been described as a ram raid in which a vehicle was run into the front of the premises and then set alight. There has been a range of media speculation with regard to the motivation. I have been assured that there are no terrorist related aspects to that whatsoever. To go any further would be inappropriate because the matter is still under investigation. The other matter, as I said, was also on 13 May. That was a matter in which I was providing details. It similarly involved a vehicle. It had gas bottles in it and an initiation device. It was also in Sydney's west. Again, that is not terrorist related at all. Likewise, it is an ongoing investigation so it would not be appropriate to go into any further details with regard to it.

Senator LUDLAM—Thank you very much. I appreciate that somebody must have given up their dinner break to go and establish those things for us.

Senator BRANDIS—While we are dealing with matters that were looked at over the dinner break, Commissioner Negus, you were going to try and find out for me over the dinner break those figures about the officers who, as a result of the Beale report, had been assigned to airport duties. You could not tell me the number of AFP sworn officers who are currently allocated to airport duties. Do you have that figure?

Mr Negus—Yes, we do, Senator. Deputy Commissioner Drennan does have those figures.

Senator BRANDIS—If Senator Ludlam does not mind, can we just get all this on the record?

Senator LUDLAM—That is fine.

Mr Negus—My apologies. I overlooked that one.

Mr Drennan—Senator, of the Protective Service officers, commonly known as the CTFR, and the K9s—handlers—there are 439 of them. Of AFP sworn, there are 62, although that includes a range of groups where there are some joint teams. I would need more time to get quite specific details as to what members are state and territory police, what members are AFP and what members belong to Australian Customs. There are in the uniform policing roles 316 state and territory police.

Senator BRANDIS—What is the aggregate? What was that last figure, please?

Mr Drennan—It is 316.

Senator BRANDIS—So the aggregate at the moment is the aggregate of those figures, is it—316 plus 62 plus 439? At the moment there are 501. Is that right?

Mr Drennan—No, 439 plus 62 is 501—that is total AFP. But there are another 316 state and territory. So your total is 817 at airports.

Senator BRANDIS—That is 817. You told us, Commissioner Negus, that there was going to be a 12 per cent reduction. So that would produce a figure of about 719 officers. Is that right?

Mr Negus—That is right—approximately a reduction of 98.

Senator BRANDIS—Approximately 98 fewer officers. Thank you very much.

Ms Newton—I have an answer to the questions on Christmas Island and the disturbances that took place in November. On 21 November, a series of disturbances took place involving up to 200 male detainees occurring at the immigration detention centre North West Point. Forty-three detainees received injuries, with seven detainees requiring some level of hospitalisation, four of which were medically evacuated from Christmas Island to Perth, with the worst injury being a broken leg. As a result of AFP involvement, we were not required to assist in resolving the matter in the detention centre but subsequently we undertook the investigation. On 20 January this year, 11 people held at the Christmas Island IDC were charged with offences, 10 people with riot under section 65 of the Criminal Code Act, 10 suspects with manufacture and possess weapons by detainees under the Migration Act and three suspects with common assault under the Criminal Code Act.

Senator BRANDIS—It must have been quite a riot if it involved 200 people, 43 of whom were injured and seven of whom were seriously injured. That is a fairly large-scale incident, is it not, Deputy Commissioner?

Ms Newton—It was a series of incidents that occurred. Because the AFP—

Senator BRANDIS—Over how many hours or days did these incidents occur?

Ms Newton—It was an individual day. I do not actually have the time in terms of the hours that it took place. The additional question that you asked with regard to how many incidents is that we have had eight incidents in the last 12 months.

Senator BRANDIS—Thanks, Deputy Commissioner.

CHAIR—Senator Ludlam, just before I call you for questioning, can you tell me if you or anyone else in your party needs the DPP?

Senator LUDLAM—I cannot speak for the others but I do not. I do not believe anybody will—they have questions for the department but not for the DPP.

CHAIR—All right. I am going to make a brave call here, Mr Wilkins, and advise that people from the Office of the Director of Public Prosecutions can go home. I am humbly sorry that we have given you that information after dinner.

Senator Wong—Three hours out of their day.

CHAIR—Yes, it is tough to say it is three hours early. I sincerely apologise that they could not go earlier.

Senator LUDLAM—I would just like to pick up the thread from where we left off. Thank you, Mr Drennan, for the information that you provided us with. I recognise that you do not want to go into operational matters partly because I think both of these matters are being handled by the New South Wales police. But the second incident I was not aware of. Can you just tell us where that occurred? Did it occur at roughly the same time as the one that I referred to before dinner?

Mr Drennan—One incident was in the early hours of the morning and one was in the late hours of the same day.

Senator LUDLAM—The same day?

Mr Drennan—Yes. Believe me, I questioned that a number of times because it is so coincidental, but that is the reality. That is why I thought you were referring to the second incident.

Senator LUDLAM—No. I was referring to the first one, which I understand was late evening at the CFMEU office. Can you give us some details of the premises of the second event or just point me to where I can find out that information?

Mr Drennan—It was not premises. It was a vehicle which had been stopped. It related to the occupant of the vehicle and the material that the occupant had within the vehicle.

Senator LUDLAM—They were carrying gas bottles?

Mr Drennan—Yes, a gas bottle and what was described as an initiation device. Beyond that I would not like to go into too much more detail.

Senator LUDLAM—Did the AFP have any ongoing role in investigating that allegation, or is that something the New South Wales police are handling?

Mr Drennan—The AFP were briefed on it because of the circumstances initially. It was assessed that there was no terrorism relationship to it whatsoever. From that point, the New South Wales police proceeded with their investigation..

Senator LUDLAM—Here is the part I do not understand. I am presuming you do not have the act in front of you. What is your working definition of terrorism in these sorts of instances?

Mr Drennan—It is certainly an act which I think you described before as being politically motivated.

Senator LUDLAM—That was kind of off the top of my head—‘the calculated use of violence, the threat of violence against civilians in order to gain goals that are political or religious’ et cetera; not an ordinary crime. That is why we are devoting an extraordinary amount of law enforcement and investigation time to these kinds of crimes. Has anybody been apprehended that you are aware of in the case of the first instance of the office of the CFMEU in Lidcombe?

Mr Drennan—I am not aware if anyone has been apprehended. I certainly do have more detail in relation to what is the potential motivation for it, but because it is an ongoing investigation and that would potentially prejudice the investigation or any subsequent court case, it is not something I can go into.

Mr Negus—Senator, in fact, the New South Wales police have asked us specifically not to go into the details of that. They have shared the information with us about the potential motivations but have asked us specifically not to go into that sort of detail.

Senator LUDLAM—All right. Perhaps this seems a little pedantic, but this is an attempted car bombing that was foiled, probably by the extreme bravery of the officers who arrived at the scene first—we could have been faced with a disaster that would have potentially killed people—at an office of the largest and arguably most militant trade union in the country. That is not being seen as having any relationship to politics or social motivation at all? Do you see where I am going and why this seems odd?

Mr Negus—I understand the confusion, Senator. On the publicly available information that you are referring to, I think it is a reasonable assumption that that would be a question that would be asked. Again, the investigating officers are privy to far more than we are and, from what they have shared with us, we are satisfied with the way the course of the investigation is going. I am sure that all will be revealed as the investigation unfolds and evidence or other material is provided.

Senator LUDLAM—As I say, thanks for following up that material. I am going to change topic to the visit. On 18 March of this year, the foreign minister of Columbia visited Australia. He met with the foreign minister, Stephen Smith. There were some subsequent reports that the foreign minister had asked for a judicial action against a member of FARC here in Australia. Again, this is just reportage, so I will ask you if you can confirm any of this for us because it is material that is on the public record but has not been verified. Accusing people of being

from that organisation, the FARC, is often used in Columbia in the persecution of dissidents. My question to you is: has the AFP been called in either by the Colombian government directly or by the Department of Foreign Affairs and Trade in anti-terror operations here in Australia or Columbia?

Mr Negus—Senator, we might have to take that on notice. There are a number of investigations which could potentially cross over the sort of area we are talking about. Some of those are ongoing. Whether it is appropriate just to discuss them now without the full facts—and we do not have those in front of us with regard to that particular incident—I think would be somewhat dangerous for us. So I am happy to take it on notice and give you a response.

Senator LUDLAM—I would greatly appreciate that. Perhaps you will take this question on notice as well. It is of a more general nature and goes to events that may or may not have occurred in the past. Do you know whether or not the AFP has given technical assistance to Colombian security agencies to tap phones and install listening or other kinds of surveillance devices to hear the conversations of union activists or leaders or opposition politicians either in Australia or in Columbia?

Mr Negus—We will take that on notice. I think that crosses again some areas that would be very difficult for us to talk about. Again, I will double-check on all of that and come back to you.

Senator LUDLAM—Do you have any idea how long that might take, because obviously this is the last estimates session potentially in this parliament?

Mr Negus—We can undertake to get that back to you relatively quickly, within a week or two.

Senator LUDLAM—I would greatly appreciate that. Thank you. I have no more questions, Chair.

CHAIR—So no other questions for the AFP?

Senator LUDLAM—No.

Mr Negus—I should say, Senator, just to close off on that, that the AFP are not routinely involved in working with other countries to conduct intercepts of those sorts of things. We do work collaboratively with our partners, of course, and we do provide technical assistance to various areas around the world. But all of that is done quite transparently.

Senator LUDLAM—To be honest, that is why I am a bit surprised that you have not just said, ‘No, we’re not doing that.’

Mr Negus—I just do not want to give you an answer, because I know we do cooperate. We have three officers on the ground in Columbia, but I would be very surprised if that was in fact taking place.

Senator LUDLAM—There are two categories of information that I am seeking there: the activities of the personnel that we have in Columbia and any assistance that you might be rendering to the Colombian government either directly or on behalf of the department here in Australia.

Mr Negus—Our work in Columbia is almost exclusively on transnational crime and particularly counternarcotics. It certainly does not delve into the areas that you are talking about there. So if it is happening, I do not know about it.

Senator LUDLAM—All right. Well, you have undertaken to provide us with some of that. Thank you. Thanks, Chair.

CHAIR—Questions of the Australian Federal Police?

Senator BARNETT—I have a couple of areas of questions. The first regards cyber safety. I indicated earlier concerns regarding the sexual exploitation of children and, in particular, a report from the Australian Institute of Criminology warning about the opportunities that are on the rise. I want to know more particularly if that is your view, how seriously you consider this as a problem in Australia today and what measures are being taken to address the concerns.

Mr Negus—Senator, as the usage of the internet increases, I think that certainly children are vulnerable to online predators. Again, there are not too many 10-year-olds these days who do not have a better understanding of the internet than most adults, so they are in those environments and we are working in very much a preventative sense as well as an operational sense to try to protect children. You may have seen recently in the media we have launched in various states of Australia the ThinkUKnow program, which has been a very successful education process of young children and their parents in talking about online safety and some simple steps that they can take to protect themselves against would-be predators. I have mentioned that we have a covert internet policing team that does online work. I should say that those people are not allowed by law to patrol the internet, if you like. We must look at things for a particular reason and investigate things for a particular purpose to be covered under the law. So we do that. There are a range of activities around education and proactive cooperation between international agencies that takes place as well. We have just been voted to be the chair of the virtual global task force, which is essentially an international organisation looking at the protection of children online in the US, the UK, Italy—I think the UAE has just come on board as well—and a number of other countries. So there are significant steps we are taking. It is an area of personal interest. When I was—

Senator BARNETT—When you say we have been voted to be chair, is that the AFP or Australia?

Mr Negus—The AFP, yes. The head of our high-tech crime unit here in Canberra has been elected as the chair. The child exploitation unit in the UK was the previous chair. We have just been voted to be the new chair. So it is a great endorsement of the work that is being done here.

Senator BARNETT—Congratulations.

Mr Negus—Thank you. The high-tech crime unit is something I set up when I was the deputy commissioner, so it is something I personally have a lot of interest and faith in. We are devoting as many resources as we can to this sort of work in a preventative sense and in an operational sense to make sure we are hunting down these predators. The other thing is that we are working very closely with the states and territories. This is not something the AFP can do by itself. The work there has been exceptionally good in cooperation and in making sure

that we are actually maximising the impact of the resourcing. With the ThinkUKnow launches—there was one in Tasmania a few weeks ago; you may have seen the local news—the state police and local teachers and other people in responsible positions are very much coming on board and looking to educate young children.

Senator BARNETT—Very good. Well, it certainly confirms some of the concerns that I and I know others in the community have about the increase in predators online—grooming and sex predators online—be it on the internet or whatever. Is social networking pages an area of interest for the AFP? I will give you two examples in the last number of weeks. Sadly and tragically, there have been two murders, based on my understanding of the evidence that has been reported. They link back to photos on Facebook and, sadly, inappropriate practices and sexual predators online. I would like to know your views in terms of how serious you consider the efficacy or otherwise of the social networking pages and specifically Facebook. I would be interested in your views on that. Secondly, do you have any observations with respect to the tragic murders of those two young people in the last month?

Mr Negus—Senator, to answer your second question first, I think it would be inappropriate for me to comment on those as they are under investigation and the respective state law enforcement agencies are prosecuting those matters and investigating them. Again, other than saying that it is a great tragedy and something that we would very much look to work to avoid, that is about all I can say. Certainly the social networking sites are becoming more popular. Some of the education processes, as I mentioned earlier, are very much targeted at young people about what information they put on Facebook and other social networking sites. It never ceases to amaze me how if you met someone in the street you would not give them personal information yet on these online sites people are telling their deepest darkest secrets and providing photos of themselves and those sorts of things. So we continue to work proactively to educate young children particularly but all of the community about the vulnerabilities of providing their name, their address and even photographs of themselves to people who would sometimes do them harm. So it is a very difficult area.

We are working with the social networking sites themselves to help them protect the people that are their customers. With regard to Facebook, for instance, we have had some meetings with US authorities and we are looking to meet with Facebook tomorrow. We have a person in the United States at the moment going to meet with the US Department of Justice to work with Facebook. We are promoting things like a report abuse button, so there is a button in the corner you can click on if you actually are concerned.

Senator BARNETT—That is a good idea.

Mr Negus—It goes directly to someone who can give them some help through an email or something like that. We have found that in recent times the social networking sites are certainly aware of the vulnerability and I think the impact on their own brand of some of these terrible tragedies that have occurred. They are looking at working with law enforcement to work with us to make it as safe a place as possible. I should say as well the AFP over the last year has had someone placed in Microsoft in Seattle in Washington to work with them on a whole range of different issues around security and learning what the next generation of technology is going to be all about so we as a law enforcement agency can be prepared to deal with the sorts of things that are going to come up in the future. So we are trying to be

proactive. We are chairing international working groups on the sorts of issues you are talking about. As I said, education underpins all of this and we are looking at that from the ground up through the schools program.

Senator BARNETT—That is fantastic in terms of your efforts and your objectives in addressing these issues. But it seems to be growing and the level of concern and anxiety in the community is also growing. Do you believe that Facebook and the social networking page organisations are seized of the same level of anxiety and concern as you and the community in general, because, frankly, some issues have been raised? Even in today's *Australian* I see a headline that says, 'Facebook pilloried for a pro rape page'. I will just read this paragraph:

An Australian Facebook page that advocates rape has prompted further calls for the social networking site to be more closely monitored.

So do you have a policy position with respect to Facebook and social networking pages being more carefully monitored and scrutinised and, frankly, issues regarding privacy being better implemented?

Mr Negus—I think, Senator, to try to monitor or regulate the internet is a very, very difficult thing. It makes your head spin to even think about the number of people. I think some of the figures I read there suggest that literally millions of Australians have a Facebook page. I think you are in the minority if you do not. But Facebook are coming on board. I have to say that in the last 12 months I have seen a shift in their willingness to cooperate with law enforcement and realise their social responsibilities. I am not saying we are there yet, but they have shown at least a willingness to engage. At the last Australian police commissioners conference, again, each of the state jurisdictions had had their own issues with particular social networking sites. I undertook that all of the issues with Facebook, particularly because we are going to see them, will come through the AFP, and we have a coordinated Australian position on this rather than seven or eight jurisdictions trying to actually all achieve the same ends. We have seen some issues with the tragic murder of a young boy in Queensland, where the memorial site—

Senator BARNETT—Yes. That was shocking.

Mr Negus—was terribly defamed.

Senator BARNETT—It was awful.

Mr Negus—Sorry, defaced, I should say. So we have worked with Facebook and other people to actually make sure their responses to these issues are appropriate.

Senator BARNETT—Thank you very much. We do not have time tonight. A cybersafety joint parliamentary committee has been established. I think that is a good initiative. I am a member of it. I know this is an area of great interest to the community in general. Thank you for your feedback. We will certainly monitor progress in terms of not just your role but the role for everyone, including the education authorities—the schools—and parents in particular.

Mr Negus—Thank you, Senator. I made the offer to Senator Ludlam before. But with this committee I would be more than happy to facilitate a tour of the high-tech crime centre. You can see firsthand the action that is actually taking place there.

Senator BARNETT—Thank you very much. Can I just move to one other—

CHAIR—Mr Negus, we might take that up as a committee. We will put it on our agenda and pursue that offer. Thank you.

Senator BARNETT—Thank you very much. This may not relate directly to the AFP, but the department may be able to assist. It relates to the Confiscated Assets Trust Fund. I just need clarification that that is different to the fund that we were talking about earlier. The correct name is the proceeds of crime CAA fund. Are they one and the same?

Ms Kelly—Yes.

Senator BARNETT—All right. In answer to question No. 65, that is the name I had—confiscated assets trust fund. Have they changed their name?

Ms Kelly—No. The Proceeds of Crime Act is the name of the act, but the fund established under the act is confiscated assets.

Senator BARNETT—All right. Good. That is very helpful. Thank you again and thanks to the AFP.

CHAIR—That is it. Thanks, Mr Negus, and your team for making yourselves available today and answering questions for us.

Mr Negus—Thank you, Chair. I thank the committee.

CHAIR—We certainly appreciate that. If we could have the officers from the Australian Institute of Criminology as well as, I think, the Criminology Research Council together, that would be useful.

[8.28 pm]

CHAIR—Dr Tomison, good evening and welcome. Mr Marks, good evening to you as well. Do either of you have an opening statement this evening?

Dr Tomison—Good evening, Chair. I have no opening statement. I would welcome any questions from the committee.

CHAIR—Thank you. Mr Marks, do you have an opening statement from the council?

Mr Marks—No, Senator.

CHAIR—Fine. Let us go to questions.

Senator BARNETT—Thanks very much for being here. I want to ask you about this issue that you have commented on publicly. I think you have done a report on it. It concerns the sexual exploitation of children through the internet. You have indicated that it has risen and will continue to rise. I wonder if you can provide some advice and evidence to support that and alert us to evidence that will support that position.

Dr Tomison—Thank you, Senator. The Institute of Criminology has had an interest in the online sex-offending area for some time. Dr Raymond Choo is one of the specialists. I guess you would call him a high-tech crime specialist. He has written a report on online grooming, which is around, of course, sex offending against children. At this point in time I do not have his report in front of me. I cannot give you the definitive answer of how much it is rising by. It would only be an estimate at any rate. But certainly as Commissioner Negus indicated, we are of the view that the incidence of online sex offending and the grooming behaviours that go

with that are on the rise predominantly as a result of the fact that online activity is increasing quite significantly each year. I am happy to take on notice, if you like, some specific figures which would be provided in that report and provide them back to you.

Senator BARNETT—That would be useful. Are you aware of the level of concern in terms of child exploitation on the internet? I presume it is in that report. Can you advise the committee today as to the significance of it and the level growth?

Dr Tomison—In many ways, online sex offending is essentially the new stranger danger. It is bringing strangers into the house in a whole new way. I think there has been quite a lot of media interest in the topic. Certainly a lot of young people and adults have experienced some form of online inappropriate behaviour ranging from initially things like exposure to pornographic material or very violent material all the way through to chatroom type behaviours, where people are essentially predators and they are trying to gain the trust of a young person for inappropriate purposes. I think there is a lot of public interest in those issues. I guess I would point out as a child protection expert of long standing that we cannot also forget the fact that much of the contact offending that occurs in sexual assault terms actually occurs from people who are known to young people. It is family, it is friends and it is people in the immediate environment rather than strangers. That said, I do not want to underplay the importance of addressing issues of online offending either.

Senator BARNETT—Have you got any evidence to support the fact that exposure to pornography and violent crime leads to sexual predators becoming more active and people becoming more violent in terms of criminal activity?

Dr Tomison—There is evidence around which looks at children in particular but also young people's and adults' experiences of violence and victimisation and how that may then play out as further victimisation, or revictimisation as it is called, and/or some will engage in offending behaviour as a result of their own experiences. When you are talking about exposure to pornographic material and violent material, often what is discussed are issues around desensitisation to violent material—if you like, starting to normalise what is being seen and to think of it as less grotesque or less problematic than what other people would suggest it really is. Whether that leads on to contact offending is actually something which we are interested in exploring. We have proposed a study which we are hoping to get up and running in the next year or so which will look at online sex offenders who have been caught and looking at some of the motivations and their histories to sort of see where they are coming from and what is the motivation to offend. Hopefully that will shed more light on this issue. At the moment it really is still early days. Even though the police are doing great work in actually tracking down these individuals and getting better and better at trapping them online, there is still a lot of work to be done.

Senator BARNETT—Are you aware of a group called Project Respect, which is, I think, supported by the Salvation Army and Collective Shout? They estimate that there are typically up to 1,000 women in Australia under contract at any one time with respect to prostitution. Are you aware of that?

Dr Tomison—I have heard of the group Project Respect. I am not aware of that figure of 1,000 women as prostitutes at any one time.

Senator BARNETT—They also say that 300 Thai women were held in the sex industry under debt bondage in Sydney in Australia in 1995. They also say women trafficked to Australia are indentured by a \$15,000 to \$18,000 debt which they must work off before they are freed. Do those figures sound accurate to you, or are you not aware of those details?

Dr Tomison—I am not particularly aware of those figures, but they sound in the right ballpark. The AIC actually has a study underway right now on human trafficking. One element of that is running a sex workers survey through the Scarlet Alliance, which is a peer support network for sex workers. The intention of that survey is to look at migrant women who have come into the country both legally and illegally and to try to get a feel for their circumstances, their experiences and to shed light on the issue of human trafficking in Australia for sexual purposes.

Senator BARNETT—Do you have a consultancy arrangement with Scarlet Alliance?

Dr Tomison—Yes, we do, to run the survey for us.

Senator BARNETT—What is the extent of the survey and what is the cost of the survey? I am happy for you to take it on notice.

Dr Tomison—I may need to take it on notice. The survey is about to get underway. At the moment, there has been pilot testing in Melbourne and I think in Sydney as well. I can get those figures for you.

Senator BARNETT—Thanks for sending us *Trends & issues in crime and criminal justice*. These are your monthly reports, which are very interesting. What are the main areas of research for the institute currently?

Dr Tomison—It is quite a varied program, Senator. At the moment, some of the key areas are human trafficking, as I have indicated.

Senator BARNETT—When will that report be delivered?

Dr Tomison—That will be early next year. I can actually, if you like, partly answer the question on notice. Scarlet Alliance has received \$100,000 to run the sex worker survey for us.

Senator BARNETT—Any other key areas of activity?

Dr Tomison—Sure. Anti-money-laundering and counterterrorism financing. We have been running a research program over the last 3½ years. A range of reports have been produced with the support of AUSTRAC looking at a whole range of elements of AML-CTF, including alternative remittance schemes, obviously levels of fraud, finance on account of terrorism and those sorts of issues. So they are two areas that we are focusing on. We also run a series of annual monitoring programs, which you may be familiar with, which cover a range of crime types. We have one of the best national homicide monitoring programs in the world, which has been running for almost 20 years. We report on those regularly, usually every year. We have a range of other monitoring programs that we also report on, usually every year or so, that includes DUMA, which is Drug Use Monitoring Australia. Essentially, it is looking at interviewing detainees in eight police stations around the country across a year for the purpose of checking out their alcohol and drug use and then drawing a range of conclusions from that. That is quite a powerful program and it is, again, respected internationally. We

collect information on armed robbery. We collect information on deaths in custody. A report on the issue of deaths in custody is due out in a matter of weeks. There are a number of other monitoring programs as well. In addition to that, of other key projects that we are working on now, I will go through my list, if I may.

Senator BARNETT—I will interrupt, Dr Tomison. Are they on your website?

Dr Tomison—Yes, they are.

Senator BARNETT—We will have a look at them there and we will come back to you if we have any further questions. Mr Marks, do you wish to contribute at this stage in terms of your activities? Are you a different entity to the institute or are you part of the institute?

Mr Marks—I am the general manager corporate and chief finance officer of the Australian Institute of Criminology.

Senator BARNETT—Thank you. All right. I think that covers it for tonight. Thanks very much for being here. Thanks for your work. I did not ask you about your staffing numbers.

Dr Tomison—Currently we have 52 FTE.

Senator BARNETT—And what was it at 30 June last year?

Dr Tomison—It was 62.

Senator BARNETT—And your budget allocation for this year? I just have not found it.

Dr Tomison—For this year it is \$7.2 million.

Senator BARNETT—And compared to last year?

Dr Tomison—Same.

Senator PARRY—I have one question, Dr Tomison. In relation to violent video games and violence on television, do you have any research in relation to how detrimental that is?

Dr Tomison—Until recently, Senator, the message was quite mixed in terms of whether violent video games and other materials were actually having an effect. More recently, there has been evidence which has shown that there is a desensitisation impact which is obviously a negative impact. To date we have not personally done any research ourselves on that topic.

Senator PARRY—Do you intend to?

Dr Tomison—Possibly. It is on our list of priorities, which tend to change quite frequently according to contracted research that we can pick up and other priorities that we monitor regularly.

Senator PARRY—I have read that violent video games could be worse for society than pornography. Do you have a view on that?

Dr Tomison—Certainly in my old psychology days, what we were taught was that sexual behaviour is not of itself a negative experience, even though you do not want to expose young people to it on a regular basis. Violent crime or violent activity is in fact far worse. I would still say that. Then again, violent sexual activity is probably one of the worst things you can experience.

Senator PARRY—It is a combination of both, yes. Can I encourage you to undertake some research into that particular area?

Dr Tomison—Certainly, Senator.

Senator PARRY—Thank you.

CHAIR—Thank you both, gentlemen, for this evening. Thanks for your time. I call officers from the CrimTrac agency.

CrimTrac Agency

CHAIR—Mr McDevitt, good evening.

Mr McDevitt—Good evening, Madam Chair.

CHAIR—Welcome. And hello, Mr Storer. Welcome to our estimates consideration of the budget. Do you have an opening statement you would like to provide us this evening?

Mr McDevitt—No, Madam Chair. I do not have an opening statement. I am happy to take any questions.

CHAIR—Let us go to questions.

Senator PARRY—Thank you, Chair. I am just going to provide Mr McDevitt with some correspondence which he may have seen. It is a letter from me to the Attorney-General, Mr McClelland, dated 10 September, and a response from Minister O'Connor on 23 November, both of last year. The correspondence just basically asks the Attorney-General to look at the Commonwealth government engaging in the production of, or encouraging the production of, a five-minute television program entitled *Australia's Most Wanted*, which used to run many years ago. I draw Mr McDevitt's attention to the paragraph on the second page—

Senator Wong—Do the witnesses want a copy of this?

Senator PARRY—I am sorry I have not got one. There is one copy. It can be copied.

Senator Wong—I will just have to share.

Senator PARRY—There is a key paragraph. The key paragraph is on the second page of the response from the minister. Basically, it indicates that CrimTrac would be the agency to look at running this. I do not know whether CrimTrac has had a chance to look at this. I am happy for CrimTrac to take that on notice. I am particularly interested, first of all, in your view as to whether a five-minute television segment outlining Australia's most wanted would be useful to CrimTrac and would be useful to the country.

Mr McDevitt—I am not aware of the correspondence, although I notice it does talk about CrimTrac's feasibility study into the national case management program. Certainly from that perspective, what that program is actually aiming to do is to better enable a national view of criminality across the country. A second element of it would be to enable searches through modus operandi and so on in various offence types across the country. The third element would be to actually provide an investigative platform for use by police to conduct investigations across borders. My background is in policing. Obviously with any opportunity whereby criminality is prominent in the minds of the public in terms of people who are most

wanted and so on—the same as for missing persons or anything else—the police cannot do this job by themselves.

Senator PARRY—You pre-empted my second question, which is in the third last paragraph: ‘I understand that results of the study are to be provided to the board of management of CrimTrac later this year.’ Can you provide us with the results of that study in a bit more detail? I presume it has been completed. Obviously you cannot provide it if it has not.

Mr McDevitt—The feasibility study itself is still underway. It is a hugely complex task. The progress on it is very encouraging at this point in time. The study itself is due for completion at about the end of next year. The CrimTrac Board of Management and the Police Ministers Council are being briefed on the progress of the study as it evolves.

Senator PARRY—When do you anticipate an absolute completion of the project?

Mr McDevitt—The completed feasibility study is due to be presented to the CrimTrac Board of Management in March 2011.

Senator PARRY—So the minister was just pre-empting a little by indicating it would be finished by the end of 2009. I am not criticising that, but there was obviously a presumption it was going to be concluded by then.

Senator Wong—That is not something this officer can comment on.

Senator PARRY—In relation to appropriations, would there be any room—again, without the detail of the feasibility study—for such a program of the Commonwealth through CrimTrac to assist in a commercial or a state- or government-owned network in providing such a program to—

Senator Wong—I am sorry to do this, but it seems to me that is a question of opinion. You are asking the officer for his opinion on this issue and that is—

Senator PARRY—No. I am asking about appropriations and whether there would be any appropriation room in relation to CrimTrac’s budget to assist in this program. I understand from Mr McDevitt’s answers so far that may be something that is being considered, because we do not have the outcome of the program. I am asking these questions on the basis that I thought the program would be completed by December 2009, as indicated in the minister’s response to me. Obviously the feasibility study for that program has not been completed by that date.

Mr McDevitt—The progress of the scoping study is not being hindered in any way by a lack of funding. That is an important point that I need to make. Additional funding will not actually speed up the progress of the scoping study itself. The reality is that this is involving very extensive work with every state and territory police force in terms of how their current systems and capabilities work and documenting their response to incidents, how they handle and document information, how that is stored and everything else. We actually have the capability to do it. Right from the start we predicted this timeline. It is complicated and it is complex and it is a significant endeavour to try to actually get a single capability whereby we would have this national view of incidents across the country.

Senator PARRY—So it appears from your response that maybe there is no room for additional funding to provide for publication or advertising by way of television or other means in relation to people who are of interest to police jurisdictions around Australia? Would that be a fair comment? Again, we are pre-empting a feasibility study that is not complete. The whole basis of my questioning was that it was going to be complete. Do you feel as though that is an accurate statement?

Mr McDevitt—My comments in relation to funding were not in relation to the production of the sort of program you are talking about but in relation to the conduct of the scoping study itself.

Senator PARRY—The minister has led me to believe that this is something that could fit within the context of this feasibility study or the outcome of that feasibility study. What you are saying is, because the feasibility study is not complete, we have no idea as to whether or not that could be a part of that particular issue.

Mr McDevitt—I have not been able to read in detail the correspondence here, but it would seem to me this could operate separately to the national case management feasibility study.

Senator PARRY—Could I suggest we leave this matter on notice, in light of the fact that I have just assumed by the minister's correspondence to me that this matter would have been complete. It is not complete; therefore, we cannot really advance the matter until such time as the feasibility study is finished. Are you comfortable to take that on notice?

Mr McDevitt—Yes.

Senator PARRY—Madam Chair, I will ensure there are copies for the rest of the committee in relation to the documents I have given to Mr McDevitt. Thank you.

CHAIR—We do not seem to have any other further questions, so thanks for your time this evening.

[8.50 pm]

National Capital Authority

CHAIR—I welcome officers from the National Capital Authority. Mr Rake, do you have an opening statement that you want to provide to the committee?

Mr Rake—No. The evening is late enough. We can go straight to questions.

CHAIR—Very good.

Senator PARRY—We are waiting on Senator Humphries, who is just leaving another committee. Would you like to outline to the committee any major projects in the Australian Capital Territory that we should be aware of at this point in time?

Mr Rake—Certainly. The National Capital Authority represents the Commonwealth government's interests in Canberra, as Australia's national capital. In that regard, we fulfil three statutory functions. We are responsible for planning the national capital, promoting the national capital and maintaining the estate within the national capital. In that last output, we undertake two core areas of work. We build new projects and we maintain public land. The biggest project that we have underway in terms of building a project on the national estate at

the moment is the Russell roundabout. It is the major construction site that you would all be passing through on the way to the airport.

Senator Wong—None of us need to be advised about that!

Mr Rake—I promise you it will be so much better when it is complete.

Senator PARRY—I do have a genuine question now, Madam Chair. When will it be completed?

CHAIR—Actually, now that you have said that, we all have a thousand questions we want to ask you about it.

Mr Rake—It was so worth while. It will be complete in June next year. There is a winter recess coming up!

Senator Wong—Just stop talking!

Senator PARRY—What other jurisdictions do you have? Do you extend beyond the Australian Capital Territory?

Mr Rake—No. It is entirely within the ACT.

Senator Wong—Madam Chair, Senator Parry has been doing a very loyal and valiant job.

CHAIR—I know where you are going to, but Senator Humphries is just minutes away, I think.

Senator Wong—If Senator Humphries is perhaps on his way, do you think we should start someone else and—sorry to do this to you—come back to the NCA rather than have questions?

CHAIR—We can do that.

Senator Wong—Here he is. Please do not be long, Gary. Senator Parry has asked all the questions.

CHAIR—I think, Senator Humphries, it would not be in your best interests to ask questions about some sort of roundabout that is happening.

Senator Wong—And to ask questions for two hours or anything like that.

Senator HUMPHRIES—I have a number of questions.

CHAIR—Put them on notice.

Senator HUMPHRIES—I will put them on notice. I want to ask a couple of questions about the NCA's maintenance budget. We were told in earlier hearings of another committee that the maintenance budget for the 2009-10 financial year has been halved. I think the figures are from \$12 million to \$6 million. Can you tell me what the budget is for 2010-11 for maintenance in the Parliamentary Triangle?

Mr Rake—In aggregate, our budget position going into the 2010-11 financial year is very similar to the 2009-10 year. But we have been able to realise internal efficiencies so that the impact on our maintenance will be lower than it has been in the financial year to date.

Senator HUMPHRIES—Can you describe what those internal efficiencies entail?

Mr Rake—We have cut back on some of our corporate expenses. Since I took over as chief executive, we have cut two SES positions from the organisation structure. We have been able to improve our IT systems, particularly our financial and asset management systems, and free up cost savings there. We have been able to find other efficiencies in our corporate back office services—human resources, payroll and the like. So whenever we make those savings, we are able to reallocate the money into maintenance expenses.

Senator HUMPHRIES—Okay. You have not postulated a figure for the budget for maintenance, I assume. Does that mean effectively that more will be spent on maintenance in 2010-11 than was spent in 2009-10?

Mr Rake—There will be more, yes.

Senator HUMPHRIES—Substantially more? Slightly more?

Mr Rake—It will be marginally more. It will be around \$1 million more. The break-up of our departmental appropriation of \$15.8 million is around \$2.1 million to the planning function, \$2.1 million to the promotions function and about \$1½ million to the maintenance function.

Senator HUMPHRIES—Over what period of time?

Mr Rake—That is for a single year. That is for the 2010-11 financial year.

Senator HUMPHRIES—Right. I am sure you have heard the expectation or the rumour that President Obama's visit to Canberra will proceed in the next few weeks, possibly in the middle of June. I am not sure if that figure is confirmed or simply speculated at this stage. But let us assume for the moment that it is going to happen. Is the NCA anticipating making a special effort to improve the look of the city and particularly the Parliamentary Triangle in anticipation of the President's visit?

Mr Rake—We went on the record in the lead-up to the last anticipated visit to indicate that we will not be spending large amounts of additional money. But we are able to reprioritise works that would otherwise occur to make sure that the national capital looks as best it can for any important visit.

Senator HUMPHRIES—What sorts of works?

Mr Rake—The best example is the mowing of grass areas. Where we mow on a fixed cycle—every second week in irrigated areas and every six weeks on dryland areas—we can adjust those cycles to bring a mow forward or delay a mow slightly so that those broad areas look attractive.

Senator HUMPHRIES—So you would not anticipate that any more was spent or any amount was taken from one part of the maintenance budget to be spent to the detriment of another part of the maintenance budget in such a way as to provide for the city to look better for President Obama's visit?

Mr Rake—No. I do not, Senator. We are incredibly proud of the national capital and we try and keep it looking its best all of the time. So it is just a matter of reprioritising if we really want to focus on a key day. We do that for key national events as well—Anzac Parade and Anzac Day being the most prominent of those.

Senator HUMPHRIES—So we are not expecting things to happen only once in the year—namely, the time President Obama visits—that would not happen another time of the year?

Mr Rake—Not unless those are activities that would only happen once a year anyway, no. There will be nothing particularly unusual about our maintenance programs. They will be rescheduled, but that is it.

Senator HUMPHRIES—So, for example, the weeds growing at the southern end of Commonwealth Avenue that have not been removed for a long, long time will not be removed especially for President Obama's visit?

Mr Rake—Those weeds will probably be removed, but they will not be because of President Obama's visit. We have received a number of complaints from the public about those particular weeds. As we move towards the end of financial year, we are able to understand how our budget has progressed for important reactive maintenance activities, such as fixing potholes on roads. At the moment we are tracking ahead of budget, so we will be able to undertake that work. As we get to the end of the year, we are able to undertake more elective works.

Senator HUMPHRIES—I turn to the issue of the Brodburger van at the end of Telopea Park. I understand from other information that the NCA is still in the process of moving the present van off its site unless it is able to create a permanent structure on the site or make itself sufficiently temporary that it does not require approval for permanent works on the site.

Mr Rake—That is the case, Senator. We are negotiating with the owners of that business to try to find a solution that is acceptable to all parties. But at the moment we have not yet reached an agreement.

Senator HUMPHRIES—You would be aware, of course, that the requirement to have approval for permanent works on that site is a general requirement under the National Capital Plan. But you are also, I am sure, aware that there are other structures in the Parliamentary Triangle that do not have such approval and that have not been removed. I refer specifically to the structures associated with the Aboriginal Tent Embassy in front of Old Parliament House. I understand that the minister, or perhaps more accurately successive ministers, for the ACT have given instruction that the provisions of the National Capital Plan that require structures to have approval should not be applied to the structures on the Aboriginal Tent Embassy site. Is that correct?

Mr Rake—It is not a formal instruction per se. But successive governments have asked the National Capital Authority to treat issues around the tent embassy sensitively. We have had that same matter put to us directly. I have said previously that I do not think there can be any reasonable or fair-minded comparison of the two. The activities at the tent embassy are a protest relating to a national issue. Down at Brodburger we have a local businessman who is seeking to have Commonwealth legislation set aside so that he can make a profit.

Senator HUMPHRIES—The difference in the reasons for the breach of the law might be very different, but the effect is the same. If the law requires that a structure has to have permanent approval and you seek to enforce that with respect to the Brodburger van, I am

curious to know how it is that the law is not enforced with respect to the structures in the Aboriginal Tent Embassy.

Senator Wong—I think Mr Rake has explained that, Senator. I was of the understanding that this was an issue which both parties in government had treated with some sensitivity.

Senator HUMPHRIES—Indeed it is, Senator Wong.

Senator Wong—I just fail to understand why you are trying to equate an issue about a hamburger van—I am sorry, but as a non-resident of the ACT I was not aware of this issue until now, but now I am—with an issue of the tent embassy.

Senator HUMPHRIES—Well, the comparison between the two sites involves a series of judgments which we can all make individually. I am interested in the process—I agree with you, Minister Wong, that there have been ministers from both sides of the political divide—

Senator Wong—Correct.

Senator HUMPHRIES—whereby those ministers indicate that the law as it stands in the National Capital Plan should not be applied to certain structures in the Parliamentary Triangle.

Senator Wong—I did not understand that—Mr Rake may have something to add—to be his evidence. He used the words that ministers from both sides of politics have asked the NCA to deal with this issue with sensitivity. I think that is a different response to the way in which you have stated the evidence.

Senator HUMPHRIES—Well, let me take this step by step. Is there a provision in the National Capital Plan that requires structures within areas the NCA is responsible for—designated land—to have approval if they regard it as permanent structures?

Mr Rake—Yes, there is.

Senator HUMPHRIES—Do the structures at the Aboriginal Tent Embassy such as the shipping container there have approval?

Mr Rake—No, they do not.

Senator HUMPHRIES—Would you characterise the requirements of the National Capital Plan as a legal requirement on the NCA to apply under the terms of its appointment and its legislation?

Mr Rake—That is one of our statutory functions. The authority acts independently of government. We seek advice from government from time to time, but it is a decision for the authority as to the compliance action that it undertakes where there are unapproved structures. In relation to—

Senator HUMPHRIES—So you have the discretion to apply those provisions of the national capital plan?

Mr Rake—Ultimately, we have the discretion to decide whether or not to undertake a compliance action, yes.

Senator HUMPHRIES—But you would be influenced in the extent to which you take compliance action by the wishes of the government of the day or the minister responsible for the NCA?

Mr Rake—We would take those views on board, but we would also consider the national interest. One of the important elements of the national capital in a democracy like this is that it is a place that people come to to express protest and express their democratic rights. The five members of the authority have taken the view that that is fundamentally different to seeking to set aside the law to conduct a business.

Senator HUMPHRIES—So if, as has been the case, successive ministers have said, ‘We would prefer you not to enforce the requirements of the National Capital Plan with respect to the structures at the Aboriginal Tent Embassy’, where that occurs, you would find that persuasive but not necessarily mandatory to follow. But if a minister gave an instruction that he preferred that you not remove the Brodburger van at the end of Telopea Park, you may not find that persuasive enough to leave the structure there?

Mr Rake—The authority would take account of their views, but ultimately the authority is an independent statutory body and would make its own decision.

Senator HUMPHRIES—Lastly, I want to ask you about the announcement that the Prime Minister made on Anzac Day that I think was calling for a ‘centenary of Anzac’ inquiry or commission. I understand some other agencies have been invited to participate in that commission or whatever it is. Has the National Capital Authority been asked to participate in that?

Mr Rake—I am not aware that we have been invited. No, we have not.

CHAIR—Thanks, Mr Rake and your colleagues, for your time this evening.

Senator PARRY—Thank you very much. That was very enlightening.

[9.07 pm]

Attorney-General’s Department

CHAIR—We are going to move now to the department and move back to outcome 1, which we were dealing with last night. We were actually in program 1.1, but I have a feeling we jumped around a bit. Senator Barnett is waiting for some answers. Perhaps you might want to remind us what they are.

Senator BARNETT—The question related to the two Senate committee reports of this committee tabled in November-December last year. One regards judging the judges and the second regards access to justice. When are we likely to receive a response to those two reports?

Ms Leon—Dr Popple will be able to assist you with that.

Dr Popple—I actually answered that question yesterday. The answer was that the government is considering its response to both. In particular, in relation to the access to justice report, that consideration is taking account of the initiatives announced in the budget as summarised in the secretary’s summary yesterday.

Senator BARNETT—So the budget is a partial response to the report?

Dr Popple—Not necessarily. But the response will take into account those parts of the budget initiatives which go directly to the recommendations in relation to access to justice.

Senator BARNETT—Thank you. The other question was in regard to Christmas Island approaching 4,500 people. I asked for a breakdown of those figures.

Dr Popple—Again, with respect, I answered it yesterday. The answer was that the resident population of Christmas Island from the most recent census, which was 2006, was 1,347. The number of people in the detention centre as at 21 May this year was 2,437. Our estimate of DIAC, Serco and NGO staff is between 400 and 600. That fluctuates.

Senator BARNETT—Sorry, Serco and which staff?

Dr Popple—NGO.

Senator BARNETT—As in non-government organisation?

Dr Popple—Yes. That is right.

Senator BARNETT—And what is that figure?

Dr Popple—Well, the range and total of those three is approximately—

Senator BARNETT—Yes, sorry—

Dr Popple—Sorry, that figure was between 400 and 600.

Senator BARNETT—Between 400 and 600?

Dr Popple—That is right. It fluctuates. That is our estimate, which we say is a total of approximately 4,200 to 4,400. You also asked whether that was a record population. The best figures we have are that the highest past resident population was 3,000, which is the estimate from 1976.

Senator BARNETT—All right. I presume those last figures—DIAC, Serco and NGO—includes other government personnel. We have heard from the AFP tonight. I think they have got dozens and dozens. They have 34. So that figure includes other departmental representatives?

Dr Popple—Yes.

Senator BARNETT—Thanks very much. To assist the department I will indicate that the areas that I want to address in the next little while are cybersafety, Family Relationship Centres, legal aid, the Administrative Review Council, shared parenting, surrogacy and a couple of the consultancy projects that I referred to yesterday. I am giving you a heads-up. Thank you. I am ready to go on outcome 1.

[9.12 pm]

Senator Wong—Yes. Let us just do it.

Senator BARNETT—Is that legal aid? If you want to start on legal aid, I am happy to do that. In terms of the legal aid budget, and specifically for the smaller states, I am wondering if we could confirm on the record the figures for the states and territories for the growth in legal aid funding. Mr Wilkins in his opening remarks yesterday made some comments about legal aid. If we just address that, can we get on the record the growth in legal aid funding for Tasmania. I understand it is \$131,000 for this next financial year. Is that correct?

Ms Jones—I am just getting the relevant bit of paper in front of me now. Senator, the additional amount of funding for Tasmania for legal aid only is \$147,000 in 2010-11, \$152,000 in 2011-12, \$149,000 in 2012-13 and \$143,000 in 2013-14, bringing the total to \$591,000. As I said, that is in relation to legal aid only. It does not take account of the additional funding in relation to community legal centres and indigenous legal services. I will give you those figures as well.

Senator BARNETT—Ms Jones, while you are doing that, can I clarify that the base rate is the increase you are referring to over that four-year period? It is \$591,000 over a four-year period. Is the base figure some \$5.6 million? Is that a correct figure for this financial year?

Dr Smrdel—The figure in Budget Paper No. 3 for Tasmania includes \$200,000 of one-off funding that was announced by the Attorney-General a few weeks ago. Ms Jones provided the additional funding. We would consider the core funding, excluding new funding, for Tasmania as \$5.589 million in 2010-11. So the Budget Paper No. 3 figure includes \$200,000 additional one-off funding that was provided.

Senator BARNETT—Thank you very much. Ms Jones was going to provide the figures for the community legal centres.

Ms Jones—Yes. In relation to community legal centres, there will be additional funding in—I apologise. I have the wrong bit of paper.

Senator BARNETT—We can come back to that, Ms Jones, if it is tricky to find.

Ms Jones—Sorry, Senator. I will have it in a minute.

Senator BARNETT—That is all right. Can we just clarify the funding for the Northern Territory. There has been no increase. Is that right?

Dr Smrdel—Basically, there is no increase.

Senator BARNETT—And the ACT likewise?

Dr Smrdel—Likewise.

Senator BARNETT—South Australia, \$600,000-odd?

Dr Smrdel—We would have South Australia at \$667,000 in the first year.

Senator BARNETT—And WA?

Dr Smrdel—In WA, an additional \$3.83 million.

Senator BARNETT—Queensland?

Dr Smrdel—It is \$3.811 million.

Senator BARNETT—And Victoria and New South Wales?

Dr Smrdel—Victoria is \$8.454 million and New South Wales is \$9.102 million.

CHAIR—Are we talking about indigenous legal aid as well—

Dr Smrdel—This is mainstream legal aid.

CHAIR—And women's legal aid centres?

Dr Smrdel—Mainstream legal aid only.

CHAIR—Not the other areas?

Dr Smrdel—Not including CLCs and not including ATSILS or family violence prevention legal services. It is just mainstream legal aid.

CHAIR—But there has been an increase in those other areas, has there not?

Dr Smrdel—That is correct.

CHAIR—Thank you.

Senator BARNETT—This is the core funding that I am asking about for legal aid. Are you aware of the concerns—

Senator Wong—They are additional, Senator.

Mr Wilkins—These are additional. This is not core funding.

Senator BARNETT—Yes. That is right. This is additional to the core funding. This is the increase for this financial year.

Mr Wilkins—No. But you want to know what the core funding is, Senator.

Senator BARNETT—No. I do not. I have the Tasmanian core funding. I do not need the core funding for the other states and territories.

Mr Wilkins—You do not want the core funding?

Senator BARNETT—Not for the other states and territories. We are only looking at the increase.

Mr Wilkins—You want the aggregate of CLCs.

Senator Wong—No. He has what he wants.

Senator BARNETT—No. I know what I want, Mr Wilkins. Thanks for asking, though. I appreciate that. I have what I want. Now I want to ask, based on those figures, if you are aware of the concerns that have been expressed in Tasmania with respect to the very small increase relative to the other states and territories. Clearly the Northern Territory and the ACT have received no increase. Tasmania has received a very nominal or small increase. In a report on 19 May from the ABC, the Legal Aid Commission in Tasmania said that it is rejecting up to 100 applications a month and has been forced to stop providing lawyers for traffic offenders and parents in child protection cases. I am advised in addition to that that people are coming in off the street. They are meeting the means test, they are meeting the criteria, but as a result of the lack of funding—I am talking about Tasmania—they cannot be seen and addressed and cannot have their needs met.

In the Northern Territory and Tasmania in particular, we have the lowest socioeconomic background proportionally of all the states and territories. Therefore, we have a higher need for legal aid compared with the other states and territories. I hope you understand that. Does that correlate with your thinking? Secondly, how do you respond to the concerns that have been expressed in Tasmania?

Mr Wilkins—There are a couple of things, Senator, which might be useful for the committee to understand. The first thing is that this is money for Commonwealth matters, so I am not sure what the people are complaining they do not have money for. But it may well be

state matters. The issues that were in the newspaper that you showed us the other day were state matters, not Commonwealth matters. So that is important to understand. The second thing is that the distribution was not something we just did arbitrarily. It is based on a formula and it does take into account population, socioeconomic issues and some of the legal issues around the prevalence of the types of matters that might occur. I might get Albin Smrdel to explain to you what the issues were in relation to Tasmania.

Senator BARNETT—I would like to know how the formula works because with Tasmania, based on those figures, it is not taking into account the low socioeconomic background of a large proportion of our population. That is the concern I have. So if somebody could address that question in terms of the formula and how it is constructed, that would be enlightening.

Senator Wong—I will ask the department to do that, Senator.

Senator BARNETT—Well, I asked the question, Minister. If you want to contribute, I would be happy for you to.

Senator Wong—It is interesting given that I do not think in your budget reply your leader or your shadow treasurer or your shadow finance minister foreshadowed any additional funding for legal aid. This government has funded legal aid much more substantially than your government ever did, so if you are interested in representing the issues of Tasmanians, we could—

Senator BARNETT—I raise a point of order, Chair. Are you going to allow the minister to lecture me and the opposition with respect to opposition policy and the leader Tony Abbott's speech in the address in reply?

Senator Wong—It is called hypocrisy, Senator. It is called hypocrisy.

CHAIR—Senator Barnett—

Senator BARNETT—I will not be lectured to by the minister at these Senate estimates.

CHAIR—Thank you. And I will not—

Senator BARNETT—Bring the minister to order.

Senator Wong—And less hypocrisy might be useful in this.

CHAIR—Senator Barnett, I am not going to bring the minister to order or tolerate you interrupting people. The minister is making a statement and a comment—

Senator BARNETT—Political diatribe, you would call it.

CHAIR—I think you need to look at perhaps some of your colleagues before you lay that accusation at this hour of the day.

Senator BARNETT—I was asking legitimate questions, fair questions.

Senator Wong—It is a legitimate question, Senator. I am just pointing out the hypocrisy of it for your constituents. You did not in government fund Tasmania more. You did not seek more funding for Tasmania. Now you are having a go at a government that is putting more money into Tasmania. I certainly note the hypocrisy of it.

Senator BARNETT—Why are you going on with a political diatribe?

CHAIR—I am certainly not going to—

Senator Wong—You could at least be consistent, Senator.

CHAIR—Senator Barnett, I am not going to put up with you interrupting me. The committee will now suspend for our evening break until a quarter to 10. See you back at a quarter to 10. Thank you, everybody. I am cutting it short because I do not have senators who can obey the chair when I call them to order.

Senator BARNETT—What about the minister?

CHAIR—So we are now having a break until a quarter to 10. Thanks, everybody.

Proceedings suspended from 9.23 pm to 9.43 pm

CHAIR—I think we will reconvene. We have Senator Ludlam here ready to ask questions. We will go to Senator Ludlam.

Senator BARNETT—I raise a point of order, Chair. We were in the middle of a legal aid discussion.

CHAIR—We have reconvened and I have gone to Senator Ludlam now.

Senator BARNETT—I raise a point of order, Chair. We were in the middle of a debate, discussion and questions regarding legal aid funding in Tasmania. I would ask you to reconsider that decision. You said that you would call us back at 9.45 pm. You have called us back a minute and a half early. I am sitting here together with other members of the committee and I would ask that you would follow usual convention and process when you are in the middle of questions regarding a certain topic that that would continue until the debate on the discussion has concluded.

CHAIR—Senator Barnett, we did have Senator Ludlam ready to go. Do you still have further questions on legal aid?

Senator BARNETT—Thank you. Yes, I do.

CHAIR—When you have finished your legal aid questions, we will go to Senator Ludlam and then come back to you.

Senator BARNETT—I would be delighted to go to Senator Ludlam when I have finished this bracket regarding legal aid funding in Tasmania, which we were pursuing before the break. As a preface to my question, I want to note to Minister Wong that this committee was very much involved in a Senate committee report into legal aid funding and access to justice which was tabled in December last year. It was a very significant report. A lot of unanimous recommendations flowed from that report. That is one of the reasons I did not appreciate the contributions from Minister Wong before the break.

CHAIR—Do you have questions, Senator Barnett?

Senator BARNETT—Yes, I do.

CHAIR—Let us move on. We have Senator Ludlam waiting.

Senator BARNETT—That is right. I have referred to comments in the media from director Norman Raeburn. I refer to a conversation that I had with the President of the Law Society of Tasmania, Graeme Jones. I am happy to read a report from the ABC news of 19

May which I think reflects the views expressed to me personally and which he has expressed publicly—

Senator Wong—Senator, is this a question or is this reading into the public record something that is on the public record?

Senator BARNETT—I am asking for a response to this comment:

The Tasmanian Law Society says the lack of funding for legal aid is causing bottlenecks in the court system.

The Society's Graeme Jones says unrepresented cases are being adjourned, denying justice to many disadvantaged people.

I wonder if the department representatives could respond to that because this has been raised as an important issue in Tassie. Then we can get to the protocol or the formula and your advice about how it is created. So there are two questions there.

Mr Wilkins—The answer to the first part of the question is clearly that, if that is happening in Tasmania, nobody is happy about it. But it is not very clear whether they are state matters or Commonwealth matters.

Senator BARNETT—Mr Wilkins, my understanding in Tasmania is the funding is 52 per cent federal and 48 per cent state. I know there is a differentiation between the two. I am advised that the matters that are not being addressed cross over both federal and state matters. If you have a different view, I would be interested in any evidence that you have to support that different view.

Mr Wilkins—No. But I can tell you that the Tasmanian taxpayers are significantly better off than people from other states in the way this funding formula works. We can take you through that, if you like.

Senator BARNETT—I am also aware that the state Attorney-General, Lara Giddings, has written to the federal Attorney-General about legal aid funding and the need for more federal legal aid funding in Tasmania. I am not aware of what is in the letter, but I am aware that the letter has been written expressing those concerns.

Mr Wilkins—I am sure everybody in Tasmania would like more money. Everybody in every state in Australia wants more.

Senator BARNETT—So Tasmanian taxpayers are better off. Why don't you explain how that works.

Mr Wilkins—If the legal aid money were distributed on a per capita basis in Australia, the per capita allocation for Tasmania would be \$4.3 million, to round it out. Using the funding formula that we have here that we have applied across all the Australian states and territories, they end up with \$5.7 million. That is bringing into account issues such as the number of single-parent families, the rate of divorces and the general socioeconomic issues that are used by the Grants Commission. The Grants Commission has something like 17 factors. They weight it accordingly. I can get Mr Smrdel to take you through it. If you start with a per capita figure and then apply those disability features, Tasmania ends up significantly ahead of where it would have been if a per capita funding model was used.

When I discussed this with the CEOs from the different state and territory justice departments, Victoria and New South Wales were not very happy about this—this is what you would be familiar with under the grants—because they thought money was being distributed to the smaller states and territories and away from them. So you need to look at the total effect. You are just looking at the increment. But you need to look at the total effect of how much legal aid is going to each jurisdiction. If you do that, then Tasmania comes out much better using this formula than it would come out if we used a per capita funding model. This is essentially the Grants Commission.

Senator BARNETT—I accept your advice, but other people have a different view. I would like to see the formula. Can you outline for us the formula, or do we have a copy of the formula and the different criteria that apply?

Mr Wilkins—I think it might be easier to do that on notice. We can take you through the different components of the formula now.

Senator BARNETT—In light of the time, I would be quite happy for you to give us—

Mr Wilkins—If you have seen the Grants Commission reports, they are very, very complex and about so thick.

Senator BARNETT—Are you saying that the Legal Aid Commission of Tasmania has agreed to this formula? Has the Legal Aid Commission of Tasmania agreed to the formula?

Mr Wilkins—Actually, I have not spoken to the Legal Aid Commission of Tasmania. My officers have. I have spoken to the CEO of the justice agency down there. I think the view there was certainly that this formula was better than other formulas on offer. Victoria and New South Wales do not like this formula. But Tasmania does not particularly like the per capita formula. Nobody is happy with any of the—

Senator BARNETT—None of the smaller states—with respect, Mr Wilkins—support the per capita formula. We are aware of that. We would not have states if everything was done on a per capita basis.

Mr Wilkins—No. I am just making the point that you are not going to get consensus on the way in which distributions should occur. This is seen as the fairest method. The Grants Commission has developed this method over a number of years. Essentially what we have done is to apply a version of the Grants Commission which is specifically tailored to legal services, because it is not about buses, trains, dams and things like that. But we can probably take that on notice and give you some explanation of the funding model along those lines.

Senator BARNETT—That would be appreciated. I know Senator Ludlam has a special interest in this area as well as myself and other members of this committee. So in light of the time, I would appreciate getting on notice a copy of that formula. All I can say is there are people who are missing out. There are dozens and dozens every month, according to the advice I have received and the feedback that I have had. I think that is an issue, frankly, for the government. For whatever government is in power at any time, that is an issue.

Mr Wilkins—I agree that it is an issue. As the minister explained, the government has gone a long way to try to find a good deal of extra money. It is the largest injection for a long

time. Money was taken out of the budget previously. This represents an attempt to inject more money into it.

Senator BARNETT—I will leave it there.

Mr Wilkins—The only other thing is the issue around CLCs and ATSILS. I think Katherine Jones has now found those numbers and will just give them to you.

Ms Jones—In terms of the overall additional funding for Tasmania, it is \$2.3 million over four years. That is across the three programs. So for mainstream legal aid, as I have already indicated, it is \$590,000 over the four years. For indigenous legal services, it is \$470,000 over the four years. For community legal services it is \$1.2 million over four years.

Senator BARNETT—Thank you.

Senator LUDLAM—Some of these you have covered to a degree in answers to Senator Barnett's questions, but I have a couple of specifics on access to justice. There was a welcome increase in funding, but I think over the last day or so we have been discovering where some of that money has been taken from. I would ask you to take me through some of that. Increased hearing and filing fees in some of our courts is one measure to fund an increase in community legal services. Is there any way of directly quantifying what the hearing and filing fees increases will be?

Mr Wilkins—Senator, sorry, but I cannot hear you.

Senator LUDLAM—I will straighten up the mike. I understand that there are proposed increases in hearing fees and filing fees and routine court charges and fees and so on. I am wondering if there is any way that you can quantify what they will be worth in the budget.

Mr Wilkins—I think there is. The increased fees altogether across the AAT, Federal Court and Family Court represent \$66.2 million.

Senator LUDLAM—That is not the increase, is it? That is the total? Or is that an increase?

Mr Wilkins—That is the total. That is right. Is that what you wanted to know?

Senator LUDLAM—I want to know what that represents as an increase on the last budget. Have some of those fees and charges that you have lifted across those courts been raised? If so, by how much?

Mr Wilkins—The actual structure of the fees has not yet been decided. We can indicate that it probably represents increases of, say, in general court fees, around eight per cent, but the structure of the fees will differ. It will depend on how long the matter is. Fees for corporations would be higher than fees for individuals. Fees for longer trials would be higher than fees for shorter trials. There will be some attempt to try to use this to give some price signals to people in terms of the real costs of access compared with cheaper alternatives of ADR or something like that.

Senator LUDLAM—I suppose that is where I am leading. To what degree can the structure of the increased costs be measured so that they are not running directly counter to the sort of work that you are trying to do on access to justice to make it easier for people,

particularly people on low incomes or disadvantaged people, to access the court system? Would you introduce, for example, a fee scale so that it is levied on ability to pay?

Senator Wong—The budget measure is at page 103 of Budget Paper No. 2. I understand—and officers might wish to correct me—that these are the estimates of revenue from increases in various court and filing fees. My advice and my recollection is that there is already a structure in place in relation to Commonwealth matters which does go some way to addressing the issues you have raised. But I also understand that the detail of this new structure has as yet not been finalised.

Senator LUDLAM—In that case, I suppose this is a request for those sorts of matters to be taken into account rather than a request for information so that the increased fee structures are not running counter to the government's objectives in access to justice.

Mr Wilkins—It is certainly an extraordinarily relevant consideration from where we are coming from.

Senator LUDLAM—All right. Let us move on. There are increases of funding to the community legal sector. It looks as though they have come at a cost of about \$84 million to court services, including—and correct me if I am wrong—a \$4½ million cut from the counselling service under the Family Relationship Services Program over a period of three years, which I think was canvassed a little earlier tonight. I do not understand how that is consistent, given the essential role that counselling plays in assisting people who are distressed by the court process.

Mr Wilkins—Yes. I did go through that. I am happy to take you through it again at the very beginning of estimates.

Senator LUDLAM—It is late. If there is material on the transcript that is directly germane to that, I can refer to it.

Mr Wilkins—There is.

Senator LUDLAM—But just explain for me how that is consistent with an access to justice program, cutting something like counselling?

Mr Wilkins—Because it is not actually a reduction. The reduction from the Family Relationship Services Program is not actually a reduction from the service delivery side of the program. It is more from the R&D side and some of the issues about program development. It is basically not from the service delivery side. It is basically from those other sort of areas. That is really it.

Senator LUDLAM—All right. I will take your word for it and go back to the transcript.

Mr Wilkins—There is a long explanation I gave right at the beginning. It sets out exactly the different components in Family Relationship Services that are being cut.

Senator LUDLAM—I have a bit to get through, so I will leave it there, if you feel you have addressed that in detail already. There is \$29.1 million for Closing the Gap in the NT. There are a number of services there, including night patrol, legal assistance, interpreter services, the NT welfare rights post and so on. Can you point to me where I can find a breakdown of how the funding is going to be divided between those different services?

Senator Wong—Are you able to refer us to where you are looking?

Senator LUDLAM—I am covering three committees, so I am not carrying all the portfolio budget statements with me, I am afraid. I would need a wheelbarrow.

Mr Wilkins—Can you just repeat that?

Senator LUDLAM—There is \$29.1 million for Closing the Gap. You have listed four or five different places into which that funding is being distributed but I could not find a breakdown as to where the funds would go exactly. If it exists just point me to the table; if it does not I am looking for some advice about where your thinking is at.

Senator Wong—We are just trying to clarify, Senator: this is an A-G's measure not a FaHCSIA measure?

Mr Wilkins—I am not sure it's us.

Senator LUDLAM—I believe it is A-G's, yes.

Mr Wilkins—Is this the Indigenous justice program?

Senator LUDLAM—Do you want me to move on while folk are looking this up?

Ms Jones—In relation to a specific breakdown: I have the overall figure for 2010-11 and I have the current year breakdown between those four components but I would have take on notice the breakdown between the four of them for the next financial year.

Senator LUDLAM—That is fine; that would be helpful.

Ms Jones—To give you a sense: for this year, \$17.3 million is for night patrol services in 81 communities in the Northern Territory; \$1.09 million is for the Aboriginal Interpreter Service; \$2.5 million is for legal assistance service providers; and \$1 million for the welfare rights outreach. The numbers will be consistent with that for 2010-11.

Senator LUDLAM—That is good. That is a good start. If there are forward estimates for years beyond that and you want to provide them on notice, that would be great. I understand that \$39.9 million is to be divided between the states and territories for Aboriginal legal services. Can you provide us with a state and territory breakdown, and will the NT and WA receive proportionally more, considering that is where the greatest unmet need is?

Mr Wilkins—We could give you the numbers for outsource.

Ms Jones—The proposed allocation for 2010-11, including ongoing funding and new funding, in New South Wales will be \$15.4 million; Victoria, \$3.3 million; Queensland, \$14.4 million; South Australia, \$3.8 million; Western Australia, \$11 million, Tasmania, \$1.7 million; Northern Territory south, \$3.7 million; and Northern Territory north, \$6.5 million.

Senator LUDLAM—Okay, great. So it looks as if there is something of a malapportionment. Just briefly, what kind of formula do you use for that break-up? How do you decide how that funding is to be broken up?

Ms Jones—The funding allocation model for the Indigenous legal services program takes into account a range of factors associated with the type of demand for the services. It takes into account geographical factors, incarceration rates, incidence of stolen generation people within the jurisdiction and a couple of other factors that affect the cost of service delivery.

Senator LUDLAM—So it is on a needs basis and that is why those numbers are the way they are.

Ms Jones—Yes.

Senator LUDLAM—There were strong proposals made for a specific women's Aboriginal legal service, that I presume you are aware of, during the access to justice inquiry that the Senate Legal and Constitutional References Committee undertook. I am wondering where that went. There is no reflection of that in the budget. Why was that idea rejected?

Ms Jones—There are a couple of things to note. In addition to funding the Aboriginal and Torres Strait Islander Legal Services program, the Commonwealth also funds the Indigenous Family Violence Prevention Legal Services program, of which there are 31 units in remote rural and regional areas around Australia. They predominantly provide services for women and children who are victims of family violence. So there is already a significant program there to address the specific needs of Indigenous women.

In terms of more broadly funding Aboriginal women's legal services, there is a separate program—the Indigenous women's program—that is part of the Community Legal Services Program that the Commonwealth government has been funding for quite some time. I do not have the exact figures for that here with me now but I can take that on notice and provide it to you. There have been some issues raised with us about funding particular positions in particular jurisdictions that would be focused just on supporting Indigenous women. That is something that we are taking under ongoing consideration.

Senator LUDLAM—Are you aware of why those calls were made? None of them that I am aware of were made with any sense of criticism of the ALS or of the other family violence prevention services that you fund but with a sense that there is quite a clear and specific need for an Aboriginal women's legal service at least in Western Australia and the Territory. This is because many of the tiny handfuls of lawyers working for the ALS are quite often working for the men who are more often than not being alleged as perpetrators, which means they then have a direct conflict and cannot represent the women. That was established and stands out in my mind as one of the greatest areas of unmet need that arose as a result of our work in that committee.

Ms Jones—One of the options available in those circumstances is for the women to seek assistance from the Legal Aid Commission, as opposed the dedicated Aboriginal Legal Service. So there are alternative options depending on the location and where the person is placed. The broader issue of ensuring adequate access for Indigenous women, particularly in metropolitan areas, is something that we are discussing with the Indigenous legal services about to be able to manage conflict issues better than we have been in the past so that they are not prevented from being able to assist women.

Senator LUDLAM—The best source that I would refer you to would be the evidence that we took in Perth, I think, last year from ALS. I think that is well worth reviewing but I will move on. Since you have mentioned legal aid, my understanding is that there is a boost over a period of four years of \$92.3 million directly to legal aid. Is it the case that that excludes the Northern Territory and the ACT?

Ms Jones—Regarding the application of the funding model, as was being discussed before, to additional funding for mainstream legal aid commissions, there is no increase in the base funding for those jurisdictions.

Senator LUDLAM—Have you already explained while I was out of the room why that is the case?

Ms Jones—It is about the application of the funding model and the range of factors that were taken into account in applying it. There were needs based factors and disadvantage factors taken into account but when we applied it to the Northern Territory and the ACT there was no increase in the funding. I should say that there was additional funding in both of those jurisdictions for Community Legal Centres and Indigenous legal services.

Senator LUDLAM—It sounds like you have been through this tonight to a degree already. The ACT is obviously vastly different in circumstance to the Northern Territory in almost every sense. Why were those two considered together? I do not understand how that decision is consistent with the decision to increase funding to the AFP for the purposes of the Northern Territory intervention on that side of things but not to increase the safety net. Obviously you would be aware that legal aid is first line of safety net for many of these people.

Ms Jones—I suppose one of the key things to point out in relation to the Northern Territory is that there is significant additional funding for the Indigenous legal service providers. Whilst noting that in mainstream legal aid Commonwealth provides funding for Commonwealth law matters, which are predominantly family law matters, funding for criminal law matters is a responsibility of the Northern Territory government. Acknowledging that a very significant percentage of the population in the Northern Territory is Indigenous, I think about 30 or 32 per cent of the population, the demand for Indigenous legal services is much higher there and they have had a very significant increase in the Northern Territory.

Senator LUDLAM—Rather than mainstream legal aid.

Ms Jones—Correct.

Senator LUDLAM—Before the budget the Australian Greens called very strongly for increases in foundation funding and program funding rather than one-off ribbon cutting and this and that. We are really pleased to see that that is there, but I am wondering whether you have estimated—and I know this cannot all be done over one single budget cycle—how the funding increases relate to the areas of unmet need that have been identified. One that I would pull out, and I think it fell out of our work in this committee last year, is the average requirement to preserve legal aid funding, or restore it to 1997 levels, pro rata is \$43 million a year compared to the \$23 million that the government did find in this budget. Is there any way of identifying how far there is still to go before we will not be hearing that this sector is in crisis?

Ms Jones—My first general point is that the Attorney, when he looked at this issue, wanted to look more broadly at the whole access to justice framework—not simply at the funding needs of the legal assistance services but at a whole range of other issues in the justice sector that were going to impact on the access of disadvantaged and other people to the legal system. That work led to the development of the access to justice strategic framework and the key principles that were established under that framework with a view that over time, when we

have a greater focus on dealing with people's issues at an earlier time when the problem arises in their lives—so early intervention and prevention—we will be able to minimise the demands on the legal assistance system because we are resolving things much more quickly and efficiently. The starting point is looking at the system as a whole and trying to ensure that we have a more efficient approach to addressing legal problems, so that over time hopefully we will not need to be continually looking at putting more money into legal assistance and we are getting a better calibrated justice system.

Senator LUDLAM—Because fewer people are being forced through the court system.

Ms Jones—Correct.

Senator LUDLAM—Did you look into what Aboriginal and Torres Strait Islander Human Rights Commissioner, Tom Calma, has been promoting for some period of time, at least a year, of justice reinvestment? I have raised this probably just about every time I have been in front of you. None of that made it into this budget, or would you characterise some of your initiatives as being along those lines?

Ms Jones—On the concept of justice reinvestment, where you are looking at trying to redirect funding out of the corrective services system or those parts of the broader justice system to try and get in early and prevent people from offending or becoming engaged in the criminal justice system, I would say this is significantly in the state and territory areas of responsibility. They are the jurisdictions that have responsibility for jails and the criminal court systems in their states. We are aware of the fact that the social justice commissioner has raised this quite a few times and that it was a recommendation of their Senate committee report. We have been looking at it broadly in terms of trying to research it and look at best practice models because it is something that has had some success in the United States and more recently in the United Kingdom. It is an area that we are looking at but it certainly is not something that I think the Commonwealth can look at unilaterally. It is really going to be a matter of dialoguing with the states and the territories.

Senator LUDLAM—It would be showing leadership rather than unilateral action. How many people do have working on it? When you say you are looking at it, how hard are you looking at it? How hard is the justice reinvestment department looking into this?

Mr Wilkins—I do not think it is as simple as saying that. We have a number of different areas of the department that work on different areas of law. There are people engaged with the states on criminal justice in the Criminal Law and Criminal Justice divisions. There are people who deal with legal aid. There are people who deal with Indigenous matters. I guess your interest would be mainly in the area of social inclusion.

Senator LUDLAM—I am going to keep banging on about it. What is that, sorry?

Mr Wilkins—I do not have anyone working exclusively on it, but they are working on a number of issues around this.

Senator LUDLAM—So it is really pretty low in the order of priorities? No disrespect for the work—we are glad that it is being looked at, but it is really not on your radar at all, is it?

Mr Wilkins—I did not say that at all. I just said that we are looking at it.

Senator LUDLAM—I have one more case, which goes to the specifics of the shortages of funding in the legal assistance centre—some matters that I think were touched on earlier by Senator Brandis—around the 12 Sri Lankan men who were transferred to the Perth detention centre after the events that were alleged to have occurred late last year on Christmas Island. I wonder whether you can tell us whether or not you are aware of the difficulty those men have had in securing legal assistance through legal aid? They are facing an additional year in detention, after most of them had already been through our immigration processes, partly as a result of not being able to access legal assistance. I believe they have had one or two phone conversations with lawyers. I wonder whether there is anything at all you can tell us about those men and whether there is anything that we can do to speed up the process around their continued detention?

Senator Wong—Senator, can we clarify: are these alleged state, federal or Commonwealth criminal matters?

Senator LUDLAM—I believe they are Commonwealth criminal matters. Earlier, the AFP was giving us some advice on their incarceration. You could clarify that for me if you like, but I would not have brought it to you if I did not think it was relevant.

Mr Wilkins—I do not have any specific advice about it. These may be Immigration matters and should, perhaps, be taken up with them.

Senator LUDLAM—They have been prosecuted with crimes, including offences that were outlined to us earlier in the evening. The immigration process had almost run its course and then they found themselves with an extra year in detention, as a result of being allegedly involved in some of these events on Christmas Island.

Mr Wilkins—So these were state crimes?

Senator Wong—He is not sure. Could we take that on notice, Senator? Unless somebody is starting to rush to the table, I do not have any advice in front of me that I can see on this issue.

Mr Wilkins—We will take it on notice and try to work out exactly how money is made available. It may be available through Western Australian Legal Aid. I need to understand what the offences are. We will need to go and figure it out for you.

Senator LUDLAM—All right. I will stick around a bit longer. I realise I did just spring those ones on you without much warning. If I need to leave—and I do in 10 minutes—if you have not been able to come back to the table with that information—

Mr Wilkins—I do not think we will have it in 10 minutes.

Senator Wong—We will not have it in 10 minutes.

Senator LUDLAM—You will not? Okay—it is nice to have some certainty in these committees! I will just ask as much as I am able to, from this side of the table, to help these gentlemen find some legal assistance so that they can get out of the cage they are in and do not have to spend a year at Perth Airport. They had actually cleared most of their immigration procedures. I visited them in the detention centre after their hunger strike last week. This is one example where a little bit of legal help, for some people whose English is not great,

would go an enormously long way. If there is any point for Commonwealth intervention, they would appreciate it. And so would I.

Senator BARNETT—The issue of family relationship centres was touched on by Senator Ludlum and I am aware of your opening remarks, Mr Wilkins, which were quite extensive regarding the Family Relationship Services Program. I wonder whether you could provide on notice how much funding was provided to each family relationship centre in 2008-09 and 2009-10, and then how much funding will be provided to each family relationship centre in 2010-11? Secondly, how much funding was provided to each approved marriage counselling agency in 2009-10 and in this current forthcoming year 2010-11?

Mr Wilkins—We will take that on notice.

Senator BARNETT—Could I go to the Administrative Review Council—I know I am jumping around a little bit. I refer to an article in the *Australian Financial Review* of 22 April that is headed ‘Administrative council left to starve’. You are obviously aware of it or have read about it. I would like to know the current state of the ARC: is it able or unable to function under its statute because it does not have a chair, what is the current cut to its budget for this financial year, and what steps have been taken to appoint a new chair? Do you have a short list? Has it gone to the Attorney-General?

Mr Wilkins—There is a new chairman who has been appointed: Mr Colin Neave, who is the financial industry ombudsman and has extensive experience in the public sector and in the private sector. At one stage in his career he was a deputy secretary in the Attorney-General’s Department here in Canberra. He has had a lot of experience across administrative law, and he is going to be the new president of the Administrative Review Council.

Senator BARNETT—When does he start?

Mr Wilkins—He has started. This is a part-time position. Members of the ARC are part-time members, and that has always been the case as far as I understand it. There are no resources for the council as such. The previous government took the step of supplying advice and so on through the Attorney-General’s Department. It is very much an advisory council.

Senator BARNETT—So they do not have any staff.

Mr Wilkins—They have the entire staff of the Attorney-General’s Department, if you want to think of it that way. They are provided with staff through the department. They have not had this for decades.

Senator BARNETT—How many staff are currently supporting the ARC?

Mr Wilkins—There are something like 10 officers working on administrative law specifically and the ARC is central to that.

Senator BARNETT—Has the Australian Law Council written to the government expressing its concern on the demise of the ARC? If so, could you provide a copy of the correspondence and also the government’s response?

Mr Wilkins—I am not aware that they have, but I can see if they have. I have had very useful discussions with the Chief Executive Officer of the Australian Law Council, who has

indicated general satisfaction with the direction that we are taking on this, but I am happy to see if there is some letter floating around somewhere.

Senator BARNETT—Are you aware of public statements that the ARC needs to be sustained and that it performs a useful function? I refer specifically to Professor David Weisbrot, former head of the ALRC; former Chief Justice Sir Gerard Brennan; and Professor Cheryl Saunders who made supportive comments. Are you aware of those comments?

Mr Wilkins—Only because I have read the same article as you are reading from. If the article is accurate, then yes.

Senator BARNETT—Do you support those statements and sentiments?

Mr Wilkins—That the ARC is an important institution and should be supported? Yes. That is what we are doing.

Senator BARNETT—I refer to report No. 48 of the ARC and the coercive power of regulators, which was presented to the government in May 2008, and a separate report on legal privilege, report No. 47 by the ALRC which inter alia covered the use of coercive powers by regulators. Why has there not been a government response to either of these reports which have been in the minister's tray, I understand, for many months if not years?

Mr Wilkins—Governments—all governments—I do not think have made responses to ARC reports. They are not exactly like Senate reports or something like that. A lot of them are basically to take forward thinking on a matter. I am not sure that they are in the same category as an Australian Law Reform Commission report, et cetera. The modus operandi for the Administrative Review Council—which I know the Attorney has written to the council about—is that they should be part of a very large forward agenda in terms of review of administrative law. A lot of this was set out in the access to justice report that he tabled. The department is going to work closely with the ARC and the new president. They will be a significant contributor, providing advice to the government on a whole range of areas of reform in administrative law.

Senator BARNETT—Are we likely to see a response from the government on those two reports?

Mr Wilkins—You are not likely to see one.

Senator BARNETT—I want to now move to another topic. Can you provide an update on the SCAG development of a nationally consistent approach to surrogacy law? The Standing Committee of Attorneys-General last year undertook a consultation process on a national model to harmonise regulation of surrogacy. Can you update the committee on the progress of the consultation?

Mr Wilkins—At the November 2009 SCAG meeting, ministers agreed to 15 principles to form the basis of model provisions to regulate surrogacy. In the May 2010 SCAG meeting, ministers agreed to model provisions based on the 15 principles.

Senator BARNETT—When will the principles be available to the public?

Mr Wilkins—At these meetings, both the 15 principles and the model provisions were referred to the health and community services ministers' council for the consideration. Once they have considered them, I assume they will be made available after that.

Senator BARNETT—I hope you can understand that a lot of work has been done behind closed doors, and that is a concern for some in the community. What is the purpose of the national principles where several states have already moved to enact surrogacy laws?

Mr Wilkins—The purpose of that is to inform those that have it. I assume there have been discussions. I have not been a party to the discussions, but they are largely consistent with the laws that have been enacted.

Senator BARNETT—I guess that is a matter of opinion. Given that surrogacy involves important considerations such as the best interests of the child, will SCAG move to dissuade the states who are already in the process of enacting surrogacy laws to wait until the finalisation of the SCAG principles are adopted or applied across all jurisdictions? We will end up with a bit of a scrambled egg otherwise.

Mr Wilkins—You are going to end up with perhaps slight variations in different jurisdictions if they conform to the principles.

Senator BARNETT—But what if they do not conform to the principles? There are states that have already legislated.

Mr Wilkins—Nobody can make jurisdictions conform to the principles. It has to be a choice of the attorneys in the jurisdictions, at the end of the day. We cannot frogmarch people into complying with these principles.

Senator BARNETT—Can you advise what the Commonwealth has done to ensure that any national standards make provision for the best interests of the child by ensuring that surrogate children have both a mother and a father?

Mr Wilkins—I did not catch the question.

Senator BARNETT—Minister, feel free to respond if you would prefer. It is more of a policy decision, obviously. What has the Commonwealth done to ensure that any national standards make provision for the best interests of the child by ensuring that a surrogate child has both a mother and a father?

Mr Wilkins—I think that concept is clearly part of the model principles. It could be more explicitly spelt out, but it is here. The general gravamen of that is around that idea.

Senator BARNETT—That principle is supported by the Commonwealth; that the best interests of the child is a key principle that is supported to ensure that a surrogate child has both a mother and a father? I want to confirm that is your understanding and we are of like minds.

Mr Wilkins—There are two propositions that you are asking me. You want to know if there is a principle that the best interests of the child is incorporated into the model principles?

Senator BARNETT—That is supported?

Mr Wilkins—It is certainly implicit in the principles, yes.

Senator BARNETT—I would hope that it is more than implicit. Is it supported?

Mr Wilkins—It is not spelt out in so many words in the principles, but it is implicit. There are 15 principles here, and if you put them all together you would see that implicit in the principles is the idea of looking at the best interests of the child.

Senator BARNETT—Let us go to the second one, which is ensuring that a surrogate child has both a mother and a father. Is that principle supported or is it implicit in the principles?

Mr Wilkins—I think the easiest thing might be to read the principles out to you. I can tell you roughly what they are anyway.

Senator BARNETT—I am happy for you to table it if that is not convenient in light of the time.

Mr Wilkins—I think it is best if I outline what they are. The first principle to do with the fact that the court may grant a parentage order where the court is satisfied a surrogacy arrangement was entered into by the surrogate mother, her partner—if any—and the intended parents prior to conception. Do you have any queries about that?

Senator BARNETT—I do not have time to do a cross-examination on the 15 principles, but I would appreciate it if you could either elucidate them now or read them out now.

Mr Wilkins—It may be better if I give you a precis of it on notice so that you can get some idea—**Senator BARNETT**—It would be even better to get a copy of them, but if that is problematic—**Mr Wilkins**—You are particularly interested in the this issue—

Senator BARNETT—It would be appreciated if we could have a copy of the principles. I am not sure why that would be problematic for you, but if a precis is the best thing that is available we will accept it.

Mr Wilkins—We will see if we can. The main problem in is the agreement of other jurisdictions who are part of the working group on this. So if other people do not have a problem with that, it may be the easiest way. If they do, I can give you a precis of what is in the principles that deals specifically with the two issues that you have raised.

Senator BARNETT—Thank you. Is there anything further on that at this stage from you?

Mr Wilkins—Not from me, Senator.

Senator BARNETT—Okay. Let's go on to the shared parenting issue, which has been subject to much debate and discussion and continues to be so. I put a question on notice, No. 110, to you in February, and the response indicated that the government released a number of key reports—and it sets out the three key reports—and that the 'government is currently considering the findings and recommendations of the reports'. That was in response to my question in February 2010. Can I ask the government for the status of your response to the findings and recommendations of those reports.

Mr Wilkins—The answer to your question, No. 110, is still current: the government is currently considering the findings and recommendations of those reports.

Senator BARNETT—I wonder if the minister might be able to provide any further information on the government's response and the government's position regarding shared parenting.

Senator Wong—I would have to take that on notice.

Senator BARNETT—It would be appreciated if you could. We have been waiting a good while—many months—and a response to those reports would be appreciated. We discussed them in February. I go to the consultancy report, *Research into shared care since the 2006 family law reforms*, which is dated 12 May 2009. It says, ‘Draft qualitative report received in April 2010. Report to be finalised for publication in June 2010. Cost: \$329,755, GST inclusive.’ What is the status of that report?

Mr Wilkins—My understanding is that they are not yet finalised. They require some editing, because they are quite large, apparently, but they are close to finalisation.

Senator BARNETT—Who undertook that research?

Mr Wilkins—In respect of the research into shared care parenting arrangements since the 2007 family law reforms, it was Ilan Katz, Social Policy Research Centre at the University of New South Wales, University of Sydney and AIFS; for child outcomes from shared physical care in post-separation families, it was Jennifer McIntosh. Her company is apparently called Family Transitions Pty Ltd; and for research into family violence since the 2006 family law reforms, Thea Brown, Dale Bagshaw, from Monash University and the University of South Australia consortium.

Senator BARNETT—Mr Wilkins, I do not want to delay the committee. If there is a document that summarises the consultants and those involved in preparing the documents, with the cost of those consultancies and the terms of reference of those consultancies, it would be appreciated if you are happy to take that on notice.

Mr Wilkins—We can take that on notice.

Senator BARNETT—When are you likely to publish that report?

Mr Wilkins—The report is presumably to the government, so it is really not my call.

Senator BARNETT—Is that report a combination of all those consultancies put together, or is it just that you have lumped them altogether and they are separate reports?

Mr Wilkins—They are separate reports.

Senator BARNETT—When you on notice respond, can you indicate the titles and the terms of reference of each report so that we know what they are about? And that all comes up to \$329-odd thousand and they were first commissioned on 12 May 2009. Is that correct? That is what this document says.

Mr Wilkins—No. What document?

Senator BARNETT—I have the document that you have tabled in answer to question No. 129 in February from Senator Eggleston. It has date commissioned in column 1. Perhaps in your response, Mr Wilkins, you can confirm the dates when they were—

Mr Wilkins—We can reconcile that. That is fine. We can sort that out for you.

Senator BARNETT—Thanks very much. At the opening of our cross-portfolio discussions, I referred to four consultancies. I am now just interested in the one—2040, by Gibson Quai. The subject matter was ‘Emergency warning system—network congestion

review' and was concluded on 30 May last year for \$53,000. Do you have a copy of that report and may we have it, please?

Mr Wilkins—We have the report but, unfortunately, we cannot release it because it contains highly sensitive commercial information from the telcos. We are trying to do business with the telcos at the moment on early warning systems and a variety of issues about location based warning systems. I do not think we would get much cooperation if we went around letting this stuff into—

Senator BARNETT—Can you provide a précis of the report that is going to be made available to the committee? It is a publicly funded report and it was concluded in May last year.

Wilkins—We did provide an executive summary and a précis to a question on notice No. 156 from a hearing on 27 May last year. You may have a look at that and see if that serves your purpose.

Senator BARNETT—I will have a look at that and I will come back to you on notice if required.

Wilkins—Okay.

Senator SIEWERT—I wanted to ask about the Family Relationship Centres and the family counselling cuts.

Senator Wong—Senator, your colleague did ask some questions about this and put some questions on notice. In addition, Mr Wilkins did give an opening statement which went to some of these issues. We are happy to traverse them again if that is what the committee wants.

Senator BARNETT—They may be different issues.

Senator Wong—I am just flagging it. I am just giving you the context.

Senator SIEWERT—Could you please outline whether there has been any modelling done on the impact of the cuts into specific demographics and to particular clients from particular areas—in other words, those most disadvantaged?

Ms Pirani—The reductions in funding to the Family Relationship Centres will not come into effect until July next year when the current round of funding agreements expire. It is our intention to do that modelling and to consult closely with the sector on the application of the funding cuts to each individual FRC based on the sorts of considerations that you have outlined.

Senator SIEWERT—Who will be undertaking that modelling?

Ms Pirani—We have not yet decided that but we will work very closely with FaHCSIA, who also have data on those things. We would also be consulting with the service providers through their peak body.

Senator SIEWERT—There are a number of questions I have that arise out of that. No cuts will be occurring to any of the family counselling programs prior to next year?

Ms Pirani—That is correct.

Senator SIEWERT—You said that you have not worked out yet how you are going to do the modelling that will be undertaken. What are the processes for working out how you do that and the timelines for doing that?

Ms Pirani—Again, we would be consulting with the sector and with FaHCSIA on those issues.

Senator SIEWERT—Was there any consultation with the sector prior to these cuts being made?

Mr Wilkins—Senator, I think it is probably useful to put this in context. I am happy for Ms Pirani to continue, but I made an extensive statement at the beginning, in which I indicated that most of the money that is coming out of the Family Relationship Services Program are not coming from services as such; they are coming from, if you like, the backroom services, some of the research around the program. It is not likely to have an extensive effect on the service delivered. In that context, I am happy for Ms Pirani to continue to answer. But I did make an extensive statement right at the beginning of estimates, which is available to you.

Senator SIEWERT—Okay. That does not replace my question—which is, was the sector consulted before the cuts—the changes—were made?

Mr Wilkins—No, they were not.

Senator SIEWERT—What process and time line will we be using now to consult the sector in the undertaking of the modelling?

Ms Pirani—We have actually already started talking to the sector about that. So we would expect to be working through that process very shortly. I think the important thing to remember about—on the face of it—the reduction of funding to the family relationship centres is that the savings have been designed around them being able to recover any shortfall from clients who have the ability to pay a small fee towards their family dispute resolution sessions.

Senator SIEWERT—I understand that—which is why I was specifically asking about the modelling and the impact it will have on those most disadvantaged clients. And you said that that modelling has not been undertaken. So you do not actually know what impact there will be in certain areas for those most disadvantaged?

Ms Pirani—In coming to the numbers, we have looked at the data that we have for existing clients, to work out what the earning capacity is overall for clients of the FRSP. We estimate that something in the order of 67 per cent of clients will not be affected by the changes. We have modelled based on the remaining percentage paying the \$30 per hour fee for the second and third hours.

Senator SIEWERT—Is that modelling available? And has it been made available to the services?

Ms Pirani—No. It is actually based on quite old data as well. We would expect the services to recover more fees than what we have estimated they should be able to recover.

Senator SIEWERT—How old is the data and where did it come from?

Ms Pirani—It came from the system that is run by FaHCSIA.

Senator SIEWERT—The online system?

Ms Pirani—Yes.

Senator SIEWERT—And we know there are a lot of inaccuracies in that data.

Ms Pirani—It was based on 2007-08 data. That is the most recent year of it.

Senator SIEWERT—As I said, we know that that online data is pretty inaccurate. Do you accept that there is a high degree of inaccuracy, particularly from the previous online data? I have been through this extensively with FaHCSIA. There are a lot of inaccuracies in that data, as I understand it.

Ms Pirani—That is something that is the responsibility of FaHCSIA rather than the Attorney-General's Department.

Senator SIEWERT—I will be chasing that with FaHCSIA next week. So you confirm that the cuts are based on the online—

Ms Pirani—The global figures—in terms of what is reported in that system in terms of client income, where that is entered—we have relied on the data that was provided. And that data is provided directly by the service providers.

Senator SIEWERT—I am sorry that I was not here for the opening statement; I was elsewhere. In terms of the comments that it is the 'back end' of the process, can you tell me what actual funding cuts there will be to the Family Relationship Services Program?

Mr Wilkins—I will go back and give you the statement.

Senator SIEWERT—Thank you.

Mr Wilkins—The government has reallocated \$48.4 million over four years from the Family Relationship Services Program, which had a total appropriation across this department and FaHCSIA of \$253 million in 2009-10. This program has grown significantly in recent years, from a total appropriation of \$121 million in 2006-07. The reallocation represents a reduction of about 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 primarily held to establish due services. The sector is now well-established and operating many of its own forums, which the government uses to actively engage with the sector.

Senator Barnett interjecting—

Mr Wilkins—These are the cuts.

Senator SIEWERT—What I am specifically after is the impact on the delivery of services to the centres.

Mr Wilkins—There is a limited impact on direct service delivery. These are, firstly, 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 a year, beginning in 2010-11, moving upwards to total around the \$5.2 million over four years. Secondly, introduction of a means test for the second and third hour of family dispute resolution at

family relationship centres. Clients with incomes over \$50,000 will make a modest contribution of \$30 per hour for the second and third hour after the first free hour. This will only affect 32 per cent of clients. It is appropriate for those who use mediation services to contribute to the costs if they are able to afford it.

Senator SIEWERT—I will read this later, but I want to get back to the issue about how you worked out that it will only affect 32 per cent of clients. Was that based on the survey data that we were talking about earlier?

Mr Wilkins—Yes.

Senator SIEWERT—So we do not actually know that that is accurate?

Mr Wilkins—I think Ms Pirani has just explained to you what the nature of the data is, its reliability et cetera, and what we propose to do about testing it.

Senator SIEWERT—You did not tell me what you are going to do about testing it because you have not developed the model yet for testing it.

Mr Wilkins—Well, how we intend to go about developing a model to test it.

Senator SIEWERT—Will that modelling be public once you have done it?

Mr Wilkins—That will be a matter for the government.

Senator SIEWERT—The consultation with the sector, will they be involved in developing a model?

Mr Wilkins—We intend to have discussions with them, yes.

Senator SIEWERT—Intending to have discussions is different to developing the modelling.

Mr Wilkins—Well do they want to sit down and design the modelling?

Senator SIEWERT—Sorry?

Mr Wilkins—I am not sure whether—what are you suggesting? That they do the modelling themselves?

Senator SIEWERT—No. You talk to them about what information is required to provide more accurate information. The information you are working on now.

Mr Wilkins—Yes, we intend to discuss it with them.

Senator Wong—Senator, I might have misunderstood Ms Pirani's answer, but I thought that is what she went to, that discussion around these matters had already commenced and she outlined the engagement that would occur.

Senator SIEWERT—She did not in detail; she said there would be some consultation. There is consultation and there is consultation, Minister, as you well know.

Senator Wong—Sure. I think we would accept that it is in early stages. We acknowledge that.

Senator SIEWERT—Thank you. What happens with the answers of the modelling? Now the cuts have been made, you will be doing modelling. What happens if the modelling shows that the number of people who will be impacted is significantly different to that which you have calculated—your assumptions now?

Ms Pirani—We do not anticipate that that will happen for the reason that the threshold of \$50,000 is the point at which clients will be asked to pay if they do not come within one of the other exclusions. As I said, it has been calculated based on what we know about the clients in the system. The savings have also been based on older data of the amount of work that the FRCs are doing. It has been based on about 80,000 sessions. That number has gone up significantly since then. So we have taken a very conservative view of that, but we do expect the impact would differ across different FRCs and that any recouping of funding would be based on those differences.

Senator SIEWERT—I realise I have got to hand over in a second, but I just want to clarify. How will the modelling then be used in terms of allocating resources?

Ms Pirani—Is not a question of allocating, because the resources are already allocated to particular sites.

Senator SIEWERT—That is what I am trying to understand.

Ms Pirani—It is making an assessment of what each centre would be expected to be able to collect under this fee structure. That will differ between, for example, Western Sydney and the northern beaches of Sydney, just because of the demographics in those areas.

Senator SIEWERT—I have a whole range of other questions, which I will put on notice, given the time, but I will be exploring that a little bit further because I am trying to understand whether the government actually understands the impact this may have on those most disadvantaged areas. You cannot tell me that at the moment, can you?

Ms Pirani—We can, because the fees will not apply to individuals who cannot afford to pay. That is recognised within the structure of charging that small fee.

Senator SIEWERT—If you are a centre in a disadvantaged area, you will guarantee that all those clients under \$50,000, despite the cuts, will be funded?

Ms Pirani—That is what centres are currently required to do and that is certainly the intention—that they will not charge clients who earn less than \$50,000.

Senator SIEWERT—Have you looked at the number of clients that may drop out and will not be able to pay if they are above \$50,000?

Ms Pirani—That is something that we will talk to the sector about, but we do not expect that to be the case, based on other services that we fund to provide family dispute resolution that currently charge fees. The three hours is something that is only available in family relationship centres and not elsewhere.

Senator SIEWERT—Thank you.

CHAIR—That finishes our questions on outcome 1.

[10.57 pm]

CHAIR—We now move to outcome 2. We have about three minutes left.

Senator HUMPHRIES—I want to ask about the works that were loaned by the late Sir Sidney Nolan to the Commonwealth and which were housed at the Nolan Gallery at Lanyon in the ACT and which Lady Nolan has now asked to be returned because of what she sees as a breach of the conditions of their loan. Can you tell me what involvement the Commonwealth

has had in the process of dealing with this request by Lady Nolan? How many works are going to be returned? What is the value of those works? Is the Commonwealth attempting to avoid this return on the basis of some new negotiation to meet the conditions that Sir Sidney Nolan imposed on the loan when he first made it?

Mr Wilkins—I might ask Julian Yates to answer this question.

Mr Yates—The summary of the issue is that the Commonwealth's interest is in 141 gifted artworks that we own, and we have an interest in protecting those artworks for the long-term heritage of the nation and in making them accessible. In addition, there are over 200 artworks that were on loan from Lady Nolan. The artworks were originally stored in the gallery down at Lanyon. That property is owned by the ACT government. Following 2007 and a period of wet weather, it was assessed that there was a significant humidity damage risk in the property. On the advice of the ACT government, to protect all the works they were moved to the Canberra Museum and Gallery in Civic. We have since been in consultation with Lady Nolan on that. She has asked that the loaned artworks that are her property be returned, and we are organising that at the moment. The Commonwealth is covering the cost of that, including the cost of transport and insurance.

Senator HUMPHRIES—To London?

Mr Yates—To London. The ACT government is preparing a specific new place in the Canberra Museum and Gallery for a permanent exhibition of the artworks that the Australian government owns.

CHAIR—Senator Humphries, it is 11 o'clock and we need to finish at this time, so I am going to have to ask you to put the rest of your questions on notice.

Senator HUMPHRIES—Okay.

CHAIR—Thank you very much. We move to Immigration and Citizenship in the morning, so I thank you, Mr Wilkins, and all of your officers and the agencies, both in Canberra and interstate, for your appearance at our estimates for the last two days.

Mr Wilkins—I will pass that on. Thank you.

Committee adjourned at 11.01 pm