



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION
COMMITTEE

ESTIMATES

(Additional Estimates)

TUESDAY, 22 FEBRUARY 2011

CANBERRA

CORRECTIONS TO PROOF ISSUE

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Tuesday, 26 April 2011

BY AUTHORITY OF THE SENATE

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SENATE LEGAL AND CONSTITUTIONAL AFFAIRS**LEGISLATION COMMITTEE****Tuesday, 22 February 2011**

Members: Senator Crossin (Chair), Senator Barnett (Deputy Chair) and Senators Furner, Ludlam, Parry and Pratt

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

Senators in attendance: Senators Back, Barnett, Bernardi, Bishop, Boswell, Boyce, Brandis, Coonan, Crossin, Fielding, Furner, Hanson-Young, Heffernan, Humphries, Marshall, Pratt, Parry, Trood and Xenophon

Committee met at 9.00 am

Attorney-General Portfolio**In Attendance**

Senator Ludwig, Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery

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

Mr Roger Wilkins AO, Secretary

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

Mr Tony Sheehan, Deputy Secretary, National Security and Criminal Justice Group

Ms Elizabeth Kelly, 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**

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

Ms Serena Beresford-Wylie, Acting Assistant Secretary, Justice Policy Branch

Ms Janet Power, Assistant Secretary, Administrative Law Branch

Mr Steven Marshall, Assistant Secretary, Marriage and Intercountry Adoption Branch

Ms Toni Pirani, Assistant Secretary, Family Law Branch

Dr Albin Smerdel, Assistant Secretary, Federal Courts Branch

Civil Law Division

Ms Janette Dines, Acting First Assistant Secretary, Civil Law Division

Ms Helen Daniels, Assistant Secretary, Business Law Branch

Mr David Bergman, Assistant Secretary, Personal Property Securities Branch

Ms Carmen Miragaya, Acting Assistant Secretary, Office of Legal Services Coordination Branch

Mr Chris Collett, Acting Assistant Secretary, Classification Branch

Constitutional Policy and Law Reform

Mr David Fredericks, First Assistant Secretary, Priorities and Coordination Division

Mr James Faulkner PSM, Assistant Secretary, Constitutional Policy Unit

Mr Andrew Walter, Assistant Secretary, Strategy and Policy Advice Unit

Office of International Law

Mr Greg Manning, First Assistant Secretary, Office of International Law

Mr Bill Campbell QC, General Counsel (International Law), 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

Dr John Boersig PSM, Assistant Secretary, Human Rights Branch

Social Inclusion Division

Ms Katherine Jones, First Assistant Secretary, Social Inclusion Division
Ms Marjorie Todd, Assistant Secretary, Legal Assistance Branch
Mr Peter Arnaudo, Assistant Secretary, Indigenous and Community Legal Services Branch
Ms Kathleen Denley, Assistant Secretary, Native Title Unit
Ms Catherine Fitch, Assistant Secretary, Indigenous Policy and Service Delivery Branch

Office of Legislative Drafting and Publishing Division

Mr John Leahy, First Assistant Secretary, Office of Legislative Drafting and Publishing

Program 1.2 Attorney-General's Department operating expenses—national security and criminal justice**Criminal Justice Division**

Ms Sarah Chidgey, Acting First Assistant Secretary, Criminal Justice Division
Mr Jonathan Curtis, Acting Assistant Secretary, Border Management and Crime Prevention Branch

National Security Capability Development Division

Mr Kym Duggan, First Assistant Secretary, National Security Capability Development Division
Mr Peter Channells, Assistant Secretary, Emergency Management Capability Development Branch
Ms Raelene Thompson, Assistant Secretary, National Security Training, Education and Development Branch
Mr Michael Pahlow, Assistant Secretary, Counter-Terrorism Capability Development Branch
Ms Doris Gibb, Assistant Secretary, Geospatial Capability Development Branch

Emergency Management Australia

Mr Campbell Darby DSC AM, Director-General, Emergency Management Australia
Ms Diana Williams, Assistant Secretary, Security Coordination Branch
Mr Mark Carpenter, Assistant Secretary, Crisis Support Branch
Mr Jim Bryant, Acting Assistant Secretary, Crisis Coordination Branch
Mr Kevin Rheese, Director, Relief and Recovery Section

International Crime Cooperation Division

Ms Maggie Jackson, First Assistant Secretary, International Crime Cooperation Division
Ms Alex Taylor, Assistant Secretary, International Crime—Policy and Engagement Branch
Ms Anna Harmer, Assistant Secretary, International Crime Cooperation Central Authority
Ms Catherine Hawkins, Assistant Secretary, International Legal Assistance Unit

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
Ms Ayesha Perry, Assistant Secretary, Emergency Management Policy Branch
Mr Andrew Rice, Assistant Secretary, Identity Security Branch
Ms Marcella Hawkes, Acting Assistant Secretary, 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
Ms Tamsyn Harvey, Assistant Secretary, AusCheck Branch
Ms Kelly Williams, Assistant Secretary, National Security Policy Branch
Ms Annette Willing, Assistant Secretary, Security Law Branch
Ms Catherine Smith, Assistant Secretary, Telecommunications and Surveillance Law Branch

Program 1.3 Justice services**Access to Justice Division**

Mr Matt Minogue, First Assistant Secretary, Access to Justice Division
Ms Serena Beresford-Wylie, Acting Assistant Secretary, Justice Policy Branch
Ms Janet Power, Assistant Secretary, Administrative Law Branch
Ms Toni Pirani, Assistant Secretary, Family Law Branch
Dr Albin Smerdel, Assistant Secretary, Federal Courts Branch

Social Inclusion Division

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Mr Peter Arnaudo, Assistant Secretary, Indigenous and Community Legal Services Branch
Ms Catherine Fitch, Assistant Secretary, Indigenous Policy and Service Delivery Branch

Civil Law Division

Ms Janette Dines, Acting First Assistant Secretary, Civil Law Division
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Office of International Law

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Mr Bill Campbell QC, General Counsel (International Law), Office of International Law
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Dr Annemarie Devereux, Assistant Secretary, International Security and Human Rights Branch
Dr John Boersig PSM, Assistant Secretary, Human Rights Branch

Office of Legislative Drafting and Publishing Division

Mr John Leahy, First Assistant Secretary, Office of Legislative Drafting and Publishing

Program 1.4 Family relationship services**Access to Justice Division**

Mr Matt Minogue, First Assistant Secretary, Access to Justice Division
Ms Serena Beresford-Wylie, Acting Assistant Secretary, Justice Policy Branch
Ms Janet Power, Assistant Secretary, Administrative Law Branch
Ms Toni Pirani, Assistant Secretary, Family Law Branch
Dr Albin Smerdel, Assistant Secretary, Federal Courts Branch

Program 1.5 Indigenous law and justice**Social Inclusion Division**

Ms Katherine Jones, First Assistant Secretary, Social Inclusion Division
Ms Marjorie Todd, Assistant Secretary, Legal Assistance Branch
Mr Peter Arnaudo, Assistant Secretary, Indigenous and Community Legal Services Branch
Ms Kathleen Denley, Assistant Secretary, Native Title Unit
Ms Catherine Fitch, Assistant Secretary, Indigenous Policy and Service Delivery Branch

Program 1.6 National security and criminal justice**Criminal Justice Division**

Ms Sarah Chidgey, Acting First Assistant Secretary, Criminal Justice Division
Mr Jonathan Curtis, Acting Assistant Secretary, Border Management and Crime Prevention Branch

National Security Capability Development Division

Mr Kym Duggan, First Assistant Secretary, National Security Capability Development Division
Mr Peter Channells, Assistant Secretary, Emergency Management Capability Development Branch
Ms Raelene Thompson, Assistant Secretary, National Security Training, Education and Development Branch
Mr Michael Pahlow, Assistant Secretary, Counter-Terrorism Capability Development Branch
Ms Doris Gibb, Assistant Secretary, Geospatial Capability Development Branch

Emergency Management Australia

Mr Campbell Darby DSC AM, Director-General, Emergency Management Australia
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Mr Jim Bryant, Acting Assistant Secretary, Crisis Coordination Branch
Mr Kevin Rheese, Director, Relief and Recovery Section

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National Security Law and Policy Division

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Ms Tamsyn Harvey, Assistant Secretary, AusCheck Branch
Ms Kelly Williams, Assistant Secretary, National Security Policy Branch
Ms Annette Willing, Assistant Secretary, Security Law Branch
Ms Catherine Smith, Assistant Secretary, Telecommunications and Surveillance Law Branch

People, Information and Technology Division

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

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 David Fredericks, First Assistant Secretary, Priorities and Coordination Division

Mr James Faulkner PSM, Assistant Secretary, Constitutional Policy Unit

Mr Craig Harris, Assistant Secretary, Public Affairs Branch

Mr Matt Hall, Assistant Secretary, Cabinet and Ministerial Coordination Branch

Mr Andrew Walter, Assistant Secretary, Strategy and Policy Advice Unit

People, Information and Technology Division

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

Administrative Appeals Tribunal

Mr Philip Kellow, Principal Registrar

Mr Chris Matthies, Acting Assistant Registrar

Mr Steve Wise, Chief Finance Officer

Mr Michael Binnington, Systems Accountant

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

Ms Raelene Vivian, Acting Deputy Chief Executive Officer

Mr Steven Groves, Chief Finance Officer

Mr David Leonard, 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 Jeff Buckpitt, National Director, Intelligence and Targeting

Dr Ben Evans, National Director, Law Enforcement Strategy

Mr Justin Wickes, Acting National Manager, Trade Measures

Ms Sharon Nyakengama, Technology and Enforcement Capability

Australian Federal Police

Mr Tony Negus APM, Commissioner

Mr Peter Drennan APM, Deputy Commissioner, National Security

Mr Michael Phelan, Deputy Commissioner, Close Operations Support

Mr Andrew Wood, Chief Operating Officer

Australian Government Solicitor

Mr Ian Govey, Chief Executive Officer

Mr David Riggs, Chief Financial Officer

Australian Human Rights Commission

The Hon. Ms Catherine Branson QC, President and Human Rights Commissioner

Mr Graeme Innes AM, Disability Discrimination Commissioner and Race Discrimination Commissioner

Mr Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner
Ms Padma Raman, Executive Director
Mr Darren Dick, Director, Policy and Programs
Mr David Richards, Manager, Finance and Services, Chief Financial Officer

Australian Institute of Criminology/Criminology Research Council

Dr Adam Tomison, Director
Mr Tony Marks, Deputy Director, Corporate and Chief Financial Officer

Australian Law Reform Commission

Professor Rosalind Croucher, President
Ms 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
Mr Peter Clark, Executive General Manager, Supervision
Mr John Visser, General Manager, Intelligence
Mr Alf Mazzitelli, General Manager, Corporate and Chief Finance Officer
Ms Michele Foster, General Manager, Policy
Mr Bradley Brown, Acting General Manager, Program Management

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Mr Greg Scott, Senior Classifier
Mr Chris Collett, Acting Assistant Secretary, Classification Branch

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Ms Victoria Rubensohn AM, Convenor
Mr Chris Collett, Acting Assistant Secretary, Classification Branch

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Mr Doug Smith, Chief Executive Officer
Mr Jeff Storer, Chief Operating Officer
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Mr Stewart Cross, National Manager, Law Enforcement Information Services
Ms Roberta Kennett, National Manager, Background Checking Services
Ms Yvette Whittaker, Manager, Finance
Ms Theresa Van Gessel, Manager, Policy and Legal

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Mr Richard Foster PSM, Chief Executive Officer
Mr Grahame Harriott, Executive Director, Corporate Services
Ms Angela Filippello, Principal Registrar

Federal Court of Australia

Mr Warwick Soden, Registrar and Chief Executive
Mr Peter Bowen, Chief Finance Officer
Mr Gordon Foster, Executive Director, Corporate Services

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Mr Richard Foster PSM, Acting Chief Executive Officer
Mr Steve Agnew, Acting Deputy Chief Executive Officer
Mr Grahame Harriott, Acting Chief Finance Officer

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Mr Andrew Phelan, Chief Executive and Principal Registrar
Mr Jeff Smart, Manager, Corporate Services
Ms Carolyn Rogers, Senior Registrar

Insolvency and Trustee Services Australia

Ms Veronique Ingram, Chief Executive and Inspector-General in Bankruptcy
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Mr Jeff Hanley, National Manager, Regulation and Enforcement
Mr Bob Morison, Chief Finance Officer

Mr Matthew Osborne, Principal Legal Officer

Mr Adam Toma, National Manager, Regulation and Enforcement

Mr Andrew Robinson, National Manager, Debt Agreement Service and Information and Registry

National Native Title Tribunal

Ms Stephanie Fryer-Smith, Registrar

Mr Frank Russo, Director, Operations East

Mr Hardip Bharbra, Chief Financial Officer

Office of the Director of Public Prosecutions

Mr Christopher Craigie SC, Director of Public Prosecutions

Mr John Thornton, First Deputy Director

Ms Stela Walker, Deputy Director, Corporate Management

Office of Parliamentary Counsel

Mr Peter Quiggin PSM, First Parliamentary Counsel

Ms Susan McNeilly, General Manager and Chief Finance Officer

CHAIR (Senator Crossin)—I declare open this public hearing of the Senate Legal and Constitutional Affairs Legislation Committee. The Senate has referred to the committee the particulars of proposed additional expenditure in respect of the year ending 30 June 2011 and the particulars of certain proposed additional expenditure in respect of the year ending 30 June 2011 and related documents for the Attorney-General and the Immigration and Citizenship portfolios. The committee must report to the Senate on 22 March 2011. We have set 8 April 2011 as the date by which answers to questions on notice are to be returned to the committee. 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, and the secretariat has copies if you need those.

I particularly draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised and which I now incorporate 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).

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

CHAIR—I remind officers that when they come to the table for the first time they should put their name tag in front of the glass so that Hansard can see who they are and they should clearly state their name and position for the purposes of Hansard. And I remind everybody to please switch off your mobile phone or put it on silent. You know the penalty: a box of chocolates for the chair and the secretary of the committee.

The committee will begin today's proceedings with the Administrative Appeals Tribunal and we will work through the program for the Attorney-General portfolio. After lunch at 1.30 pm, irrespective of where we are on the program, we will go to the Family Court of Australia, the Federal Court of Australia and the Federal Magistrates Court. At the conclusion of the courts, we will resume the questioning of the agencies and the departmental programs.

I welcome the minister, Senator the Hon. Joe Ludwig, the Minister for Agriculture, Fisheries and Forestry and now also the Minister Assisting the Attorney-General on Queensland Floods Recovery. Minister Ludwig is also representing the Attorney-General, the Minister for Home Affairs, the officers of the Administrative Appeals Tribunal and the Attorney-General's Department. Good morning, Mr Wilkins, and welcome to your officers. Minister, would you like to start with an opening statement?

Senator Ludwig—No. However, when we get to Emergency Management Australia I would like to make some comments about their involvement in Queensland, New South Wales, Victoria, Western Australia and Tasmania dealing with floods and cyclones. I understand there have also been some rain events in the Northern Territory as well. I do not want to take the time this morning, but I want to put on record my appreciation for their significant work with, for instance, the Emergency Management Queensland, the Australian Defence Force, Centrelink and the federal portfolios. Having named a few, I am sure to have omitted many who have provided great assistance throughout the period. Many of them worked well and truly beyond their usual day of duty.

CHAIR—Thank you. Mr Wilkins, do you have an opening statement?

Mr Wilkins—No.

CHAIR—We will begin with the Administrative Appeals Tribunal.

[9.04 am]

Administrative Appeals Tribunal

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

Mr Kellow—No.

Senator BARNETT—The AAT was allocated \$653,000 in more funding for outcome 1 in the additional estimates.

Mr Kellow—Yes.

Senator BARNETT—It states in the additional estimates statement that the funds for outcome 1 are for 'supplementation for judicial and related offices salary increases' and it says that additional expenditure is for members' salary and per diem increases. Outcome 1 is very broad. Can you give an explanation as to why the extras were required and can you give a breakdown of the spending?

Mr Kellow—It follows a determination of the Remuneration Tribunal that took effect on 1 January this year, which increased the remuneration for the tribunal members by four per cent. The supplementation is to

meet those costs. The calculations are based on the expected workload of the part-time members and it is an easier calculation for the full-time members.

Senator BARNETT—What about the per-diem increases? Have they gone up?

Mr Kellow—The increase was four per cent across the board. Within the determination, it provides for a set remuneration for the full-time members and a per-diem rate for part-time members. Both of those rates were increased pursuant to the determination of the Remuneration Tribunal.

Senator BARNETT—So that has gone up four per cent as well?

Mr Kellow—That is right.

Senator BARNETT—Can you provide further and better particulars of the breakdown of that \$653,000?

Mr Kellow—I will perhaps take that on notice, but we could attribute that part of the increase to the full-time members and the balance would be for the part-time members' remuneration.

Senator BARNETT—Can you inform us why the expenses on revenues from independent sources—section 31—was estimated at \$1.085 million but actually was only \$0.497 million? Will that saving happen again this year?

Mr Wise—The revenue is actually quite close to what we estimated. That was just a method of reporting; it is just the way the figures came out. It is more of a cash figure—the way we spend the money, rather than how we earn the money. It is more of a reporting issue. If we have a look at our revenue, the revenue was \$1,122,000 for the 2009-10 financial year.

Senator BARNETT—So what is this \$0.497 million figure? Where does that come from?

Mr Wise—It is actually a balancing item to the way the money is actually spent. The total expenses are broken down by the revenue received free of charge—the ordinary appropriation—and the balance of the money that was actually spent last financial year was the \$0.497 million figure.

Senator BARNETT—Well, it says, 'revenue from independent sources' was \$497,000 in 2009-10. It is written on page 47 of the document.

Mr Wise—That is in budgeted expenses and resources. That is really a breakdown of how we spent the money last financial year. It is quite hard to explain but it is not a true reflection of what the revenue was.

Senator BARNETT—If that is the case, why is it not made clear in the budget statement? I have got a document here and on page 47 it says revenues from independent sources were \$497,000 for 2009-10 and revised estimated expenses for 2010-11 are \$1.085 million. You are telling me it is \$1.122 million. I am not sure whether to believe the document here in front of me or your evidence. I am little confused and I think most committee members would be based on the evidence to date.

Mr Wise—We chose to report it that way. It may or may not be correct. If we adjusted that middle figure for revenue from independent sources back to \$1.12 million, we would actually have to report an incorrect figure for either ordinary annual services or expenses not requiring appropriation, which is really goods received free of charge.

Senator BARNETT—Mr Wise, can I just draw to your attention that this is a budget estimates committee and when you make statements about half a million dollars of taxpayers' money saying that it may or may not be correct for us it is totally unacceptable. We do not accept that at all. It must be correct. The figures in your document, which are on the public record, must be correct. If they are not correct, you must correct them. You must say, 'We have made a mistake,' and correct the figure. You cannot say, 'They may or may not be correct.' You are talking about half a million dollars. That is a lot of money in anybody's book.

Mr Wise—I apologise if we have given that impression.

Senator BARNETT—Why don't you take it on notice. It is obviously an accounting measure that you understand but in terms of explaining it to the committee it is not that easy. Why don't you take it on notice and advise the committee of your answer in terms of where that half a million dollars that has gone missing is. Could you do that?

Mr Wise—Yes I can.

Mr Kellow—The figure that Mr Wise referred to is mentioned in the audited reports of the tribunal. In its annual report there is the \$1.12 million. If it would be helpful to the committee, we will come back a little bit later on this morning to provide the explanation you have asked for.

Senator BARNETT—I am looking at the portfolio additional estimates statements and I have been quoting the pages and I have been reading the figures. These are the documents that we were provided with. So that is what we are trying to get to the bottom of. Let us move on. In program 1.1 I notice that you have got the percentage of matters that have progressed to hearings within 40 weeks and your 2009-10 figures say that you have achieved 52 per cent on time when your goal was 85 per cent.

Mr Kellow—Yes.

Senator BARNETT—Can you explain why that was and is your target 85 per cent for 2010-11? How can you give us confidence that you are going to meet the target?

Mr Kellow—In response to the first question, the target was 85 per cent and we did come in at 52 per cent. That is an increase on the previous year when it was 46 per cent. It has been between 46 and 50 per cent for several years. The annual report does go into some detail as to why that target has not been met. To a large extent it does come down to external factors about the preparation that is required for hearings and the availability of medical reports, expert reports and so on. The tribunal has been looking at its performance measures and the target it sets. It was something that was covered in the Bendelta report that you might recall from earlier this year. We are setting up processes to review those targets to actually see how realistic they are and what we can do to adjust the targets to more accurately reflect the circumstances in which the tribunal deals with matters. We are also exploring a range of case management options. We have had a number of pilots in certain areas of jurisdiction going during the year. We are now compiling the results of those to try and develop the standard approach, if I can put it that way, to the management of those areas of the jurisdiction which do tend to take longer than is desirable.

The other thing is that there are a number of external factors. We have been working with the department to identify some which might be rectified by legislative change and we have been improving liaison with relevant agencies in the way they manage cases and prepare them for hearing. We have a range of strategies in train to try to address and improve that target for those matters that do progress to hearing, doing so within 40 weeks. Having said that, we are also very determined to try to continue the tribunal's success rate in resolving matters without going to hearing. We are putting a lot of effort into bolstering and learning from our strengths and seeing if we can expand our success rate in that area.

Senator BARNETT—Would you be confident in this financial year of achieving the target?

Mr Kellow—I would not be confident of reaching 85 per cent, but I am hopeful that we will improve on 52 per cent.

Senator BARNETT—Where do you think you will get to this year?

Mr Matthies—The figures just for the first six months of the current financial year indicate approximately 60 per cent of matters reaching hearing within 40 weeks—so at least some improvement within this financial year.

Senator BARNETT—Do you think that that might continue to improve or be about 60 per cent through to 30 June?

Mr Matthies—It is difficult to predict. Perhaps some small improvement, yes, but it is hard to say.

Senator BARNETT—It is a little bit like the immigration department yesterday, where they have rolling averages. I will not say it is very like them, because they were totally unrealistic with respect to the number of irregular maritime arrivals coming into Australia. They are living in another world. I would not say you were in the same boat, as it were, but my point is: why do you have targets if you know that you are not going to meet them? It must be disempowering for you and your staff if you set targets and then do not meet them.

Mr Kellow—I am unsure about the history of how those targets were set. Obviously, targets evolve as the jurisdiction change and other circumstances.

Senator BARNETT—Who set the target—you or the government?

Mr Kellow—It would have been set by the tribunal. As I say, we have a process underway now to review our various performance measures and to develop and introduce strategies which try to prevent matters having to go to hearing—that is, increasing our alternative dispute resolution and similar processes to resolve matters early and without the need to go to hearing—and for those matters that cannot be resolved through those processes, to try to ensure that they are ready for hearing as quickly as possible.

Senator BARNETT—Moving on, the cost per completed application finalised with a hearing has increased almost \$1,000 from your first estimate in May. Why is that and do you have the funds to meet that increased cost?

Mr Kellow—The cost reflects the number of finalisations, and there has been a drop in the current financial year in the number of finalisations. It is primarily a consequence of the last two or three years, in which the tribunal has been working through the tax scheme matters, which increased its number of finalisations. So in one sense the number is coming back down to the more normal figure, if you look at the disposition rates prior to the dedicated attack on the tax scheme matters. In response to your second question, yes, the tribunal, does have the funds to meet those costs.

Senator BARNETT—So within budget?

Mr Kellow—It is within budget.

Senator BARNETT—And how much extra is it? Have you done that analysis?

Mr Kellow—I have not done that analysis.

Senator BARNETT—Can you take it on notice and let us know?

Mr Kellow—Yes.

Senator BARNETT—In conclusion, how many tribunal members do you have at the moment?

Mr Kellow—As at the end of January the tribunal had 96 members.

Senator BARNETT—Is that up or down on last year?

Mr Kellow—It is slightly up, I think, on where we were six months ago. There was a round of appointments just prior to Christmas. We have 15 appointments due to expire at the end of May this year.

Senator BARNETT—Are they likely to be reappointed? Will you fill those vacancies?

Mr Kellow—That is a matter for the Attorney.

Senator BARNETT—Put it this way: if you do not then your target is going to be totally unrealistic in terms of achieving your results and getting through your hearings and coping with your workload, isn't it? Would that be a fair comment?

Mr Kellow—No, I do not think so. There is a mix of appointments, with members bringing different expertise to the tribunal. It really depends on the nature of the reappointments or the vacancies that occur, but in broad terms, no, it will not affect the workload of the tribunal. The strength of having the range of appointments is really that diversity of experience that we can bring to particular matters. That varies from time to time, depending on the nature of the matters brought to the tribunal.

Senator BARNETT—Are you saying it does not really matter whether you have 80 or 96 or 110; there is no real difference?

Mr Kellow—I am saying we have a pool of members that we can allocate work to. In the event that that pool might shrink from time to time, existing members may have to be allocated slightly additional work, but I do not think that would impose any great impost on the tribunal. We will continue to dispose of matters in a timely and efficient fashion.

Senator BARNETT—Let us put the question another way: with those 15 retiring in May-June—

Mr Kellow—End of May.

Senator BARNETT—is it your hope that those vacancies will be filled?

Mr Kellow—It is, in the sense that the members provide the expertise that allows the tribunal to deal with a range of matters.

Senator BARNETT—So are you budgeting for those 15 vacancies to be filled?

Mr Kellow—Most of those appointments relate to part-time members and, yes, we do have funds to continue to allocate work to part-time members at the same rate that we are allocating work at present.

Senator BARNETT—Okay. The GS Corporate Services internal audit contract is \$70,000. Has that been completed or is that still underway? It is for your internal audit services report. Is that still on foot?

Mr Kellow—That is an ongoing engagement to provide internal audit advice to the tribunal.

Senator BARNETT—Do you pay that \$70,000 every year to GS Corporate Services Pty Ltd?

Mr Wise—That is correct. It varies from year to year, depending on the level of service provided.

Senator BARNETT—What sort of service do they provide you with?

Mr Wise—They provide the general internal audit services. We do not have an internal auditor on staff because we are not large enough to warrant that, so it is more cost-effective to let that out to contract.

Senator BARNETT—So you have outsourced that.

Mr Kellow—It varies, depending on the demands that we make on the auditor. We may ask them to look at something in particular, and that might force the cost up. The contract price is per hour worked.

Senator BARNETT—Have they provided a report to AAT on your services?

Mr Kellow—It is not a single report. There is an audit committee with oversight for this area in the tribunal and, as Mr Wise indicated, each year there is a program of matters that the auditor is asked to review. The reports are provided in relation to each of those particular aspects and assistance is provided where there are particular issues identified that need to be addressed. For example, we have done some work in updating the chief executive's instructions arising from certain findings that the auditor made during the previous year. It is an ongoing process. There are no single reports. The auditor reports to the audit committee that meets quarterly and, where necessary, findings may be produced in writing. More importantly, it is to provide advice and assistance in developing materials or training that address those risks.

CHAIR—Mr Kellow, thank you to you and your colleagues for joining us this morning.

[9.25 am]

Australian Human Rights Commission

CHAIR—I welcome Ms Branson, Mr Gooda, Mr Innes and officers from the Human Rights Commission. Do you have an opening statement?

Ms Branson—No, I do not.

CHAIR—We will go to questions.

Senator BARNETT—I just want to follow up, firstly, on the National Human Rights Consultation and go to that part of your work. We know that the framework of that was launched on 21 April last year. I wonder whether you could provide an update on the total cost of conducting the National Human Rights Consultation Committee and then provide a breakdown of those costs?

Ms Branson—Do you mean the national consultation that was conducted by the committee that was chaired by Father Brennan?

Senator BARNETT—The National Human Rights Framework, 21 April 2010, which outlines a range of key measures to further protect and promote human rights in Australia.

Ms Branson—Yes. The framework is an initiative of the Attorney-General.

Senator BARNETT—It has acted on the recommendations of the National Human Rights Consultation Committee?

Ms Branson—Yes.

Senator BARNETT—Of which you were a part; is that right?

Ms Branson—No. The national consultation was conducted by an independent committee, chaired by Father Brennan. That reported to the Attorney-General and the Attorney-General responded by announcing the framework in, I believe, April last year.

Senator BARNETT—You think that is more a question for the department?

Ms Branson—I do.

Senator BARNETT—Maybe we can deal with that later, unless the department wants to answer that question now.

CHAIR—We will deal with that later.

Mr Wilkins—I am happy to deal with it whenever you want to deal with it.

Senator BARNETT—It would be more useful if it were—

CHAIR—We have questions and officers from the Human Rights Commission here. We will go to questions of the department when we get to the department.

Senator BARNETT—With the greatest of respect, Madam Chair, this is going to assist and add value to the questions to the commission. It would be of great assistance to the committee if you would allow a member of the department to answer that particular question, then we could go back to the commission.

Mr Wilkins—Madam Chair, I think your suggestion would be much better in terms of the information. We answered questions on this extensively in previous estimates and we would need to go and retrieve all of that information. It is now historical. But we are happy to go and get that information and be ready to answer questions later in the day.

Senator BARNETT—I am happy with that response. Thank you, Mr Wilkins. We will move on, because in the past we have asked about the costs for the consultation process and all that is on the record. Where I would like to get to with the commission is, knowing that the government has committed around \$12 million to human rights education, have you had any input into the distribution of those funds and how they are expended?

Ms Branson—To some extent, yes, we have. Some of that funding, as you will be aware, has been allocated to the Australian Human Rights Commission over a period of years, particularly to do community education on human rights, but some of it has been allocated to the department and we expect to work cooperatively with them in some of their work particularly around human rights training within the public sector. And there is a component that is intended for distribution to non-government organisations by competitive process and staff of the commission have had some involvement in assisting evaluating those bids for funding.

Senator BARNETT—Let us drill down in terms of the commission, so we will not go to the department at this stage. How much has the commission been provided for this year under that section in funding for education and what is the money being spent on?

Ms Branson—Although I was unable to be present on the last occasion, there were some questions on this last time and I think a breakdown of the funding was provided as a response to a question on notice. I am just trying to find it.

Senator BARNETT—Is it question 14, the \$6.6 million?

Ms Branson—That is correct.

Senator BARNETT—So that is the money that has been allocated, \$1.015 million for 2010-11 and so on to \$6.613 million?

Ms Branson—That is right.

Senator BARNETT—I would like to know a little bit more in terms of this financial year. You have set out in that answer community education activities, inquiries and complaints, APS education. Is there anything further you can add to the work that you have done in terms of the money expended this financial year?

Ms Branson—The money expended is staffing funding, as I think the answer advised. It is not project funding as such, it is staffing funding, and the breakdown I think is set out in the answer, at the bottom of the first page.

Senator BARNETT—Okay. And in terms of the out years through to 2013-14, can you be more specific with respect to the programs or the work that you will be undertaking as the commission?

Ms Branson—I cannot tell you the precise detail. Apart from anything else, the personnel that constitute the commission will not remain stable through that time. My own term will expire in the course of 2013. The commission is currently engaged in a strategic planning exercise as the statute requires and we will give a new strategic plan to the Attorney-General in June of this year. The process of formulating that strategic plan is well underway but not yet complete. Additionally the commission plans on an annual basis its more detailed work program and that work program is then published when it is finalised for each year. We are also well advanced in planning our work program for next financial year.

Senator BARNETT—Do you have a current work plan?

Ms Branson—Yes, we do.

Senator BARNETT—And is it for a period of years or one year?

Ms Branson—We are nearing the end of the last strategic three-year plan which was formulated by the commission when it was headed by my predecessor, Mr von Doussa QC. That, as I have said, will come to an

end shortly. There is an annual planning process each year and that plan is available on our website at any time.

Senator BARNETT—In short, you work to that strategic plan and you work to your work plan. They are the two key documents that guide the work of the commission.

Ms Branson—That is so, and you will have seen, I imagine, in our recently published annual report that the commission has adopted two key priorities which will inform its work for at least two years. They are the key priorities of community understanding of human rights and tackling violence, harassment and bullying generally in Australia, which we see as a very key human rights issue.

Senator BARNETT—The strategic plan is on your website?

Ms Branson—The strategic plan is on the website.

Senator BARNETT—But your work plan is not, though, is it?

Ms Branson—I believe it is, but let me check. Yes, it is. And also published separately we have a couple of quite simple publications that we make available to people interested in our work to let them know what our work program at any time is and what our priorities are.

Senator BARNETT—Who do you liaise with with respect to the preparation of your strategic plan? Is it internal work?

Ms Branson—It is an internal exercise but which we seek to inform by both speaking widely, to members of parliament amongst others, but also by reading and research to try and get a sense of the environment in which we work and what are the key priorities that will be appropriate for a national human rights institution to be addressing. As I indicated, we have recently adopted those two key priorities that I have identified as a result of that process.

Senator BARNETT—Do you liaise with the department to get their input? Do they provide it?

Ms Branson—They do not formally involve themselves in our planning process but we are regularly in contact with both the Attorney-General and senior officers of the department. We would hope that we would broadly be aware of their views about key priorities in human rights for Australia. But they are one of a number of sources of information that inform our thinking.

Senator BARNETT—Of course, and it is not uncommon that you have completely different views to those of the government on a whole range of issues.

Ms Branson—I think that is uncommon but it happens on occasions.

Senator BARNETT—Indeed it does. I will go to another area, the establishment of this new parliamentary joint committee on human rights. It has been in the public arena and the bill has been considered by the Senate committee, indeed with a good deal of interest from others. Can you provide the commission's view on the estimated cost of operating such a committee?

Ms Branson—The commission does not have a view on the estimated cost of running a parliamentary committee.

Senator BARNETT—Obviously you support the establishment of that committee as set out in your submission to the committee.

Ms Branson—Yes, of course.

Senator BARNETT—And that has not changed since you put in your submission?

Ms Branson—The commission approved the submission. The commission has not met again to reconsider its submission.

Senator BARNETT—What is the cost of creating an annual NGO human rights forum?

Ms Branson—I think that is a governmental initiative. I think you would have to ask the Attorney and the Minister for Foreign Affairs that question.

Senator BARNETT—Are you involved in any way in the establishment of an NGO human rights forum?

Ms Branson—If we are speaking of the forum which was most recently called jointly by the Minister for Foreign Affairs and the Attorney-General, staff of the commission were present but that is our involvement.

Senator BARNETT—What is your view on the establishment of an NGO human rights forum? It is to enable comprehensive engagement with non-government organisations on human rights matters. Do you have a view on that?

Ms Branson—Broadly, the commission has always been supportive of that forum but I am not sure formally that we have ever had a commission resolution to that effect. But we see engagement by the government with civil society generally on this and other issues as an important aspect of a well-functioning democracy.

Mr Wilkins—Senator, this might be helpful. We actually run this forum, so you have gone over into some issues that relate to the department. I do not know whether you want to follow those up later.

CHAIR—Mr Wilkins, I am reluctant to keep jumping from the agency to the department and back and forward, to be honest with you, because we could be doing that all day given the number of agencies we have got in front of us.

Mr Wilkins—I will simply indicate, Chair, that is something which should be addressed to the department probably more than the commission.

Senator BARNETT—We will flag that, thanks, Mr Wilkins, and we appreciate that contribution. Can we go now to the report on freedom of religion and belief, which has come up consistently at estimates and we get regular reports that it is still underway. I think it was due in June last year. I am wondering in terms of its progress and its status. Mr Innes or Ms Branson might wish to respond.

Ms Branson—I will ask Mr Innes to respond to that question.

Mr Innes—Thanks for your question, Senator. This is one of the projects from that tranche of funding which was not completed by 30 June last year and the commission regrets that. I think that, because of our keenness to ensure that we obtained the best value and results from that funding, we were slightly ambitious on projects that we could complete. The report, which is a report to the commission prepared by others and coordinated through the Australian Multicultural Foundation, is with the commission now and we hope to launch that report in March of this year, around the time of Harmony Week, but we do not have any further details as to the launch yet. So it is very close to completion now.

Senator BARNETT—When you say it is ‘close to completion’, you have just said to the committee that you have received the report. When did you receive the report and from whom?

Mr Innes—The Australian Multicultural Foundation have been coordinating the preparation of this report. The commissioners received the final report some two weeks ago and it is with us for approval to publish. It is not our report; it is a report that has been provided to us.

Senator BARNETT—When was it provided to the commission?

Mr Innes—The commission received it several weeks ago.

Senator BARNETT—Can you take it on notice to tell us when?

Mr Innes—I can take on notice the exact date on which I and the other commissioners received the report, absolutely. It is on my desk now. I am part of the way going through it. It was in the last fortnight.

Senator BARNETT—So what is your job now if you are not planning on changing it or amending it? What is your job now? You are reviewing it. What does that actually mean?

Mr Innes—The commission would review any document, obviously, before we launched it. That is the process that we are now involved in. It is a little hard for me to predict what views I my colleagues might form when we have gone through the report, so I have a bit loath to pre-empt those views. But my expectation, subject to the acceptance of the report by the commission, is that we would launch it in March—as I said, during Harmony Week.

Senator BARNETT—Do you have the discretion or the ability to change or amend the report?

Mr Innes—I suppose if the commission is launching the report, we would always have that discretion. But given that this is a report to us by other authors—it is not report of the commission—we are less likely to feel that that would be appropriate. If it is our own report coming up from our own staff, then it is a commission report and commissioners would, if they were not satisfied with the report, of course—that is our role—change it until we were satisfied with the report.

Senator BARNETT—I am not asking about a hypothetical commission report; I am asking about this report—the Australian Multicultural Foundation report. So the commission is giving a commitment that it is not and will not amend the report and it will be released in its current form. Is that correct?

Mr Innes—I did not think I had given any such commitment. In fact, I would have no authority to do that, because I am only one member of the commission and the commission has not—

Senator BARNETT—Ms Branson might wish to respond. I just want to know if it is able to be amended. I would just like you to let us know: is it going to be released in its current form or is it able to be amended or changed in any way? It is not a trick question: I just want to know.

Ms Branson—No, it is not a trick question. Senator Barnett, the commission reviews documents that may be published in a way that would associate the commission with them to ensure that there is nothing that, in our view, would be inappropriate to have, effectively, the brand of the Australian Human Rights Commission on them, even if it is not authored by the Australian Human Rights Commission. We would not be free to change a document written by somebody else, but we would be free to invite them to consider amending anything that, for example, we thought would be offensive to the Australian public or inconsistent with the values for which we stand. We do not expect that to happen, but we do not give anyone an undertaking that we will publish anything they ask us to, because we feel that there is an appropriate management role for us. But it would involve negotiation with them if we thought it appropriate to have it changed.

Senator BARNETT—Is it fair to say that when it is released it will have to the full support and backing—and, as you call it, the ‘brand’—of the Australian Human Rights Commission?

Ms Branson—We expect that this work, which has been done at our request, will be launched by us jointly with the Multicultural Foundation and with our support. But as Mr Innes has indicated, the members of the commission have not yet had the opportunity to, in his case, finish, and in my case, start, reviewing the document. So I am not able to give any assurances about that.

Senator BARNETT—Will you be forwarding the report to the Attorney-General for his review and/or consent prior to its launch?

Ms Branson—That is not envisaged.

Senator BARNETT—Will the Attorney-General be given an advance copy of report?

Ms Branson—I think it would be usual that he would, but it would be very shortly before publication.

Senator BARNETT—So he will not have an opportunity to advise that, as far as the government is concerned, the government brand will be on this report when it is released?

Ms Branson—No.

Senator BARNETT—So you cannot say that it will be a report of the Australian government?

Ms Branson—No. It is definitely not.

Senator BARNETT—What is the cost of the report to date?

Mr Innes—We have provided in previous answers details on the cost of the report. I am just trying to find whether we have—

Senator BARNETT—You have, but you have not provided the most up-to-date figures because this is a question of today and not a question of October. I am happy for you to take that on notice. You may not have it today.

Mr Innes—I might take it on notice and we could provide you with costs, which would include launch costs et cetera.

Senator BARNETT—That would be excellent. Will the Attorney-General or a government representative be invited to co-host or be involved in some way in the launch?

Mr Innes—I am confident that the Attorney-General and/or government representatives will be invited to participate in the launch. We have not completed the program arrangements and it may be that we are launching the report at an event that is not our event. It might not be a specific event to launch it. It may be at a conference that is not in our control. That is not a matter over which we have absolute control, but clearly we will advise the Attorney-General and the government when and where and we will invite them to participate.

Senator BARNETT—Can we move to another topic—the United Nations Universal Periodic Review in Geneva on January 27. Where you there, Ms Branson?

Ms Branson—I was present.

Senator BARNETT—How many other officers were present?

Ms Branson—Mr Gooda was there at the invitation of the department of foreign affairs, which had asked him to attend for a side event on using sport to fight racism—an event in which the AFL was involved. So Mr Gooda was therefore, in a sense, almost coincidentally present, which was a very happy thing from the commission's point of view. Mr Darren Dick attended as well.

Senator BARNETT—I understand the UPR process provided Australia with 145 recommendations to which we must respond formally by June. Is that correct?

Mr Wilkins—Madam Chair, can I just intervene again. I am sorry to interrupt but this is really a matter for the department, not for the Human Rights Commission.

Senator BARNETT—Yes and no, Mr Wilkins. Of course it is a matter for the department but I am asking Ms Branson who attended the conference.

CHAIR—Well she has answered that question.

Ms Branson—The report records that number of recommendations.

Senator BARNETT—Let me address Mr Wilkins' point. It is not uncommon for the commission to have a different view to that of the government and we have seen this occur from time to time, including with respect to international conventions in Europe that have been debated here in this committee. So I am more than happy to ask the department questions about the government's response to the UPR, but it may be very different to that of the commission. I do not know until I ask the commission and get the answers from the commission. Then we can ask the department and get the answers from the department. Does that satisfy your inquiry, Mr Wilkins?

Mr Wilkins—That is fine, Senator.

Senator BARNETT—Let us proceed. From the commission's perspective, Ms Branson, were you satisfied with the outcome of the forum, the fact that you attended—and taxpayers' was obviously expended in that regard—and the recommendations from the forum?

Ms Branson—My assessment of the process both in Australia before we arrived in Geneva and in Geneva was that it was very positive. It reflected well on Australia and I thought the engagement with the international community at the actual universal periodic review process was an extremely positive one.

Senator BARNETT—Your view of the 145 recommendations for Australia?

Ms Branson—Many of them cover the same subject matters and fall into a number of identified categories, and, broadly, the commission would be supportive of them.

Senator BARNETT—Are you supportive of all of them?

Ms Branson—I do not think I have sat down with the entire list and gone through them one at a time, and certainly the commission has not done that at this stage.

Senator BARNETT—Are you opposed to any of them?

Ms Branson—Without sitting down and going carefully through every one of them, which the commission has not done at this stage, I am unable to answer that question.

Senator BARNETT—Are you familiar with the recommendations?

Ms Branson—Yes, I am, and I was present when they were made.

Senator BARNETT—So none come to mind that you would oppose and you would broadly support the recommendations? You have indicated that.

Ms Branson—Yes, I have indicated I would be broadly supportive of the recommendations.

Senator BARNETT—Could you take on notice and provide the committee with the commission's response to the recommendations. You can indicate just broad support. If there are any that jump out at you that you do not support, we would appreciate knowing the views of the commission on those.

Ms Branson—Are you asking the commission to sit down and reach a considered position on every one of those? Senator Barnett, I ask that because the government itself will be responding by the middle of the year. The commission's ordinary course would be to await the government's response and then form a view on the

government's response as opposed to itself forming a view on matters which are really part of Australia's international relationships, which is not normally something that the commission would seek to intrude upon.

Senator BARNETT—No, it is not normally, but from time to time the commission certainly expresses views in the international arena which affect our relations with other countries, whether it be Israel or others.

Senator Ludwig—You are entitled to ask questions of the commission, but I am concerned that you are asking them to undertake work which is in addition to simply answering questions. It appears you are asking them to provide additional comment or information about a subject matter that the government has not yet considered. I ask the chair to rule on that, in the sense that you are imposing a workload requirement on the commission.

CHAIR—Senator Barnett, as I understand it, the process is that the department will prepare a response for a minister in relation to the recommendations that have come out of that United Nations periodic review and then, I am assuming, the Human Rights Commission will make comment about the government's reaction or response to those recommendations.

Ms Branson—That is what I would expect. Also, we would wish to be informed by the government's response before reaching any conclusion. On a topic of this kind, we would wish to consult and receive a wide range of views and the government's view would be an important one. We would prefer that the usual course were followed in this case, Senator Barnett.

Senator BARNETT—Let me move on. Of course, the commission does not always act in accordance with government views and policy. I have a document which was downloaded from your website and it is headed 'Australia commits to follow up on human rights recommendations'. The first paragraph states:

The report of Australia's appearance before a crucial UN human rights meeting in Geneva highlights addressing racism, improving the rights of Indigenous peoples and overturning mandatory detention policies as key focus areas for Australia into the future.

Let us start with that one. Do you support the overturning of mandatory detention policies in Australia?

Ms Branson—The commission has long been on the record asking the government to review and overturn the mandatory detention policy.

Senator BARNETT—We have dealt with that before. Thanks for confirming that on the record. You have also said, with respect to those 145 recommendations, that you welcome the recommendations—this is in your media statement—as well as a series of voluntary pledges made by the Australian government in the UPR process. Then it goes on, towards the bottom, to say:

Human rights education in schools and harmonising laws to protect people against discrimination on the grounds of sexual orientation or gender were raised, along with calls to amend the Marriage Act to allow same-sex partners to marry and to recognise same-sex marriages from overseas.

When you refer to the Marriage Act, are you talking about the Marriage Act 1962, the Australian government's Marriage Act?

Ms Branson—There was a recommendation made in the course of the UPR for Australia to amend the Marriage Act, yes.

Senator BARNETT—And is that one of the 145 recommendations?

Ms Branson—I believe it was.

Senator BARNETT—And do you support it?

Ms Branson—The commission recommendation was that the national government do what it can to ensure equality of marriage rights for heterosexual and same-sex couples.

Senator BARNETT—Let us try again. Does the commission support same-sex marriage?

Ms Branson—We made a quite clear submission when there was an inquiry into a bill, I think, initiated on this topic. What the commission has argued in favour of is nondiscrimination on the ground of sexuality so far as relationship recognition is concerned.

Senator BARNETT—So that means, yes, you support same-sex marriage because you see, from your perspective as a commission, that that is non-discriminatory?

Ms Branson—The reason I hesitate is simply that we are not particularly, excuse the pun, wedded to the Marriage Act but we say that, whatever formal recognition there is of relationships, it should be available both for same-sex couples and heterosexual couples.

Senator BARNETT—Which means that the Marriage Act should be amended to allow marriage for both heterosexuals and same-sex couples.

Ms Branson—It does not mean that because the Marriage Act could be repealed and some new legislation touching on relationship recognition could be put in its place.

Senator BARNETT—So something like civil unions?

Ms Branson—That is one option.

Senator BARNETT—But the recommendation from the UN conference was to amend the Marriage Act in Australia, was it not?

Ms Branson—I recall such a recommendation, yes.

Senator BARNETT—Have you got a copy of the recommendation? I must say I tried to download it but I could not. I failed to download it so I do not have it. Could that be tabled?

Ms Branson—I think it might be a matter for the Attorney-General but it is a readily available document.

Senator BARNETT—If you could as soon as convenient provide a copy of those recommendations.

Ms Branson—Could I point out that it is readily downloadable from the UN's own website, the human rights council website.

Senator BARNETT—If we could get a copy of that that would be great.

Mr Wilkins—We can organise that.

Senator BARNETT—As well as the voluntary pledges made by the Australian government, so if they could be tabled as well, Mr Wilkins.

Mr Wilkins—They are set out at the end of the reports.

Senator BARNETT—I do not have a copy.

Mr Wilkins—We will get you that.

Senator BARNETT—So that recommendation specifically focused on Australia's Marriage Act and it recommended an amendment to it.

Ms Branson—It did.

Senator BARNETT—And the commission supported the recommendation.

Ms Branson—The commission has not been required at this stage to support or not support. I think we discussed this earlier.

Senator BARNETT—I know you are not, but you have indicated your support broadly for the recommendations including that recommendation.

Ms Branson—We have broadly expressed our support for the recommendations and in a more detailed way we have put our view about marriage on the record in a submission to this parliament.

Senator BARNETT—Yes. Well, there is only one way that I can interpret that but perhaps other people interpret your views in different ways that you do support same-sex marriage.

Ms Branson—In broad terms we do, yes.

Senator BARNETT—I will go to another topic, the national action plan—\$4.3 million over four years. I am wondering about the status of that. Where are we up to in terms of the commission's work on the national action plan? I think it morphed into another piece of work, did it not?

Ms Branson—Are you speaking of the National Action Plan on Human Rights arising out of the human rights framework?

Senator BARNETT—Yes.

Ms Branson—I think it is a matter for the Attorney-General's department.

Senator BARNETT—Have you received \$4.3 million over four years for the implementation of the national action plan?

Ms Branson—I do not believe so. I would be very happy to do so.

Senator BARNETT—I am sure you would. Unlike other agencies like the Australian Law Reform Commission, who have had their funding cut, the Human Rights Commission funding has gone up.

CHAIR—You wish, Ms Branson, don't you?

Ms Branson—Quite.

Senator BARNETT—I have been advised that the \$4.3 million over the next four years is to continue the important counter radicalisation work with ethnic and minority groups at risk and it was a continuation of the old NAP budget.

Ms Branson—That is a different action plan. Yes, that funding was renewed and we continue to work broadly under the supervision of the Race Discrimination Commissioner in this area.

Senator BARNETT—But let us just clarify this: the government has appointed a new commissioner, is that right?

Ms Branson—There has been an announcement that there will be a stand-alone Race Discrimination Commissioner to be appointed, if possible, from 1 July.

Senator BARNETT—So instead of one doing two jobs, it is two separate commissioners; is that right?

Ms Branson—That will be so, yes.

Senator BARNETT—From 1 July?

Ms Branson—We hope from 1 July.

CHAIR—Once we finish our report.

Senator BARNETT—Is that from within budget or will you get extra funding for that from the government?

Ms Branson—We understand we will, but again it is a matter for the Attorney-General's Department.

Senator BARNETT—But you are hopeful that you will get extra funding for that additional commissioner's position: is that right?

Ms Branson—Yes.

Senator BARNETT—Of course, that is in stark contrast to the Australian Law Reform Commission that we will be dealing with shortly.

CHAIR—Again.

Senator BARNETT—On what basis will this person be selected and will this person be responsible for race discrimination and counter radicalisation work?

Ms Branson—The selection process is under the control of the Attorney-General. Again, it may be appropriate for the Attorney-General's Department to answer that, although I do have some information about it. Race discrimination work is, we see, an important contribution to a peaceful and inclusive society, so there will be involvement that will be relevant to the issues that you raise.

Senator BARNETT—Can you provide a snapshot of what the commission is doing to combat racism?

Ms Branson—Yes, I will ask the Race Discrimination Commissioner to do that.

Mr Innes—We are working in a range of more general and specific areas. We welcomed the government's announcement last week of a multicultural policy and we will be working with the government on an anti-racism strategy which is part of that policy. That strategy has not yet been designed, but we will be having input into that and working on the delivery of that. We are also working in areas including on international student safety, on African-Australian communities and on the development of some workshops for empowering women in Muslim communities. There is one other area I was going to mention that has just gone out of my mind.

Senator BARNETT—If you want to add to it on notice, Mr Innes.

Mr Innes—Yes. Broadly the commission is involved in those sorts of activities as well as the reactive work which occurs from time to time from comments in media to which we may respond, et cetera.

Ms Branson—Senator, if I may add: our complaints handling service is regularly conciliating complaints in the discrimination area, including in the race discrimination area. Not only is it important for resolving individual complaints but also as an educative process.

Mr Innes—Senator, the area that slipped my mind was that of cyber racism where, as Ms Branson says, complaints received in the area of cyber racism have doubled in the last two to three years, and we are also doing some policy work in that area.

Senator BARNETT—Thank you for that. If I can move on to an answer to a question on notice provided by the department regarding the human rights bill on the rights of a child. We have touched on this before and I just want to get on the record again your views in terms of the rights of an unborn child to protection. Ms Branson, do you want to provide on the record your response?

Ms Branson—Senator, this is a question that you asked us on notice previously. We gave a carefully considered answer, which I am not in a position to add to.

Senator BARNETT—Right. You stand by that?

Ms Branson—We stand by that answer.

Senator BARNETT—This Human Rights Commission report, WestWood Spice, monitoring and evaluation, advice and support services, \$32,000 to conclude by 31 December. That was a direct consultancy—

Ms Branson—I am sorry, I was unable to hear you because I think your paper was blocking the microphone.

Senator BARNETT—I will try again and speak up as I read. WestWood Spice is the consultant for the purposes of monitoring and evaluation advice and support services for \$32,780 to conclude on 31 December.

Ms Branson—Into all of the work we do now we build in a monitoring and evaluation aspect so that we can gain an understanding about whether we are achieving the outcomes that we seek to achieve, and that project was an evaluation and monitoring project.

Senator BARNETT—Do you have a copy of the report? If you do not have it with you, I am happy for you to take it on notice.

Ms Branson—I do not think I made it as clear as I should have: WestWood Spice is working with us to strengthen our monitoring and evaluation capacity, so we are taking guidance and assistance from them to ensure that when we work we can appropriately evaluate and monitor that work. The outcome should be improved capacity within the Australian Human Rights Commission to ensure that, when it commences any work, it builds appropriate monitoring into that to enable us to be able at the end of any project—and indeed throughout some projects—to evaluate the success of the projects.

Senator BARNETT—So they haven't provided a report?

Ms Branson—No.

Senator BARNETT—So you have given them \$32,000 for verbal advice and the odd sort of instruction, but no report.

Ms Branson—There is a very carefully specified list of tasks that they are required to undertake for purpose of assisting us to ensure that our monitoring and evaluation capacity is strengthened.

Senator BARNETT—Would you like to take this on notice and provide a copy of the terms of reference and related material in terms of their work that is so important to the commission?

Ms Branson—I will take it on notice.

Senator BARNETT—My understanding is that the commission has been allowed to retain body corporate status under the FMA Act; is that right?

Ms Branson—I believe so, yes.

Senator BARNETT—Could I have a confident guarantee that that is the case—perhaps we could have that confirmed?

Ms Branson—Yes, that is so.

Senator BARNETT—Very good, because we will following that up shortly with the Australian Law Reform Commission. Can you confirm that the document ‘Guidelines for cost recovery in new project funding 2010’ still applies and you are meeting the guidelines set out in that document?

Ms Branson—Yes, Senator.

Senator BARNETT—Thank you. I do not have any further questions.

Senator PRATT—We have already touched on the release of the new anti-racism partnership and strategy. Mr Innes, I notice that you made some comments upon its release regarding the kind of monitoring and evaluation that might be required into the future for that strategy. I do note that the strategy has not yet been drafted but I suppose I am looking for some initial thoughts as to the outcomes that we should like to see from such a strategy and how they should be evaluated.

Mr Innes—Senator, as you say, there is not a lot of point in having a strategy if you cannot test it at the start and the finish to see whether it has been effective. There will be some work released tomorrow by Professor Kevin Dunn from the University of Western Sydney which will very much assist in this respect. It is a Challenging Racism project which he and others—and the commission has been a partner—have been conducting for the past five years or so where he surveyed almost 14,000 people across Australia to assess their experiences of racism. It would seem to me that one way might be to build some evaluation from this project, which of course will be occurring prior to the strategy, and to revisit those questions once the strategy has had an opportunity to take effect. That is really an early thought, because we need to sit down with government and work out how the strategy will be developed and determine how that evaluation may occur. But that seems to me to be one way of maximising the value of that research.

Senator PRATT—Yes, that sounds like a good start. I note we have already acknowledged that we will have a new Race Discrimination Commissioner and that you will no longer have to carry two hats, Mr Innes, and I would like to thank you at this point for the work that you have undertaken as Race Discrimination Commissioner.

Mr Innes—Thank you, I have enjoyed it.

Senator PRATT—Mr Gooda, I know that racism is a key theme that you seek to address within your work as Aboriginal and Torres Strait Islander Social Justice Commissioner, so I am interested in your thoughts, Mr Gooda, on how you see your role—and clearly it is something you already actively do in your partnership with Mr Innes—complementing that of the Race Discrimination Commissioner.

Mr Gooda—You are absolutely right, Senator: the research coming out tomorrow will signify a significant amount of racism that Aboriginal and Torres Strait Islander people experience in this country, and of course it is an issue that is dear to my heart. The racism against Aboriginal and Torres Strait Islander people is an issue we have to confront in Australia. Since I started at the commission—and I am sure it was happening before I started—we have looked at how we work together both with the Race Discrimination Commissioner and also with the Sex Discrimination Commissioner in that the issues come up almost the same way. Aboriginal people have the right and probably a duty to go to the Race Discrimination Commissioner when they feel experiences of racism. The same as Aboriginal women feeling discrimination should also be accessing Liz Broderick, and we are facilitating that. I see my role as playing almost a brokering role to take up the issues that are raised either by Aboriginal and Torres Strait Islander women or around racism. We work closely together, and I must say Commissioner Innes and Commissioner Broderick are respectful of my role, in a way we can interact together to bring about some change in both those areas.

Senator PRATT—Good, thank you. It is nice to see those layers of discrimination identified in terms of the multiple facets of inequality in Australia and your approach to tackling that. This is a good point for me to ask our Sex Discrimination Commissioner and our commissioner responsible for age discrimination because I note that last week the Minister for the Status of Women, Kate Ellis, and the Attorney-General announced the Commonwealth, state and territory governments’ national plan to reduce violence against women and their children. Clearly, Mr Gooda, this is a policy that interplays across your role as well. I would like to ask: what role do you see the commission playing to address the issues of family and domestic violence in Australia?

Ms Branson—Commissioner Broderick, the Sex Discrimination Commissioner who has responsibility for ageing, is an apology today. She is with the minister in New York at the Commission on the Status of Women.

Senator PRATT—I am sure you are well equipped.

Ms Branson—The commission, however, welcomed the announcement of a national action plan for violence against women, which we had been awaiting for some time. As you will have heard me say in answer to Senator Barnett, fighting violence, harassment and bullying in all of its manifestations is a key priority of the commission across all of its work. We look forward to being able to contribute what we can to that plan and we are very hopeful that there will be monitoring and evaluation of the success of that national action plan.

Senator PRATT—I will return to Mr Gooda for a moment. I am very pleased to see the work that you have undertaken in the Fitzroy Valley and I have not had an opportunity to look in detail at the key issues regarding governance that have come out of your work there. I wondered if you might point today to some of the key issues that we as parliamentarians should be looking at to foster positive developments in those communities and to enhance their governance structures.

Mr Gooda—I picked Fitzroy Crossing because of the work that particularly women have done in addressing violence. They have done that through the advocacy of alcohol reform up there against fairly hardcore opposition from both the Aboriginal and non-Aboriginal community.

Senator PRATT—Yes, I have seen it up there myself.

Mr Gooda—I highlight three issues in my report: the alcohol reforms, the Fitzroy Futures Forum and a project run in conjunction with the George Institute on foetal alcohol spectrum disorder. They are three great stories in and of themselves, but the underlying message I want to give to government is that when Aboriginal people take control, appropriately supported by government, we have different results. With the evaluations going on with alcohol reform generally in the Kimberley, it will be interesting to see how the emergence of the alcohol restrictions in Halls Creek, for instance, comes up against what happened at Fitzroy Crossing, which was really a community led process.

Senator PRATT—I noticed the distinction between what has happened in both of those communities.

Mr Gooda—University of Notre Dame have been engaged—not by us, but I think by the state government; I stand to be corrected on that—to do the evaluation and we are constantly receiving reports from the university on that. So somewhere down the track we will have good evidence around the difference between community developed responses and government imposed responses, which I think will make for interesting reading.

On governance, I think the Fitzroy Futures Forum is a great forum and it brings Aboriginal and non-Aboriginal people together in the Fitzroy Valley. It is now considered one of the leading practices of community engagement and governance. But there is a cautionary note: I keep on pointing out to people that it is now 10 years old. It was not created and fully functional within a week, a year or even five years. Again, the message to government and to Aboriginal and Torres Strait Islander people is that this stuff takes time. If we think we are going to have a quick fix and have it all over and done with in a couple of years we are kidding ourselves.

The other issue I think I have to raise is what I call our engagement workforce between government and Aboriginal and Torres Strait Islander communities. I make some recommendations about how we improve the quality of people working in our communities. It is a key point that I raise and I will be working with the Public Service Commission. I have already made contact with the Public Service Commission about how we can improve the quality of people who go out there and work in our communities.

CHAIR—Mr Gooda, I wanted to ask whether or not you believed there was a role for you and the Human Rights Commission to play in the current situation that is occurring in Alice Springs, for example, and what initiatives you think the commission can bring to try to assist?

Mr Gooda—I read with alarm the report on Alice Springs in the weekend media. It is something I am acutely aware of. I lived in the Northern Territory for about four years before I took up this position. I was fortunate to meet with the Aboriginal legal services in Melbourne yesterday where I met with people like Pat Miller from Alice Springs. She confirmed to me that the situation in Alice Springs is pretty much as reported in the weekend media. I really struggle with what we can do there. I have made it clear to Pat and others that if they think the Human Rights Commission more generally, and me as social justice commissioner specifically, can help in any way out there, it is something I will certainly work towards.

To me, from the view of now an outsider looking in, it will be absolutely disastrous if that issue out there dissolves down to a black and white issue. It is more complex than that, as it always is in communities like Alice Springs. My fear from what I am reading in the newspaper and from what people are telling me from up

in Alice Springs is that there is a great possibility that that can happen. Those issues that Commissioner Innes spoke about on anti-racism and addressing racism in this country might have to be put into practice somewhere like Alice Springs in the first place. The first place I would start, if I went out there, would be to get Aboriginal and non-Aboriginal people together, because the people I talk to from the Aboriginal perspective are also alarmed by what they see happening out there. They feel that the need to feel safe and secure has been compromised completely.

CHAIR—That is probably a very good point.

Mr Gooda—This is an anecdote I was told yesterday: when people were growing up in Alice Springs they would do window shopping at night. It is probably no longer possible to do that because of the harassment that is happening down there, from both Aboriginal and non-Aboriginal sides. Places like Alice Springs will be a touchstone community to do some work like this.

CHAIR—We do not have any other questions for you, so again I thank you for your attendance at our estimates. We will see you again—probably not after the budget—I am sure many more times before the budget in our work that we do in this committee.

[10.23 am]

CHAIR—If I could ask representatives from the Australian Law Reform Commission to come to the table. Professor Croucher, it is good to see you again so soon.

Prof. Croucher—Good morning, chair.

CHAIR—Professor, do you have an opening statement?

Prof. Croucher—No, chair.

Senator BARNETT—Ms Croucher, thanks very much for being here and thanks again for your submission and presentation to our committee a few weeks ago regarding the future of the Australian Law Reform Commission. Monty Python has been in my mind ever since, the day of the black knight and the analogy which you shared, which was well noted and appreciated. I wanted to ask you about the new commissioner. You have probably heard advice given by the department following your evidence to the committee. I am paraphrasing their advice, but you would have seen it and heard it and seen it on the *Hansard*, that there was an understanding from their point of view that it was to be within budget but there would be some transitional funds to help you through. I would like your understanding and your response to that as well as your response to whether the commission has the ability to meet the cost of that new commissioner.

Prof. Croucher—Thank you, Senator. The ability to afford a further commissioner, let alone two, at the moment does not fit within our appropriation. However, we have been advised by the department and the Attorney, and I heard in evidence here a couple of weeks ago, that we would be assisted in the appointment of a commissioner for the proposed classifications reference. We are working towards managing our reduced appropriation so that in several years we may again be able to afford additional commissioners within our own budget.

Senator BARNETT—What action is the commission taking to meet the new demands on your finances to allow for a new commissioner to be appointed? I do not think I have a time for that, unless you have.

Prof. Croucher—At the moment we are taking proactive action in order to reduce one of our major budget components which is our rent. By reducing our rent it will create space in the budget within a couple of years. We have existing rental obligations that we need to discharge but we are sub-licensing—I think is the correct impression—some rooms of the Australian Government Solicitor and endeavouring to sublease our existing premises while we have lease commitments. But a reduction of that kind will provide significant savings within the appropriation as projected over the next three years.

Senator BARNETT—When will those savings start to kick in and how much will they be?

Prof. Croucher—The savings will kick in in two years. Our current lease commitments in our present premises run until September 2012. Obviously until that time we are having to carry responsibility for our new premises into which we will move in April, although we have been given a rent-free period to facilitate that move. The next budget year, worst case scenario, will be a significant carry of both rents, but after that period we look like being able to manage within our reduced appropriation. But the ability to afford commissioners is a specific topic that we have ongoing discussions about.

Senator BARNETT—Just to clarify regarding the rent: your rent and your lease goes to September 2012; is that correct?

Prof. Croucher—That is correct.

Senator BARNETT—And you are committed to meet your terms and conditions under the lease, including the rent?

Prof. Croucher—That is correct, yes.

Senator BARNETT—And you are moving to new premises in April of this year?

Prof. Croucher—That is right.

Senator BARNETT—And you will be paying rent for those premises?

Prof. Croucher—We will be paying rent for the new premises from July. We have been given a rent-free threshold.

Senator BARNETT—Will you be subletting your current facility through to September 2012—is that possible or is that unlikely to be able to be done?

Prof. Croucher—One cannot predict the market to that extent, but we have put in place all of the means that one would need to do by securing appropriate agents to do that task, opening up discussions with other tenants in the buildings and the like.

Senator BARNETT—Of course you should, and due diligence would indicate that is exactly what you would do—

Prof. Croucher—Professional managers have to do these things.

Senator BARNETT—Absolutely, of course. But from July this year you will be paying, it would be fair to say, double rent: one in your new premises when you start paying from 1 July through to the end of September 2012?

Prof. Croucher—That is the worst case scenario, yes.

Senator BARNETT—So you have two years plus three months of double rent potentially?

Prof. Croucher—It is 2011 now, so it is to September—18 months.

Senator BARNETT—Sorry, what did I say? So how much double rent would you be paying—from July this year through to September next year?

Prof. Croucher—That is correct.

Senator BARNETT—So that is a year and three months or so.

Prof. Croucher—It is not double because the idea of the move is to reduce—we will have a double commitment but it is not double rent.

Senator BARNETT—No, a double commitment. You would be paying two lots of rent.

Prof. Croucher—Yes, we will be under obligation to do so if we are not able to sublease our current premises.

Senator BARNETT—I would like you to take on notice to advise this committee the exact rent costs in terms of worst case scenario if you cannot sublease it for the two lots of commitments through to September 2012.

Prof. Croucher—Certainly, we have that budgeted. I do not have the figure immediately in my head but we can certainly give you all the details you need.

Senator BARNETT—In terms of this new commissioner coming on board, have you been advised of a date?

Prof. Croucher—No, not expressly. However, I have been advised by the Attorney that the new commissioner would be on board in order to commence the next reference.

Senator BARNETT—Have you been advised of this transitional funding that you will receive to assist the commission; and how much will that be?

Prof. Croucher—I do not know how much. I heard in evidence here the other day and also in the advice I had by letter from the Attorney yesterday that we would be assisted in meeting the cost.

Senator BARNETT—What did the letter say? Can you table the letter?

Prof. Croucher—Yes, it would be possible to do so. I received it yesterday by email.

Senator BARNETT—It indicated transitional funding—

Prof. Croucher—It indicated that the department would be assisting us, which is what we also heard in evidence the other day, and importantly that the appointment would be from the commencement of the period of the new terms of reference which, from a management point of view, is also a critical matter.

Senator BARNETT—You have given in evidence recently the cost of the full-time commissioner. In terms of transitional costs, what other transitional costs might there be?

Prof. Croucher—Transitional in what respect?

Senator BARNETT—I do not know what the government is advising in their correspondence because I have not seen the letter. But you are talking about transitional, I assume, through to September 2012 when your lease concludes.

Prof. Croucher—I see. The transition period being the period until our budget can sustain the appointment itself, which clearly in that worst case scenario situation we are not able to carry it within our own budget.

Senator BARNETT—My point is you are not going to saving any money in terms of lease costs until September 2012, unless something else happens; is that right?

Prof. Croucher—Yes. I should note that the indication is that the commissioner is to be appointed for the classifications reference, which is in the public arena. It is not a standing appointment of a period of years; it is an expert or it is a reference-related appointment not a standing appointment.

Senator BARNETT—Which is different from the appointment of previous full-time commissioners, is it?

Prof. Croucher—In the main, yes, that is correct.

Senator BARNETT—Will the full-time commissioner have roles and functions with respect to the commission more generally to assist you in your efforts in terms of managing and overseeing the commission?

Prof. Croucher—All commissioners form part of the commission. The full-time commissioners, yes, will have a role in that regard.

Senator BARNETT—But it is your understanding that this person will be appointed for the duration of the classifications inquiry and then ongoing—or you do not know?

Prof. Croucher—At this stage I understand that the appointment is to be for that reference and not an ongoing appointment.

Senator BARNETT—It is a 12 months reference or a bit less than that, isn't it?

Prof. Croucher—It depends on the terms of reference. I have not seen the final version and the final version will have in it a reporting date, which I anticipate or hope will be at least a 12-month period from the commencement of the terms.

Senator BARNETT—They are matters we can clarify with the department.

Prof. Croucher—Thank you.

Senator BARNETT—Thanks very much for that. Let me just check in terms of the costs—I think you have answered that. He or she will be paid in accordance with the normal process as a full-time commissioner.

Prof. Croucher—The salary of a commissioner is a matter for the Remuneration Tribunal which binds us.

Senator BARNETT—Thank you very much.

CHAIR—There being no other questions for the Law Reform Commission, thanks very much for your time, Professor Croucher and Ms Wynn. We will break for a morning tea break.

Proceedings suspended from 10.34 am to 10.54 am

CHAIR—Mr Wilkins, I understand Mr Kellow and the AAT would like to come back to the table and clarify an issue that was raised, so as the chair I am going to allow that.

Mr Wilkins—Thank you, chair.

Mr Kellow—Thank you for the opportunity to return to the table. I wanted to respond to Senator Barnett's query arising from the budgeted expenses and resources in table 2.1 of the statement and to apologise to the committee and advise that there actually is an error in the table which is our responsibility. There was a change

in methodology as to how the figures in the table are to be calculated. There is a difference between 2009-10 and 2010-11, and we in error applied the current 2010-11 methodology to our old figures, the 2009-10. The main difference relates to how we treated depreciation and the loss approval that we had in the previous year and how that is reported. The bottom line figure remains the same, but I can give the committee a breakdown as to those three elements and what they should read. The appropriation figure should be \$32.772 million; the section 31 revenue is \$1.122 million; and the expenses not requiring appropriation should be \$1.311 million. I apologise again for the confusion we created with that error.

CHAIR—Thanks, Mr Kellow.

Senator BARNETT—Does that fully explain the \$500,000 differential that we saw in the earlier discussion?

Mr Kellow—Yes, it was simply a mathematical error as to how things were counted.

Senator BARNETT—So you were counting it differently and applying it differently in the previous financial year to this financial year; is that right?

Mr Kellow—Yes, 2010-11 has a new methodology. In particular depreciation is now counted as something that is free of charge in that column or the expenses not requiring appropriation but it was not in the previous year's, and we had moved that figure. When you take the difference between the depreciation—sorry, I am confusing myself again. Mr Wise?

Mr Wise—In the 2010-11 year we actually aren't funded for depreciation while in 2009-10 we were.

Senator BARNETT—Why wouldn't you be funded for depreciation? Most other agencies are.

Mr Wise—No, it is a general government change in that prior to 2010-11 we were actually funded for depreciation a set amount each year and in 2010-11 they have changed that to—

Senator BARNETT—Is that an across-the-board global change for all agencies?

Mr Wilkins—It is a change in finance policy. I think it came up with some questions Senator Brandis was asking in the last estimates.

Mr Lutze—If I can just clarify the government has moved away from funding depreciation or explicitly funding agencies for capital expenditure in the departmental capital budget, which is one of the attached tables on page 52. It is a general policy of government now that agencies are to be prepare a capital management plan which forms part of the capital budget's expenditure, and the government will fund on that basis rather than just funding depreciation.

Senator BARNETT—All right. If you can set out in a table or in a document what should have been in your budget statement, that would be helpful to the committee. I know you verbally expressed it, but we look at the papers to compare what we have in the budget statements and then we analyse those. That is why the questions pursued in the way they did and we found half a million dollars, which is a lot of money. You can buy a really nice house in Tasmania for half a million dollars, but not so much in Sydney or Melbourne—it is a lot of money.

Mr Kellow—Yes, I understand, Senator.

Senator BARNETT—So you will do that?

Mr Kellow—Yes, we will.

Senator BARNETT—Thank you.

CHAIR—Thanks, Mr Kellow, for staying around to clarify that for us and taking the time to do that.

[10.59 am]

CHAIR—We are going to move to AUSTRAC now. Mr Schmidt and your officers, welcome to our estimates program. Do you have an opening statement?

Mr Schmidt—Senator, no opening statement.

CHAIR—We will go to questions straight away.

Senator TROOD—Mr Schmidt, I wanted to ask you a few questions about ANAO audit report No. 22 with which you are no doubt very familiar. It raises some questions about the way in which AUSTRAC has kept its accounts and books, et cetera. The report makes some observations about weaknesses in relation to AUSTRAC's procurement framework and in relation to breach of mandatory requirements of the

Commonwealth procurement. It makes some observations about controls in relation to delegations not being applied properly; it makes some observations about preparation and approval of purchase orders not being timely; inadequate retention of appropriate supporting documentation; and lack of formal guidance to support policies and work practices. I suppose you might say that none of these are hanging offences except that, for an agency of your character and the particular responsibilities you have, it seems to me we are entitled to have an absolutely punctilious attention to all of the Commonwealth's requirements and rules with regard to these matters. I noticed that, having received the original report, you undertook some changes; and then the final report noted the changes but still there was some reservations and in fact some additional issues emerged in the final audit report. The obvious question is: what have you done to rectify all of these shortcomings; and are any of them as yet incomplete?

Mr Schmidt—I appreciate your question and the concern. I do take these matters very seriously. Some concerns were raised both by the Audit Office and also by our own internal audit committee with me in the last 12 months. Immediately I became aware of these matters we engaged an external expert to come in to review our systems and arrangements and begin to put in place steps to remedy these things. It is not a good look; I agree with that. There are a number of different components of it. You may want to talk about those. I will pass over to the chief financial officer for more detail but, for example, to pick up some of the points you touched upon, there were a number of the internal policies which you would expect to have either updated or revised. There has been an active program within the organisation to have that advice out to staff so they understand what our processes and procedures are. In addition to the review of the financial area and the systems there, we have engaged an external provider to come in and give training to all the staff on the FMA obligations. Having adopted the recommendations of the review of the financial area, the author of that review is now engaged to oversight the implementation of recommendations to improve our systems. An officer has been dedicated full time to running that program, and that is ongoing at the moment. We are working closely with the ANAO and also internal audit within the organisation to achieve those outcomes.

Senator TROOD—Mr Schmidt, at which point did you engage a consultant? Was it after the ANAO report had been completed or between the primary and the final report?

Mr Mazzitelli—We engaged a consultant in July last year when it first became apparent that the ANAO had some concerns about our financial statement preparedness.

Senator TROOD—So that was before the ANAO had provided the final report on its audit; is that right?

Mr Mazzitelli—That is correct, yes. At the commencement of the financial year we started work—

Senator TROOD—So the changes you made and the observations that the Audit Office made in relation to your reporting procedures were made after the consultant had already been engaged; is that right?

Mr Mazzitelli—That is correct. We progressively made rectification measures and put in place measures to improve our compliance. In some cases there are some outstanding issues which the ANAO have not yet tested, which they will when they next come in to review our financial statements.

Mr Schmidt—Senator, if I could add to Mr Mazzitelli's answer: we did not wait until the final report from the adviser to start making changes. Some of the changes were apparent that we could start work immediately, such as the policies and training I touched on before. They were matters we could address and we addressed as soon as we became aware of them.

Senator TROOD—I am glad to hear that, Mr Schmidt. What are the matters that are outstanding of those that have been identified by the audit report?

Mr Mazzitelli—We had some systems integrity issues surrounding our new financial management information system. We went live with the new finance system in the previous financial year and we are progressively having to improve the internal controls around that system. Work is currently under way to make those improvements and have them ready and complete by the end of the financial year in line with the ANAO's next review of our financial statements.

Senator TROOD—Is that the only issue or area?

Mr Mazzitelli—That is the primary area. We have put in place a multi-use list to address the procurement concerns. As the CEO just mentioned, we have put in place supporting financial documentation, SOPs, and we are putting in place further training and development to improve the expertise within the finance function. As a result of the recommendations from the strategic review we are improving the structure and management within the financial services environment—

Mr Schmidt—If I could pick up on that point: one of the recommendations arising out of the review was that AUSTRAC has grown to such a stage now—although we are a very small organisation in the great scheme of things—that it was too large a role to have the general manager corporate also being the chief financial officer and with the complexity of the work due to growth. There was a great deal of growth prior to my joining the organisation when the new AML legislation came in place, there was now sufficient workload that that position should be split. We went to the Public Service Commission using that review as a basis to seek approval for a lifting of the SES cap to create an additional position for a standalone CFO. That was approved, and the recruitment exercise for that position is currently in train. In addition, there will be more resources for staffing within the financial area itself.

Senator TROOD—Mr Schmidt, is that your explanation for these deficiencies: that your organisation has grown very quickly and has been given some additional responsibilities? And I note you have had increased funding and increased staffing as a result of all that. Are you telling the committee it is essentially the result of a growing workload on the basis of a limited amount of staff?

Mr Schmidt—I think there is a combination of factors. As Mr Mazzitelli referred to, we introduced a new accounting system and, as we know with IT systems, they can often have problems in the roll out. That was part of it. Another part does reflect the growth and more demands being put on those existing people in the finance area and the expertise and experience that they have had in an organisation which is now of our size. So it is a combination of factors, but it got to a point where obviously it was time to do some structural changes as well.

Senator TROOD—When do you expect all these changes to be completed?

Mr Mazzitelli—We expect to have those changes implemented by 30 June, in line with the ANAO coming in to review our financial statements for this financial year.

Senator TROOD—Do you have a date on which the Audit Office will be back into your organisation?

Mr Mazzitelli—They have started work on the interim phase of their audit where they are looking at day-to-day transaction recording. They will be back in to do a hard close in April and then commence their final audit in approximately late August this year.

Senator TROOD—Finally, can you tell me how much the consultancies have cost the organisation?

Mr Mazzitelli—The consultancy cost us \$28,000.

Senator TROOD—That amount covers all of the advice you have received?

Mr Mazzitelli—It covers the strategic review that was conducted, yes.

Mr Schmidt—And we now have that person engaged on an ongoing basis to implement the review, so there will be a further consultancy with that which is ongoing.

Senator TROOD—We might check all this again in May.

Mr Schmidt—Thank you, Senator.

Senator TROOD—Chair, I do not have any further questions.

Senator BARNETT—Thanks very much, Mr Schmidt and others, for being here. In terms of consultancies, can I draw your attention to the Murphy Davis Consulting Group report that was due on 27 October last year, according to my advice. It cost \$175,000 and it was for research and project planning for cost recovery implementation—obviously a very substantial report. Do you have a copy that you can make available?

Mr Schmidt—We can provide one, yes.

Senator BARNETT—Are you satisfied you got value for money from such a report?

Mr Schmidt—Absolutely.

Senator BARNETT—Are you implementing the recommendations of the report?

Mr Schmidt—Indeed, it is fed into the structure of the proposal as it is now out there in the public domain.

Senator BARNETT—Have you determined a series of implementation actions to follow up the recommendations?

Mr Schmidt—One of the focuses of that work was changes to our internal systems in the lead-up to the introduction of cost recovery. A significant component of that work will be data cleansing within our existing

databases and the preparation of the databases in such a way that a cost recovery system based on the model which is out for consultation can effectively run. So that work is currently underway within the organisation.

Senator BARNETT—If you are happy to make the report available on notice, that would be appreciated. On cost recovery, I draw your attention to the proposal to charge LPOs a \$500 annual fee for reporting to AUSTRAC as well as introducing a fee for sending certain mandatory reports to AUSTRAC. Licensees are charged for the right to report to AUSTRAC, I understand. One of the implications of this is the possible disenfranchising of these licensees. Of course, you need those licensees to help achieve your objectives of fighting money laundering, terrorism financing and so on. I would like your feedback on that and the impact of those extra reporting fees on your work.

Mr Schmidt—If I could set the scene to the comments I will make. The cost recovery impact statement was released last week and significant changes have been made to the model since first foreshadowed in the budget process. The base component has been reduced now to \$284. The large entity component is \$9,120—these are the estimates at this stage, subject to the budget process for the financial year.

Senator BARNETT—So \$284 instead of \$500?

Mr Schmidt—Yes, that is correct, and \$9,120 for the large entity component. I am not sure if that was in the original budget proposal, but it was certainly in the discussion paper which went out.

Senator BARNETT—What was the original cost?

Mr Schmidt—\$10,000. Perhaps of more significance for the individual entities which have large volumes is rather than the proposed 27c per transaction report that has dropped to 1c per transaction report. It is hard to express this in figures, but it was originally proposed, in the paper which went out towards the end of last year, that there would be a transaction value factor of 0.000002; it is now 0.0000048. So that has gone up a bit to adjust for the fact that the per-transaction figure has dropped from 27c to 1c. The reason that was done—to lead into some of the issues you raised—was we were concerned about a disproportionate impact on entities which have a large number of small value transactions being sent. They would have a very large volume, but the amounts the individual customers were sending were quite small. That has been adjusted to reflect that.

In addition, significant changes have been made to the range of entities which will be covered by the proposal. I think we touched upon, when we were here before, that with the proposed changes to remitters' registration we envisaged the vast majority of remittance dealers would no longer be subject to the arrangement. What I mean by that is, under the legislation which is currently before the House for a new enhanced remitter registration scheme, our primary contact will be with the entities that run the networks and who fund their funds through these large entities—Travellex and other people like that. They will pay the fee, but it will not be for the small front-end entities. That is the vast majority of the remittance sector.

There are also the proposed exemptions. Any entities which have been given exemption from all or the majority of other-than-suspicious transaction reporting reports will be exempt from these fees and, of course, suspicion transaction reports are not subject to a fee. In addition, in recognition of the burden on small businesses, microbusinesses are to be excluded—that is, sole proprietors and small businesses, I think with a number of employees of five or fewer.

Senator BARNETT—That is about 80 per cent of all small businesses in Australia.

Mr Schmidt—There will be a number of businesses who will no longer be subject to any of the fees. Mind you, a large majority of those would have only had to pay the base figure which is now mooted to be 284. And just recently, in light of representations which have been made not only to me but also to the Productivity Commission and others, the pubs and clubs industry have sought some relief from some of the operation of the legislation and so I have announced to the relevant associations that I have given permission for a draft rule to be made which will exempt very small gaming venues from a number of the administrative requirements of the legislation—not suspicious matter reporting, of course.

Senator BARNETT—Can you do that as a right, or do you need government consent?

Mr Schmidt—It is a power I have under the legislation. The legislation has a built-in capacity to adjust its scope because of the broad range of entities covered, from the very big banks to one business firms. It has, very sensibly, a provision which allows the burden to be adjusted. As operation of the system becomes more apparent where the weaknesses and strengths lie, and where the focus should be, we can make changes to its coverage. That has proven to be a flexible and useful power.

Senator BARNETT—Indeed. This report released last week, is that on the record or on your website?

Mr Schmidt—Yes. It is on the website. It was the next step in the process. We had to do a formal cost recovery impact statement, and that is out for consultation at the moment.

Senator BARNETT—Does that include modelling and the impact of the changes on small business and other licensees?

Mr Schmidt—It includes some breakdown of the impact of the different segments of industry. I cannot recall how much detail that goes into, but it is written in such a way that hopefully a reporting entity could read it—it is not a lengthy document—and see whether it would fall within the exemptions or not and know whether they are in or out, and if they are in then to what extent they might have a liability.

Senator BARNETT—Did you work with the department in the preparation of that document, did you do it yourself, or did you outsource it?

Mr Schmidt—We did it ourselves. The department of finance approves its release, so we have worked with Treasury, Finance, and the Attorney-General's Department. We have consulted intensively within the relevant parts of government.

Senator BARNETT—Do the various departments support the document?

Mr Schmidt—We have been given permission to release it. Obviously it is a matter for the government to take into account the feedback that comes back from that legislation in due course.

Senator BARNETT—When is a final decision to be made with respect to these fees?

Mr Schmidt—That is a matter for the government.

Senator BARNETT—Are we talking weeks or months?

Senator Ludwig—That is a matter for the government.

Senator BARNETT—I know it is a matter for the government. This report has been released; is there a time frame for people to comment and provide feedback?

Mr Schmidt—We gave two weeks for this phase of it, although if people want extensions of time I am of course happy to entertain those. I cannot speculate as to when the government will a final decision.

Senator BARNETT—What is the next step? Do you provide a report to the government?

Mr Schmidt—We report back to government on the feedback and suggest changes in light of that, which we will discuss within the portfolio but also with Finance, who are the holders of the cost recovery guidelines.

Senator BARNETT—How long will it take for you to obtain the feedback and provide the report to government?

Mr Schmidt—I cannot speculate on it.

Senator BARNETT—But we are talking weeks not months.

Mr Schmidt—I would hope to be in a position within a few weeks of the closing date to be able to go back with suggested changes if that is what comes out of the consultation.

Senator BARNETT—Does that recommendation go to the Attorney-General?

Mr Schmidt—The Minister for Home Affairs is the minister who is primarily responsible for the portfolio, but the cost recovery guidelines are a Finance beast and they do require a broader approval within government when the model is finally settled.

Senator BARNETT—Sure, but your recommendation will go to the Minister for Home Affairs?

Mr Schmidt—And also through to Finance.

Senator BARNETT—Thank you.

Senator FURNER—Can you provide an update on the progress of the Wickenby tax fraud investigations?

Mr Schmidt—I hesitate, only because of the operational aspects of this. We are a partner agency with tax in working on it, but tax is really the agency who should be taking questions on Wickenby.

Senator FURNER—So you cannot provide information on its success or otherwise?

Mr Schmidt—I believe it is a successful project from my perspective, but I do not feel comfortable commenting further on another agency's operation.

Senator FURNER—Fair enough.

Senator BARNETT—I believe the ACC may be able to make some comment at a time later today, Senator Furner.

Mr Schmidt—What I might be able to touch upon, if I could, is this: it is not only Wickenby but also the general relationship we have with tax. It is the work of AUSTRAC and the data we receive and the analysis that we do which has led to significant tax recoveries. This is not isolated purely to Wickenby, it is more general. Tax keeps a running tally, which they publish in their annual report each financial year, of the tax raised which is directly attributable to AUSTRAC data. There is other work that they do which relies on our data, but this is the one with the closest link. I think in the last financial year the figure of tax assessments raised on that basis was \$274 million dollars, and I believe we are tracking this financial year for a larger amount. This has been going up in significant steps for the past three or four years. That figure alone demonstrates that there is a great deal of value being realised (1) out of the data which we analyse and make available to our partner agencies and (2) by the cooperation between agencies and using that data for a public benefit.

Senator FURNER—So since its inception it has been a huge success on what you are identifying as significant improvements?

Mr Schmidt—Our involvement with the tax office has been a huge success and also I think there have been significant gains within our collaboration with the Wickenby project.

Senator BARNETT—Were you involved in the Paul Hogan tax retrieval attempt?

Mr Schmidt—We would not discuss an operational matter.

Senator BARNETT—But you were just talking about Wickenby and your involvement with the tax office regarding Wickenby.

Mr Schmidt—But what particular taxpayers or matters were being examined as a part of that I could not comment on.

Senator BARNETT—Thank you.

CHAIR—Mr Schmidt, I thank you and your colleagues very much for your time.

[11.21 am]

Classification Board

Classification Review Board

CHAIR—Good morning. Mr McDonald, do you have an opening statement?

Mr D McDonald—I have. Thank you to the committee for the opportunity to make an opening statement. Since the last Senate estimate hearings in October, the board has continued to fulfil its statutory duty and role in the national classification scheme, working efficiently to classify films, computer games and publications. The board tries to capture and reflect the diversity of opinion found in our community in its classification decisions. As you would be aware, the fundamental role of the board is to make classification decisions. Enforcement is primarily the responsibility of states and territories. The Department of Customs and Border Protection regulates what can and cannot be imported into Australia.

The Classification Board is in a time of renewal, with the appointment of a new deputy director and a five new board members having taken effect on 31 January 2011. Also on that date, board member Mr Greg Scott was appointed senior classifier. The new deputy director is Ms Lesley O'Brien, and Ms O'Brien is with us today. Before taking up this position, Ms O'Brien worked for eight years as a senior executive at the ABC, most recently as general manager of ABC publishing; books magazines and audio. The five new board members are Ms Tennille Burdon from Tasmania, Mr Joe Guthrie from Queensland, Ms Serena Jakob from South Australia, Mr Lance Butler from Victoria and Ms Marit Andersen from New South Wales. That now brings the membership of the board to 12.

When appointing new members to the board it is a requirement of the classification act that consideration be given to ensuring the board is comprised of members who are broadly representative of the Australian community. All states and territories are now represented on the board. As you know, members are appointed by the Governor-General on the recommendation of the Minister for Justice after consultation with state and territory ministers responsible for classification. I welcome all new appointees to the board and wish them the very best in their new roles. I also congratulate Mr Scott on his appointment as senior classifier and thank him for his service as acting deputy director for eight months to 31 January.

I would also like to express my appreciation for the invaluable contribution made by temporary board members in the period leading up to the new appointments. We needed to make extensive use of the temporary board members to meet our statutory deadlines during this period, and I would like to acknowledge them in this forum for a job well done. Even with the recent appointments to the board, recruitment activity continues—this time for the position of director of the Classification Board. My appointment to this position expires at the end of April this year and I will not be standing for reappointment. The recruitment process for this position is currently underway.

We are entering a period of unprecedented scrutiny and review of the National Classification Scheme. As you would know, the Attorney-General and the Minister for Justice are intending to ask the ALRC to conduct a review of classification in Australia. Draft terms of reference state that the review will inquire into the existing legal framework of the National Classification Scheme, the challenges facing the scheme and the needs of the community in an evolving technological environment. The review will provide an opportunity for significant reform and renewal of classification in Australia and is greeted with the full and enthusiastic support of the Classification Board.

Other review activity that impacts on the National Classification Scheme and the operations of the board is the convergence review which is being undertaken by the Department of Broadband, Communications and the Digital Economy. This review will look at content delivery platforms including broadcast, mobile and fixed telecommunications and the internet in the communication environment. There is of course this Senate's inquiry into classification which begins shortly. The House of Representatives' committee inquiry into billboards and outdoor advertising will consider the extent to which the current arrangements for the regulation of billboard advertising continue to be an effective method for managing this form of advertising in Australia.

The Classification Board welcomes all this review activity, which reflects the keen public interest being taken in the work of the board and in classification issues in Australia today. The board made 3,138 classification decisions in the six months to 31 December 2010. This compares to 3,396 made in the same period in 2009. In the 2009-10 financial year the board made a total of 6,468 classification decisions, compared with 6,153 in the previous financial year. These classification decisions are mostly for DVD products, with computer games being the second largest by volume. The board continues to make decisions within the statutory time frames of 20 business days or five days for priority processing. In 2009-10 and in 2010-11 to 31 December 2010 no decisions exceeded the statutory time limits.

The board has continued its practice of auditing those publications with serial declarations and calling in unclassified material which comes to its attention. The board audits every title within the declaration period. To date, only one call-in notice for adult publications has been complied with, and the majority of films called in have not been complied with either. As I have stated at previous estimates hearings, I do not believe this constitutes a systems failure, but in fact establishes that a breach of classification legislation has occurred. In each and every instance the Attorney-General's Department notifies the relevant law enforcement agency of the failure to comply. I will continue to use my call-in powers in circumstances where I believe it is warranted.

Classification enforcement is an ongoing issue that the board and the community are concerned about. I understand that enforcement issues are also to be a key focus of the ALRC review. The board shares the even more widespread community concern about the material readily available on the internet that would be classified RC—that is to say, refused classification. Although the ACMA refers material to us in response to complaints, there is a great deal of other material that does not come to the board as part of this process. An internet filter is being proposed as part of the government's cybersafety initiative. Details of the proposal and its operation, including enabling legislation, are still under consideration. How online content will be screened and selected by a proposed internet filter is not a matter for the Classification Board. The regulation and classification of online content services is provided for under schedule 7 of the Broadcasting Services Act 1992. Internet content is regulated by the ACMA. The department and the Classification Board have been working with DBCDE and the ACMA on the policy and operational questions regarding the filter as described in Senator Conroy's media statement of December 2009.

On the matter of computer games and the R18+ justification, I remind the committee that in December 2009 the Minister for Home Affairs released a discussion paper on whether an R18+ classification for computer games should be introduced into the National Classification Scheme. Since that time, the Australian government has made clear its support for the introduction of an R18+ classification for computer games. All ministers responsible for classification have not yet made a decision on this issue. The committee will be

aware that any change requires the unanimous agreement of the states and territories. The Classification Board classifies computer games RC if they exceed the standards acceptable for MA15+. RC games cannot be legally sold, hired, advertised, demonstrated or imported. Again, enforcement in that respect is the responsibility of states and territories. Thank you, Chair.

CHAIR—Thank you, Mr McDonald. I take it from that you are heading out of your position at the end of April?

Mr D McDonald—Yes.

CHAIR—This will be our last opportunity to have you at an estimates hearing. We will make note of that. Thank you, very much, for the work that you have done over many years. Do you have plans to move onto another venture? Or will you put your feet up for a while?

Mr D McDonald—At my age, one is modest in one's expectations.

CHAIR—I think that means yes.

Senator BARNETT—Thank you, Mr McDonald, for your service to the community. Ms Rubensohn: congratulations on your appointment—is that right?

Ms Rubensohn—I have been in this position for two years.

Mr D McDonald—Mr Scott is the new senior classifier and Ms O'Brien is the new deputy director.

Senator BARNETT—Lesley O'Brien; I thought you were sitting at the table. Congratulations to you, Ms O'Brien. Mr McDonald, there are 12 board members now?

Mr D McDonald—Yes.

Senator BARNETT—What is the capacity of board members under the act?

Mr D McDonald—Under the act it can be 30, but that was a provision made to deal with some exceptional circumstances in the past. In recent times it has fluctuated. There was a period of eight months last year when we were much smaller than that, but that was when the recruitment process was going on. It has fluctuated between this sort of number and up to 17. My view is that about 12, plus the availability of a pool of experienced temporary board members who the director can appoint on a daily basis to meet fluctuations in demand, is a cost-effective way of dealing with it.

Senator BARNETT—How many temporary board members are there?

Mr D McDonald—We have a roster of eight.

Senator BARNETT—And that fluctuates?

Mr D McDonald—Yes, they are not always available. They are people who expect to be asked to do a day a week or a day a fortnight. They have other lives. We have had to in recent months call on them much more frequently and put them under a fair bit of pressure. It is a good mechanism because we cannot control the demand. We have to deal with things within the 20 days, or five days for priority things. It is a pressure valve mechanism.

Senator BARNETT—I know that broadly this is a question for government, but if you have a response that is relevant to the board, please let me know. Have the SCAG compliance and enforcement outcomes of the December meeting impacted on the board?

Mr D McDonald—No, not on the board. I think it is fair to say that the department officers within the classification branch work very closely and maintain good contact with all of the enforcement agencies. Whether there have been impacts from that meeting on them I would have to leave that to the department to answer.

Senator BARNETT—We will come to the department in a minute, unless Mr Wilkins wants to contribute.

Mr Wilkins—I think the chair wanted us to wait.

Senator BARNETT—That is fine. We will deal with that shortly. I want to deal with the issues we have dealt with before—the audits and the call-in notices. You said you have had one call-in notice that has been complied with. Out of how many and over what period of time?

Mr D McDonald—In 2009-10 we called in 49 publications and in the period to December 2010 we have called in eight adult publications. In that period only one complied.

Senator BARNETT—Which period: the last six months?

Mr D McDonald—Yes.

Senator BARNETT—I have the figures for 2009-10. We did that in October. I am really interested in the latest figures. So in the six months through to 31 December you have had eight call-ins and the one that has complied.

Mr D McDonald—Yes.

Senator BARNETT—So seven have not complied and they relate to what? Can you be more specific?

Mr D McDonald—They were adult magazines that were not classified. They were on sale and were not classified.

Senator BARNETT—And who was the distributor? You can provide on notice who they were. Were they separate distributors or the same distributor?

Mr D McDonald—They were different. We can supply those names to you.

Senator BARNETT—Thank you. The majority of the films called in you indicated were complied with; is that right?

Mr D McDonald—Were not.

Senator BARNETT—They were not complied with. Can you provide details of how many were called in in that six-month period?

Mr D McDonald—In that six-month period there were 32 films.

Senator BARNETT—And how many were complied with?

Mr D McDonald—None have complied.

Senator BARNETT—So why would you say ‘majority’? You said in your opening statement that a majority of the films were not complied with. That assumes that some were complied with.

Mr D McDonald—If I did, I was in error. I would be surprised if I used the word ‘majority’, but I am sorry if I did. Let me see if I strayed from my own text. I did say ‘majority’ and I was in error.

Senator BARNETT—So you will provide the details of those films? Again are the distributors different or are they broadly the same?

Mr D McDonald—Are they different distributors of the films within that number?

Senator BARNETT—Yes.

Mr D McDonald—Yes, I would say so.

Senator BARNETT—You can provide that on notice?

Mr D McDonald—We can.

Senator BARNETT—Thank you very much. As far as I am concerned the reasons for this extensive scrutiny and review—ALRC, Senate committee, House of House of Reps committee et cetera, as you have indicated—is because there is systemic failure across the board. I am not pointing the finger at you directly, but what I am saying is that across the board, in terms of the system and you refer it to the law enforcement agencies at state and territory level, it is simply not working. That is one of the reasons, probably a main reason, that it is under scrutiny, up for review and in need of reform. You indicated that offensive material on the internet remains subject to the law. I have an article here from the *Canberra Times* of 24 November last year which says:

Unclassified smartphone games, such as those available on the Apple iPhone and Google Android platforms, may be illegal in Australia with buyers and sellers potentially liable for large fines, according to law experts.

Do you concede that that is correct?

Mr D McDonald—Absolutely. Yes, I do.

Senator BARNETT—So they are not exempt in any way, shape or form?

Mr D McDonald—No, they are not exempt. I believe I drew this committee’s attention some hearings ago to the legal advice that we have had that indicated that games that were available on mobile phone applications were classifiable as computer games. The government is aware of this, all ministers are aware of this and this is a matter that is exercising ministers at SCAG.

Senator BARNETT—Okay. I have never seen that legal advice. You have referred to it.

Mr D McDonald—I incorporated it in opening remarks to the Senate.

Senator BARNETT—It was May last year, was it?

Mr D McDonald—Yes, three or four hearings ago.

Senator BARNETT—You do not have any further legal advice in addition to that.

Mr D McDonald—No.

Senator BARNETT—In terms of these call-in notices have you advised the relevant state and territory authorities?

Mr D McDonald—Yes.

Senator BARNETT—Have you received any feedback from these state and territory authorities with respect to the correspondence or communications you have had with them?

Mr D McDonald—I would not receive anything back from them—the department would.

Senator BARNETT—All right.

Mr D McDonald—They have consultations with them. They send regular bulletins to them. I think they are better placed to answer that question.

Senator BARNETT—All right. What about with respect to the distributors? Have you received feedback from them? When you send these call-in notices you have indicated that some have complied but what feedback have you had from them?

Mr D McDonald—It varies. Some say that they no longer distribute that magazine, that they no longer have copies of it. They are generally ‘not guilty, your honour’ sort of responses when they do respond.

Senator BARNETT—Not guilty?

Mr D McDonald—It was a poor joke, Senator. They generally say, ‘Hands clean,’ if they respond. If they do not respond, I do not know what they think.

Senator BARNETT—You have indicated in terms of compliance, but my question is: do you receive responses from these distributors which say, ‘Go jump in the lake,’ so responses other than compliance?

Mr D McDonald—No, they are not ‘go jump in the lake’ responses but there are what are called parallel imports. The problems with publications are, as I have said before, overwhelmingly with imported publications. They are not Australian initiated publications. The Australian publishers overwhelmingly try to work within the classification laws and guidelines. They are imported publications and there are not exclusive importers. Often we will get a response saying, ‘I didn’t import that particular issue, somebody else did.’ The community liaison people then go back to the retailers to try to find out from the retailers who the supplier was. There are serious efforts made to track down the source of these things. I think it is also fair to say that Customs appear, from my observation of what I hear of the work of the department, to have taken a much more positive role in trying to stop the importation.

Senator BARNETT—How do you know that? Have you communicated with Customs?

Mr D McDonald—I have not, but I hear that the department does.

Senator BARNETT—How do you hear that. Who has told you this?

Mr D McDonald—Officers of the department—the managers of the department. If I can, perhaps, remind the committee: the previous government absorbed most of the administration of what used to be the Office of Film and Literature Classification back into the Attorney-General’s Department. The Classification Board is simply an independent board that makes classification decisions. Everything else is the responsibility of the department.

Senator BARNETT—That is right. But, with respect, would you say that what you are reporting is hearsay? You are reporting a report. You are saying that a department official has advised you that Customs is far more active and proactive in combating illegal and offensive material. Is that what you are advising the committee?

Mr D McDonald—Last year, there was a classification enforcement contact forum which I was asked to address.

Senator BARNETT—I am aware of that. It was in April, I think, wasn’t it?

Mr D McDonald—I hear of outcomes flowing from that. There is to be another meeting of that forum in June of this year.

Senator BARNETT—That was the April forum last year?

Mr D McDonald—Yes.

Senator BARNETT—There is another forum in June this year?

Mr D McDonald—Yes.

Senator BARNETT—Will you be speaking at that?

Mr D McDonald—My successor may.

Senator BARNETT—All right. We will be talking to Customs directly and will get it directly from the horse's mouth as to whether they are far more proactive in combating pornographic, illegal and offensive material coming into this country. Are you participating in the Salo court case?

Mr D McDonald—No. The review board are the respondents because the subsequent decision by the review board becomes the decision. Ms Rubensohn can help you.

Senator BARNETT—Are you preparing for the court case?

Ms Rubensohn—Yes. The hearing is on 4 March, which is at the end of next week.

Senator BARNETT—I will not go into particular questions, because it is before the court, but I will clarify that you are appearing for and on behalf of the—

Ms Rubensohn—No, I do not appear.

Senator BARNETT—You are a respondent, aren't you?

Ms Rubensohn—We are one respondent and the minister is the second respondent—there are two respondents—and the Australian Government Solicitor appears. I do not appear.

Senator BARNETT—Will you be there?

Ms Rubensohn—I hope so.

Senator BARNETT—Thank you.

Senator PRATT—My first question relates to the classification of computer games. It is a technical question. How does one go about classifying something that you need to interact with and go through levels and the like? Does someone making an assessment need to be able to play the game? Are the levels opened up?

Mr D McDonald—Somebody does need to be able to. That is why I am going to ask Mr Scott, the senior classifier, who, you would be able to deduce, is generationally much closer to computer games than I am.

Mr Scott—You are right, we do play the games. But under the act there are various fees and how much information the applicants supply to us. They are obligated to provide a CD of the most contentious material in the computer game. Obviously that enables us to watch a component of the game without having to be a competent gamer and play through 15 hours of video game. We view that material and then we play the game to contextualise how that gameplay is played within the game. The applicant can also provide us with the codes and the cheats to help us progress through the levels, to open up various later levels in the game and in doing so we apply the act, the code and the guidelines relevant to the material that we are viewing.

Ms Rubensohn—The review board does not have the benefit of Mr Scott to play the games, but where it seems relevant in the past we have called in the developer of the game and they sit with us and move through the interactivity. That is another option if you feel it would be of help.

Mr Scott—That is open to the Classification Board as well.

Senator PRATT—Clearly, interactivity now has a whole new dimension to it in relation to interacting with other players and the extent to which the game can contextualise those interactions. Phone games are probably a good example of this. For a start how do you distinguish between computer games and social media applications, which in varying degrees allow users to feed their own content through and contextualise that information? I am interested to know how you approach those issues.

Mr D McDonald—Social media is the responsibility of ACMA, coming under the Broadcasting Services Act. Unless a game is a marketed game, it does not come to us.

Senator PRATT—But the boundaries of that are certainly blurring at the moment, which I suppose in part is my question. Take the iPhone app for *Glee*, where there is a lot of social interaction and players rate each other. That seems like a fairly safe environment because people are simply singing on it, but there are certainly other applications that are very difficult to tell if they are a game or a social media application.

Mr D McDonald—I suggest that is actually one of the points of these various inquiries. There is wide acceptance that there is blurring—and you yourself used that phrase. I am sure that is what the ALRC, the convergence inquiry and this committee's inquiry will turn their attention to. The classification scheme as it exists is working perfectly well in respect of standard media. It is still working perfectly well for films, DVDs and publications. Where it is not working effectively is in areas that were not imagined at the time the legislation was written 20 years ago.

Senator PRATT—Thank you.

CHAIR—Mr McDonald, thank you again for your work and the effort and time you have put in to assisting us with our inquiries and with our estimates processes over the years.

Mr D McDonald—Senator, thank you. They have been four unforgettable years.

CHAIR—We do not have balloons to drop from the sky or anything, but I guess at some appropriate time people will recognise your work and thank you for that appropriately.

Senator Ludwig—The government thanks Mr McDonald for his work over the four years. I have been with him for some of those years. The government thanks him for his service.

CHAIR—We might cross paths during our inquiry before you finally head out the door.

[11.54 am]

Attorney-General's Department

CHAIR—We are now going to jump to the department and cross-portfolio questions before we move to program 1.1. Senator Barnett, I think you are going first in this area.

Senator BARNETT—Mr Wilkins, I will give you a heads-up on four reports that I have an interest in and we can get to them later in the day. They are consultant reports Nos 2, 3, 18 and 26. They are: No. 2, ACIL Tasman, *Final regulation impact statement on the proposal of the National Legal Profession Reform Taskforce*; No. 3, ACIL Tasman, *Assessment of the economic impact, including cost-benefit analysis, of proposed regulatory reforms*; No. 18, Deloitte Touche Tohmatsu, *Internal audit services, \$1.3 million*; and No. 26, Malcolm Pascoe, *Update data in the legal aid funding distribution model revised in September 2009*. Please take that on notice for later today—as soon as convenient. I also have some follow-up questions on the ALRC, the Australian Human Rights Commission and the Classification Board. We had those witnesses this morning. I can ask those questions now, if that is convenient, unless you want to do it later in the program.

Mr Wilkins—I am not sure what the chair's position is on this. There is a list of different areas that were shown in one of the proceedings. But I am happy to take the questions.

Senator BARNETT—Do you want me to kick off and we will see how we go?

Mr Wilkins—Sure.

Senator BARNETT—Do we have a date yet for the commencement of the new commissioner of the Australian Law Reform Commission?

Mr Wilkins—No.

Senator BARNETT—You have heard evidence today from the Australian Law Reform Commission about their budgetary constraints and the fact that they will be having two commitments in terms of lease costs through to September 2012. They will be paying two lots of rent—not necessarily double rent but two lots of rent—from 1 July this year. What is the response from the department in terms of that additional cost burden on the commission and its ability to pay for a new full-time commissioner at the same time?

Mr Wilkins—We can go all the way through the answer to that question we gave to the committee that was looking at the ALRC. I will ask Renee Leon to answer that question and we can go through their budget again, if that is what you want. We have done that once before.

Senator BARNETT—No, you have not. With the greatest respect, you have not. We have new evidence put to the committee today about the commitments with respect to the leases. You have got a double commitment—that is made clear; it is on the evidence today—and you said there would be transitional funding. I would like to know details regarding the transitional funding, please.

Mr Wilkins—Okay, we will deal with that. I will ask Renee Leon if she could explain it to you.

Ms Leon—As the president of the commission was careful to point out, the commitment will be to renting two facilities. But I do not believe that the president is necessarily expecting that the committee will need to pay the rent in two facilities, because they are taking steps to sublease their original premises. So, should they be successful in doing so, they will, as well as being relieved of the burden of the rent in their original premises, enjoy a number of months rent holiday from the Australian Government Solicitor in their new premises as part of the negotiations for the move. So whether they will be struggling with their budget or not will obviously depend on the outcome of those commercial arrangements about the subleasing of the premises. As the president said, it is not possible to predict whether or not that will occur. We are hopeful that it will occur. We will make a decision about the extent to which the commission might need departmental support in relation to the commissioner once we know whether they have been successful in subleasing their premises and therefore finalising their budget for next financial year.

Senator BARNETT—How much transitional funding is the department budgeting to provide to the commission?

Ms Leon—Our budget for the next financial year is not finalised yet.

Senator BARNETT—The advice that we have been given on the record by the department is that transitional funding would be provided to the commission.

Ms Leon—That is correct.

Senator BARNETT—Have you determined the amount of the transitional funding?

Ms Leon—No.

Senator BARNETT—When will that be determined?

Ms Leon—When we are apprised of the situation with the commission's budget for the next financial year, which we are not able to be apprised of until there is an outcome as to their efforts to sublease their premises.

Senator BARNETT—Which may be 1 July this year or many months later.

Ms Leon—If they have not subleased their premises by 1 July, then obviously we will start to budget on the assumption that they have not subleased their premises. If they have subleased their premises by 1 July, then we will budget on that basis.

Senator BARNETT—I want to now go to a related matter. Is it the case that with respect to the financial framework legislation the ALRC was by far the most significantly affected entity?

Mr Wilkins—In comparison with what?

Ms Leon—In what way?

Senator BARNETT—My understand and reading of that legislation is that it was an omnibus bill that impact a whole range of agencies. For example, it brought Australia Post under the CAC Act, it changed the name of the Australian Wine and Brandy Corporation Act and it made administrative changes to the CAC Act. But the major changes were the ALRC governance arrangements, as it abolished the deputy chair, reduced the minimum number of commissioners, put in place new advisory committee appointments by the AG et cetera. There were also changes to the Criminology Research Act. Do you concede that the ALRC was the most significantly affected entity by that legislation?

Ms Leon—As we canvassed in the committee when it was inquiring into the Law Reform Commission just recently, the changes that were implemented by that act are part of a long line of changes that are being implemented to deal with the Uhrig review into the way in which statutory bodies are constituted in the Commonwealth. It is a finance department act. They administer the financial frameworks legislation and so they are responsible for the implementation of that view and for the financial frameworks that apply to a range of statutory bodies. In addition to the implementation of the Uhrig review, no doubt the department of finance also uses its omnibus legislation to make other changes to the financial arrangements for other bodies. I do not think that this department can really comment on the reasons for those, the nature of those or the impact of those on those other bodies that are outside our portfolio. What I can say in relation to the Law Reform

Commission is that the changes that were implemented on the Law Reform Commission in that legislation were ones that are consistent with the way in which the Commonwealth has over time been seeking to bring bodies that are not appropriate to be operating as commercial bodies within a normal financial management act framework.

Senator BARNETT—I am advised that 14 pages of the 56 pages of that legislation related to the changes, which were quite dramatic, to the ALRC. Were they consulted about the changes?

Ms Leon—They were consulted about the changes. They were consulted about the concept of the Uhrig review applying to the Law Reform Commission in 2008, and they were then consulted in detail about the drafting of the legislation while it was being drafted.

Senator BARNETT—Can I move on to the Australian Human Rights Commission and their advice that the abolition of the Marriage Act was one option that they would consider, following Ms Branson's attendance at this international conference. This is perhaps a question for the minister, rather than the department, as it is a policy related matter. Can the minister rule out the abolition of the Marriage Act as an option for the future?

Senator Ludwig—I think I could, but I will certainly check with the Attorney-General as to his view.

Senator BARNETT—Check with who?

Senator Ludwig—The Attorney-General—it is his legislation.

Senator BARNETT—You think you need to check with another cabinet minister?

Senator Ludwig—I think I can, without any shadow of a doubt. But let me also do so for the record, given that it is his portfolio and in his legislation.

Senator BARNETT—Does it concern you that the Australian Human Rights Commission is willing to express a view which is, I would say, certainly contrary to the view of the parliament in terms of the parliament's current support for—as in, it is in legislation that had bipartisan support in 2004—marriage between a man and a woman? The Australian Human Rights Commission would appear to have a view contrary to that—and, indeed, contrary to current government policy, as expressed by the Prime Minister as recently as late last year.

Senator Ludwig—If I recall the conversation around the question that you had for the commission, I think they acknowledged that their views would differ from government on occasion. Certainly you did not take issue with that and I do not take issue with it either; they are an independent body and entitled to their separate views. That does not always accord with the government view. And quite frankly it does not surprise me that it does not always accord with the government view. You do want an independent body that does provide separate and different advice on occasion.

Senator BARNETT—Do you agree that millions of dollars of taxpayers' money has been provided to the Australian Human Rights Commission for educational purposes?

Senator Ludwig—It is not a matter of whether I agree or not; they might be the facts of the case.

Senator BARNETT—It is a fact; I am just confirming that you acknowledge that.

Senator Ludwig—If that is what the portfolio budget statement says they received, then that is what they received.

Senator BARNETT—That is what we discussed this morning.

Senator Ludwig—Yes, I do recall that.

Senator BARNETT—So they are using taxpayers' money for educational purposes, to educate the community, including members of the public—including children, I would assume—with respect to their views on marriage: that, in their view, it should be non-discriminatory and that one of the options would be to abolish the Marriage Act.

Senator Ludwig—I think that is a misrepresentation of the evidence. I think they are entitled to provide information to the community about what they do within their budget as an independent statutory authority. I think you have misrepresented their position and the size and scale of their expenditure. But, that aside, they are entitled to provide their view, independent from government. That is why they are independent from government.

Senator BARNETT—So it does not concern you that they are expressing a view and providing educational material and information to members of the public on a view which is clearly, in this case—subject to your checking with the Attorney-General—contrary to government policy?

Senator Ludwig—My recollection is that all they did was provide a submission to the Senate inquiry. You have extrapolated that out to say that they are on an education campaign. I did not hear that evidence. If you would like to point out where in the transcript they say they are providing educational material then I would be happy to look at that. Or you could take the opportunity of recalling them and asking them those questions that you are putting to me. You certainly did not put those questions to them in that way.

CHAIR—Senator Barnett, you should go back and reread Ms Branson's answers to your questions this morning about the interpretation of the Marriage Act and the commission's view about that because I do not believe that she indicated at all that they were using their human rights education program in the way that you have suggested. I ask that you move on to other questions, please.

Senator BARNETT—With respect, let me clarify for the record that I did not say that they are using their educational funds and educational program to promote that particular view. I did note that they have millions of dollars for promotion for educational purposes for the objectives they see as pursuant to their act. I did not say they were going on a campaign promoting—

CHAIR—I thought you mentioned the abolition of the Marriage Act.

Senator Ludwig—Forgive me, Chair, I thought that is exactly what Senator Barnett said.

CHAIR—Senator Barnett, I think you talked about abolishing the Marriage Act. I ask you to move on to another line of questioning.

Senator BARNETT—That may very well be one of their objectives and that will be a question that the commission can answer. Clearly, they have millions of dollars for educational purposes. What is also clear is their view with respect to marriage, and they have put that on the public record previously and confirmed it again this morning in evidence, including one view that one option was to abolish the Marriage Act. They have said that on the record this morning and I am seeking the minister's response. Will you take that on notice, Minister?

CHAIR—Senator Barnett, you have misrepresented Ms Branson's evidence this morning. Perhaps we will invite the Human Rights Commission to reread your comments just now and come back to the committee with further clarification and a rebuttal of that. I think it is unfair to pursue this line of questioning without the Human Rights Commission's officers being present to—

Senator BARNETT—You refused that option this morning.

CHAIR—Senator Barnett, I am speaking.

Senator BARNETT—You made that decision.

CHAIR—I made a decision this morning that we were not going to ping-pong back and forth between agencies and the department, and that is what you seem to be doing now—except of course the agency is no longer here. I ask you to move to another line of questioning, otherwise we will go to Senator Pratt, whom I am sure has questions.

Senator Ludwig—Just so that there is no ambiguity about the government's position on this, the government believes the definition of marriage in the Marriage Act is appropriate—that is, the marriage between a man and a woman. It is Labor Party policy. The Australian Human Rights Commission is an independent statutory agency, as I have said. The commission is able to determine how it undertakes its work, provided it meets its statutory obligations under its legislation, which is the Australian Human Rights Commission Act. In undertaking its requirements under its act, it does have to meet a range of accountability requirements, including those under the Financial Management Act. The commission regularly updates the government and public about the work it undertakes, and that is entirely appropriate.

Senator BARNETT—Thank you. The Australian Human Rights Commission confirmed this morning that they oppose mandatory detention. Is that a concern to you that that is contrary to government policy?

Senator Ludwig—If we are going to bounce between what you think they said then I want look at the transcript first. It is appropriate that we have an immigration policy and a detention policy, and nothing has changed. As I have continued to say, the Human Rights Commission is an independent statutory authority. It can and does have differing views to the government. It is not unsurprising.

Senator BARNETT—We have heard that.

Senator Ludwig—If we are going to bounce everything that they say off the government then you could have asked this during the immigration portfolio yesterday when you had the opportunity.

Senator BARNETT—Could we move on to the Classification Board. Mr Wilkins, have you received feedback from the law enforcement agencies in the states and territories with respect to the call-in notices and, if so, could that be either tabled or provided to the committee?

Mr Wilkins—We do have some information, I think, on action taken. That will need to be edited to make sure that we are not divulging names and disclosing operational issues, so it might not be something I can give you today. We would also need to liaise with the state police in providing that information.

Senator BARNETT—I am sure the question is not a surprise. It comes up at every estimates. It would be appreciated if you could take that on notice and provide the committee with that information. Thank you.

Chair, through you I just want to flag that we have a number of questions under ‘emergency management’. I understand it is 1.2 and 1.6. I just want to flag with the department that a number of senators have questions in that arena. If it could all be dealt with together, that would be of assistance. I just wanted to draw that to the department’s attention—not that we want to deal with it now, but we are moving into that section.

CHAIR—That is right. We are a long way from there. We have lunch at 12.30 and then at 1.30 we are dealing with all of the courts. By the time we finish with the courts we will be dealing with Senator Trood’s questions in 1.1—intercountry adoption agency—and then we will be moving to 1.2.

Senator Ludwig—Perhaps I could just mention one issue. There have been reports of a serious earthquake in New Zealand. Of course, EMA has officers there and some of those will be engaged in providing advice and assistance to government and dealing with potential requests from New Zealand. So perhaps I could take the opportunity to gauge the type of information that Senate estimates may want from EMA, because there may be some officers who are now engaged in vital work.

CHAIR—I cannot give you a time. I have no idea of what time that will be. I am thinking 3.30 or four o’clock, probably.

Senator Ludwig—Okay. I just raise that for the record. Thank you.

Senator BARNETT—Through you, Chair, I know Senator Bernardi has some cross-portfolio questions in 1.1, but before that I have a cross-portfolio question. I might have missed it, but do you have the latest figures on the media-monitoring costs for the minister and the media-monitoring costs for the department for 2009-10 and then the latest figures to date? If you do not have that now I am happy to get it later in the day.

Mr Wilkins—Were there other questions, Senator?

Senator BARNETT—Yes. The other questions related to the High Court case on chaplaincy. Where would that be in the portfolio questioning?

Mr Wilkins—The High Court case on chaplaincy—could you expand on that.

Senator BARNETT—Perhaps you could just provide a status report on that particular High Court matter that the Commonwealth is defending. I have some questions about that case.

Mr Wilkins—We are not involved in that case. It is probably a DEEWR question, I would think.

Ms Leon—I will just check, but I think it is another department that is instructing in that case, so we will come back to you.

Senator BARNETT—It may be the Australian Government Solicitor.

Ms Leon—Yes. The Australian Government Solicitor could be being instructed by any one of a number of departments.

Senator BARNETT—Perhaps you could let us know at lunchtime where we should ask that question. That is all I have for the moment. I know Senator Bernardi and others have questions as well.

CHAIR—We will go to Senator Pratt before lunch.

Senator PRATT—I am not sure whether I am in the right place, but I want to ask about the establishment of a new FOI Commissioner and their role. That was a recent appointment.

Mr Wilkins—That is actually a PM&C matter. Sorry.

Senator PRATT—Okay. Concerning human trafficking, as I understand, late last year discussions began in relation to possible reforms to Australia’s criminal law on slavery and servitude. I understand that work started late last year and I am interested to know where that has progressed to.

Mr Wilkins—I think the best thing to do might be to come back to you with some details about that, because the officers who have been involved in that are not here at the moment. I think that would be better. We might come back after lunch on that issue, Senator, if that is all right.

Senator PRATT—Okay, that is fine. We have also got the implementation of new laws in relation to bomb hoaxes, and aviation specifically. I note that the Aviation Crimes and Policing Legislation Bill 2010 created a range of new offences and I know that there was a package of initiatives to complement that.

Mr Wilkins—I will have to take that on notice too. I am not quite sure whether it is from us or whether it is transport, so we will just have to come back to you on that one as well.

Senator PRATT—Okay, thank you very much. Lastly, we had some discussion while the Human Rights Commission was before us about the domestic violence package that has been launched and I would like an update from a departmental perspective—

CHAIR—It might be another outcome though, I think.

Mr Wilkins—We can give you some response on that if we could take that on notice as well. It is partly this portfolio and it is partly a COAG issue which crosses a number of different portfolios. We can give you some indication now.

Senator PRATT—That would be good, because, as I understand it, there is a public consultation about the exposure draft, the family violence bill—

Mr Wilkins—I will get Toni Pirani to give you some advice on that.

Senator PRATT—That would be terrific, thank you.

Ms Pirani—The national plan was released last week and the department has been involved in relation to that project but mainly in relation to how the family law system deals with the issue of family violence. The exposure draft legislation is a key measure that the department has worked on in assisting that family law system to better deal with the issue of family violence.

Senator PRATT—As I understand it, the public consultation closed in January—and I am not sure whether I am asking this in the right place. What would the process be for dealing with those submissions?

Ms Pirani—The department has gone through all of the 409 submissions that it received. The Attorneys-General put out a press release recently about the outcome of the consultation process and we are currently providing advice to government in relation to that.

Senator PRATT—So you are processing the evidence that was presented as part of those consultations and will put those forward?

Ms Pirani—Indeed.

Senator PRATT—Any findings from that evidence you can put forward to the minister?

Ms Pirani—Yes.

Senator PRATT—Were those submissions generally supportive of the measures proposed in the bill?

Ms Pirani—Indeed they were. Of the 409 submissions, 300 were supportive of the proposal, 67 did not support the proposal and 42 did not make a specific comment one way or the other but shared personal experiences.

Senator PRATT—I would expect, therefore, that there is now a process through COAG to try and unify that program of law reform.

Ms Pirani—The Family Law Act is a Commonwealth responsibility. Having been through a public consultation process, the bill is not sitting within the COAG process. It is quite separate.

Senator PRATT—What about the state of Western Australia? Is it part of these discussions or not?

Ms Pirani—The consultation process certainly included the state of Western Australia and, in particular, the Family Court of Western Australia.

Senator PRATT—I think the Family Court operates there instead of the Family Law Act in general terms. Is the state of Western Australia going to undertake a process of reform to match the national reform?

Ms Pirani—I probably should clarify: the Family Law Act does apply in Western Australia, because there was referral of a number of the powers that allow that act to apply, so these amendments will apply in Western Australia.

Senator PRATT—But it is the jurisdiction of the court that is separate.

Ms Pirani—Slightly different. Yes.

Senator PRATT—Thank you for clarifying that for me.

Mr Wilkins—Senator, Geoff McDonald can clarify issues around the bomb hoaxes matter that you raised. What specifically was your question about that?

Senator PRATT—As I understand it, we now have tougher laws in place for bomb hoaxes. I am looking for an indication of the costs of the package that it will take to improve safety on aircraft to that level. As I understand it, the law has changed, but it also has to be funded, so there is some kind of package that complements that legal change.

Mr G McDonald—The changes to the bomb hoax offence increase the penalty from a maximum jail term of two years to one of 10 years. That was enacted in the Aviation Crimes and Policing Legislation Amendment Bill 2010. There has been quite a deal of work in the aviation policing area, including the implementation at airports of an all-in policing proposal from the Federal Police—that is happening transitionally. In terms of enforcing this legislation, it is increasing penalties, so the enforcement mechanisms that exist at airports now and will exist through the all-in policing approach will be used to enforce this and other offences.

Senator PRATT—Just to clarify: the law reform has been done and the package to support that is still being rolled out?

Mr Wilkins—There is an all-in reform to transfer what was a disaggregated, or distributed, policing at airports to the AFP, which will increasingly take over sole responsibility for that.

Senator PRATT—Yes.

Mr Wilkins—That is going to be more efficient and we think that this could be accommodated within that envelope, so it might be something that you might want to ask Commissioner Negus when the AFP is giving evidence later in the day. But I think our view would be that the simple increase in penalties should not actually increase the need for reforms other than the reforms that are underway that Commissioner Negus is carrying out.

Senator PRATT—That clarifies that for me in any case.

Mr Wilkins—The other thing is that Renee Leon could provide to the committee information Senator Barnett asked about on media monitoring. We could provide that to you now.

CHAIR—You could quickly do that. We are due to go to lunch.

Mr Wilkins—The other quick thing is that I can table now what is called the advanced unedited version of the draft report of the Working Group on the Universal Periodic Review from the UN. I am advised that this is the most complete version that we are going to have until June, so I would not be put off by the fact that it has ‘advanced, unedited and draft’ in it. Apparently this is UN talk about what we work with. I have happy to table that.

Senator BARNETT—It is the UN report.

Mr Wilkins—It is the UN report, yes.

CHAIR—Thank you, Mr Wilkins. Ms Leon, we will hear from you and that will clear the decks for the cross-portfolio area before we go to lunch.

Ms Leon—The cost of media monitoring services in the department for 2009-10 financial year was \$268,918. The cost for this financial year so far is \$237,726, to February, almost to the current date.

Senator BARNETT—Have you got the costs for the minister’s office?

Ms Leon—I do not have the costs for the minister’s office, I am sorry. I will have to take that on notice.

Senator BARNETT—Is that something you could get today, do you think?

Ms Leon—I will see what I can do.

In relation to the chaplaincy case, I can confirm that the department whose program is under challenge in that case is the Department of Education and so it is their primary responsibility, although of course this department will be involved to the extent that constitutional issues might arise.

Senator BARNETT—So who can I ask about those questions?

Ms Leon—You can ask the Department of Education. It is their program.

Mr Wilkins—You can address questions to us but at the end of the day we may deflect them to the Department of Education.

Ms Leon—We are not the instructing department.

Senator BARNETT—One of the key question is have other states and/or territories been requested to join. Queensland has recently joined. I would like to know.

Ms Leon—Whenever there is a constitutional issue, section 78B notices are sent to all states and territories to invite them to join if they wish.

Senator BARNETT—So that has been done. I would like to know when it was done.

Ms Leon—We can advise you about that, I would think, but if we cannot I will come back to let you know.

Senator BARNETT—Through you, Chair, I want to give you a heads-up. As I indicated some time ago there are questions regarding Emergency Management Australia. I understand they are under 1.2 and 1.6. There will be a number of senators asking questions in that area and we would like to handle it all together. If we could do it in 1.2 that would be convenient for everybody.

Mr Wilkins—I just flag that we will do our best but, as Senator Ludwig said, some of these guys are now involved in an emergency which is erupting literally in New Zealand, so I may have to take some of those things on notice. We will just see.

Senator BARNETT—I fully understand. My point is rather a group of senators coming for 1.2 and then coming back later for 1.6, I want it to be convenient for everybody. If we can deal with it under 1.2 to the best of our ability, that would be great.

Mr Wilkins—It is okay with me.

CHAIR—Let me be very clear about where we are going from here after lunch. When we return we are going to the three courts. Then we are going back to 1.1 as there are senators that have questions on that. When we finish those two areas we will move on to 1.2 and we will combine that with 1.6.

We will break for lunch and return in an hour.

Proceedings suspended from 12.34 pm to 1.34 pm

Federal Magistrates Court of Australia

Family Court of Australia

CHAIR—I reconvene this public hearing of the Senate additional estimates by the Senate Legal and Constitutional Affairs Legislation Committee. I now welcome Mr Foster, Mr Harriott and Ms Phillipello from our courts. Mr Foster, we are now dealing with the Family Court and the Federal Magistrates Court together. Is that how you see it, or do you want us to just deal with the Family Court first?

Mr R Foster—I am in the committee's hands, Chair. I am flexible.

CHAIR—I think as you are at the table with your people we will put those two courts together and then we will go to the Federal Court. Do you have an opening statement for us?

Mr R Foster—No, I do not.

CHAIR—We will go to questions.

Senator BRANDIS—Mr Foster, you are still in this dual capacity as the CEO of both of these courts. How long has that been the case for now—both acting CEO and CEO?

Mr R Foster—I was first appointed in November 2008 as the acting CEO of the Federal Magistrates Court. I was appointed as the CEO of the Family Court of Australia for the first time in May 2000.

Senator BRANDIS—So, at the CEO level, there has been a de facto fusion of roles of these two separate courts now for two years and three months?

Mr R Foster—That is correct.

Senator BRANDIS—Do you expect that status quo to continue pending parliament's consideration of legislation which may or may not integrate the courts?

Mr R Foster—There was a short break in, I think, November when I was absent overseas, when Mr Agnew from the Federal Magistrates Court was appointed as the CEO—

Senator BRANDIS—Regardless of who the individuals are, the functions have been the same.

Mr R Foster—for about eight or 10 days, and then subsequent to that I was reappointed by the Chief Federal Magistrate as the acting CEO until basically—I think it is—September this year or there is a permanent appointment made, whichever is the earliest.

Senator BRANDIS—These two courts, assuming they continue as separate courts, will have been administratively fused, at least at your level, for three years by that stage?

Mr R Foster—By that stage, yes.

Senator BRANDIS—At the last estimates I asked you and other officers a number of questions about meetings of a group called the Family Law Courts Advisory Group and—very late in the piece, I might say—in response to questions that I placed upon notice, a series of minutes of meetings of the Family Law Courts Advisory Group have been tabled, with some redacted material. There are four of them: minutes of meetings of 15 March; 1 April, which was a telephone conference; and 24 June, which was also a telephone conference; and the most recent of the minutes that has been tabled was a meeting of 11 August—in each case in 2010. Mr Foster, those minutes also indicate future meeting dates and identify dates for which minutes have not been produced: 6 October and 8 December. Did those meetings of the Family Law Courts Advisory Group take place?

Mr R Foster—I think the question asked was to provide the minutes of the four meetings immediately prior to the meeting of 20 August. They were the minutes—

Senator BRANDIS—I am not suggesting you are not compliant with the question that you took on notice. I am merely saying that what these minutes reveal, among other things, is that there were further meetings notified for 6 October and 8 December. Have those meetings taken place?

Mr R Foster—The meeting on 8 December did proceed but the meeting in October did not.

Senator BRANDIS—Can there be produced for the committee, please, minutes of the meeting of 8 December?

Mr R Foster—Can I take that on notice?

Senator BRANDIS—Yes. I assumed you would.

Mr R Foster—I do not have the minutes with me.

Senator BRANDIS—Okay. Other than the meeting on 8 December, which you have mentioned, have there been any other meetings of the Family Law Courts Advisory Group since the meeting of 11 August 2010 up to today?

Mr R Foster—No, there have not.

Senator BRANDIS—Has the Family Law Courts Advisory Group been replaced or reconstituted by any other body?

Mr R Foster—No, it has not.

Senator BRANDIS—So the Family Law Courts Advisory Group has met once since 11 August, and that was on 8 December?

Mr R Foster—That is right.

Senator BRANDIS—We will no doubt glean this from the minutes when they are produced, but just for today's purposes can you tell me: did you attend that 8 December meeting?

Mr R Foster—Yes, I did.

Senator BRANDIS—What was decided at that meeting, please?

Mr R Foster—Can I take that on notice as well? I would need to refresh my memory by looking at the minutes.

Senator BRANDIS—It will be a sufficient response to my question merely to produce the minutes. I am not asking you for a detailed recounting of what happened at the meeting, but you must have some idea. Just to

assist the questioning and where I want to go from there, can you tell us in general terms, without holding you to the specifics too narrowly: what were the principal decisions made at that meeting?

Mr R Foster—Off the top of my head, I cannot remember what specific topics were discussed, but I am just trying to get a copy of the agenda, which can refresh my memory about what items were discussed at that meeting, if that is helpful.

Senator BRANDIS—It is helpful indeed. Is the agenda able to be produced in the committee room, is it?

Mr R Foster—I think I might like to have a look at it first.

Senator BRANDIS—Of course, but it is here, is it?

Mr R Foster—No. I am trying to get a copy of it now.

Senator BRANDIS—I will just move on to something further. There was a meeting of the Family Court judges in Melbourne on Friday, was there not?

Mr R Foster—There was, yes.

Senator BRANDIS—Did you attend that meeting?

Mr R Foster—No, I did not.

Senator BRANDIS—Were there any administrative officers of the court present at the meeting, or was it merely a meeting of the judges?

Mr R Foster—It was a meeting of the judges, but it also included the Principal Registrar, Ms Fillipello, and I think the senior registrar from the Melbourne registry, Registrar FitzGibbon. They were the only people other than the judges, to my knowledge, who attended that meeting as members of the court.

Senator BRANDIS—Thank you. Mr Foster, I might leave you alone for a moment to chase down that agenda and I might ask Ms Fillipello some questions about the meeting. What was the purpose of the Melbourne meeting, please?

Ms Fillipello—It was a wide-ranging meeting. The program was set by the Chief Justice.

Senator BRANDIS—But what was the purpose of this wide-ranging meeting?

Ms Fillipello—The purpose of the meeting was to draw the judges to have some discussion about the future direction of the court and to look at a future vision for the court, in accordance with the vision that the Chief Justice had.

Senator BRANDIS—In accordance with the vision of the Chief Justice?

Ms Fillipello—Yes. She shared her vision with the judges of the court.

Senator BRANDIS—I did not know chief justices had visions, but I think I understand what you are trying to say. I assume that the Chief Justice was there conveying her vision. How many other judges of the court were there?

Ms Fillipello—There was a substantial representation of judges.

Senator BRANDIS—How many judges are there currently sitting on the Family Court?

Mr R Foster—There are currently 34 judges, which includes the Chief Justice.

Senator BRANDIS—How many of the 34 were there?

Ms Fillipello—I am sorry—I cannot be certain as to the number, but there was a substantial number.

Senator BRANDIS—Approximately?

Ms Fillipello—I could consult the record, but it would be in excess of 25.

Senator BRANDIS—In excess of 25, so most of the judges were there.

Ms Fillipello—The majority of judges, yes.

Senator BRANDIS—And were there judges present from every state?

Ms Fillipello—Yes, that would be correct to say.

Senator BRANDIS—Was there an agenda or an agenda-like document like a program published for the meeting?

Ms Fillipello—Yes, there was an outline published.

Senator BRANDIS—An outline. Can we have a copy of that produced, please?

Mr R Foster—I think I would like to take that on notice because I am not certain that a meeting of the judges is not a matter for the judges. Perhaps the outcomes in the public interest might be of interest to someone outside, but I think a meeting for the judges is for the judges' discussion only. It may not be for the public record. I would like to take that on notice and have a discussion with the Chief Justice about what might or might not be able to be released.

Senator BRANDIS—I can understand your proper concern, but I am only interested in discussions about administrative arrangements in the future—administrative and structural issues which might comprise the Chief Justice's vision for the court. I am conscious of separation of powers issues here, too. I would not trespass into what might fairly be called the judicial function but, equally, I do not think anybody would be silly enough to suggest that discussions among judges about administrative arrangements and administrative structures of a court are aspects of judicial power.

Mr R Foster—If it would be helpful, could I perhaps read into the *Hansard* a statement that the Chief Justice has given me authority to provide to you if this question was raised. Would that be helpful?

Senator BRANDIS—It would be very helpful, but of course it may not be sufficient. But by all means do so.

Mr R Foster—The statement is thus: 'The Chief Justice and judges of the Family Court hold the view that legislative policy is a matter for government'—

Senator BRANDIS—I am sorry to interrupt you but, pausing there, is this a statement prepared in advance of the meeting or a statement prepared subsequent to the meeting?

Mr R Foster—This was a statement that was prepared before the meeting on Friday.

Senator BRANDIS—Before the meeting, okay. Can you start again, please?

Mr R Foster—I will. It reads: 'The Chief Justice and judges of the Family Court hold the view that legislative policy is a matter for government and generally would not comment on policy. The Chief Justice made a submission to the Semple review in 2007 supporting a proposal to merge the Federal Magistrates Court and the Family Court. The Chief Justice has not publicly commented since the government announced its response to the Semple review and its subsequent intention to merge only the family law aspects of the Federal Magistrates Court with the Family Court. The court has, however, been consulted and made submissions on technical aspects of the proposed legislation to put this into effect. The position of the Chief Justice is that, whatever the structure, she will do her utmost to ensure that litigants receive the best and most efficient service possible within the resources of the court and that Commonwealth funds are utilised in the most efficient manner.'

Senator BRANDIS—Well, that is not very visionary.

Mr R Foster—I am not using the term 'visionary'. It is just a statement that has been approved by the Chief Justice for me to read into the *Hansard*.

Senator BRANDIS—I do not myself think chief justices should have visions, so I approve of the circumspection and modesty of that statement, incidentally, in any event. From that rather modest vision for the court, Ms Fillipello, tell us what happened at the meeting.

Ms Fillipello—Perhaps I could go back to your original question as to whether or not there were discussions at that meeting in relation to the administration of the court, or indeed in relation to—

Senator BRANDIS—I think I said 'administration and structure of the court'.

Ms Fillipello—There were no such discussions that took place at that meeting.

Senator BRANDIS—Tell us what was discussed, please.

Ms Fillipello—There were matters that were purely of a judicial nature.

Senator BRANDIS—I am sorry?

Ms Fillipello—Purely of a judicial nature and the manner in which the judges conduct their work.

Senator BRANDIS—I think you might be using the word 'judicial' in a non-technical sense when you say that, Ms Fillipello. Are you telling the Senate that there were no discussions about the administration of the court?

Ms Fillipello—That is correct, yes.

Senator BRANDIS—All right; if that is correct, that is correct. Are you telling us that there were no discussions about the structure of the court?

Ms Fillipello—There were no direct discussions about structure.

Senator BRANDIS—Are you telling us there were no discussions about the Semple report?

Ms Fillipello—There were no discussions about the Semple report.

Senator BRANDIS—Were there no discussions about the current shape or possible future shape of the government's proposal to integrate the court and the Federal Magistrates Court?

Ms Fillipello—There were no direct discussions about that proposal.

Senator BRANDIS—When you say 'direct', what you mean by direct?

Ms Fillipello—In direct consequence would be what sort of work the Family Court should do into the future. That is set out in the protocol that is currently on the Family Court website. It is a joint protocol with both courts.

Senator BRANDIS—But that is not a protocol postdating this meeting on Friday?

Ms Fillipello—No, not at all. There was perhaps further discussion about how that could be achieved.

Senator BRANDIS—Were any decisions made this meeting?

Ms Fillipello—There were proposals put forward and suggestions made.

Senator BRANDIS—Proposals of what nature?

Ms Fillipello—Purely in relation to the discussion that was had.

Senator BRANDIS—We are going around in circles here. Rather than telling me what they related to, just tell me what they were. What were the proposals put forward?

Ms Fillipello—They have not been summarised in any particular way.

Senator BRANDIS—Well, here is your chance, Ms Fillipello: you can be the first person to summarise them.

Ms Fillipello—It would be inappropriate for me to do so.

Senator BRANDIS—No, it is not.

Ms Fillipello—The meeting was a meeting of judges.

Senator BRANDIS—I know that.

Ms Fillipello—As a consequence it is appropriate that any decisions—and I use that word loosely, in the sense that they need to be communicated—are really a matter for the judges and the Chief Justice.

Senator BRANDIS—No, it is not. It is also a matter for the parliament.

Ms Fillipello—It is certainly not a matter for me, Senator.

Senator BRANDIS—Ms Fillipello, you are the person being put forward by the court, which among other things is for our purposes an agency appearing before this Senate estimates committee, with the particular knowledge of this topic. Therefore, it is perfectly proper for me to ask you about matters within your knowledge and, if you have that knowledge, you are obliged to respond to my questions. So what were the proposals, please, Ms Fillipello?

CHAIR—Senator Brandis, could I just seek some clarification from Mr Foster about whether we are now delving into the content and discussions of that meeting that you have previously said you think may well want to be kept confidential by the judges?

Mr R Foster—My understanding about the meeting and what was discussed there was that it was in relation to the workings of the court, how the judges manage their cases, their docket system. It was a range of internal working policies which are a matter for the court. I do not know what the outcomes were and whether the Chief Justice thinks it is appropriate to publish such outcomes. That is something I would like to take on notice and have a discussion with her about that. But the meeting was primarily about the working of the court.

Could I also say in answer to Senator Brandis's earlier question that I think at the last Senate estimates there was a suggestion by the senator that the Chief Justice had basically moved her position—you would remember that discussion, obviously.

Senator BRANDIS—I remember putting that proposition to you, yes.

Mr R Foster—The Chief Justice has given me approval to provide a summary of the minutes from the judges meeting in October, just to demonstrate that her position had not changed.

Senator BRANDIS—I am very grateful for that; that will be very helpful. Would you perhaps just table that document or summary.

Mr R Foster—I do not have the document in a form that I could table, I don't think, but I can certainly take that on notice. I have just a piece of paper with some notes on it, basically.

Senator BRANDIS—Whose notes?

Mr R Foster—A note that the Chief Justice sent to me. About tabling that, I would want to seek her approval to do so.

Senator BRANDIS—When was that document prepared?

Mr R Foster—This was only sent to me on 21 February.

Senator BRANDIS—Yesterday?

Mr R Foster—Yesterday. The Chief Justice said: in case Senator Brandis asks a question about—

Senator BRANDIS—Why don't we wait until I ask a question to which that might be responsive.

Mr R Foster—That is fine.

CHAIR—Senator Brandis, can I make it clear that I understand the witnesses before us may well have the answer to your question but I do not believe that they are trying to not reveal as much as they know. I do not want to see Ms Fillipello put in a position where she is pressured into providing an answer when she is unsure that those magistrates want it released publicly. That is all. I am just asking you to be mindful of that fact concerning these witnesses. If you want to have a break, we could move on to something else and come back to you, Mr Foster, while you check whether or not the contents of that meeting can be released. That might make it easier.

Mr R Foster—The meeting was only on Friday, and I do not know that the minutes of that meeting have been settled or discussed.

Senator BRANDIS—Madam Chairman, may I say that I am very mindful of two things. Firstly, I am mindful that this is a court and therefore issues properly arise about the separation of powers. There are certain aspects of the operation of a court which it would never be appropriate for the parliament to inquire into, and those matters concern the exercise of judicial power. That much is clear. I have asked no such questions. Secondly, I am mindful of the standing and sessional orders of the Senate, which you recited at the beginning of this hearing, and in particular the injunction in those orders that, with the exception of the nominated categories of exclusion, there are no areas which cannot properly be explored by this committee. So my position, if I may respectfully say so, Madam Chairman, is that, as long as I do not ask about the exercise of judicial functions, which are, of course, a different thing from administrative functions, which would in my view be inappropriate and as long as I do not ask any questions prohibited by the standing and sessional orders of the Senate and keep closely in conformity of those orders that you recited at the beginning of the hearing today, all other questions are appropriate and they must be answered. Though, of course, it is proper for a witness to take questions on notice.

Mr R Foster—I am not in a position to answer them.

Senator BRANDIS—I was not asking that of you, Mr Foster, because, as you have made clear, you were not there and Ms Fillipello was. Ms Fillipello did tell us that the meeting considered judicial matters. It is plain as can be from what you have told us from your knowledge of what was discussed there—for example, the operation of the docket system—that those are not judicial matters at all. So I will continue to ask questions about what topics were discussed at that meeting, subject to the two qualifications that I have expressed and subject always, Madam Chairman, to your guidance.

CHAIR—All right. Let us proceed on the basis that some of the questions may need to be taken on notice.

Senator BRANDIS—Thank you very much, Madam Chairman. Back to you, Ms Fillipello.

Ms Fillipello—Yes, Senator.

Senator BRANDIS—We have heard Mr Foster’s helpful advice that things such as the docket system and other aspects of the workings of the court were discussed. Just tell us, without going into the detail of it, broadly the topics that were discussed, please.

Ms Fillipello—I did not keep any independent record of the discussions that took place.

Senator BRANDIS—I did not ask whether you did.

Ms Fillipello—I have not taken any notes of the decisions, if one calls them that.

Senator BRANDIS—First of all, I did not ask you about your records and I did not ask you about decisions. I asked you what topics were discussed at a meeting which you said you attended five days ago. You must have some recollection of what was discussed. I made it clear in my question that I only wanted you to mention the topics that were discussed in the broad.

Mr R Foster—Can I assist my colleague here.

Senator BRANDIS—Yes, Mr Foster, by all means.

Mr R Foster—I have just been informed that the meeting was a workshop—so it was a workshop meeting of judges—about case management, as I suggested. About 150 suggestions about case management were put forward but they have not yet been summarised. So there is still work to go before there can be any statement or information about what happened at the meeting. I think, in summary, it is about that.

Senator BRANDIS—Was that information just texted to you by someone, Mr Foster?

Mr R Foster—I just got it from my adviser.

Senator BRANDIS—I see we are in real-time here today.

Mr R Foster—I think it is helpful, actually.

Senator BRANDIS—It is very helpful. It is immensely helpful. It may also make it unnecessary for you to take questions on notice if the answers are only a Tweet away. Ms Fillipello, does that sound right to you: about 150 suggestions were made in the broad area of a discussion of case management?

Ms Fillipello—Yes. There were probably several hundred.

Senator BRANDIS—Several hundred?

Ms Fillipello—Close to 200.

Senator BRANDIS—All right. We are in the ballpark, as they say. Were any decisions made or was it not the sort of meeting which makes decisions? Was it more the sort of meeting that discusses ideas in an open-ended way?

Mr R Foster—I had a discussion with the Chief Justice about that this morning. The Chief Justice’s Policy Advisory Committee is meeting in Brisbane early next month. The outcomes of the judges’ meeting will be discussed at that Policy Advisory Committee meeting. That is the next formal step in this process of sifting through and evaluating the material that came up in the workshop last Friday.

Senator BRANDIS—Ms Fillipello, was anything discussed at this meeting that did not fall within the broad category of case management?

Ms Fillipello—Other than what I have already mentioned, no.

Senator BRANDIS—So when you said earlier on that the Chief Justice was setting out a vision for the court, was it a vision about the particular details of case management?

Ms Fillipello—It was her vision of the court and its structures and the work it would do.

Senator BRANDIS—Did the Chief Justice give an address to start or conclude the proceedings or at any other time?

Ms Fillipello—The Chief Justice kindly made an opening statement, yes.

Senator BRANDIS—Is a copy of that statement available?

Ms Fillipello—I do not recall it being recorded.

Senator BRANDIS—Did the Chief Justice speak from a text?

Ms Fillipello—The Chief Justice would have had some notes.

Senator BRANDIS—Mr Foster, can you please take on notice that I would like a copy of the text of that statement or any relevant notes, please.

Mr R Foster—I will take it on notice.

Senator BRANDIS—Was the opening statement the only speech that the Chief Justice made during the day?

Ms Fillipello—She made some closing comments.

Senator BRANDIS—Were they from text or notes?

Ms Fillipello—I think she did those off the cuff.

Senator BRANDIS—Were the proceedings recorded?

Ms Fillipello—Not in any formal sense. There were notes taken. We use whiteboards.

Senator BRANDIS—Were they electronically recorded is what I mean.

Ms Fillipello—We did not have any Auscript facility, if that is what you mean.

Senator BRANDIS—I mean were they electronically recorded?

Ms Fillipello—We did not have a minute taker.

Senator BRANDIS—I said: were they electronically recorded in any form?

Ms Fillipello—I do not recall that there was an electronic recording of the events.

Senator BRANDIS—Can you check that out for me, Mr Foster?

Mr R Foster—I will. It would be pretty unusual. In my 10 years experience in the judges' meetings we have never recorded any meeting, so I would be extremely surprised if this meeting was recorded.

Senator BRANDIS—I do not want to make a big issue of it.

Mr R Foster—I will certainly take it on notice, but I would be very surprised.

Senator BRANDIS—I just want to find out as much about this meeting as I can. That is all.

Mr R Foster—I can understand that.

Senator BRANDIS—I will go down every burrow, even though it might be a dry one. Ms Fillipello, was anything said directly or indirectly about the possible integration of the Family Court with the Federal Magistrates Court?

Ms Fillipello—I have no recollection of that discussion occurring.

Senator BRANDIS—Were you there for the whole meeting?

Ms Fillipello—Yes, I was.

Senator BRANDIS—Were you listening?

Ms Fillipello—Yes, I was.

Senator BRANDIS—Then, if you have no recollection, may we it take that nothing was said about that?

Ms Fillipello—Yes. That would be correct.

Senator BRANDIS—You are quite comfortable about that?

Ms Fillipello—Yes.

Senator BRANDIS—Thank you. You will take those issues on notice, Mr Foster, won't you? I have one last question to you, Ms Fillipello. You started off by saying the Chief Justice spoke of her vision for the court. We know that the integration of function of this court and the federal magistrates court has been—being pursued; I am trying to be neutral here. It has been being pursued at least since the time the government announced its response to the Semple inquiry. Are you seriously telling the Senate that the Chief Justice's vision for the court did not include any reference to the likely implications for or future of the court in the event that it were to be integrated with the Federal Magistrates Court, when that is the biggest structural issue for the court that there has been for years?

Ms Fillipello—As outlined by Richard Foster, the focus of that workshop was the work of the judges of the Family Court, and, if there was a reference to the integration—and I do not recall any direct reference—it would have been inferential. The focus of the workshop was the Family Court and its work, and the judges of

its court and the pressures on them. So, whilst the topic you have outlined may have been a topic at some other meetings, it was not particularly a topic at this one.

Senator BRANDIS—Mr Foster, pursuing the matter from that angle then, let us go back to the last meeting, on 8 December, of the Family Law Courts Advisory Group.

Mr R Foster—Can I correct that date—it was 13 December, I am sorry. The date changed.

Senator BRANDIS—Okay. Were you present at that meeting?

Mr R Foster—Yes, I was.

Senator BRANDIS—I think I have already asked for you to produce the minutes of that meeting. But are you able to assist us today by telling us what decisions, if any, were made at that meeting in relation to the progression of the integration of the courts?

Mr R Foster—In general terms, only—and I am prompted by a note that there was a budget update provided by me about the court's financial position at that meeting. There was some discussion about workload of registrars, and the Federal Magistrates Court review of divorce processes with sessional registrars. There was discussion about the transfer of resources between the two courts in relation to family consultants and registrars. So, primarily, the meeting was about resource sharing as between the two courts. That was the basic substance of the meeting. I would have to go back and refer to the minutes to find out actually what happened, and then seek approval from the Chief Justice to table those minutes. I will take that on notice, if that is okay.

Senator BRANDIS—Yes, of course, Mr Foster. When you say 'resource sharing'—I have used the word 'integration'—would it be accurate to say that the discussion was based on the assumption that the courts would be integrated at some time in 2011 or in the reasonably near future?

Mr R Foster—No, not necessarily. This is about putting the resources on an assigned basis to where the work is. By way of an example, there are a certain number of family consultants that were permanently assigned to the FMC, some 18 months or two years ago, and any spare resource that the Family Court had it would allocate to the Federal Magistrates Court. But I am just going by memory and this figure is around the mark but not necessarily accurate: there were an additional nine family consultants resources provided to the Federal Magistrates Court. So it is an ongoing review of the workload of the two courts and it is important to recognise now, I think, that 85 per cent of the filings in family law now are in the FMC, which leaves only 15 per cent across the country in the Family Court. So there has been a corresponding shift of those resources which 'help judges' make their decisions, primarily around family consultants and registrars. And there are ongoing discussions about that at the Family Law Courts Advisory Group.

Senator BRANDIS—That is where I was going, actually. Mr Foster, do you have to hand the minutes of the Family Law Courts Advisory Group that have been produced in answer to the question taken on notice last time.

Mr R Foster—Have I got them to hand?

Senator BRANDIS—Yes.

Mr R Foster—We sent them to the Attorney-General's Department.

Senator BRANDIS—There you are. I bet those are them. Am I right?

Mr R Foster—They just turned up, Senator.

Senator BRANDIS—Thank you, Ms Kelly. I just go to attachment D, which are the most recent minutes that have been produced to the Senate. If I understood your earlier answer correctly, this is the minutes of the second-last meeting to have happened. The only minutes we do not have use of the 13 December meeting—is that right?

Mr R Foster—Yes.

Senator BRANDIS—11 August 2010, attachment D.

Mr R Foster—What date are you talking about again.

Senator BRANDIS—11 August.

Mr R Foster—Sorry, there's a whole mixture of them together.

Senator BRANDIS—It will be the last six pages.

Mr R Foster—Yes, okay.

Senator BRANDIS—This is 11 August. You were there?

Mr R Foster—Yes, I was.

Senator BRANDIS—Identified by your initials ‘RF’ and Chief Federal Magistrate Pascoe as was Chief Justice Bryant. Unhelpfully these minutes are not paginated, but if you go to the third page under item 3.3—do you have it there?

Mr R Foster—Yes.

Senator BRANDIS—The entry will be the subheading, ‘Courts restructure—what happens if?’ What does that gnomic title mean? What is the contingency which the word ‘if’ refers to?

Mr R Foster—I could only interpret that to be talking about if the government were successful in its plan to restructure the courts.

Senator BRANDIS—This is 10 days before the federal election. Are you sure it was not addressing the committee’s mind to what happens if there were to be a change of government—particularly in view of in the unredacted portion there is a reference to meeting with the new Attorney-General.

Mr R Foster—I think the view I stated earlier is that the court would support whatever the structure of the courts are.

Senator BRANDIS—I understand that. It would be perfectly proper—and, indeed, appropriate and necessary—for any agency to contemplate during a caretaker period what might happen if there were to be a change of government. There is no criticism implied in my question. In any event, at the bottom of that ‘what happens if?’, after the two redacted paragraphs, we learn that ‘the Chief Federal Magistrate discussed the differences between a superior court and lower jurisdiction and the importance and merit of maintaining the separation. The Chief Federal Magistrate further expressed his view that the joint administration was working well and that the allocation of resources under the current acting CEO is working very well. He raised concerns that the uncertainty of the outcomes or a merger is very unsettling and is very problematic for federal magistrates and the court.’

Then it goes on to say ‘EK’—That is Elizabeth Kelly. That is you, Ms Kelly—I remember asking you some questions about this last time, ‘will highlight the need for the new A-G to meet urgently with the CFM and the CJ to discuss these issues. Action item, RF’. That is you, Mr Foster—

Mr R Foster—It is.

Senator BRANDIS—‘to prepare a briefing paper that outlines the key issues relating to the restructure.’ Did you do that?

Mr R Foster—No, I did not. No such briefing paper was ever prepared.

Senator BRANDIS—Was that because there wasn’t a change of government, so the existing policies of the re-elected or reinstalled government continued and therefore there was no sufficient material change of circumstances to warrant continuing with the preparation of the briefing paper?

Mr R Foster—I cannot remember entirely the reason why, but that seems like a perfectly logical reason why it would not have been done.

Senator BRANDIS—Perhaps that is right. Anyway, there was no briefing paper.

Mr R Foster—There was no briefing paper.

Senator BRANDIS—Other than judges workshops, about which we have spoken with the registrar and with you, Mr Foster, at meetings of the Family Law Courts Advisory Group, what other meetings have taken place since the last estimates involving you or your senior officers concerning the future progression of the proposal to merge the two courts?

Mr R Foster—In relation to senior officers and me, absolutely none in relation to merging of the courts. We were just working through on the administration on the instructions of both the Chief Federal Magistrate and the Chief Justice about the merger administration, which now is completed, basically. In that sense there is no more work to do. There is an ongoing discussion, as I mentioned before, at various Family Law Courts Advisory Group meetings about sharing resources. The merged administration has largely happened. We still have to run two sets of accounts. We still have to have to annual reports so to all intents and purposes the courts are separate.

Senator BRANDIS—The courts are separate.

Mr R Foster—They are separate institutions.

Senator BRANDIS—They are separate institutions with a merged administration. That administrative merger, as was learnt from you in earlier estimates hearings, was embarked upon in the expectation that an announced government policy to merge the courts would come to fulfilment.

Mr R Foster—I am not sure I would go as far as making that final statement.

Senator BRANDIS—I understood you to have said that at the last estimates.

Mr R Foster—No, I do not think I have said that. I think I have said that it is a sensible thing to do in any event. There was duplication and it was to meet budget pressures between the two courts. That was the primary reason, I think, that the merger went ahead. Would it have happened if the government did not have a proposal on the table to merge the courts; I am not entirely certain, but it is a good, sensible business decision. It is happening everywhere. Shared services are happening all over government and, in fact, everywhere. It is quite a common business practice.

Senator BRANDIS—I am well aware of that argument, Mr Foster, and as you will recall, without detaining the committee to re-argue the merits of the Semple report, it has always seemed to me and to the opposition that considerations of cost and efficiency—which are not, of course, unimportant consideration—have entirely driven a process whereby the government has decided to eliminate an entire tier of the federal judiciary, and it has seemed to me that other considerations beyond cost and efficiencies have not been given sufficient weight. But in any event you have restated your view.

Mr R Foster—That one is not a matter for me.

Senator BRANDIS—No, it is not. I have a couple of other things, please, Mr Foster. Do you know where the legislation now is?

Mr R Foster—I think that is a question for the department.

Senator BRANDIS—It is probably to Mr Wilkins, actually. How far away are we from the next stage in the progression of this?

Mr Wilkins—Madam Chair, do you want us to answer these questions?

Senator BRANDIS—Well, I am asking them.

Mr Wilkins—No, we had been doing departmental things separate from agencies but I am perfectly happy to answer.

Senator BRANDIS—I do not mind, Mr Wilkins. It just seemed to me that since we are seized with the Family Court at the moment it might be a sensible thing to ask you now.

Mr Wilkins—I am happy to do it, Senator.

CHAIR—Senator Brandis, all day we have tried to avoid this ping-pong effect between the agencies and the department.

Senator BRANDIS—In any event we are talking about the Family Court and its future and I want to know where the government's proposal in relation to the fundamental restructuring of the Family Court stands. Given that the officer who can answer my question is sitting at the table and the question is directly germane to the agency before us it seems reasonable to ask it now.

CHAIR—Mr Wilkins, these questions would come under which program?

Mr Wilkins—Under 1.1.

Senator BRANDIS—Do you know the answer to my question, Mr Wilkins?

Mr Wilkins—Yes.

CHAIR—Mr Wilkins, go on then.

Mr Wilkins—The Attorney-General intends to put the legislation into the parliament in the current session.

Senator BRANDIS—That is what I understood. Ms Phillipello, was the proposed legislation, of which Mr Wilkins has just spoken, one of the subjects discussed last Friday at the meeting with Family Court judges?

Ms Phillipello—No, it was not, Senator.

Senator BRANDIS—Mr Foster, how recently did the court receive the latest iteration of the draft legislation?

Mr R Foster—If the latest iteration is the draft that is about to be introduced into the parliament, we have not received that at all.

Senator BRANDIS—By reference to the date on which you received it, what is the most recent iteration of the draft legislation you have received?

Mr R Foster—I would have to take that on notice. I cannot recall off the top of my head. It certainly would have been last year.

Senator BRANDIS—Was it before the meeting of the Family Law Courts Advisory Group, on 11 August?

Mr R Foster—I would have to take it on notice. I cannot remember.

Senator BRANDIS—Turning your mind to what was a reasonably significant event, namely, the federal election on 21 August, can you tell us whether you have seen a new iteration since the federal election?

Mr R Foster—I do not believe we have.

Senator BRANDIS—So the most recent iteration of the legislation you have seen is one which was in the shape it was in before the federal election?

Mr R Foster—The one that the court has commented on over a period of time before the election; that is right. I do not know when—

Senator BRANDIS—You are going to take that on notice. Mr Wilkins, is the iteration of the legislation that will be introduced into the parliament in this session the same as that which was shown to the court before the federal election or have there been further revisions to it since?

Mr Wilkins—I understand it is the same.

Senator BRANDIS—Can you describe for us in the broad and take the details on notice, if you like, what, if any, consultations have taken place between the government and the court in relation to the foreshadowed review of the Family Law Act, in particular, in relation to the issues of shared parenting and the definition of ‘family violence’?

Mr R Foster—Could I deflect that question to the Principal Registrar.

Senator BRANDIS—By all means. I do not mind who answers the questions, as long as I get an answer.

Mr R Foster—To tell you the truth, I do not know the answer.

Ms Fillipello—The court has actually responded to the exposure draft on the family law bill 2010 and has been given an opportunity to provide comment. I understand the department is in the process of drafting the relevant legislation and that the court was given an in-confidence copy of some of the provisions.

Senator BRANDIS—I just did not understand your answer. Are you saying that the court has provided or has been invited to provide comment?

Ms Fillipello—The court has provided comment in relation to the draft.

Senator BRANDIS—When was that comment provided?

Ms Fillipello—My understanding is that it was provided on 9 February this year.

Senator BRANDIS—A couple of weeks ago. When did the court receive the invitation to comment?

Ms Fillipello—When it was generally released.

Senator BRANDIS—Which was when—remind me?

Ms Fillipello—I do not have the date in relation to that.

Senator BRANDIS—But last year sometime?

Ms Fillipello—It would have been.

Senator BRANDIS—Do you have a copy of the court’s comments there?

Ms Fillipello—That was provided to the department.

Senator BRANDIS—I would like the court’s feedback to be tabled.

Mr Wilkins—I do not wish to go round in circles, but I think we would be comfortable with the release of those comments if the chief justice is.

Senator BRANDIS—It is not advice to government.

Mr Wilkins—It is advice from the judiciary. I am just a little concerned about simply releasing this.

Senator BRANDIS—Judges do not give advice—

Mr Wilkins—As I said, we are happy to release it; it is just, I think, a question of courtesy, if nothing else, of asking the chief justice whether that is okay.

Senator BRANDIS—I understand. You will take that on notice?

Mr Wilkins—Yes.

Senator BRANDIS—What I would like is for there to be produced to the committee a copy of the court's comment on this draft that has been mentioned by Ms Phillipello.

Mr Wilkins—Yes.

Senator BRANDIS—That is all from me, for the moment, on the Family Court.

CHAIR—And also the Federal Magistrates Court, Senator Brandis? No questions there?

Senator BRANDIS—I have got some questions on the Federal Magistrates Court, but I think Senator Heffernan indicated to me that he had a question on the Family Court.

CHAIR—So you want to stop your questioning for the time being? I am happy for you to keep going with the two courts before us before I go to other senators.

Senator BRANDIS—I was going to move off the Family Court. I just wondered if—

Senator HEFFERNAN—Could I seek some clarification from the committee. I would like to discuss where we are up to with progress towards a federal judicial commission.

CHAIR—Mr Wilkins, is that really a question of the department?

Mr Wilkins—Yes, it is actually a question of the department.

CHAIR—Yes. Under which outcome?

Mr Wilkins—Under 1.1.

CHAIR—Senator Heffernan, we are coming back to 1.1 after we finish with the courts. Senator Furner, do you have questions? This is not the Federal Court, though; this is the Federal Magistrates Court and the Family Court.

Senator FURNER—That is correct. I understand that there have been some pilot programs working at the Brisbane Registry of the Federal Magistrates Court. I would like to hear some feedback in terms of the encouragement of parties to use practical measures other than conciliation and the success of those arrangements since that has occurred.

Mr Wilkins—By way of clarification, is the question specifically about the pilot project where conciliation conferences are being outsourced?

Senator FURNER—That is correct.

Mr R. Foster—I do not have that detail with me, and neither has Mr Agnew, regrettably. I would like to take that on notice if I possibly could. As I understand it, it has been a very successful pilot. The Federal Magistrates Court is looking at expanding that pilot into other locations.

Senator FURNER—In addition to that, I would like to have some feedback, on notice of course, on how many cases the court has referred and what that has done in terms of the impact on the court workload and the benefits of those litigations that have been made. Lastly, I believe the Brisbane Registry has one as one of the highest volumes of filled contravention orders in the country and I would like to know how the court is handling that particular aspect.

Mr Agnew—There has been a pilot conducted in Brisbane in respect of contravention applications and registrars have been assisting in that pilot. I believe that pilot has also been very successful. I do not have the actual details on me, but I can take that on notice.

Senator FURNER—I look forward to hearing of it. Thank you.

CHAIR—Senator Brandis, do you have any questions for the Family Court or the Federal Magistrates Court?

Senator BRANDIS—Yes, I do. Mr Foster, how many judges of the Family Court retired in the last 12 months?

Mr R. Foster—I am sorry, but we did not bring that information with us. But it is a significant number.

Senator BRANDIS—You must know.

Mr R. Foster—I just have not got the detail.

Senator BRANDIS—What about the registrar? Surely the registrar knows how many judges there are.

Mr R. Foster—I know how many judges there are but I do not know how many retired in the last months off the top of my head.

Senator BRANDIS—Does anyone know?

Mr R. Foster—We have got the information and we can try and get it for you now.

Senator BRANDIS—Can you get that information for me now?

Mr R. Foster—Yes, we will try and get it now.

Senator BRANDIS—What is the current establishment of judges on the Family Court.

Mr R. Foster—There are currently 34 judges, including the Chief Justice.

Senator BRANDIS—How many of those are in the appellate division?

Mr R Foster—Seven point five, not counting Chief Judge Thackray from Western Australia.

Senator BRANDIS—For your purposes the Western Australian judges, because of their separate establishment under state law, are not counted in your figures?

Mr R Foster—Even though they hold a dual commission, that is right.

Senator BRANDIS—Have any judges of the Family Court at either level been replaced in the last 12 months?

Mr R Foster—Again, there are a number of judges and there have been at least three for four that have been replaced, but again I would like to try to get that information now for you if I can.

Senator BRANDIS—If you could get that information now for me that would be very good. In the meantime I will ask you some questions about the Federal Magistrates Court. Wearing your Federal Magistrates Court hat, how many federal magistrates are there at the minute?

Mr R Foster—Sixty-one, including the chief federal magistrate. There is one vacancy in Newcastle, which I understand is in the process of being filled, and the government has announced that it would appoint two more in relation to migration matters.

Senator BRANDIS—The federal magistrates, as we both know, have also met in recent times to discuss their attitude to integration of their court with the Family Court. What is the most recent occasion on which there has been a federal magistrates' meeting to discuss the attitude of magistrates to the proposal?

Mr R Foster—The federal magistrates' position has not changed since the court considered it in 2008 and made a submission to the Semple inquiry at that time.

Senator BRANDIS—So they are still against it.

Mr R Foster—Basically, any diminution in the court's independence they could oppose—so the position has not changed.

Senator BRANDIS—I suppose diminution in the court's independence would include elimination?

Mr R Foster—I think the government's proposal at the moment is not to eliminate it but to take family law out. That is the point I am trying to make.

Senator BRANDIS—To put it very loosely, the Family Court broadly still supports the Semple proposals.

Mr R Foster—I think I read that statement into the *Hansard* earlier. It has not changed since.

Senator BRANDIS—And the Federal Magistrates Court oppose it.

Mr R Foster—I think that is basically—

Senator BRANDIS—And you are the CEO of both, so which side are you on?

Mr R Foster—That is a matter for the government to sort out. My position is I manage the resources. I think, as you read out, the chief federal magistrate says he is very pleased about the way the amalgamation with the administration has occurred. I am prepared to work, whilst I am the CEO of both courts, with whatever structure is provided.

Senator BRANDIS—Once again, Mr Foster, I will put the same questions to you in your Federal Magistrates Court CEO capacity in relation to consultation by the government in relation to the draft legislation. What is the most recent iteration of the draft legislation on which the Federal Magistrates Court's views were sought?

Mr R Foster—It is the same as that which was provided to the Family Court. The Federal Magistrates Court has not seen the bill that is going to be tabled in this session of parliament.

Senator BRANDIS—And Mr Wilkins has told us there is not one, so we may take it that you have seen what parliament will see soon.

Mr R Foster—We have not seen it yet.

Senator BRANDIS—And the magistrates are against it. Is it not the case that there has been a substantial increase in the allocation to the Federal Magistrates Court in the additional estimates?

Mr R Foster—Yes.

Senator BRANDIS—Just run us through those.

Mr R Foster—Could I hand over to Mr Harriott, the CFO.

Senator BRANDIS—Yes.

Mr Harriott—Back in 2009-10 there was a transfer of appropriations from the Federal Magistrates Court to the Federal Court of Australia and to the Family Court. That transfer was based on the proposed restructure and the amounts transferred were based on agreements at the time between the respective courts and CFOs. What has happened is that, in the additional estimates, the funding that was previously transferred has been transferred back. That is explained on page 131 of the additional estimates document.

Senator BRANDIS—That is where I am—table 1.4.

Mr Harriott—Yes.

Senator BRANDIS—Can you run us through what that means?

Mr Harriott—The 2010-11 figures are for six months, so these calculations are based on a half year for 2010-11 and a full year in the out years. So the first item is the transferring from the Family Court back to the FMC the money that was previously given to the Family Court on the basis of the restructure proceeding. The next item down is the Federal Court component. The next item is transfer of funding for five judges that were replaced by federal magistrates.

Senator BRANDIS—I do not want to take up too much time; the rest of it is a relatively modest amount of money—in the hundreds of thousands as opposed to the millions. The vast majority of this transfer is in the first item, 'Restructure of the Federal Court's movement of funding between the courts, Family Court of Australia'.

Mr Harriott—And also Federal Court, definitely. That is bulk.

Senator BRANDIS—Well, it is 19.5 million as against \$2.15 million.

Mr Harriott—Yes.

Senator BRANDIS—Does this constitute a drawing back from the integration model? This money is being retransferred, so if I may put it in inelegant, non-technical terms, because I am not an accountant, it seems to me that this is not new money in the system; it is just money that had been transferred from one court to another and is now being retransferred back to where it came from in the first place. Is that right?

Mr Harriott—Absolutely. You are correct. It is reversing the previous transfer.

Senator BRANDIS—Why was this done?

Mr Harriott—My understanding is that following the announcement of the proposed military court and that the magistrates court would remain, there were also some issues raised by the Australian National Audit Office. There was an agreement made between the courts that we would transfer the funding back at the earliest opportunity. Depending on the passage of future legislation, there will be a transfer between the courts,

depending on the final outcome under the FMA Act. So it will be agreed between the CFOs. But it is basically reverting to the position that existed before, then seeing what happens in terms of the passage of legislation. Depending on the outcome of that, then there would be some further transfers. You are absolutely correct. This is no new money.

Senator BRANDIS—I must say—and this is absolutely no criticism of you, Mr Foster, because you are not the author of these mistakes—it does seem like there is an enormous amount of confusion here about the direction in which this proposed integration will go, and I cannot remember how many different goes at it this government has had. I understand that the Lane and Morrison decision caused some reconsideration of the appropriate structure. These are post Lane and Morrison decisions, are they, Mr Harriott. Lane and Morrison being the High Court decision that struck down the Military Court and caused a rethink about the restructure of the other federal courts.

Mr Harriott—Senator, I am aware of that particular case. This was mainly in respect of concerns or issues raised by the Australian National Audit Office.

Senator BRANDIS—I see.

Mr Harriott—The decision was—and that was agreed with the department of finance, their accounting policy and their technical people and also the department—that we would transfer the funding back.

Senator BRANDIS—You spoke of an agreement between the courts. Can we have a copy of that, please?

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

Senator BRANDIS—Is the substance of the agreement to mandate the transfer of these funds or give effect to the transfer of these funds?

Mr Harriott—Yes, there were costing agreements. There is a standard department of finance costing template that was agreed at the time for the shift of the resources.

Senator BRANDIS—So you will produce that agreement?

Mr Harriott—Yes.

Senator BRANDIS—Thank you.

Mr R Foster—I now have the information that Senator Brandis was asking for about retirements and appointments in the Family Court. Since December 2009 there have been six retirements—Justices Jordan, Waddy, Warnick, Flohm, Brown and Boland—and five appointments: Justices Cleary, Ainslie-Wallace, Loughnan, Johnston and Forrest.

Senator BRANDIS—I must say that my recollection of earlier estimates is asking about the replacement of Family Court judges and your evidence being that they had not been replaced. I surmised on the basis of what you told the committee that that was an expectation of the integration of the courts. Do I surmise now that the replacement of Family Court judges, rather than allowing their positions to remain vacant, reflects at least a different administrative philosophy when it comes to the proposed integration?

Mr R Foster—I am not sure that is the answer. Certainly in relation to Justices Cohen and Rose, who indicated he will retire at the end of this financial year, that money has been taken out of the forward estimates. Justice Cohen I think retires next week and Justice Rose—it is not in these figures because it has not happened yet—retires in the middle of the year. For those two judges the money has already been taken out of the forward estimates. They will not be replaced.

Senator BRANDIS—So they will not be replaced?

Mr R Foster—No. I did not actually say anything beyond that.

Senator PRATT—I have some questions about trials being conducted in the Federal Magistrates Court. I understand the Fair Work pilot is taking place within the Coffs Harbour circuit.

Mr Agnew—There is a proposal for a Fair Work pilot to commence in the Coffs Harbour circuit. I think the first list date for the pilot is 11 March.

Senator PRATT—So it will begin proceedings then?

Mr Agnew—That is correct.

Senator PRATT—If the pilot is successful, are there plans in place for it to be expanded more broadly or will that depend on the outcome of the pilot?

Mr Agnew—It will probably depend on the outcome of the pilot and our capability to accept the matters more broadly. The pilot in Coffs Harbour will give us a sense of the workload at least.

Senator PRATT—I understand the Dandenong project has some relationships with the Victorian Family Pathways Network and some Family Relationship Centres. Can you tell me what is at the core of that trial?

Mr Agnew—The Dandenong project encapsulates a range of measures we are trialling in Dandenong. One of those measures is working closely with the Family Relationship Centres and Pathways Victoria. The pilot started early last year and we are currently in the process of evaluating that pilot.

Senator PRATT—What are you looking for in the evaluation? What will be the indicators of success?

Mr Agnew—I think there will be a range of indicators. We are certainly looking for parties to be able to resolve their matters at an earlier stage in proceedings. That is why we are working closely with the relationship centres and Pathways Victoria.

Senator PRATT—Is there any assessment at this stage of how that project impacted on the court's workload?

Mr Agnew—No, we are in the process of conducting that evaluation.

Senator PRATT—That will include an evaluation of the outcomes for litigants as well, I would imagine.

Mr Agnew—All aspects of the project.

CHAIR—Those are all the questions we have for you and your colleagues from the Family Court and the Federal Magistrates Court this afternoon. Thanks very much for your cooperation. I will now ask representatives from the Federal Court to please come forward.

[2.46 pm]

Federal Court of Australia

CHAIR—Do you have an opening statement for us?

Mr Soden—No.

CHAIR—Then we will move to questions.

Senator BRANDIS—What is the current number of judges?

Mr Soden—Forty-five.

Senator BRANDIS—That has not changed, has it?

Mr Soden—Not in recent times, no.

Senator BRANDIS—There is really only one issue I wanted to explore with you lightly. Has the Federal Court been consulted by the department in relation to proposals for the restructuring of the federal judiciary? I have particularly in mind the issue of military justice.

Mr Soden—In relation to military justice, yes there have been discussions between the administration of our court and the Attorney-General's Department over some months now.

Senator BRANDIS—Can you give us a little more fully a description of the nature of those discussions?

Mr Soden—I think many of those questions could be answered by the department in detail.

Senator BRANDIS—I will ask the department, but I thought I would give you ago.

Mr Soden—From our perspective, the issues concern the governance structure and how it would be administered.

Senator BRANDIS—Does the Federal Court have a view as to what, if any, its role should be in relation to any restructuring of the federal judiciary arising in particular from *Lane v Morrison*.

Mr Soden—Yes, we do. I do not know whether our view has ever been expressed publicly, but I think I can summarise it by saying it is a similar view to the one we expressed about how we would be involved with the Federal Magistrates Court. Typically, I think we have said that a military court should be a chapter III court. It should be a self-administering court, but the Federal Court is happy to administer it.

Senator BRANDIS—So it is the Federal Court's view that when there is a new military court it should be a standalone court and not a division of the Federal Court?

Mr Soden—Yes, that has been our view.

Senator BRANDIS—But, nevertheless, you would be prepared to assist with some administrative arrangements?

Mr Soden—That is the view we have expressed, yes.

Senator BRANDIS—Apart from what you just said now on the public record, where would we look to find the most developed and recent expression of that position? Is there a document, for example, or a letter to the secretary of the department? Which document distils your position best?

Mr Soden—I hesitate to answer that, because I do not think there is an actual document in existence from the Federal Court to the department. I think that our view, which has been expressed in discussions and meetings, may well be the view that has been picked up in the policy development context. I just cannot recall a document that exists from our court to the department expressing in particular that view.

Senator BRANDIS—You just want to be left in splendid isolation.

Mr Soden—I would not go that far, Senator.

Senator BRANDIS—Some of the members of your court would.

Mr Soden—There would be others in our organisation that might express that view.

Senator BRANDIS—I want to ask you about pressures on the court, in particular with some of the very long pieces of commercial litigation that some of your judges have been running. I read with interest the characteristically candid and blunt views of the chief justice on these matters, in his interview in the *Financial Review*. Has the court developed a policy or a paper in relation in particular to costs associated with, and the burdens upon the court of, long-running commercial cases?

Mr Soden—Not specifically. Our workload varies enormously in complexity and jurisdiction and issues—from single-party cases involving bankruptcy to huge class actions to native title to huge corporations law disputes. The subject of the management of the court's workload in all those areas is a matter that is always on the agenda. There has not been, in recent times, specific attention to what you describe as long cases, because there are lots of long cases all the time.

Senator BRANDIS—The chief justice expressed a number of views in his *Financial Review* interview, including about class actions, litigation funders and a miscellany of other topics. I take it those were his own views, not the views necessarily of the court. I am not saying they were not shared by the court, but that was not a profession of the court's corporate view, was it?

Mr Soden—No. I think he would want me to say they were definitely his views.

Senator BRANDIS—That is all I have for you, Mr Soden.

Senator FURNER—In relation to the Native Title Act and, in particular, the Native Title Amendment Act 2009, I understand there have been some processes to make it broader, more flexible and quicker in terms of negotiated settlements to the native title claims. Would you be able to provide some feedback on how that is going in respect of those particular cases?

Mr Soden—There have been two major initiatives by the court following those amendments which gave the court the clear authority for the responsibility of management of all native title cases. The first was the establishment, after wide consultation with applicants, respondents, governments and the tribunal of a priority list of matters that the court would focus upon. It varies in numbers from state to state. We indicated when we published that list that we would try and resolve all of those matters within two years of the creation of the list. We are having reasonable success in getting settlements, withdrawals and refilings with amended applications. I will not go into the actual details, with the numbers, but that process has brought to bear, from our perspective, a real focus on the parties involved. They know which ones we are focusing on. There can be a coordination of effort, and there have been some substantial settlements in cases that were lingering for a long time, we believe as a result of the creation of the priority list and the focus of attention by us on matters in that list.

The second initiative which has worked in a complementary way to that process has been the creation of a list of specialist mediators upon which the court can call in particular cases. That has been done quite sparingly. It is done in conjunction with the management process undertaken by the judge. But particularly in two recent examples it has been extremely successful, producing the resolution of matters that have been lingering for 10 to 12 years.

Senator FURNER—You are soon to publish a priority list of native title cases. How far off are you from that?

Mr Soden—It is actually published now, Senator. If you go to our website, you will see three iterations of that current list, the movements in the list and the original list. So it shows over time what has occurred. The other facility is that if you just click on the name of the case it will take you to our computer records which show you the status of the matter, who is involved, the orders made et cetera, so it is quite an interactive process.

Senator FURNER—Would you be familiar with any of those in Queensland in particular?

Mr Soden—I prefer to take that on notice. It all depends what you want to know about Queensland.

Senator FURNER—In particular the cape. I have an interest in what sorts of cases might be identified up in that particular region.

Mr Soden—I do not know, off the top of my head, which of the matters in the cape are on the priority list. But if you go to our website on the priority list, all the names of the cases are there and you would probably recognise the names of the people involved in those cases. If you would like, I can take on notice that particular issue—

Senator FURNER—I can do that, thank you.

Mr Soden—It might be quicker for you to go to the website. You will find it very helpful.

Senator PRATT—I want to ask about the access and fairness survey.

Mr Soden—Oh, yes.

Senator PRATT—As I understand it, similar surveys are done overseas and the practice has been adopted here and that it provides rankings for the court, from 1 to 5, along the lines of fairness and access. I think your report highlights that on average across Australia it is 4.41 for access and 4.47 for fairness, which seems pretty good. Did you survey all registries? If that is an average, from that survey have you gleaned any findings which show that some have not performed as well as others? I would be interested in your comments about that survey as a whole and what you have learned from it.

Mr Soden—To put a little context around all that for everyone's benefit, that survey originated out of a concept called *Excellence in court performance*, which came out of the United States. It is a survey looking at issues of excellence, components of which are perceptions of the users of access and fairness. Any score in any of the categories over 4 is considered an excellent result.

Senator PRATT—Yes, it did seem that way.

Mr Soden—There were some slight variations in those results. But one of the things I like to talk about is that that survey, which was given to anyone coming into the courthouse and into any one of our courthouses across the country, actually asked questions about how the people rated the fairness of the judge. We thought that was a fairly important thing. It was probably one of the first times that kind of thing has been done in Australia. Very pleasingly, of course, they were rated as being very fair, which was a good result.

Senator PRATT—That is very good. Is there any other public information available about that survey, or just what is in the report?

Mr Soden—I am not sure. I think we put as much as we thought we could in the annual report without overburdening the annual report. There might be some more information. I think that on the website there is a sample of the form that was used. If there is not, there will be one there tomorrow.

[2.59 pm]

CHAIR—We are now going back to the Attorney-General's Department, program 1.1. Senator Heffernan, I think that will give you a chance to ask your questions.

Senator HEFFERNAN—I just want to ask a couple of questions about where we are up to with the progress towards the creation of a federal judicial commission, given there was an inquiry that recommended this and obviously there has been a lot of good work done in places like the Judicial Commission of New South Wales. All human endeavour has some human failure and we do not seem to have a way of dealing with it in the federal jurisdiction.

Mr Wilkins—What was your question, Senator?

Senator HEFFERNAN—Where are we up to with progress towards the creation of a federal judicial commission?

Mr Wilkins—As you are probably aware, the Attorney-General has been seeking to get agreement from the states and territories on a national approach to judicial complaints handling. He will be having further discussions in New Zealand next weekend around the possible creation of a national judicial complaints handling mechanism. I think if we—

Senator HEFFERNAN—Bear in mind that a judicial commission is much more complex than complaints. You would be aware that the Judicial Commission of New South Wales deals with everything from complaints to guidance for sentencing. It provides a whole range of very valuable services to the legal profession. Are we saying that we are not going down that path?

Mr Wilkins—No, we are not saying that at this stage. The key thing is about judicial complaints and a lot of the other functions of the Judicial Commission of New South Wales are properly handled by the Judicial College, which was set up by the previous government. A lot of the issues around education and comparison on sentencing and things like that are dealt with by the National Judicial College of Australia. So it may not be necessary to duplicate that. The key issue is judicial complaints handling, as I understand it, and how that is to be dealt with. You will be aware that most pieces of legislation, including section 72 of the Constitution, provide for the manner in which judges may be removed—

Senator HEFFERNAN—Which is the convening of both houses of parliament.

Mr Wilkins—Exactly.

Senator HEFFERNAN—Which we have discussed many times.

Mr Wilkins—I am just in the middle of answering your question actually. The issue will be: how does the parliament inform itself around that and maybe the role in relation to handling cases which fall short of necessarily dismissing a judge, as the Judicial Commission of New South Wales does, and maybe some other form of discipline or counselling et cetera. So, yes, the Attorney-General has made a number of proposals to the states and territories and he has been pushing this for some time. I think if we do not get some movement shortly on a national basis then we will go it alone at the Commonwealth level and it is a matter for the Attorney-General to formulate policy in discussion with his colleagues in cabinet then.

Senator HEFFERNAN—I have an instance in New South Wales where there was a very civilised process and a judge quietly retired. He has now come back as an acting judge in a different jurisdiction. This particular judge, by the way, in police documents was alleged to have picked up boys in the toilets opposite Marcellin College in Randwick. He subsequently was arrested, but that fell to pieces. The last case he heard that I know of was a case against a father in suppressed court proceedings where the father was alleged to have been assaulting a step-daughter, including the insertion of a rifle barrel. The judge found this person guilty, gave them a non-custodial sentence and allowed them back into the family home. That judge has now moved on and is acting as a judge in a different state. I think we need a way to deal with these processes and I think the civilised way to do it is the way the Judicial Commission of New South Wales dealt with this particular person in the first instance. We do not have the process federally. Do you envisage that we would be able to deal with acting judges that go into different jurisdictions under the federal jurisdiction?

CHAIR—Mr Wilkins, I have to interrupt here. I just want to be very careful about some of those examples in relation to whether or not we are getting into some sort of sub judice area here. I think your response should be carefully constructed and crafted and I know you will attempt to do so.

Mr Wilkins—I will not say anything more than that you have raised certain policy issues. The policy issues you raised would certainly be taken into account. I am sure it is a matter of policy for the minister to consider what the ambit of a judicial complaints body would be, and I am sure that the policy issues, as opposed to the specific details in each of the policy issues, are things that will be taken into account.

Senator HEFFERNAN—So the answer is that it is still progressing; a process in the federal jurisdiction which allows a civilised process without some sort of public ambush, and which also does away with the need to convene both houses of parliament to vote when there is no process to convene both houses of parliament under the present system, and which deals with human failure in the federal judiciary.

Mr Wilkins—Not quite. I think you misunderstand what the Judicial Commission of New South Wales actually does.

Senator HEFFERNAN—I can assure you that I am fully acquainted, having been there for four or five hours.

Mr Wilkins—And I am fully acquainted, having set it up when I was working in New South Wales. It actually makes recommendations to the parliament. The parliament still has to remove judges of the Supreme Court of New South Wales.

Senator HEFFERNAN—With great respect, provided that when the tap on the shoulder is made that the judge objects—that is the next process. Some people just quietly get the message and go.

Mr Wilkins—That may be the case. All I am saying is that the formal process of removing a judge in New South Wales is still the same as it always was, and it will be in the federal sphere as well. No matter what judicial complaints system you set up, the difference would be, as in New South Wales, that there would be some way of dealing with complaints and, if you like, advising the parliament if it becomes necessary.

Senator HEFFERNAN—In the unlikely event that the judge does not take the advice, yes.

Senator BARNETT—Mr Wilkins, you were going to get back to me on the High Court case on chaplaincy and provide the dates?

Mr Wilkins—We do not have it yet. I think you wanted to know the dates for intervention by states and territories. There would have been a formal notice from the High Court.

Senator BARNETT—Yes. I wanted to know when the Commonwealth had forwarded the letter of request or invitation to the states and territories to join and intervene in the High Court case regarding chaplaincy.

Mr Wilkins—That is not the way it works. There is actually a formal process whereby the court allows the joining of other states and territories where a constitutional matter is raised. It is not a matter for the Commonwealth. But we will find out.

Senator BARNETT—Perhaps you can advise us of the date when that occurred. I think you were also going to get back to me on the cost of media monitoring for the minister. We have the cost for the department at \$268,000 for the last financial year and through to January 2011 at \$237,000.

Mr Wilkins—We have taken that on notice.

Senator BARNETT—So you do not have that figure with you?

Mr Wilkins—No.

Senator BARNETT—Can we get that today?

Ms Leon—Senator, returning to your query about the chaplaincy case, 78B notices were filed on 21 December 2010.

Senator BARNETT—In plain English terms, what is a 78B notice?

Ms Leon—A 78B notice is the notice issued to all states and territories when a constitutional issue arises in court proceedings, inviting states that wish to intervene to do so.

Senator BARNETT—That was 21 December?

Ms Leon—That is correct.

Senator BARNETT—Do you know the date that Queensland intervened?

Ms Leon—I do not, but I could find out for you.

Senator BARNETT—Are you aware of any other state or territory planning to intervene?

Ms Leon—So far only Queensland has intervened.

Senator BARNETT—But are you aware of any other state or territory that is planning to intervene?

Ms Leon—I am not. In relation to media monitoring we are still just calculating what the bill for that ministerial usage is, but I am still hopeful that we will be able to get that to you before the end of the hearing.

Senator TROOD—My questions are about inter-country adoption. I want to follow up some questions I asked in the estimates in October. The first question relates to the consequences of opening our new embassy in Addis Ababa. My understanding is that most of the issues with which I had some interest on the last occasion were being dealt with through our embassy in Nairobi. Can I clarify whether or not these matters are now under the carriage of the embassy in Addis Ababa since it has opened?

Mr Wilkins—They are now being handled by the embassy in Addis Ababa.

Senator TROOD—Can you tell me whether or not you have an officer there at all?

Ms Kelly—Not permanently, but I have been there and a number of officers have been there recently.

Senator TROOD—So your department does not have an officer?

Mr Wilkins—No, we do not have officers in any embassies. It is a question of expense, as you would appreciate.

Senator TROOD—I understand that. There is the matter of the memorandum of understanding. My understanding of the matter is that a delegation from your department visited Addis Ababa in December.

Mr Wilkins—That is right.

Senator TROOD—How many officers were on that trip?

Mr Wilkins—I think there was a representative from New South Wales and two from my department.

Senator TROOD—Was the memorandum of understanding discussed during the course of that visit?

Mr Wilkins—My understanding is that it was, yes.

Senator TROOD—Can you tell me what the results of those discussions were? This has been a matter on the table for quite a long period of time, I think you will recognise.

Mr Wilkins—Yes.

Ms Kelly—I understand that a draft memorandum of understanding was provided to the Ethiopian authorities and is under consideration.

Senator TROOD—That is my understanding as well, but that is a draft memorandum that was provided years ago, I think.

Ms Kelly—I understand that it was a new draft document that had only been provided to them at that visit in December last year.

Senator TROOD—So was this a new document that the Attorney-General's Department had drafted?

Ms Kelly—That is my understanding.

Senator TROOD—Did the Ethiopian authorities have notice of that memorandum prior to the arrival of the delegation?

Ms Kelly—I understand that it reflected discussions that we had been having with them on an ongoing basis.

Senator TROOD—And have the Ethiopian authorities accepted our desire to have a new memorandum and have they understood the reasons for that?

Mr Wilkins—I was actually in Addis Ababa on private business at the time that they were meeting and had the opportunity to talk to the ambassador and a number of people who were involved in this. It is quite difficult to get engagement at the moment from the authorities in the Ethiopian government. They had a great deal of difficulty getting any sort of real traction. Despite the best efforts of the ambassador and a variety of people to try to get in front of the key ministers who are responsible for this, it was very difficult to get visits. I met with the chief judge there about federal and family court matters, and they admitted it was quite difficult to get traction.

So there were a number of discussions between my officers and various levels of people in the Ethiopian government, but it is fair to say that the discussions were relatively inconclusive. My officers were getting some mixed messages about the way in which they would prefer us to structure our relationships with Ethiopia. So it is not a simple matter.

I think that the end result is that we do have a view. It is now a better view after having talked to them about how we might get through this and come up with a solution. For example, they did not particularly want us to have a separate agent there retained for our purposes. If we went through a certain form of structuring that relationship they would find it more acceptable. There were a number of quite difficult issues to work our way through in that sense. We are hopeful that we will conclude and, as I said to you before, we are trying to get a concluded view but I would not underestimate some of the sheer difficulties of negotiating on this front. It is not like going out and buying a car down Parramatta Road or something.

Senator TROOD—Knowing something of Ethiopia, I have some sympathy for the challenges the department faces in trying to engage effectively with the Ethiopian government. I acknowledge that. But also,

I think it is fair to say, this matter has been on the table for a long period of time and there are many frustrated people who believe that they were on the verge of or about to be able to adopt from Ethiopia. One of the frustrations they have is that they are not getting a great deal of information about the difficulties you are facing as well as, of course, the delays. I am seeking to gain as much information as possible about the difficulties that you are confronting.

Mr Wilkins—Mr Minogue has just been giving me some additional information. The way it was heading when I was there seems to be the most likely solution which was that they do not actually want a new MOU although they had previously said they did. I think, now, they want a revised MOU, an updated MOU. Anyway, we can do that. They would prefer to not have us retaining an agent. I think they simply want us to work through an agent. It is a bit smoke and mirrors.

Senator TROOD—I would be happy to hear from Mr Minogue on this subject.

Mr Minogue—You are right that there has been difficulty getting some traction and that has been a feature of the relationship over the last couple of years. There was also a change of government before the delegation went over in December. While there is still some flux, the minister that our delegation met with was interested in not a wholly new MOU arrangement, as Mr Wilkins said, which had been the tenor of discussion previously, but seemed to be more satisfied that progress could be achieved by updating the existing bilateral arrangement.

Senator TROOD—This is the 1994 agreement, is that right? So you are just revising that in some fashion.

Mr Minogue—Yes, to bring it up to date to reflect what is actually happening now. While officers were there, there was discussion about a new Australian representative to manage the program. There were quite positive discussions with potential candidates for that role. We have retained a program manager because we still have the current Australian representative discharging their functions. The government expects to be in a position to say something quite positive shortly. I appreciate your comment about families being quite frustrated about the lack of information but, I think from our perspective, it is quite important that announcements are not made prematurely given the expectation that people place on the information. It is a difficult balance to make sure that the information that goes out is accurate and that people can act and rely on it as opposed to saying things too soon to give people comfort, which might then lead to disappointment.

Senator TROOD—Mr Minogue, you are congenitally cautious, and that may be no bad thing, but at the very least you might perhaps take into confidence the president of the association or one of the members of the executive with whom you might share some of these matters which you do not necessarily want in the public domain. I think that in many ways would satisfy some of the concerns. There is a desperate want of information here, and I think the people who have been waiting a long period of time are entitled to have at least some of that information provided to them.

Mr Wilkins—Hopefully we will be in a position to give them that information soon. As I explained to you last time we spoke, we are doing our best. As I said, I was there. I spent at least two days of my private leave trying to meet a minister who was unavailable despite the best endeavours of the ambassador over there and, as I said, I saw a judge and met our putative Australian representative who will be working with us over there. It is a very frustrating process. All I can say is: we will continue to do our best.

Senator TROOD—Just let me understand this, Mr Wilkins. I thought you said that the Ethiopian authorities were not particularly enthusiastic about us having an Australian representative.

Mr Wilkins—They are not particularly enthusiastic about us getting some new representative in there; that is right.

Senator TROOD—I see. So they are happy for us to have an Australian representative but they wish us to continue with the existing representative. Is that right?

Mr Wilkins—No, not the existing one. It is a little unclear exactly what structure they want, but they are happy for us to not—if you like—work through a third agency or an NGO but rather to have somebody as sort of our ambassador or representative there. There is a subtlety about this, but I do not think they want us to work through an NGO; they want us to have a direct relationship with them but have somebody on the ground that can actually—

Senator TROOD—I am usually reasonably competent at grasping nuance. This is slightly elusive at the moment. Do they mean dealing directly with the Ethiopian government? Is that it?

Mr Wilkins—We are still trying to come to grips with this. I think that is what they mean. Other governments sometimes, I think, act through NGOs, and the NGOs do business for government there. That is what we had been looking at doing, replicating what a number of other countries had been doing, but it appears that that is not, in our case, what they would like to see, for reasons best known to them. So we have been trying to reconfigure our relationship with them and the role that our ambassador or agent would play. We are basically going to use an NGO there but as an agent, as a sort of go-between, rather than as somebody who, if you like, acts on our behalf for all purposes.

Senator TROOD—Does that mean that that person or NGO agency will have some kind of formal arrangement with the Australian government?

Mr Wilkins—Yes. If you want to think of it this way, the way I try to think of it—but I am not sure that is the way the Ethiopians necessarily think of it—is that the person is more an agent than an outsourcing. I think other countries outsource it, in a sense, to NGOs. We are getting the message that they want somebody who is an ambassador or an agent on behalf of the Australian government rather than—

Senator TROOD—So do we have somebody who can fulfil that role?

Mr Wilkins—Yes, we do, apparently. I met a person who seemed to me okay who works at the moment for, I think, a US NGO in Ethiopia. He seemed like a fairly solid sort of character. I only met him briefly, but my people had extensive discussions with him, and I think we were thinking of using that individual.

Senator TROOD—Is that person now able to act on our behalf to further these matters?

Mr Wilkins—I am not sure whether we have finally concluded an arrangement with them; that is the only thing. I would have to take that on notice. But I thought we were getting there.

Senator TROOD—Perhaps you would take on notice—

Mr Wilkins—Sure.

Senator TROOD—whether or not an arrangement has been concluded between that person—are you able to tell us who that person is or the organisation with which they are connected?

Mr Wilkins—I might be able to. Can I take that on notice too?

Senator TROOD—Yes.

Mr Wilkins—There is a name of a person. I just do not want to mislead.

Senator TROOD—I am happy for you take that on notice.

Mr Wilkins—Under the circumstances, I think that would be a very bad thing to do.

Senator TROOD—I am happy for you to take that on notice and, simultaneously, whether or not you are now in a position to have that person act as we would hope they would be able to do on the subject.

Mr Wilkins—Yes, okay.

Senator TROOD—There is just one other matter. Has any progress been made with regard to orphanages with which we might deal?

Mr Wilkins—I personally do not have the answer to that. I might take it on notice. I think that would be better. I am not across that one.

Ms Kelly—Senator, I can inform you that we have made good progress in identifying two new potential orphanages to work with, but we are not in a position to name those at this stage. But we have made good progress in identifying two new potential partner orphanages.

Senator TROOD—Ms Kelly, you are probably familiar with a letter I received from the Attorney-General—in fact, just this month—which provided me with some information about this matter, in which he referred to orphanages. But his comments were not terribly encouraging because he said that the Ethiopian government had not granted one of the potential orphanages a licence, and the other had had its licence cancelled.

Ms Kelly—Those are not the orphanages that we are referring to. These are other than those two.

Senator TROOD—I am very encouraged by that, Ms Kelly. So there are two other orphanages with whom you are dealing; is that right?

Ms Kelly—That is correct.

Senator TROOD—And is it fair to say that they are actually looking better than the two mentioned by the Attorney in his letter to me?

Ms Kelly—That is my understanding.

Senator TROOD—How much progress has been made in relation to these two new orphanages?

Ms Kelly—As I said, we are confident with what has happened so far but we are not a position to give any time frames or identify those.

Senator TROOD—Why is that?

Mr Wilkins—Can I just say that, from talking to Ethiopian ministers, not the ones concerned with this but more generally around interstate issues et cetera, it would be right to say that they do not think it is a good idea to have widespread adoptions. They think that Ethiopians should look after their own children. So, within the administration, there is not a lot—I think I would say—of support for intercountry adoption. So you are dealing with an administration—and it is understandable, I guess—which says, ‘We should be looking after our own kids.’ So you will find, I think, that they have within the administration of things like orphanages et cetera a type of tension as well, because they have a significant number of children in orphanages and, as you would appreciate, there are things like HIV et cetera which leave kids in difficult circumstances. They seem to have a sort of a tension between, on the one hand, not adequately caring for them—so they are not really encouraging at an official level this type of intercountry adoption. On the other hand, the orphanages seem to have difficulty in getting proper recognition and licensing as well. So within Ethiopian policy there are certain contradictions and tensions. I would be loath to predict with any certainty that we will find orphanages that can accommodate, but there is no doubt that there are some opportunities there. Certainly the people who have been over there have been pursuing it, as has the embassy there. I just do not want to mislead the Senate, and I do not think you should underestimate the difficulties of making this work.

Senator TROOD—That is not an unfamiliar theme in relation to countries with whom we have intercountry adoption. I have some experience of this, and I am very conscious that there are different views about these things in countries from which Australians have previously received adoptions. But we are dealing with this problem, and we are dealing with it on the assumption that at some point the Ethiopian authorities are prepared to deal with Australia in relation to intercountry adoption?

Mr Wilkins—Yes.

Senator TROOD—On that assumption I think, if it turns out that that is not the case, obviously we would all be better off if we knew that, but if we still believe that the Ethiopian government is prepared to engage in intercountry adoption with Australia then I think we need to pursue as vigorously as we can the opportunities that exist.

Mr Wilkins—I think we are. The fact that I have taken time to go and talk to these people, as well as officers of my department, I think shows that we are serious about this thing.

Senator TROOD—I am not doubting certainly your own conscientious attention to this matter, given that you were on your vacation. Ms Kelly, can I ask you about the orphanages that you are looking at—the two new ones. Is the lack of progress, or the speed with which this matter is proceeding, related to matters of checking on their bona fides or their integrity, or are we just waiting for something to happen perhaps inside the Ethiopian government? In other words, are we undertaking probity checks of some kind?

Ms Kelly—It is my understanding all of those things would be occurring. Perhaps one of the more significant things is that, as Mr Wilkins has indicated, we are in the process of appointing a new representative in Ethiopia. Certainly we would be expecting, early upon the appointment of that representative, that they would progress the identification of new partner orphanages.

Senator TROOD—Do you know whether the new representative has knowledge of these orphanages and has worked with them previously? Is there a working relationship with them?

Ms Kelly—I understand that is the case, but I do not have any further detail. I would hope as soon as that representative is in place then that will begin to happen.

Senator TROOD—At this stage can you give me any time in relation to the conclusion of the appointment of the new representative?

Ms Kelly—I can tell you that the existing representative's term concludes on 1 April, allowing that person to conclude their current workload in an orderly manner, so we would be hopeful that it would be around that period that we would be able to appoint the new Australian representative.

Senator TROOD—Am I right in assuming, since the 1994 agreement remains on foot—albeit that it is intended it be amended in some fashion or other—that that constitutes the foundation upon which the relationship continues?

Ms Kelly—That is the case.

Senator TROOD—Have you identified the kinds of changes which need to be undertaken or made to the 1994 agreement?

Ms Kelly—I understand that is the case, but I do not have any detail on that. We could perhaps come back to you at a later time.

Senator TROOD—Perhaps you would do that and perhaps you could identify for me the areas of the agreement which may need amendment or are under consideration for change. Is that possible?

Ms Kelly—Yes.

Mr Wilkins—Chair, we are taking a number of points that have been made on notice and we might be able to come back to you later in the day with some of those details.

CHAIR—All right. We will break now for afternoon tea.

Proceedings suspended from 3.33 pm to 3.47 pm

CHAIR—Mr Wilkins, let us start, because I think we have a fair bit to do in 1.2. The game plan is that I am going to try and finish 1.1 with questions from Senator Bernardi and Senator Pratt—hopefully that is it—and then I am going to go to 1.2. Senator Furner has a commitment from 4.30 pm right through to eight o'clock, so I am going to go to Senator Furner first when we go to 1.2. Senator Bernardi, we will start with you.

Senator BERNARDI—Mr Wilkins, I have some questions about intellectual property and compensation with respect to the plain paper packaging of cigarettes. I am referring to the former Prime Minister's announcement in April 2010, introducing legislation to mandate plain paper packaging of tobacco products. In a doorstep interview of the former Prime Minister and Minister Roxon, the minister stated:

... we're very confident that we can take this action.

The Prime Minister said:

... the Government will not be paying any compensation to any tobacco company anywhere ...

A media release for a recent report by the Institute of Public Affairs, IPA, entitled *Governing in ignorance: Australian governments legislating, without understanding, intellectual property*, made this claim:

Stripping intellectual property from products is akin to stripping someone of their physical property and requires compensation under the Commonwealth Constitution and our free trade agreements.

IPA calculations show that the taxpayer compensation could amount to as much as \$357 million to film companies annually, and \$3 billion for tobacco companies annually because of these laws.

What advice has the Attorney-General's Department received in relation to the federal government's exposure to compensation payments to companies arising out of the introduction of the so-called plain paper packaging proposal?

Mr Wilkins—You are probably better off asking the health department. They have engaged the Australian Government Solicitor. They are looking, presumably, at the very sorts of issues that you have raised to see if there is anything in that argument. It is not something that this department has been involved in.

Senator BERNARDI—So there has been no advice provided to you? Can *Hansard* record a long pause?

Mr Wilkins—One aspect on which we have been asked to advise is the WTO aspect. My office has explained to me that it is perfectly feasible to have a system design that would meet WTO obligations. That is the size of the advice that we are giving.

Senator BERNARDI—Has your department sought any external advice in regard to this?

Mr Wilkins—No. We are the external advice—the Office of International Law.

Senator BERNARDI—Okay. But no advice has been provided in respect to compensation or potential compensation?

Mr Wilkins—Not to my knowledge.

Senator BERNARDI—Would you expect the health department, if it is correct that they have responsibility in this particular area, to have obtained advice prior to making such statements?

Mr Wilkins—I would have thought that it would have been prudent to canvass the scheme that they have in mind with the AGS to see if there are any legal issues in that. On the particular point that you raise, personally speaking and off the top of my head, I would be surprised if there was an argument of that type. It seems like a long bow to me to use the Constitution just compensation clause in this regard. It would raise a lot of issues about a lot of schemes of regulation. Nevertheless, it is a matter for the health department, I suspect. You should ask them.

Senator BERNARDI—I will pursue it with them. Thank you.

Senator PRATT—I want to return briefly to the question of intercountry adoption and Ethiopia. As I understand, that program was withdrawn for a range of reasons, one of which was a concern about whether the program was meeting the Hague convention. It seems that currently the program is being actively renegotiated and I want to know whether questions pertaining to the things within the Hague convention are resolved—and we are talking about resolving additional matters—or whether any arrangements that would meet the requirements of the convention are already assured.

Ms Kelly—Absolutely. Australia only conducts intercountry adoption in accordance with the Hague convention, even when it is conducting those relationships with a non-Hague country. If the program is re-established, it will be re-established in accordance with the Hague convention obligations.

Senator PRATT—Are those issues resolved already?

Ms Kelly—The way the program is being re-established will be in accordance with the convention. So it follows that those issues will be resolved.

Senator PRATT—I am not sure that that quite answers my question. It does make it sound as though whether any future program would meet the convention is still being actively discussed or debated.

Ms Kelly—The program will only be conducted if it meets the convention obligations.

Senator PRATT—I understand that. Do the matters you are discussing in order that a future program might proceed pertain to issues within the convention actively at the moment or are those issues already resolved?

Ms Kelly—We are exploring relationships with new agencies. So in establishing those relationships we would obviously be mindful that they embody all of the obligations that the convention requires. So going forward the relationships we are establishing now in order to get the program moving again will reflect the Hague convention obligations.

Senator PRATT—That answers my question. As I understood, there were some concerns about the initial providers of children and whether they were meeting the convention. So for any new relationships we would need to seek new assurances that they were being conducted according to the convention.

Ms Kelly—Absolutely.

Senator PRATT—Thank you. That does answer my question. My next question relates to legal services purchasing. I understand the Attorney-General held some kind of roundtable a week ago or so at which one of the proposals was possibly abolishing legal service provider panels run within agencies and that the government is now looking towards centralising some of the provision of those services. Could you outline the structure of what is proposed and what savings might be expected from that proposal?

Mr Wilkins—It would be putting it too strongly to say that this is a hard and fast proposal. It is an idea which certainly has some appeal to the department and to the Department of Finance and Deregulation for trying to get rid of the considerable amount of red tape involved in the procurement of legal services through the setting up of multiple panels around the public service and looking not so much at a central panel as at a multi-use list.

Multi-use lists are used in relation to procurement in quite a number of areas including advertising and IT—I could be wrong about that. They enable agencies to identify providers of services—their expertise, that they have prequalified, that they meet the requirements of the department of finance, generally probity and integrity and come with a clean bill of health and good references. They can have some form of price disclosure and can lead to the government using the weight of its purchasing power to get better deals. Multi-use lists also give greater flexibility ultimately as to the way in which you use them.

You can use a multi-use list depending on the complexity or the type of the matter that you have in mind. You can go out for expressions of interest. You can buy, in some cases, directly off the list. You could even form, in some cases, your own panel if you wanted to, if you were using that type of service a lot. We think it has the advantage of cutting down the amount of red tape involved in procurement, providing greater flexibility to both legal service providers and departments. We think that ultimately savings in relation to the procurement of legal services rely on informed purchaser decisions—not so much on going through particular types of processes but rather understanding the service you are procuring and managing that appropriately. That is certainly what reports like the Krieger Blunn report have told us. So this is designed to do that, and it is in line, I think, with the government's general view that, if we can eliminate some of the internal red tape and free up the processes of government, that would be a good thing. That is roughly where we are up to. It will now be a matter, I guess, for the Attorney to consider and consult with his colleagues about. But that is what was discussed at that meeting.

Senator PRATT—Currently some providers of legal services would be putting their services forward to multiple departmental panels and the like, which does seem to be rather illogical. So thank you for explaining that to me, Mr Wilkins.

Senator BARNETT—On human trafficking, \$9.2 million was used to prevent trafficking last financial year, the 2009-10 year. I am checking the funds for this financial year and if they have been expended. Does the government support the 'Human Trafficking: the Unfair Trade' initiative, Don't Trade Lives, which was launched yesterday by World Vision? I commend World Vision on the launch and those that were present, including Minister Brendan O'Connor. Nine point two million dollars was expended last year. Can you confirm how much the funds for this year are and what they will be expended on?

Mr Wilkins—We will need to take that on notice.

Senator BARNETT—That is fine. Re constitutional issues, I want to draw your attention to evidence presented to this committee last night from the Department of Immigration and Citizenship regarding what I have referred to as a ban on Bibles at citizenship ceremonies. I find it quite disgraceful. It is political correctness gone mad. That is the way I see it, and I think many others do too. It is a current practice that is operating across Australia. Cities, local councils, community groups, NGOs and so on are involved.

Mr Wilkins—What is it?

Senator BARNETT—The Department of Immigration and Citizenship have advised that their interpretation of the code—

Mr Wilkins—Which code is this?

Senator BARNETT—The code for citizenship ceremonies. The question I want to ask you is: does that actually infringe on our Constitution—the right to free speech and the right to practise one's religion? We have freedom of religion, not freedom from religion, in this country.

The example I give you is that senators, when they are introduced and formally recognised in the Senate, receive a Bible. It is signed for and on behalf of the Governor-General of Australia. I have mine here. Obviously taxpayers' funds have been used to purchase this Bible. Other members of parliament use a holy book that is relevant to them—Josh Frydenberg, for example, with his Jewish background. I commend him and accept that, and he has received an appropriate holy book recognising his background. But we have all received this and it has been paid for with taxpayers' money. Now we have the Department of Immigration and Citizenship, in their wisdom, interpreting the code to say that it is inappropriate. My question to the Attorney-General's Department is: is that unconstitutional? Is that entirely inappropriate advice?

Mr Wilkins—The question would be better directed to the Department of Immigration and Citizenship. I assume you have asked them. Have you?

Senator BARNETT—I have, and I have asked the minister, Mr Bowen, to intervene. I have written to him twice, and he has refused to respond. I find that contemptuous. I am now asking the department, through your constitutional experts, whether it is in fact constitutional or in breach of the Constitution?

Mr Wilkins—If we were to advise, it would be to that department.

Senator BARNETT—Have you provided advice to that department?

Mr Wilkins—We do not provide legal advice to the Senate in these sorts of situations, particularly not off the top of my head.

Senator BARNETT—Could you take that on notice.

Mr Wilkins—I will take on notice your views, Senator, but quite frankly we are not going to put ourselves into the position where we can now be required to provide constitutional advice on a regular basis to a Senate committee.

Senator BARNETT—I am bringing it to your attention and perhaps, through the minister, to the Attorney-General's attention. I find this extremely concerning. It is a development that only occurred last night, and I draw it to your attention. Perhaps you could take it on notice as to whether the government can quickly—I hope immediately—intervene to set the record straight so that the current practice with respect to the provision of gifts such as holy books and Bibles, for example, at citizenship ceremonies can continue. I would ask the minister to take that on notice.

Senator Ludwig—I note your views and I will certainly seek the views of the Attorney-General.

Senator BARNETT—Thank you.

Senator BRANDIS—I have some questions. Mr Wilkins, I note that the department's expenditure on legal advice in 2009-10—\$12,851,432.29—represented a 21 per cent increase over 2008-09. Can you explain why the cost of legal services required by the department increased by 21 per cent in a year?

Mr Wilkins—I cannot off the top of my head, but I do know that a considerable amount of that was involved in our appearing on behalf of the Commonwealth in relation to the Victorian bushfires royal commission. So that required quite a lot of expenditure; we were there on a permanent basis and we made representations on behalf of the entire Commonwealth. But I cannot give you the actual details. That was \$2.2 million.

Senator BRANDIS—If you have a breakdown there, which Ms Kelly seems to be showing you, perhaps you could read it into the record.

Mr Wilkins—I do not think we have a complete breakdown.

Senator BRANDIS—If you have the main items, perhaps.

Mr Wilkins—Legal services expenditure for 2009-10 increased by \$3.5 million to a total of \$12.9 million, and \$2.2 million of that was as a result of the Victorian bushfires royal commission. The rest of that was simply a return to normal activity levels if you project backwards, I am informed. Sorry; we are anticipating that we will return to normal activity levels in—

Senator BRANDIS—Allowing for the fact that the Victorian bushfires royal commission may have been a special expense, that is still an increase of \$1.2 million, or about five per cent or more, on the previous financial year's figure. Given the government's commitment to rein in legal services, I just wonder why it is that the costs of the Attorney-General's department, who I imagine would have less need for external lawyers than any other department of the government, are inflated by so much.

Mr Wilkins—I will have to take the additional million dollars on notice and give you some breakdown of it, but it may well simply be that these things fluctuate from year to year and there was a lot more work involved. I cannot give you an answer off the top of my head.

Senator BRANDIS—All right. I see, as well, that the department spent \$1.7 million on consultants, half of which was spent on 11 ongoing consultancies and the other half of which, \$870,000, was spent on 31 new consultancies. I suppose \$870,000 is not a lot of money in the scheme of things—though, I guess, to this government, \$870 million would not seem like a lot of money in the scheme of things. But, notwithstanding that, 31 new consultancies in one year, when there are only 11 pre-existing consultancies, does seem a fairly substantial increase in the number of consultancies. Can you tell us what those were? I am not expecting you to be able to list all of them, but can you explain to us why the demand of the department for new consultancies expanded so massively?

Mr Wilkins—You said 11 ongoing consultancies—

Senator BRANDIS—Yes.

Mr Wilkins—but I am not sure that that is a massive expansion. We could go through them. I am not quite sure how to approach your question because I am sure that there is a legitimate case to be made out for all of these.

Senator BRANDIS—I think the problem, Mr Wilkins, is that there is always a legitimate case to be made—or, at least, to be attempted—out of anything looked at in isolation. But when one sees, in aggregate, a very significant expansion in reliance upon a particular form of outlay, one wonders.

Mr Wilkins—I am not sure that it is an expansion.

Senator BRANDIS—I do not want to get bogged down in this, but let me give you an example. One of the consultancies for which KPMG were paid \$65,000 was some advice on a cost-effectiveness analysis of the national preventative mechanism in complying with the optimal protocol on the convention against torture project. I am just a little bit at a loss to see why it would be necessary to engage KPMG to advise you of how to comply with the Australian government's obligation not to engage in torture.

Mr Wilkins—We will go into this one, I think. While Mr Manning is coming here, can I just indicate that the expenditure on consultancies has actually gone down by almost a million dollars from the previous financial year to this financial year, and it declined between 2007 and 2008 once again. So it has gone down for the last three years. If you like to think of it that way, we are spending \$1.3 million or \$1.4 million less now than we were three years ago on consultancies. So I am not quite sure what the measure is.

Senator BRANDIS—As I said before, I do not think these things can be looked at in isolation.

Mr Wilkins—So it went from \$3.7 million in 2007-08 down to \$3.3 million in 2008-09, and down to \$2.4 million in 2009-10. In 2010-11 it has gone from \$2.4 million to \$2.6 million. So, if you look at these things, they bounce about—

Senator BRANDIS—That is fair enough.

Mr Wilkins—but certainly the trend is down.

Senator BRANDIS—Is the trend down, though, for the number of individual consultancies?

Mr Wilkins—I am not sure why the number of individual consultancies is material.

Senator BRANDIS—That is for me to decide. If it is of interest to me, it is material.

Mr Wilkins—But in each case people do a proper cost-benefit analysis in the sense that is it necessary to get this sort of information, is it better to do it in-house or is it better and more cost-effective to buy it in.

Senator BRANDIS—If I might say so with respect, you are not telling us anything we do not already appreciate about the rationale for engaging consultants. I come back to the example I gave you of retaining KPMG to advise about the cost effectiveness of the prevention mechanism in complying with the optional protocol for the Convention against Torture project.

Mr Wilkins—I might get Mr Manning to talk about that particular project.

Senator BRANDIS—I do not want to waste too much time on this, Mr Manning, but it seems to me that we know what the optional protocol is, we know what it prohibits. I would be reasonably well satisfied that relevant Australian agencies are aware of their obligations. Why do we need a big accounting firm to advise us about that?

Mr Manning—What the consultancy dealt with was the costs of the various options. As you would be aware, the optional protocol is under consideration by the Australian government as to whether or not it should ratify it, and as part of that it is considering how would it do that if it was to become a party to the convention. The convention allows states some discretion in the sense of establishing what is called the national preventative mechanism. So this consultancy got KPMG to examine two or three options for implementing it. One would be what the cost to the Commonwealth would be if there was one national body as compared to leveraging off existing bodies in states and territories. Another option is states and territories perhaps pooling some of their resources.

Senator BRANDIS—Couldn't a public servant do that? I mean, KPMG presumably charges, like all professional firms, on an hourly basis for partners, senior associates and employees.

Mr Wilkins—I think a public servant probably could do it but they would, first of all, require a level of expertise. It will be much cheaper in the long run to get paid KPMG to do it. The other reason would be—

Senator BRANDIS—When a partner charges \$500 or more an hour, how could that be cheaper?

Mr Wilkins—I think it would be more cost-effective and would also have authority in terms of eventually the type of study we would need to do for the Senate when they are looking at treaty ratification, because that will be part of the type of submission that will need to be made, and it would be more convincing for the states

and territories with whom we are having discussions about the best way to implement this. So there are a variety of reasons for getting someone like KPMG to do it. And it is much better to have that type of capacity for modelling brought in rather than to try and house it in the department, where it will be only be used every now and then, otherwise you would have highly qualified people sitting around for long periods of time with not a lot of work to do.

Senator BRANDIS—All right. I won't take up any more time on that. Finally, you are relocating at an estimated cost of \$18 million. Over how many years will that expenditure appear in the forward estimates?

Mr Wilkins—I will get you the information.

Ms Leon—We are not entirely relocating the department. The department has a number of divisions that are currently scattered around in various leased accommodation and as their leases come to an end we are seeking to consolidate those scattered divisions into a single building directly opposite the main building of the department in National Circuit.

Senator BRANDIS—Has anyone done a cost-benefit analysis of that?

Ms Leon—Yes, we did.

Senator BRANDIS—And is the conclusion that it will save you money in the long run?

Ms Leon—It has two benefits. One is that we will be able to meet the lease size reductions that are now expected of all departments to occupy less space per person than if we were to remain in the buildings we are currently in, and also to meet the energy efficiency and sustainability requirements, and of course both of those do save us money.

Mr Lutze—Just to add to the evidence that Ms Renee Leon has given, by consolidating down from various buildings and offices that will be occupying, we will be reducing from 9,500 square meters down to 8,000 square meters. So, by doing that, we will actually be in more efficient and effective rental accommodation designed to meet, as Ms Leon said, the government intensity guidelines.

Senator BARNETT—Just a quick one, Mr Wilkins. I have been advised that the department has allocated an additional \$7.6 million for legal aid for people smugglers. Can you clarify whether that is the case and, if so, why?

Mr Wilkins—I will get Katherine Jones to answer that question.

Ms Jones—In the additional estimates, the actual additional amount that was allocated for legal aid funding in relation to—

Senator BARNETT—Sorry, for who? Say it again.

Ms Jones—Allocated for legal aid funding for a range of Commonwealth criminal law matters was \$17.6 million. That relates to a range of Commonwealth criminal law matters such as major drug smuggling, terrorism and people smuggling.

Senator BARNETT—This is an extra allocation for legal aid to support those who are involved in criminal prosecution for drugs, terrorism and people smuggling. Can you break those down in terms of the funding?

Ms Jones—In terms of the funding, the full amount goes into the Expensive Commonwealth Criminal Cases Fund, which is a reimbursement fund. When the legal aid commissions have incurred the costs associated with expensive Commonwealth criminal matters, they can apply to the department for reimbursement. It is a matter of once the applications come in, we assess them against the guidelines for the fund and then reimburse the commissions for those costs. The fund was initially established to ensure that legal aid commissions did not have a significant impact on their budget for other Commonwealth law matters because of these expensive Commonwealth criminal cases.

Senator BARNETT—On what basis has this extra allocation been made part way through the financial year?

Ms Jones—We go through a process of consulting with legal aid commissions in terms of their understanding of mainly Commonwealth criminal law matters that they are dealing with throughout the course of that year. We used that advice to make an estimate of potential further expenditure, and we came up with that amount.

Senator BARNETT—So this is based on feedback that you have had based on the fact that there will be an increased demand for those services in the area of drugs, terrorism and people smuggling. Correct?

Ms Jones—I think the ‘correct’ is in terms of anticipated demand.

Senator BARNETT—Yes. Based on your best estimates, it is an anticipation. It is an estimate and that is why you have made this allocation of \$7.6. Can you provide an indicative breakdown of that money to those three areas, please?

Ms Jones—I would have to take that on notice.

Senator BARNETT—All right. What was it last financial year in terms of the breakdown? Is it a third, a third, a third. Give us a breakdown.

Ms Jones—We can obtain that information for you but I would have to take it on notice.

Senator BARNETT—What is the existing allocation? This is \$17.6 million extra because of the growing demand in these areas. What is the current—

Mr Wilkins—Because of the success of law enforcement agencies, too, Senator.

Senator BARNETT—Indeed. Of course, they are more active, aren’t they, particularly in the area of people smuggling.

Mr Wilkins—And also in drugs and counterterrorism.

Senator BARNETT—Drugs, terrorism and people smuggling. We have seen a big growth. We had a whole day of it yesterday. We were hearing all about it.

Mr Wilkins—Drugs, Senator?

Senator BARNETT—No, people smuggling. Ms Jones, have you got those figures there?

Ms Jones—In terms of the breakdown of the different types of matters, I do not. I would have to take it on notice.

Senator BARNETT—Can you provide any more details in terms of people smuggling and the evidence that you have received to confirm that the government is using \$7.6 million extra of taxpayers’ money to provide legal aid to people smugglers?

Ms Jones—In terms of the additional information you are looking for, perhaps if you can just—

Senator BARNETT—I would like you to take it on notice and provide further and better particulars regarding the reasons why the government has made the decision it has. Are you happy to take that on notice?

Ms Jones—I can take that on notice, yes.

Senator BARNETT—Mr Wilkins, you are chatting away there. Do you want to share your views with us?

Mr Wilkins—I was just saying that we do have the number of crew who are currently detained who are subject to possible prosecutions.

Senator BARNETT—How many are there?

Mr Wilkins—I think there are probably 500 or so. I have not got the exact numbers, but we can get—

Senator BARNETT—Can you provide the numbers for this time last year—a comparison?

Mr Wilkins—We could probably do that.

Senator BARNETT—Can you take that on notice?

Mr Wilkins—Yes.

Senator BARNETT—Do you have an anticipation for this financial year and the next financial year?

Mr Wilkins—No.

Senator BARNETT—All right. If you can give us those figures, that would be useful. Thanks again.

Senator BRANDIS—Could I just clarify something, arising from Senator Barnett’s question. The 500 crew—that is an approximate number, I gather, Mr Wilkins—

Mr Wilkins—I cannot give you a proper break-up. That is my rough memory.

Senator BRANDIS—That is all right, but you think there are currently about 500 crew who are subject to prosecution for people smuggling. Is that right?

Mr Wilkins—There are 280 crew currently being prosecuted for people-smuggling offences. I can give you that, but at the moment I do not have in front of me the total number who may be in detention.

Senator BRANDIS—So the 280 who are currently being prosecuted are people against whom a criminal prosecution has already commenced but has not yet come to completion. Is that right?

Mr Wilkins—That is right.

Senator BRANDIS—Does that include people who have been convicted but are currently appealing, or is that only up to the point of conviction?

Mr Wilkins—I am not sure that we have got any appeals on foot.

Senator BRANDIS—So there are 280 people in respect of whom criminal prosecutions have begun and then there are some hundreds who are currently in detention in respect of whom there may be prosecutions.

Mr Wilkins—That is right.

Senator BRANDIS—Will each of them be entitled to receive this legal aid funding under this fund?

Mr Wilkins—Under the rulings of the High Court, of course, probably—or there may be groups of them, because they may appear as a group.

Senator BRANDIS—Let us take the simplest case, of an individual who is prosecuted alone for a particular offence. Is there a daily ceiling on the amount of fees which are reimbursed? If so, what is it?

Mr Wilkins—I think that probably depends on the state or territory involved. I think it may vary from state to state, but case costs from Legal Aid WA, for example, are \$20,000 for a defended matter and \$2,000 for a plea of guilty.

Senator BRANDIS—That is the amount for which you reimburse the Western Australian Legal Aid Commission, is it?

Mr Wilkins—That is my understanding, yes. That is an example, though.

Senator BRANDIS—Is that regardless of how long the trial takes?

Mr Wilkins—No. That is an example of a matter from WA where the defended matter cost \$20,000 and the plea of guilty cost \$2,000.

Senator BRANDIS—I think we might be at cross purposes. Is that an example of the amount of costs incurred by the Commonwealth in a particular case or is that a flat amount for which the Commonwealth reimburses the Western Australian Legal Aid Commission for any case?

Mr Wilkins—No, it is an average.

Senator BRANDIS—I see, so, assuming they do not plead guilty, we are indemnifying the Western Australian Legal Aid Commission, assuming that state to be the jurisdiction where the prosecution takes place, for \$20,000 each, on average. Is that right?

Mr Wilkins—I am advised that we actually reimburse their actual costs, but on average it is \$20,000.

Senator BRANDIS—And there is no ceiling to the amount by which you reimburse them?

Ms Jones—There is no specific ceiling but in relation to the guidelines for the Expensive Commonwealth Criminal Cases Fund there are obligations on the legal aid commissions to take all steps they can to contain costs and manage them as effectively and efficiently as possible.

Senator BRANDIS—In any event, your \$20,000 is an average figure for a defended criminal prosecution in Western Australia for people smuggling, is that right?

Mr Wilkins—That is right.

Senator BARNETT—So for the 280 crew currently being prosecuted, that would be \$5.6 million. Is that your analysis—280 crew times \$20,000? And that comes out of the allocation of \$7.6 million. Does that sound about right?

Ms Jones—The amount in question is \$17.6 million. As I said previously, it is a reimbursement scheme. The amount that will be reimbursed to Legal Aid Western Australia or other legal aid commissions that are handling these matters will be based on actual costs incurred.

Senator BRANDIS—It is an uncapped reimbursement scheme, is it not, in the sense that, however many cases are eligible under the guidelines, the Western Australian Legal Aid Commission is entitled to reimbursement from the Commonwealth?

Mr Wilkins—I do not think that is quite right. It is obviously capped by budgets here in the Commonwealth. We are given a certain amount of money, and if it were to begin to escalate unreasonably then we would negotiate with these people for a different arrangement in the states and territories.

Senator BRANDIS—But that is not a capped scheme; that is a scheme where you are saying there might be such demands on the budget that you might be forced to renegotiate the arrangements.

Mr Wilkins—We would negotiate some sort of discount and we would expect some sort of arrangement like in New South Wales where we once negotiated for lawyers to be retained on a much cheaper permanent basis for dealing with a public defender or someone like that dealing with a matter. It is not uncapped in the sense that you would say a Medicare arrangement is. It is not like that.

Senator BRANDIS—What about the Northern Territory Legal Aid Commission? Do you have to hand the average cost of a defended prosecution in that jurisdiction?

Mr Wilkins—I do not have any information here about that but I would imagine it is probably not the same level as it is for Western Australia.

Senator BRANDIS—You said there were approximately 500 cases—280 you knew had been commenced and the balance were in detention. If they are defended and they cost an average of \$20,000 each, that is \$10 million. Thank you.

Senator BARNETT—Can you take on notice to provide the average across the state and territory jurisdictions?

Mr Wilkins—We will see if we can do that.

Senator BARNETT—Just to assist the committee, you have indicated the 280, but could you just provide further and better particulars with regard to the approximately 500 that you indicated, where that gap is and if they are currently in detention.

Mr Wilkins—They are in detention.

Senator BARNETT—Right. If you could clarify that figure of 500 for us, that would assist.

Mr Wilkins—There are ongoing investigations in relation to those people.

Senator BARNETT—Of course.

Mr Wilkins—In due course, they may well be charged.

Senator BARNETT—Just to clarify, we would like to know the exact figure. Is it 500?

Mr Wilkins—That is the case.

Ms Leon—In relation to your assumption about the costs based on an assumption that everyone will contest the case, the current estimates based on the DPP's experience is that around 30 per cent will plead guilty, so it will not be the case that all of those cases require a full defended hearing.

Senator BARNETT—I am sure you will provide your best estimate on notice and that will come back to the committee. Thanks for that. I have one final question in 1.1. It relates to the Murray-Darling Basin. Has the Attorney-General's Department provided any direction or communication to the Murray-Darling Basin Authority on the release of legal advice relating to the Water Act 2007? If so, what was the nature of that direction or communication? Has the authority or any member of the authority made any requests to you to release the legal advice on the Water Act?

Mr Faulkner—Essentially the department contacted the body at some point. I would need to go back myself and look at the time just to settle the details, but essentially there was a communication from the department to the authority to the effect that constitutional advice is not disclosed generally by the Commonwealth without discussing that sort of thing with the ministers involved. That was the gist of it.

Senator BARNETT—That is a part answer. Let's find out when that advice was provided.

Mr Faulkner—Bear with me for a moment. I will see what I can find in my notes here.

Senator BARNETT—Secondly, what was the authority's response when you provided that advice?

Mr Faulkner—The department wrote to the chief executive officer of the authority on 3 December 2010. So far as I can recall, the advice was not disclosed.

Senator BARNETT—What was the content of that letter?

Mr Faulkner—Which letter?

Senator BARNETT—The letter the department sent to the CEO on 3 December. What did it say?

Mr Faulkner—It said essentially what I just said a moment ago, that it is always the case that consideration of disclosure of constitutional advice raises important issues for any government. Generally governments will not disclose constitutional advice because the implications of what is said are almost invariably very general in their application and it is rather difficult to be confident that you will not, by disclosing it, jeopardise or prejudice the Commonwealth's legal interests more generally. So the basic idea is that agencies need to be very careful whenever thought is being given to that kind of thing to make sure that they discuss the matter carefully with ministers so that the Commonwealth can make an informed and rational decision.

Senator BARNETT—Let's go back a step. Did they seek that advice from the Attorney-General's Department?

Mr Faulkner—You mean the constitutional advice?

Senator BARNETT—Yes.

Mr Faulkner—No.

Senator BARNETT—Well, why is the department writing to the CEO on 3 December? For what reason?

Mr Faulkner—We are aware in the department—

Mr Wilkins—We are the custodians of this sort of constitutional position of the Commonwealth, if you like—the Attorney-General is—and so we need to tell agencies and we issue the legal services directions et cetera. So it is part of—

Senator BARNETT—You acted on your own volition and you have written to the CEO of the authority?

Mr Wilkins—No, I think the CEO wrote to me first, actually.

Mr Faulkner—That is right.

Senator BARNETT—That is my question. Please advise.

Mr Faulkner—It appears we were at cross-purposes there; I do apologise. The authority contacted us to—

Senator BARNETT—When?

Mr Faulkner—26 November 2010.

Senator BARNETT—In a letter?

Mr Faulkner—Yes.

Senator BARNETT—And they are seeking advice, presumably.

Mr Faulkner—About the possible disclosure, which is a good thing, of course.

Senator BARNETT—Okay. And then the department has written back. What happened then—what communication took place after that?

Mr Faulkner—None that I am aware of with the authority.

Senator BARNETT—So we have got two pieces of communication. Has the department prepared legal advice and constitutional advice on the Water Act?

Mr Faulkner—That is a very broad question. No doubt the Attorney-General's Department has had things to say of a constitutional nature about the Water Act over the course of many years.

Senator BARNETT—Yes, I am sure. But has it provided advice on the constitutionality of the Water Act?

Mr Faulkner—No doubt that has been the case over the years, yes.

Senator BARNETT—In recent months?

Mr Faulkner—Nothing comes to mind, I must say, in recent months, no.

Senator BARNETT—Have you sought advice from the Solicitor-General?

Mr Faulkner—Clearly we have been involved in requests for advice from the Solicitor-General on many things over many years. In relation to the Water Act specifically, I cannot recall a request for advice emanating from the Attorney-General's Department in recent times.

Senator BARNETT—All right. Can you table both those letters?

Mr Wilkins—I will take that on notice. It may actually do exactly what Mr Faulkner said we were trying to avoid, and that is disclose constitutional advice.

Senator BARNETT—I cannot see how that is possible.

Mr Wilkins—Because I think it actually talks about the content of the advice in some of the letters. But let us have a look and see if we can—

Senator BARNETT—I cannot see how that is possible if what Mr Faulkner is telling us is correct, that they are not releasing that constitutional advice to the authority.

Mr Faulkner—I think the point the secretary is making is that it may have been necessary to describe what was in the advice which we were suggesting ought not be disclosed. Prudence dictates that we just give that some consideration.

Senator BARNETT—All right.

Ms Leon—Chair, Senator Barnett had asked me to advise when Queensland intervened in the chaplaincy case, and I can now advise that Queensland notified the court of its intervention on 14 February.

Senator BARNETT—Thank you very much.

Mr Wilkins—Also, Madam Chair, with your indulgence, Senator Trood asked for some further and better particulars about the Ethiopian program for intercountry adoption, and I have here some details which I might read into the record. They are quite brief. We anticipate that the program will again be fully operational from March 2011 and we will have structures in place to allow children to be matched with Australian prospective adoptive parents. A person called Woz Lemlem Fesseha has been engaged as Australian program manager pending formal appointment as Australian representative from 1 April 2011. Working relationships have been established with the Tesfa Elderly and Children Support Organisation—that is an orphanage—and arrangements are being finalised with an experienced service provider to provide services to the program including background checking, assistance with orphanage relationships and development assistance obligations. I am happy to put that on the record.

Can I just also inform you that I think the head of the EMA is dealing with the New Zealand crisis at the moment, but we have other officers here who may be able to assist.

[4.46 pm]

CHAIR—We are going to move to 1.2 and 1.6.

Senator FURNER—I have some questions in relation to the national disaster resilience strategy recently adopted by COAG.

Senator Ludwig—Chair, before we go there, this morning I indicated, if you recall, that at an appropriate juncture I would like to make a statement in relation to emergency management and the role of the federal government in the natural disasters that occurred in January right across Australia. It is only about four or five paragraphs and should take about three minutes.

CHAIR—It seems like an appropriate time now, before we get into questions about that.

Senator Ludwig—Thank you, Chair. This summer has seen an unprecedented number of disasters in Queensland, New South Wales, Victoria, Tasmania, South Australia, Western Australia and the Northern Territory—in short, in every single state and almost every territory. Floods, cyclones and bushfires have all caused large-scale destruction and in some cases have unfortunately resulted in a tragic loss of life. Since October, record flood events have impacted seven out of eight jurisdictions. In the course of this we have also experienced numerous cyclones—in fact 10 since October—most notably, of course, Tropical Cyclone Yasi. About 287 local government areas have been affected by these floods and extreme weather events.

The Australian government takes a whole-of-government and whole-of-nation approach to disaster response and recovery. At the Australian government level, agencies such as the Prime Minister and Cabinet, the department of regional Australia, the Department of Health and Ageing, Centrelink and Geoscience Australia, as well as the Australian Defence Force, have all worked together for the safety and wellbeing of affected

communities. This has occurred in coordination with state, territory and local governments, who of course lead their respective responses, and together with the army of volunteers who are at the coalface of combating and responding to the needs of their communities.

I would like to take this opportunity to thank everyone involved in the various Australian government agencies, in the state and territory governments and of course all the many volunteers who have worked tirelessly and selflessly in extremely difficult circumstances. Specifically, I also want to record my admiration for the outstanding efforts of the staff of the Attorney-General's Department, particularly Emergency Management Australia and the Public Affairs Branch, over the last the last four months. EMA has led and coordinated the response of the Australian government to natural disasters and a range of other threats through its Crisis Coordination Centre, which operated 24 hours a day.

The staff of EMA have provided the point of contact for the states and territories to access Commonwealth assistance, coordinated inter-jurisdictional and international offers of assistance, deployed numerous liaison officers to state disaster coordination centres, supported the Australian government and helped key decision makers be fully informed about the unfolding disaster events and actions required. Importantly, they have also worked tirelessly to enact arrangements that allow the delivery of financial assistance via a suite of measures like the Australian government disaster recovery payment and the natural disaster relief and recovery arrangements to ensure that those in need can quickly access financial support.

As at 16 February 2011, the Commonwealth has granted and paid through Centrelink over 595,856 claims for the Australian government disaster relief payments, totalling approximately \$694.6 million, and 49,848 disaster income recovery subsidy payments, worth over \$22.2 million. It is appropriate to express gratitude for the work of the departments and the government.

Senator FURNER—What are the principles of the National Disaster Resilience Strategy?

Mr Wilkins—The strategy is in a long document, but I can try to summarise the main ideas behind it. Good disaster management relies on building resilient communities. The word 'resilient' connotes a community that: understands the risks and the various hazards that confront them; can take steps to mitigate and prevent those risks; and can bounce back and recover from events or risks that materialise. At the moment, that is emerging as one of the key ideas behind emergency management and disaster management across all hazards not only in Australia but in other parts of the world. It underpins the resilience strategy that COAG has been looking at, which has gone through the emergency management ministers and which informs all hazards.

So we are looking at a range of actions across a number of government agencies at Commonwealth, state and territory levels. This is very much a national cooperative effort. It is also important that it engages with the community and business in way that we have never really pulled together before. It will build on actions already being taken by the Commonwealth. For example, we have a trusted information sharing network at the Commonwealth level where we consult with various industry sectors about hazards that confront them. They may be in the telecommunications, food or logistics sectors and we talk to them about the range of actions that can be taken to either prevent or mitigate various hazards, natural disasters or even man-made disasters. That is a very important component of the resilience strategy, but it is only one part. We also need to consult with communities. There are some good examples at the state, territory and local government levels where that planning is being done well.

There were some examples of that in the recent disasters that we witnessed in Queensland and other states, with the capacity of communities to deal with these very difficult circumstances and to bounce back, if you like, through the work of volunteers, but also because preparations and planning had been put in place beforehand. We want to be able to do that on a wider scale in a more systematic way. What the resilience strategy does is to put in place some key actions that the government can lead the way on in terms of, for example, a proper identification and quantification of risks and a better communication and dissemination of what risks people confront. We do that already but we can do it in a much more systematic way and we can do it in a much more scientific way, if you like. We can do it in a way in which people can more readily understand what confronts them and they can integrate that type of information better into their planning systems—their business planning systems, their land-use planning systems. That is an important part of the resilience strategy, and it requires work to be done, for example, through the treasuries on issues around insurance through planning ministers and small business ministers around planning. It requires the emergency management ministers to work with communities so that they understand what can be done in terms of the preparation for disasters. This is at state and territory levels, not simply at the Commonwealth level. It is very much a cooperative effort. It requires us to work more creatively with bringing along volunteers into the sector

and to widen out our view of disaster management so that it includes not only the response to a crisis but also being properly prepared and taking mitigation measures where one can—so to either prevent or mitigate disasters, and then there is the important recovery process.

One of the important things in the strategy is to look at capacity and capability building to take stock of the capabilities that we have, which are many, but it is becoming a much more sophisticated process and business in terms of engaging in both the prevention and the response and recovery, and the level of expertise that is now required is much higher. It is a challenge in terms of how you deal with a volunteering sector and with non-government organisations who are pretty of much involved in the recovery side. It is also a process that increasingly means that these types of skills and capacities have to be portable across borders, across systems and even across global boundaries so that, for instance, people from North America can come and help us in terms of disasters and vice versa. Then there are considerable challenges in terms of the equipment and systems. One needs to actually try to understand where the gaps are, where the priorities are and not just arrive in an ad hoc fashion at the acquisition of various bits of hardware et cetera. It needs to be a considered view.

One of the things that I think has been successful is looking at ways in which to share the effort in relation to the assessment and the acquisition of capabilities, such as aerial firefighting, which is now run by a corporation that is run by all the states and territories. It is sort of a common corporation—and similarly with the telephone warning system, which the Commonwealth funded but which the states and territories run through a corporation. These are the key types of issues that will need to be confronted.

There are time lines in terms of actions. You might have seen the emergency management ministers put out a communiqué in which they set out certain things that needed to be done. There is a list that sort of replicates some of the things I have just mentioned. That has also been reinforced by the COAG decision a couple of weekends ago. So I hope that is some indication, Senator.

Senator FURNER—It is, and that prompts me to provide a few additional questions on those answers. Firstly, you mentioned examples that have been identified in some of those cases, and I can think of numerous cases in my state of Queensland. Is it the case that they will be adopted as best practice and used as opportunities to deal with whatever the disaster is?

Mr Wilkins—You mean in terms of the resilience?

Senator FURNER—Yes.

Mr Wilkins—I think so. We have discussed this—the group of people who put this strategy together, which is made up of state, territory and Commonwealth officials—and there are some good examples when we should draw off best practice. Clearly one would have to adapt to particular communities and particular circumstances, but you can learn through comparison and it is much better to get that bottom-up input rather than the Commonwealth imposing some sort of cookie cutter pattern on everybody. I agree with that.

Senator FURNER—With regard to volunteers, there were certainly overwhelming numbers of volunteers coming forth. In fact, they were turned away on numerous days. Is there a view to consider registers of people who are prepared to volunteer for future disasters?

Mr Wilkins—I am not sure about the concept of registration. In the Queensland example we had two types of volunteers, if I can put it that way. We had the volunteers who had a considerable amount of training and were part of organisations and structures such as local brigades, and we had people who are members of non-government organisations on the recovery side who work with various charities et cetera. These are people who normally do have some training and background and who have an understanding of the way the structure works. Then we had all those volunteers who came out with their brooms and buckets and lent a hand—filled sand bags and things like that. I think it is really for the former type of volunteer that we need to think about training, the interface between their volunteering and their employment, for example, and some issues around age and qualification and things like that. We need to understand better their incentives for doing that to bring that along. Australia relies heavily on volunteers in a way that other countries do not necessarily, but these are some of the things we need to understand better to see what the levers are and what the incentives are that we can provide for such people and also the extent to which we can help them with training. For example, we would like to encourage increasing capacity, maybe by providing them with free training. Whereas, if you are in professional cadre, you should probably be paid for by the state or territory. So we want to try some of that.

Senator FURNER—Thanks very much for that information.

CHAIR—We are still on program 1.2. Senator Back.

Senator BACK—Thank you, Chair. I want to direct my questions to the Australian government disaster recovery payment specifically. I am aware of the other forms of payments under the scheme and I want to ask some questions regarding the Gascoyne region in Western Australia and also North Queensland if I may. The Gascoyne was the subject of major flooding in early December. It destroyed the town of Gascoyne Junction, severely affected pastoral properties, washed away 90 per cent of the plantations around Carnarvon, washed away caravan parks, destroyed houses et cetera. At the end of December the premier of the state wrote to the Prime Minister advising her of the fact that he was declaring it a natural disaster. On 5 January the Prime Minister wrote back to the premier acknowledging that and then visited the Gascoyne. Under the Australian government disaster recovery payment scheme administered through Attorney-General's, should that have activated the payment of \$1,000 per adult and \$400 per child through Centrelink to those people affected in the Gascoyne?

Mr Wilkins—We are just trying to get an answer to your question. You were talking specifically about the AGDRP, were you?

Senator BACK—Exactly. That is correct. This is the non-means-tested program. You are all aware, I am sure, of the criteria that would activate it.

Mr Sheehan—You referred before to the AGDRP and its criteria. It is a one-off payment for people who have been affected by a disaster. The eligibility criteria for it are set in relation to a disaster. It is not directly linked to the Natural Disaster Relief and Recovery Arrangements, so it is not always the circumstance that one will happen at the same time as the other. The Attorney-General's Department, through EMA, will keep the government informed of the various events across Australia. On the basis of advice, the government makes a decision about the activation of programs such as AGDRP. I might defer to my colleague, but I believe AGDRP has been activated in this case.

Senator BACK—The time I am asking about is early January, when the Prime Minister responded and then subsequently visited the Gascoyne. It is the case, is it not, that the AGDRP payment had not been activated? That is the question I am asking.

Mr Sheehan—I understand that is correct.

Senator BACK—My second question then is this. The criteria relate to destruction of a principal place of residence that sustained major damage—which happened—with people being unable to gain access to their place of residence or being unable to leave it, or electricity, water, gas and sewage services being out for 48 hours. Given that the Premier of the state had written to the Prime Minister and that the Prime Minister had acknowledged that—I understand with a letter to the Attorney-General—I am interested in knowing whose decision it would have been to have effectively overridden the Prime Minister and made a decision that no, the people of the Gascoyne had not suffered that level of injury damage that would cause the immediate triggering of that very necessary payment?

Mr Wilkins—That would be a decision of the Prime Minister. The criteria are not as cut and dried as you say.

Senator BACK—I am quoting from a document that was actually given to me in this room.

Mr Wilkins—The criteria that are used in this particular case for the application you are talking about, but the circumstances under which you trigger it are not that cut and dried.

Senator BACK—That is what I am trying to get to, I think.

Mr Wilkins—My understanding is that historically, since its inception, it has been a fairly loose type of criterion. Governments have basically activated it under different circumstances, and they have a wide discretion. So it is entirely proper that the Prime Minister would take a view, in some circumstances, on consideration and the presentation of further evidence to actually activate it.

Senator BACK—I understand that completely, but it is my understanding that at that time the Prime Minister actually accepted and agreed and when she visited the Gascoyne she shared the grief of the people up there for the injury and the damage that had been caused. So the understanding I have is that the Prime Minister was fully in support of this payment, amongst others. We know there are other payments that accrue but, on this particular one, I understand that she believed that those payments had been or were being released.

I became aware of it in early January when people who I would have regarded as being eligible kept saying to me, 'No, we can't get these payments under Centrelink.' That is what caused me to activate this and in fact to go to the briefing on 9 February here in this room in which quotations were made by the officer involved

relating to Queensland, New South Wales and Victoria. I asked the question: why are the people of the Gascoyne not receiving this payment? That was on 9 February. I established at the end of the day on 9 February from Centrelink in Carnarvon that nobody had been eligible to apply. I then in fact asked Minister Ludwig, the minister representing the Attorney-General, a number of questions on 10 February in the Senate. I must acknowledge the letter that Senator Ludwig subsequently sent to me. But it was on the next day, 11 February, that the Prime Minister, with the Attorney-General, put out a document to say that these payments were to flow. My concern is that, from the time of the flooding at the end of December, which should have activated this payment, through to 14 February, which was the first day after the Prime Minister's edict, the people of the Gascoyne, thoroughly deserving of this payment, did not receive it. I am trying to establish who made the decision. If the Prime Minister believed that these people should have been and were receiving the payment, who made the decision to actually not release this payment to these people?

Mr Wilkins—I think that is a mischaracterisation.

Senator BACK—I would be pleased to be corrected.

Mr Wilkins—It is not that there was an entitlement that was not being paid; it was that there was not yet an entitlement because the decision had not been made to trigger the payment.

Senator Ludwig—Just to go through it, the way it works is that it was originally introduced as a payment by the then Howard government. It was in the families, community services and Indigenous affairs and other legislation bill, which became an act. The legislative criteria for the activation of AGDRP is not clearly defined in that legislation. Under section 1061K of the Social Security Act 1991, a person is qualified for the AGDRP if they are 'adversely affected by a major disaster'. Section 36 of the Social Security Act provides that the minister may determine that an event is a major disaster. If the minister is satisfied that an event is a disaster that has such a significant impact on individuals that a government response is required, having regard to the number of individuals affected and the extent to which the nature or extent of that disaster is unusual. You can see that it does create significant latitude and discretion.

On 14 October 2010, as a result of revisions of the administrative arrangements orders, the Attorney-General's Department assumed responsibility for AGDRP, which is why you are actually asking questions in this portfolio. As part of that change in arrangements for the AGDRP in November 2010, the government decided to clarify the activation and eligibility criteria for the AGDRP to encourage greater consistency and rigor in how that payment was activated. Specifically, I am advised, the government decided activation of the AGDRP would be more closely aligned with the NDRRA category C activations, as category C activations have tended to be an accurate indicator of the severity of an event. To put it in context, the states and territories are the first responders to deal with natural disasters. They advise the Commonwealth of their requests. With this, you then saw it being activated.

Senator BACK—Would it be reasonable, then, Minister, to draw the conclusion that, had you and I not had our interchange and had there not have been an alerting of the community on 9 February and 10 February and then a decision by the Prime Minister on 11 February, then people in the Gascoyne would still not be receiving \$1,000 per adult and \$400 per child under the AGDPR? What I am trying to get to is that it appears as though it was not the flood that activated the necessity. It should have; it is the worst flood in the state's history.

Senator Ludwig—It is not a flood that activates. It is—

Senator BACK—It is the disaster resulting from the flood.

Senator Ludwig—There is uncertainty around this. It is what the impact that that has on individuals and communities—in other words, what the effect is. There has been a change where, in order to clarify it, it has followed the activation of category C. A state would normally declare an area a natural disaster. That would activate A and B—that is the way that it would generally work. It does not necessarily mean that the AGDPR will follow. Usually what happens is that the state would seek the activation of C, which is a higher level. That indicates that there is significant damage or the flooding event has created individual concerns and distress. In this instance—and correct me if I am wrong—the Western Australian government did not ask for an activation of category C. I think that I will take that on notice as to whether or not category C was activated.

Senator BACK—By all means, yes. I accept that.

Senator Ludwig—You would then have the Attorney-General engage with the Prime Minister to make the declaration. And that also depends on the advice that the Attorney-General has received during that intervening period. I do not know the level of information that has come from WA in relation to that in the period shortly

before the activation or the information that the Attorney-General received that has caused him and the Prime Minister to activate the AGDRP. But I will take it on notice and see what additional information he can add.

Senator BACK—I asked the question in relation to two instances in Queensland. You might be able to assist me. The first instance is in relation to a community about 40 kilometres south-east of Cairns. To remind people, the floods in and around Brisbane and Toowoomba and the Lockyer Valley occurred on about 11 January. The community of Yarrabah, some 1,700 kilometres north of Brisbane, received payments under the AGDRP of \$1,000 per adult and \$400 per child on or about 20 January—about 10 or 12 days after the Brisbane floods. ‘Floods’ is the right term, because cheques were flooding into Cairns from this community. Inquiries were made as to what disaster had befallen Yarrabah to cause them to receive these payments. I cannot validate the answer, but the answer given was ‘the floods’. The question was asked: ‘Which floods?’ The answer was, ‘The Brisbane floods.’ Is there any reasonable explanation why a community of people 1,700 kilometres away from these flooded areas would have received these Centrelink payments? Do you understand how that could have happened?

Mr Wilkins—Where did the information come from?

Senator BACK—It came from the local federal member of parliament.

Mr Wilkins—We will have to take that on notice. I do not have that information.

Senator BACK—If you could, I would be appreciative. I will not delay longer on this, but the second one relates to the same thing. It is a community in an area called Laura, which I understand to be about 250 kilometres north of Cairns. We have moved forward now. Cyclone Yasi was on 3 February. I understand the community of Laura to have been minimally affected, if at all, by Yasi. One quote in the local newspaper, the *Cairns Post*, was, I think, ‘Not a twig was lost.’ But that entire community also, upon request to Centrelink, received the \$1,000 per adult and \$400 per child.

Mr Wilkins—Are these AGDRP payments?

Senator BACK—Yes, the same payment—\$1,000 per adult and \$400 per child.

Mr Wilkins—They are not NDRRA payments?

Senator BACK—No. I understand them to have been AGDRP schedule payments.

Mr Wilkins—And the two communities?

Senator BACK—Yarrabah, on or around 20 January, and Laura, on or about 10 February—in the days after Cyclone Yasi. It perhaps causes you to understand the anxiety and concern of people in the Gascoyne, who actually were decimated, when stories of this nature came through.

Mr Wilkins—Let me take those on notice. A quick look did not identify them as communities under our schedules.

Senator BACK—I would be most appreciative. My final question is totally unrelated to this, but there is a flow-on from natural disasters, starting with the bushfires in Victoria a couple of years ago and the recent floods. It is to do with the emergency treatment of livestock and wild animals particularly, especially with regard to those needing euthanasia by veterinarians or others. The question I have is: do we yet have an emergency management plan around the welfare of animals consequent to major disasters such as fires, floods et cetera?

Mr Wilkins—I am not sure specifically, but I would be surprised if there were not plans around those issues within each of the hazards that we deal with.

Senator BACK—I understand that initially this is a states and territories issue, but there are other concerns, and that is across borders. As in the Queensland floods, emergency management coordinates the activities, for example, of the RAAF with air movement—again, veterinarians, drugs et cetera have got to be able to be mobilised and moved quickly. I guess what I am putting on notice is: if there is not yet a national plan or a national approach, I would certainly encourage this becoming part of the national planning process.

Mr Wilkins—We will take that on board. As you would appreciate, we have just been talking about the resilience strategy, so we can take that up through the NEMC with the states and territories. Clearly there would be extensive provisions in relation to quarantine issues, in relation to some of the hazards around pandemic.

Senator BACK—There are indeed. That is certainly part of it.

Mr Wilkins—But it would be more related to the particular hazards. We can certainly see what, if anything, is in there about the treatment of animals in relation to the floods, fires et cetera.

Senator BACK—Euthanasia is the big one in terms of the legal implications. Thank you. That completes my questions.

Senator HUMPHRIES—Could I follow up Senator Back's questions first of all. I think in response to what the minister said before, you were exploring when the Western Australian government indicated that they consider the situation serious enough in the Gascoyne to trigger AGDRP payments. Have you found that information as yet?

Mr Wilkins—No, we have not found that out yet.

Senator HUMPHRIES—I understand that the Western Australian government indicated that they considered that the crisis serious enough to trigger these payments something like six weeks before the decision was actually made by the Australian government to authorise those payments.

Mr Wilkins—The question was whether or not they triggered category C of the NDRRA, which is what we were linking to the trigger for the AGDRP. That is what we are trying to figure out, when that request came in or that information.

Senator Ludwig—My understanding is that you should not take that in isolation because of course if A and B were activated then the West Australian government would have been able to provide assistance under those arrangements for both personal hardship and the community. So it is not that they were not receiving when A and B were activated under the NDRRA. I think I outlined that in the Senate when that question was asked about payments that were made by the West Australian government under the NDRRA guidelines, which means that people were receiving payments. There is the separate issue of whether and when the AGDRP was activated, which we know was activated on 11 February.

Senator HUMPHRIES—I acknowledge that there were state government payments available, but the criteria were different for them to be applied. Some of them at least are means-tested, as I understand it. So we are talking here about a non-means-tested payment for people who were distressed. My understanding of the nature of the AGPRP payments is that they are there for people to deal quickly with emergency situations, purchasing things they have lost or dealing with a relatively urgent need of some sort, and a payment made six to eight weeks after the initial crisis is not exactly meeting the needs of the people concerned, I would have thought. But if you could obtain that information about when the West Australian government effectively asked for payments to be authorised and let us know when you have those answers, that would be useful.

Mr Wilkins—We are looking for that, but you should bear in mind that the payments made under the NDRRA are not insignificant and they are Commonwealth payments as well as state payments. They are not exclusively state payments.

Senator HUMPHRIES—I acknowledge that. I appreciate that there are other payments available—

Mr Wilkins—Which are made by the Commonwealth as well.

Senator HUMPHRIES—Yes, which are supported by the Commonwealth. They are made by the states but supported by the Commonwealth.

Mr Wilkins—Exactly. They are for the purpose that you indicated just as much as the AGDRP is. It is not that these people were not getting some sort of payments under the NDRRA.

Senator HUMPHRIES—Mr Wilkins, I acknowledge that. But the point remains, which Senator Back was making before, that people in Queensland were receiving these \$1,000 payments within a few days of the crisis that hit their communities and in Western Australia, on my instructions, it was taking six to eight weeks before they were receiving entitlement to those payments. I just want to know why the two situations were different. Perhaps I am wrong, perhaps the Western Australian government was late in seeking those payments to be made, in which case I accept that. But that is not what I understand is the case.

Mr Wilkins—I understand, Senator.

Senator HUMPHRIES—I turn to the role of EMA in dealing with this situation. Mr Cam Darby is not here at the moment?

Mr Wilkins—He is dealing with the New Zealand crisis, I am afraid.

Senator HUMPHRIES—Fair enough. I was grateful for the briefing that Senator Brandis and I had at the centre in Barton after the floods crisis began. It gave us insights into the way in which EMA was involving

itself in the coordination of this crisis. There are still some grey areas about exactly what EMA's role in this disaster was. It seems to me, with respect, that, although this is described as Emergency Management Australia, in effect EMA was not actually managing the crisis so much as coordinating assistance at the Commonwealth level to agencies at the state level which were actually managing the crisis. Would that be a fair characterisation?

Mr Wilkins—I think so. I think that is a fair characterisation. That is how it works.

Senator HUMPHRIES—Are there clear indications of how the Commonwealth role is played out? I am aware of the various written arrangements which are in place for this but is it clear to all the parties exactly how that is to work? For example, did EMA have a role in coordinating requests by one state to another state, such as Queensland requesting assistance from New South Wales government authorities?

Mr Wilkins—My understanding is that they did. It is the horizontal communications which they do facilitate.

Senator HUMPHRIES—Were the requests being made to EMA, in the case of the Queensland floods, made by the peak state government agency or coordinator or were they coming from a variety of levels within the Queensland government? For example, when the Brisbane City Council needed assistance with pumping out flooded basements and so on, would they have gone straight to EMA or would they have channelled their requests through the state government coordination centre?

Mr Wilkins—I think the arrangements are—I can check—that formal arrangements are made at the EMA to the EMQ level no matter what the communications may be at a lower level. I would assume there would be preparatory phone calls and all sorts of discussion but for something to occur of a coordinated sort requires communication and sign-off at that top level, whatever other preparatory conversations may have occurred.

Senator HUMPHRIES—From your observation, with the process of coordination that EMA was involved with and the lines of communication that were established when the crisis in Queensland broke out were those roles always clear or did this coordinating exercise reveal weaknesses and problems with respect to the arrangements which have been put in place for management of situations like this?

Mr Wilkins—My understanding is—we will have a chance to have a longer talk together about this at some stage—that the lines of control work very well and that is from the feedback I have had from Mr Darby. On the Queensland side the feedback from both the Commissioner of Police, the minister and the head of Emergency Management Queensland was that those command and control coordination systems work extremely well too. That does not mean we will not discover some things that could be better but it sounds as though it was very successful from that point of view and nobody, as far as I know, has been contending otherwise. That is the advice I have. I should also add that we put liaison officers in Queensland. Obviously with disasters on this scale, having people on the ground so that you can get feedback directly to Canberra about the situation and the position is important. That proved to be an important facility.

Senator HUMPHRIES—I am glad to hear that. Will there be any examination of the role that EMA played with respect to this crisis through the royal commission in Queensland? Is it a royal commission or a commission of inquiry?

Mr Wilkins—There is a royal commission. I cannot say that there will not be any examination and certainly it is potentially within the terms of reference of the royal commission. The Commonwealth of course will be represented before the royal commission the same way as we were before the Victorian Bushfires Royal Commission, to assist the commission. So they may well be examined; there may well be evidence et cetera. Of course we will do our own post mortem so to speak, but from what I understand so far it seems to have actually worked very well.

Senator HUMPHRIES—I ask this question because of the experience my office had in attempting to obtain information. I note that we had quite a good level of responsiveness from a number of areas involved in this crisis, from the minister's office, from EMA generally and so on, but there did appear on occasions to be some confusion about who was responsible for particular parts of the information flow. For example, at one point in mid-January my office asked the Victorian Emergency Services Commissioner if we could be placed on the media list for information about the floods from the Victorian government. That request was referred to the National Crisis Communication Centre, and the National Crisis Communication Centre referred it back to the Victorian SES and eventually it was referred to the Deputy National Security Advisor's office. Eventually, some hours after, we were placed on that communications list. Are you saying to me that that was an atypical example of confusion about roles?

Mr Wilkins—I hope so, Senator. It does not sound particularly salubrious.

Senator HUMPHRIES—You said that there maybe some examination of the role of EMA?

Mr Wilkins—It is possible. The terms of reference as I understand it for the flood royal commission could encompass that. It is not out of scope. And there will be other internal issues. We will look at the way it went. One normally takes stock after a disaster and even if you think you have done a good job you still examine what you can learn from it. We will do that through the NEMC as well, this new committee that I referred to, because we want to talk with the Queensland, Victorian and New South Wales authorities about what they thought. So, yes, whatever the royal commission does there will be an internal process for trying to learn from this.

Senator HUMPHRIES—I would agree that it is very important that we not let a situation like this pass by without seeing how many lessons we can draw from it as to what we should be refining and improving in the future so I am pleased to hear that. How many people were based in the state crisis coordination centres from EMA in the case of both Victoria and Queensland?

Mr Wilkins—There were two in Queensland, and we made the offer to Victoria, but they declined the offer, to have a person down there.

Senator HUMPHRIES—Did the two with the state crisis coordination centre in Queensland stay in the centre or did they move around the community to observe what was going on with respect to delivery of programs and recovery.

Mr Carpenter—There were two liaison officers that we sent to Queensland, one to work within the state disaster crisis coordination centre, but another one who was an NDRRA specialist who went there to work with their Treasury and also with the Department of Community and Safety, just to provide advice around all things regarding the Natural Disaster Relief and Recovery Arrangements. So one of them worked in Brisbane city, and the other one actually worked at their Kedron Park headquarters.

Senator HUMPHRIES—Okay. So there was really one person who was there liaising on the coordination of services between the Commonwealth and the state.

Mr Carpenter—The NDRRA person was going to Kedron Park at times as well to make sure that we had a coordinated response.

Senator HUMPHRIES—Coming back to the role of EMA: was there any relationship between the operation of EMA and a body such as the National Security Committee of Cabinet, or the National Security Adviser? I suppose what I am asking here is: exactly who was in charge of the operations of EMA at this point in time?

Mr Wilkins—As you know, there is a crisis coordination committee which is activated which is chaired by the Deputy National Security Adviser and the Director of the EMA, and that includes the Commonwealth government agencies that are characteristically involved. Other people are co-opted if necessary. That is the coordination. That is a formal coordination mechanism for decision making and for providing information to ministers. If necessary, that ministerial committee is activated. That is a decision that the National Security Adviser makes in consultation with EMA if we think it needs to be escalated to that level for decision making.

Senator HUMPHRIES—You say ‘we think’ that. Who is ‘we’ in that context?

Mr Wilkins—It would be the National Security Adviser in consultation with EMA.

Senator HUMPHRIES—Okay. On a day-to-day basis, who was heading up the EMA? Your nerve centre was in Arts House in Barton?

Mr Wilkins—That is right, and Cam Darby—

Senator HUMPHRIES—Who was heading that up?

Mr Wilkins—Cam Darby.

Senator HUMPHRIES—As to that NDRRA specialist that you mentioned before, was that person or somebody else like him or her also working with other state governments in that kind of role—with WA, for example, or with Tasmania or New South Wales with respect to their crises?

Mr Wilkins—The answer to that is no, actually. Normally it does not work by putting someone there; it normally works through liaison with people at Arts House. There is a team of people there and they have contacts interstate. I think the thing about the prospect of money being made available in advance, so to speak,

as opposed to some considerable time after the event, which is normally the way that NDRRA payments are made, was that it probably made a bit of a difference in relation to that—and also just the scale and complexity of the events in Queensland.

Senator HUMPHRIES—Could I return to that question about AGDR payments in Western Australia? I have a copy, courtesy of Senator Back's office, of the letter that Premier Barnett wrote to the Prime Minister, which is dated 31 December. He says in that that he is:

... seeking ... agreement to implement the Grants to Primary Producers and the Grants to Small Business components of the Community Recovery Package, with equal contributions from the Western Australian and Commonwealth Governments under Category C of the Natural Disaster Relief and Recovery Arrangements (NDRRA).

It seems, on the face of it, to be the kind of request that would trigger the \$1,000 payments. I might hand this up.

Senator Ludwig—That would not necessarily trigger the Australian government disaster recovery payment.

Senator HUMPHRIES—I understand that, Minister. I am not saying that it does trigger it. But you said before that there needed to be, effectively, affirmation from the state government that it saw there was a need for such payments.

Senator Ludwig—Obviously there has to be some discourse between the state government and EMA about the nature of the disaster and what has actually happened in the region. EMA would then have to be informed about the nature of the disaster and what the consequences of the disaster are for individuals. They would then, on that advice, provide that to their minister, the Attorney-General, who would take all of those matters into consideration as to what has happened along with any other information that may have been collected at the time and decide whether or not to activate the government disaster recovery payment. That is, in broad terms, how it would unfold.

Senator HUMPHRIES—I appreciate that.

Senator Ludwig—Some of the criteria they that they would use would be whether category C was activated or not, but it is not the sole determinant; it would also depend on the information flow from the Western Australian government.

Senator HUMPHRIES—I accept that state governments do not just put their hands out and have the money start to flow—that is a fair point—but it has been put to me that with this letter and with other information which the state government provided to the Commonwealth government at this point in time it was signalling that it believed the circumstances warranted that those AGDRPs be made. If EMA was not satisfied at the end of December that the case had been made for those payments to begin to flow, can you describe to the committee what the gaps in the information you required were that meant that you could not authorise those payments until 11 February?

Senator Ludwig—As I indicated, I will have to take that on notice. I do not stand in the shoes of the Attorney-General—I am merely his representative here—and so I do not know what the information flow was and I do not know the context upon which the decision was made. But I do know it was made on 11 February and that prior to that personal hardship grants were also being paid, which include the provision of emergency assistance including emergency accommodation, food and essential clothing. The payment was up to \$388 per eligible adult and up to \$194 per eligible child. I know that temporary living expenses were paid up to \$110 per day in the metropolitan area and up to \$150 per day in the country area. There were also grants of up to \$5,000 to assist with the reconnection of electricity, grants of up to \$10,000 for the replacement of whitegoods and floor coverings and interest rate subsidies of up to \$150,000 for small businesses and primary producers in addition to professional advice that was provided. There were also the cleanup and recovery grants of up to \$25,000 for small businesses, which as I understand it are under category C. All of those would have already started to be paid through the NDRRA, which the Commonwealth is a substantive contributor to. We will take it on notice and see what else we can provide for you.

Senator HUMPHRIES—I am grateful for the information on all these other payments, but I am focusing on these relatively quick and accessible payments available through Centrelink from the Commonwealth, non-means tested, which Senator Back indicated were important to a number of his constituents. Again I am advised that Western Australia essentially provided all the information necessary to the Commonwealth around the end of December and that would have allowed those payments to be commenced. It is not clear to me what prevented that from occurring. If some information was not provided or there was some gap in what was

provided by the Western Australian government, I assume that given the nature of these payments, which are emergency response payments, urgent steps would have been taken to clarify what was missing from Western Australia's case for the payments. Could you put to us what those gaps were and how quickly you got answers to your questions about what those gaps were? I assume this is all in writing somewhere and you went back to the Western Australian government saying something along the lines of, 'This is missing,' or, 'We do not know about that,' or, 'Tell us about this.' As I said before, I am not aware that such requests were made, but I would be happy to be corrected on that.

Senator Ludwig—We have not indicated there were either requests from the Western Australian government or from Emergency Management Australia. What I have said is that I will take it on notice and have a look at what the lead-up to the activation of 11 February was. The act provides for a discretion that the minister can make on advice from EMA.

Senator HUMPHRIES—Can you confirm that the Attorney-General as well as the finance minister was copied into the letter from the Premier to the Prime Minister?

Mr Wilkins—I will have to take that on notice.

Senator HUMPHRIES—If you could come back to us about that it would be appreciated. In the 2009-10 budget there was an amount of \$779,000 dedicated to a national crisis coordination capability. Was that expenditure actually expended, what did it provide and was that relevant to the kind of infrastructure that we relied upon in the crisis of recent days?

Mr Wilkins—Sorry, Senator, could you refer me to that in the papers?

Senator HUMPHRIES—No. I have an extract in my papers.

Mr Wilkins—What item is it? Could you say again what it is?

Senator HUMPHRIES—It is program 2.1.2 National security. It is in the 2009-10 budget. This is from the financial year before the present one. The actual expenditure notified to the committee, I think in additional estimates, was \$779,000. You cannot tell me what that was designed to pay for?

Mr Wilkins—I am not sure what you are looking at. We provided a considerable amount of money out of the Attorney-General's budget for the crisis coordination centre and briefing centre here at Parliament House. I think that may be what you are referring. You have seen the state of the one in Arts House. There is another one being constructed in Barton in another place, which we can brief you on at some stage. That would take the place of the coordination centre in Arts House. But both of those will cost more than the amount you just nominated there. This must just be a component of it or something.

Senator HUMPHRIES—I will obtain for you the original budget paper reference and get it to you as soon as I can. There is a replacement coordination centre being built in Barton.

Mr Wilkins—Yes. Can I brief you on that privately, Senator?

Senator HUMPHRIES—Yes. Could I ask about the role that information from the Bureau of Meteorology might have played in the work that EMA was conducting. I suppose, as a coordination centre rather than a management centre, you were not directly dealing with anticipating and managing particular flood events and so forth. Did EMA use the information available from BOM during this crisis?

Mr Wilkins—Yes. It was a very important component of pulling together a picture for the government, a sitrep.

Senator HUMPHRIES—Did it simply rely on the information on the BOM website or did it seek other, refined information directly from the bureau?

Mr Wilkins—Their part of the crisis group that I described was more refined than that, and I assume that there is regular communications between the EMA and BOM.

Mr Carpenter—They provided briefs on a regular basis to EMA on what were some of the predictions of the flood events and for Yasi as well. This information was also passed onto the Queensland government through the Emergency Management Queensland SDCC. It was also provided to some of the people in local areas along the coast of Queensland and in some of the more affected areas around expected floodwater heights and so on. We worked quite closely with the Bureau of Meteorology and with Geosciences Australia.

Mr Sheehan—As Mr Wilkins said, BOM also was involved with the Australian Government National Crisis Committee and would brief the committee, as I understand it.

Senator HUMPHRIES—Did EMA form a view as to whether the array of information coming from BOM was adequate to the circumstances of the crisis? I put that question in the context of having myself visited some of the flood affected areas in recent weeks and being told by local government emergency coordination personnel that they were frustrated by a lack of information about river levels—what was actually coming down from catchment areas towards settlements. There was a paucity of information from BOM, and everyone else, about what river levels upstream were doing.

Mr Wilkins—I have no reason to think that what they provided to us was inadequate. It is a matter I cannot really give you an answer on. As far as I know it was perfectly adequate. In meetings I attended, I would have said it was adequate. I am not a hydrologist and I do not know what the state of hydrology is or what is possible to say or not say. I think EMA is probably in the same situation. I understand that BOM is providing state of the art advice and the sort of information you would expect a bureau of meteorology to be providing. I do not have any reason to believe other than that they were doing a very good job.

Senator HUMPHRIES—My question was not suggesting that they were not doing a good job; my question was testing whether there is sufficient data available to BOM about the state of river levels and rainfall in parts of Australia close to major regional centres. To illustrate that point, I visited Bundaberg last week and the local regional council said that their coordination personnel were relying principally for information about what was happening with the river levels on a person upstream who was taking visual measurements of a river gauge and ringing that through to the council on an hourly basis and not on information available from BOM. I am simply asking whether you formed any impression that there were gaps or inadequacies in the information that BOM had at its disposal to be able to inform communities about river levels.

Mr Wilkins—I have not formed any view on that. This is no doubt something people can look at in terms of our wash-up or post mortem on basically how things went, and no doubt the royal commission will look at that issue—and no doubt nobody ever has enough information. There can always be more information; I have no doubt about that.

Senator HUMPHRIES—Okay. I understand there is money in the department's budget for training officers at local government level in managing emergency situations. How much money?

Mr Wilkins—I am not sure; I would have to take that on notice.

Senator HUMPHRIES—Can you give me any information on how much has been spent in recent years from that allocation?

Mr Wilkins—I will have to take that on notice too. I think the idea is that we are trying to provide, particularly for rural councils and councils that are not wealthy, an explicit subsidy—it used to be implicit—in relation to training at Mount Macedon. I will check that out and give you a proper response.

Senator HUMPHRIES—Did EMA form any view, in general, about how well prepared local government organisations were to cope with the crises that they faced across Queensland?

Mr Wilkins—That is a very big question and I do not have the empirical basis to give you an answer. I would be loath to even take it on notice, because that is an assessment, presumably, that the royal commission and the Queensland authorities are in a much better position to take stock of than we are. Any response we gave would be very impressionistic and probably unfair. The direct relationship with local governments is not the Commonwealth working with local governments but the state. The only observation I would make is that we obviously did have some relationships with the Brisbane City Council, which is a different order of magnitude. Our impression was that they seemed to do a good job.

Senator HUMPHRIES—I accept that you do not want to traverse the areas which the royal commission will traverse, but it seems to me that to effectively coordinate national crises we ultimately need to know how well our coordination efforts are hitting the ground, as it were. Does this lack of an impression suggest to you that the peak national coordinating body, EMA, needs better intelligence about what is going on across disaster affected areas when its role is triggered?

Mr Wilkins—Let us be clear. It is not coordinating local government. It is coordinating crisis management at a state and territory level. Let us be clear about that. There is not a direct linkage into what local governments are doing, and that is not the Commonwealth's role; that is the role of the states and territories.

Senator HUMPHRIES—I accept that, but ultimately what we do at the federal level is acted out, is translated into the action that takes place, in local communities.

Mr Wilkins—You are right, and we are not uninterested in that; we are just not in a position to give you a proper view on it—that is all.

Senator HUMPHRIES—Is the money that you have for training local government in emergency management situations spent on local government entities or is it spent on individuals?

Mr Wilkins—It is actually done through the states. It is part of the national partnership agreement on resilience, and so we would expect the states to have a plan for that expenditure and we would monitor what they are doing with it. So we would not be directly funding them.

Senator HUMPHRIES—Could you provide us with a list of those entities, whether people or organisations, which have been trained using the Commonwealth's money over each of the last, say, four years, please?

Mr Wilkins—We can provide you with a list of the projects that the states will be using the money for. That is how it works.

Senator HUMPHRIES—So you do not actually know, when they have a project, who is being trained under that project?

Mr Wilkins—The idea of this and the whole idea of national partnership agreements is to say: 'These are the outcomes. We want better training for local government officials. We want money expended. That is the outcome we want. Now, states, you tell us how you plan to achieve that. We are not going to tell you how to do it.' They will give us a plan and we can make that available to you, Senator.

Senator HUMPHRIES—I appreciate that, but you still do not know what proportion, for example, of local government bodies in a particular state end up being trained using Commonwealth money.

Mr Wilkins—We can probably give you that information. What I am saying is that it is a state project but, yes, we are interested in that and we can give you information about the AEMI, the Australian Emergency Management Institute, and its programs as well, which may be similarly of interest in terms of training local government officials.

Senator HUMPHRIES—What I am trying to get at is: if the Commonwealth is investing in preparedness of local government personnel, how well has our investment dealt with that issue? That is the question I am trying to get at.

Mr Wilkins—Okay.

Senator HUMPHRIES—So anything you could provide that would assist in that regard would be useful. How many people so far have claimed the Australian government disaster recovery payment?

Mr Wilkins—I do not know the answer to that but I think we do have figures here somewhere. I think we have that information but it will take us a little while to turn it up.

Senator HUMPHRIES—I would like to know how many people have claimed it and I would like a breakdown of how many have claimed from each state, and if possible a breakdown of—

Senator Ludwig—In the opening address I gave you I gave you the total number of payments under the AGDPR payment plus the income subsidy. There were 595,856 claims for the Australian government disaster relief payments totalling \$694.6 million and 49,848 Disaster Income Recovery Subsidy payments worth over \$22.2 million. Given that it is paid through Centrelink the figures that you seek by state and—what else?

Senator HUMPHRIES—By state and by date.

Mr Wilkins—We will pull those figures down. They are publicly available from the Disaster Assist website. They are kept up to date and they are publicly available on that, but we can try to pull them down for you if you want.

Senator HUMPHRIES—Excellent. I will look there to see if it answers my questions. Do you have an indication at this stage of the refusal rate of those making applications?

Senator Ludwig—As I understand the process, if you meet the eligibility criteria it would be paid, so for a person who does not meet the eligibility criteria they may or may not keep that statistic. If someone made an inquiry and then discovered they did not meet the criteria—that is, they were not flood affected—then I am not sure that that statistic would be kept as a logical step, unless you are trying to find another statistic. Do you see the point I am making? When you say 'refusal', do you mean that someone presented and was not entitled because they did not meet the eligibility criteria? If they did not obtain the payment then a statistic may not

necessarily have been kept of those people who have made an inquiry because you would get inquiries by phone, over the counter and through the recovery centres.

Senator HUMPHRIES—But you have to claim in writing don't you?

Senator Ludwig—Yes. So if there has been a claim in writing and there has been an assessment that they were not entitled to it post that, they should have to.

Senator HUMPHRIES—How many people have submitted a claim?

Senator Ludwig—I am just trying to make sure that we find the statistic that you are looking for.

Mr Wilkins—We would probably need to go to Centrelink to find out that information.

Senator HUMPHRIES—What is the budget for EMA?

Mr Wilkins—It is basically whatever it takes and it is part of the departmental budget.

Senator HUMPHRIES—So it is not a fixed budget?

Mr Wilkins—No.

Senator HUMPHRIES—I know there is no line in the budget for EMA.

Mr Wilkins—No. In fact, in these circumstances more people were brought in to support EMA from other parts of the department.

Senator HUMPHRIES—So I could ask for after the end of this financial year and obtain information about how much was spent on EMA's operation in the course—

Mr Wilkins—No, you could not, Senator, not unless I start keeping budgets within my department which is contrary to the way in which the finance department has asked me to run things. In any event a lot of the functions are shared by other divisions within the Attorney-General's Department as I have been at pains to explain to the estimates committee before. For example, the disaster resilience policy people have been working on a lot of the policy issues and a lot of the issues around the NDRRA and the ADGRP. The capability division deals with the AEMI and some of the issues that you have been raising about training of local government. EMA deals with response and crisis management basically. I could give you a figure for the amount that we spend on emergency management. It would be much more than EMA's budget though.

Senator HUMPHRIES—All right. I might put some questions on notice about that. I want to ask you lastly about the emergency alert telephone system. The Commonwealth has been paying for the development of that system. Do you have information about how widely the alert system was used during, say, the Queensland floods?

Mr Wilkins—I think we do. It is quite a large number. I will ask Ms Perry to answer your questions. She is the officer who has been largely responsible for putting together a lot of these issues which I was just adverting to like the resilience strategy. The work on this comes out of the resilience policy branch which if you like is intimately concerned with emergency management as well as what is called Emergency Management Australia.

Ms Perry—The rough number that we have at the moment is that there were 2.5 million warnings issued around the Queensland floods and in Victoria and also in WA. We do not have exact numbers as yet because they come in from the states and territories as the messages go out from state and territory government, but it has been used extensively.

Senator HUMPHRIES—So the decision as to when and in what circumstances to activate the alert was entirely state government.

Ms Perry—Entirely yes.

Senator HUMPHRIES—There is no ongoing servicing or coordination role or anything like that for the Commonwealth.

Ms Perry—No, so while the Commonwealth assisted the states and territories in setting up a national system, the states and territories have a role to manage and maintain it on an ongoing basis.

Mr Wilkins—Except to add that, as you know, it has now been changed from being based on billing addresses and fixed lines to be location based and the Commonwealth will be funding that development, so improving it, increasing its capacity and its refinements to warn. The capital expenditure on that is being worn by the Commonwealth, but essentially it is machinery that is used by the states and territories and they have protocols and a corporation for the ongoing management of it.

Senator HUMPHRIES—We cannot really know directly how well this technology is working because it is being operated by the states. I assume that the royal commission in Queensland in the course of its work may examine how this technology was used and it will have some information about it there, but there is no ongoing monitoring or supervisory role for the Commonwealth.

Mr Wilkins—Not in that sense. We obviously get information in from them about how they are using it.

Senator HUMPHRIES—Okay. I will put my other questions on notice.

Senator BOYCE—Ms Perry just following up on that. For the 2.5 million warnings if you are able to give us a break down by state on notice when those figures are finalised.

Ms Perry—Yes.

Senator BOYCE—Minister, first off you said that in general a state would request an activation of the arrangements under the NDRRA. Would this generally be—

Senator Ludwig—No, they declare an emergency. They are the immediate responders for natural disasters. The state would declare that there is a natural disaster. It would then—

Senator BOYCE—But to seek the AGDRP or the assistance for business and so forth—

Senator Ludwig—They are different again. Perhaps it would be worthwhile if EMA takes the Senate through how NDRRA works.

Senator BOYCE—Is it generally the Premier writing to the Prime Minister?

Senator Ludwig—That is why I think it is safer if we take you through the NDRR arrangements, because they are automatic.

Senator BOYCE—Noting we are trying to do this against the clock.

Mr Wilkins—This is not uncomplicated, Senator, so it will take some time. I might get Kevin Rheese to explain how the NDRRA works.

Mr Rheese—Emergency management and the protection of life and property is the constitutional responsibility of the states and territories. When an event occurs it will automatically activate or trigger the Natural Disaster Relief and Recovery Arrangements. When the cost exceeds \$240,000 to the state, personal hardship and distress assistance is immediately available under the arrangements of category A of the NDRRA. If the event is large, the state can request further assistance. Category C is for small business and primary producer assistance grants up to \$25,000. That would be generally reserved for more severe events and would be on request from the Premier to the Prime Minister. There is a further category of assistance, category D, that is intended for the most severe events when a request for exceptional circumstances assistance can be made to the Prime Minister. I skipped over category B assistance, which also becomes available automatically to a state when the state's expenditure within a financial year on a range of events has exceeded what we call the first threshold of expenditure. That varies for each state according to its gross public sector revenue.

Senator BOYCE—What is category B for?

Mr Rheese—Category B, generally speaking, contains infrastructure restoration provisions.

Senator BOYCE—Where do not-for-profit and community groups fit within this?

Mr Rheese—In category B. There is also a provision in category C for community recovery funds, which can provide grants for voluntary not-for-profits as well.

Senator BOYCE—That satisfies me. Why were not-for-profit and community groups not included in the initial assistance for Queensland?

Mr Rheese—There is a provision, as I just outlined, in category B of the standard arrangements available for Queensland to activate that measure. Like all measures under the NDRRA, it is a menu of measures that are available to the state.

Senator BOYCE—So they did not ask for it to be activated?

Mr Rheese—They did not choose to activate category B assistance to not-for-profit organisations.

Senator BOYCE—When did they seek that first activation that did not include the not-for-profits?

Mr Rheese—Again, category B is automatically available so it is entirely a matter for the state as to when they choose to activate the range of measures, which includes concessional loans to voluntary not-for-profit bodies.

Senator BOYCE—And grants.

Mr Rheese—Yes.

Senator BOYCE—The Prime Minister, the Premier, Senator Ludwig and someone else as well announced on 18 February that there would be grants of up to \$25,000 to not-for-profits. What changed?

Mr Rheese—The activation by the Queensland government would be a matter for Queensland. The activation of the category C grant was on the basis of a request by the Premier to the Prime Minister.

Senator BOYCE—When did that occur? Would that be a formal letter?

Mr Rheese—Yes, it would be a formal correspondence between the Premier and the Prime Minister.

Senator BOYCE—When did that occur?

Mr Rheese—I do not have the date with me. I suspect I would be able to get it for you in a short while.

Senator BOYCE—Have you ever struck the situation before where a state government has not automatically asked for category B to be included or activated?

Mr Wilkins—I might answer that question in generic terms because the NDRRA—the Commonwealth office—is much broader than any of the states ever trigger.

Senator BOYCE—Yes, but my sole interest here is in the not-for-profits.

Mr Wilkins—But it happens all the time. In other words, it depends entirely on what the states and territories want to trigger. So I am not quite—

Senator BOYCE—Have you struck the situation where states have in the past not chosen to trigger assistance for not-for-profits in a disaster of this scale?

Mr Rheese—Yes.

Senator Ludwig—This is on an unprecedented scale. In this instance it was triggered because of the nature of the event. If you rephrase your question and ask, ‘Are there other events which states declare as natural disaster areas, but are not of this magnitude, and where it is not activated?’ The answer is yes.

Senator BOYCE—Thank you for the question and the answer, Minister. My advice is that the reason that Queensland did not originally include not-for-profits was that it was an oversight on the part of the Premier. In fact, it took her two letters to the Prime Minister to get the information correct about wanting grants of up to \$100,000, which would not have included the \$25,000 grant. How many letters were written to the Prime Minister by the Premier?

Senator Ludwig—That is interesting and speculative. I do not know the reason for the Premier requesting the payment. That question should be put to the Premier. I think it is unfair to put it to an officer here to try to speculate about the reason the Premier chose to activate it. The fact is that it was activated and they are receiving those payments. So what you have been trying impugn by your question is that there were other reasons. I do not know what those were and unless you have evidence of those I cannot assist. What I do know is that it was activated because of the nature of the event.

Senator BOYCE—But, Minister, you would know what caused this to be activated. The social inclusion unit of the Department of the Prime Minister and Cabinet could tell me that very shortly after the event that they noted that not-for-profits were not included. If the social inclusion unit of the Department of the Prime Minister and Cabinet could tell me last night that they noticed it, why didn’t the Queensland government notice it?

Senator Ludwig—It is an interesting question to the federal government, but this is estimates.

Senator BOYCE—PM&C were obviously aware of this oversight by the Queensland government.

Senator Ludwig—The payment was activated—that is the fact. If you do not like that fact, I cannot help you any further. That means that not-for-profits are receiving payments.

Senator BOYCE—What are the eligibility criteria for those payments?

Mr Rheese—There needs to be physical damage to premises or assets.

Senator BOYCE—Where would I find this information?

Mr Rheese—It is available on the EMA website as part of the national disaster relief and recovery arrangements.

Senator BOYCE—If you go into the NDRRA website, though, all you find is the media release about the assistance available to not-for-profits—not the eligibility criteria.

Mr Rheese—The determination provides the provisions, and the clauses within the determination, that outline the conditions under which the category B loans would be made available.

Senator BOYCE—And how would someone find that out? How would they know to look at the EMA website?

Mr Rheese—I expect there is a link on Disaster Assist also; however, the measures are delivered by the state government and the assessment, I believe, for those sorts of assistance to Queensland not-for-profits would probably be made available by the department of communities and would have more detailed criteria that is based on the Australian government determination.

Senator BOYCE—Are the eligibility criteria very clearly spelt out?

Mr Rheese—I believe so.

Mr Wilkins—Just to go back to the main point, this is a payment made by the state government?

Senator BOYCE—The \$25,000?

Mr Wilkins—Yes.

Senator BOYCE—But it was announced by the Prime Minister and by Minister Ludwig and by a number of other people, including the Premier of Queensland. I think it is a matter that is relevant.

Mr Wilkins—It is a payment made by state governments and it is a matter for them to communicate with people in the state about eligibility. The eligibility criteria are available on the Commonwealth website, but it is really a matter for the state governments to actually make sure that people understand that. It is a matching payment.

Senator PRATT—I do note from my own experience in Western Australia that it is not uncommon for the state government in the way it advertises its part of the NDRRA—which they have even renamed WANDRRA—to tweak the eligibility criteria to suit their own administrative requirements. It seems to me, therefore, that it is difficult to be too prescriptive on the Commonwealth website as to the exact nature of the eligibility criteria. Would that a fair assessment?

Mr Wilkins—That is right. The Commonwealth has, as Kevin described it, a menu of options and these are triggered by states picking them up and triggering them—if you like to think of it that way. There is now a desire, I think, to get greater uniformity into that. Some of that has been occasioned by the variability around the countryside that has been visible in relation to some of these current disasters. But essentially the Commonwealth has a uniform set of options out there which can be triggered by state governments.

Senator PRATT—So within each category, say hypothetically category C, depending on the disaster you would have a different sweep of things that you might need to choose from in order to have relief in each region. For example, I note there were some things triggered for the Gascoyne region that were not triggered in the cases of the bushfires, although I understand they were both category C disasters.

Senator Ludwig—By its very nature its determination provides for states to select that which is appropriate for the natural disaster that they are facing and the scale, the type or the effect of it. In other words, you might have a state that decides—for argument's sake—that a flood event should be responded to in an 'X' way and a cyclone should be responded to in a slightly different way because of the different damage and because of the different nature of the event itself. Of course, the Natural Disaster Relief and Recovery Arrangements are designed as a sweep to cover all natural disasters that could potentially affect Australia. They are designed to pick up resilience—I think you made a comment about ensuring states can build resilience as well.

CHAIR—We will deal with Senator Fielding's questions and then go to the dinner break.

Senator Ludwig—Mr Wilkins has appointments that he needs to go to on the basis that we were breaking at 6.30pm.

CHAIR—On that basis, we will finish with 1.2. We will have to advise Senator Ludlam to put his questions on notice. After the break we will deal with Senator Fielding's questions. We will work through 1.3, 1.4, 1.5 and 1.6, go to Customs and then work down the rest of the agencies.

Proceedings suspended from 6.33 pm to 8.02 pm

CHAIR—We will reconvene this public hearing into the Senate's additional estimates for the Legal and Constitutional Affairs Legislation Committee. We are going to go to program 1.4, Family relationships. Senator Fielding, you have questions.

Senator FIELDING—Thank you. I am interested in the reviews that have been done on the Family Relationship Services Program. When were the last couple of reviews?

Ms Pirani—The last major review of the Family Relationship Services Program was the evaluation conducted by the Australian Institute of Family Studies and that report was published in January 2010.

Senator FIELDING—Was it your area or another area that proposed the cuts to the budget? Was that from the government or was it from the department? I am trying to work out what, in your eyes, the review said.

Mr Wilkins—They were decisions in the budget process. Nobody proposed them.

Senator FIELDING—What was your understanding from that review? What were the key points? Given that family relationship services come in this area, what was your key take-out from that report? Was it working or not working?

Ms Pirani—The evaluation covered a wide range of issues, as you would be aware. Obviously one of the particular issues it did look at was the performance of the services funded by the Attorney-General's Department under the Family Relationship Services Program. Overall the evaluation found that those services were functioning well.

Senator FIELDING—Were the services that are provided by this department cut back in the budget or were they left at the same level?

Ms Pirani—The government announced some funding reductions to some of the services. However, for the majority of those—particularly the ones to the family relationship centres—the services will be able to charge under a fee regime to recover some of those reductions through the charging of fees to people who can afford to pay.

Senator FIELDING—I may come back to that. Did the department do any consultation with any of the program people in relation to these cutbacks at all, or was it just announced?

Ms Pirani—Not prior to the budget. However, since the announcement we have been consulting extensively with the sector about the application of the funding reductions.

Senator FIELDING—Have you had any complaints at all about the changes?

Ms Pirani—Obviously the sector is not happy.

Senator FIELDING—The reason that I asked the question is that obviously relationship breakdown is a very tricky area for anyone who goes through that, and it is quite widespread around the world and in Australia. I know a lot of people found the service very valuable, but I am getting a lot of complaints from people and I am trying to work out how they are being processed. Is that being fed back through the department to the minister?

Ms Pirani—Indeed. We have given all of the affected service providers an opportunity to meet with us to talk through issues. They have come up with some proposals that they feel might make things easier for them, and we are providing advice to the Attorney in relation to the outcome of those consultation processes.

Senator FIELDING—Has there been a report done and provided to the Attorney-General on the issue of complaints?

Ms Pirani—Not as such. We have provided advice in the normal course.

Senator FIELDING—This is the reason that people do not feel as if they are really being heard; it is just going to you and not up through to the minister. I think there needs to be a formal report done, and I am interested to know whether the department could, in a formal way, look at the impact and the consequences of that decision. I do not know whether that has been passed through in a very formal sense, and I am not convinced that there is enough being fed back. The Family Relationship Services Program was a program that was very much valued by families in desperate need, and a lot of them were unable to afford the charges. I remember when the program was announced it was supposed to actually lighten the load of the Family Court. Can a formal report be provided in some way?

Mr Wilkins—I think that we have done a good job of informing the minister of the views of people. I also think that the service remains available to people. It is means tested in relation to the fees. We do bring to the

attention of the minister, as public servants should, what people's views are, and I do not see that a formal report would actually do anything different to what we are currently doing.

Senator FIELDING—That is where we will probably agree to disagree. Have there been any pressures on the Family Court because of the services being cut back or being charged for? Has there been any impact at all?

Ms Kelly—The reductions do not take effect until 1 July this year, so I would not have expected to see any impact. I am not aware of anything that has been brought to our attention from the Family Court.

Senator FIELDING—Given that the whole idea of this program was to help keep people out of the court system, do you see a dramatic change there? When this does kick in, are you envisaging that it is going to have no impact?

Mr Wilkins—Yes, we envisage that it is going to have no impact.

Senator FIELDING—No impact?

Mr Wilkins—That is right.

Senator FIELDING—I doubt that, purely because the services were being used. Some places have eight weeks waiting time for access to services. In the current arrangement I think you will find that a lot of those people will still struggle to afford the services. I know it is means tested, but there are still a lot of people that would probably not use the service. I will probably follow this up in the next lot of estimates once the changes kick in. Thank you.

CHAIR—Do we have any other questions for 1.4 while the officers are here? No? Then that is 1.4 finished with. We are going to go back now to 1.3, Justice services. Mr Wilkins.

[8.10 pm]

Mr Wilkins—I have two documents. It was probably Hansard that wanted Senator Ludwig's statement, which is available if you have not already got it.

CHAIR—I think people here wanted it.

Mr Wilkins—Okay. We have that. The second is a letter of the 21st. I think it was Senator Barnett who asked for it. It is from the Attorney-General to the President of the Australian Law Reform Commission.

CHAIR—Thank you. Senator Xenophon, do you have questions in 1.3?

Senator XENOPHON—Thank you. It relates to the funding of test cases. That is within the purview of 1.3, as I understand it.

Mr Wilkins—I think so.

Senator XENOPHON—If we both think so, then we are on the right track!

Mr Wilkins—These are arcane financial ways of carving up the department.

Senator XENOPHON—That is right. Arguably, this might have gone under 1.5, but I think it is most clearly under 1.3. This relates to the funding application by the Cape York traditional owners for a test case against the Queensland government's wild rivers declarations. What date is recorded in the departmental documents as the date the decision was made to deny funding for the legal case by Cape York traditional owners against three of the Queensland government's wild rivers declarations?

Mr Wilkins—We need to see whether we have that information with us, if you can wait a moment.

Senator XENOPHON—Sure.

CHAIR—Mr Wilkins, could you get someone to stop Ms Pirani leaving for a moment? Sorry, she has just headed out the door. We have realised Senator Boswell had questions for 1.4. We are trying to locate him.

Mr Wilkins—Senator, I might get Katherine Jones to address your question.

Senator XENOPHON—Thank you.

Ms Jones—The Cape York Land Council was advised on 5 October that its test case funding application was not approved. That was on the basis that the High Court proceedings raised issues that were under public discussion and, in particular, the subject of a House committee inquiry. On that basis, we felt that it was not appropriate to be funding High Court litigation until such time as the House committee inquiry had progressed.

Senator XENOPHON—I do not know whether Senator Brandis wants to buy into this, but is that what normally is done? Just because something is subject to public discussion—it is being discussed in parliament; it has been referred to a House committee—if there are justiciable issues, if there are issues of legal importance to be dealt with, why would that fact preclude it from going to the High Court or being the subject of a challenge?

Mr Wilkins—The logic of that decision is that such a matter of contention might be resolved in parliament and therefore render litigation in the High Court otiose.

Senator XENOPHON—That is making a number of big assumptions, though, isn't it, Mr Wilkins?

Mr Wilkins—It is not pre-empting the parliament, at any rate.

Senator XENOPHON—But there is the legislative, the executive and the judiciary; I would have thought there was a bit of separation between all three.

Mr Wilkins—It is the same issue. The issue that is exercising the Cape York council is presumably that they do not like the wild river legislation, and at the same time the parliament is looking at whether something should be done about the wild river legislation. There is a bill before the parliament in fact, so I think the logic—

Senator XENOPHON—Not a government bill, though.

Mr Wilkins—No, but I do not think that makes any difference. It could still, in the current parliament, become—

Senator XENOPHON—The success rate of non-government bills is somewhat lower than the success rate of government bills.

Mr Wilkins—Anyway, that is, I think, the inherent logic of it. You would not fund a test case if the law was about to change, would you? There is a possibility that the law might change.

Senator XENOPHON—Let us go to that decision. I question the logic. But was the decision made by departmental officers or by the Attorney-General?

Ms Jones—By departmental officers.

Senator XENOPHON—If it was made by departmental officers, was the Attorney-General informed prior to the decision being made?

Ms Jones—I would have to take that on notice, but the delegation to make decisions under that scheme is made to departmental officers, so it would be departmental officers.

Senator XENOPHON—In terms of the decision made, was it made after input or representations from other government departments? Can you provide us with the chain that led to the decision to reject the legal aid funding?

Ms Jones—We consulted within the department, as is usually the case with these types of applications, and arrived at the decision as a consequence of having those internal consultations. In terms of any consultations outside of the Attorney-General's Department, I would need to take that on notice and check on that.

Senator XENOPHON—On what date was the decision made to reject the legal aid funding?

Ms Jones—My briefing note gives me the date on which the Cape York Land Council was advised. I would need to check if that was the same date that the decision was made.

Senator XENOPHON—I have a letter here from Mr Peter Arnaudo, Acting First Assistant Secretary of the Social Inclusion Division of the Attorney's department, dated 8 November. Is that the date when there was formal notification of the decision?

Ms Jones—I would have to take that on notice and check. I do not have the exact information with me at present.

Senator XENOPHON—If you could take that on notice. If I could just go back to Mr Wilkins and the rationale behind this decision that the test case could not be funded because the issue was in the public domain—is that right? Is it because it is in the parliament or because it is in the public domain?

Mr Wilkins—The point probably is that these test cases are rare things. There is not a huge wad of money there that we keep pushing out the door for all sorts of test cases. It needs to be of exceptional importance in terms of defining the legal environment more generally. I think the logic here—and I will not pre-empt the officers who actually made the decision—is that this is a matter of contention, of policy, being debated in the

parliament, and it may go away as an issue of law, depending on what the parliament says. Why would you fund something that might turn out to be an otiose case?

Senator XENOPHON—I do not think the Cape York traditional owners would see it as an otiose case, though.

Mr Wilkins—They will if something changes in terms of the law. They would presumably withdraw their action and no longer take it.

Senator XENOPHON—But they cannot even bring their case. The lack of legal aid funding has prejudiced them in terms of even bringing the case.

Mr Wilkins—I make the point that they certainly can reapply, depending on what the parliament decides on this matter.

Senator XENOPHON—So the view is that, while the matter is before the parliament, there will not be any legal aid funding?

Mr Wilkins—That is, I think, the view that the departmental officers who made the decision took. I think that is a fair summary.

Senator XENOPHON—You may wish to take this on notice: in how many other cases has test case funding been denied for similar reasons?

Ms Jones—I will have to take that on notice. It does relate to a specific provision in the Indigenous test case scheme guidelines that provide for that. But, as Mr Wilkins has indicated, we had indicated to the Cape York Land Council that they could reapply at any point if the circumstances changed.

Senator XENOPHON—Can you direct me to which Indigenous test case guidelines you are referring to?

Mr Wilkins—Sorry, Senator. We will get them downloaded off the internet and make them available to you.

Senator XENOPHON—I have them with me and I am trying to work out which provisions—

Mr Wilkins—We do not have them with us. That is the problem.

Senator XENOPHON—Do you want mine?

Mr Wilkins—If you could come down here, that would be helpful.

CHAIR—He is just so pleased his toy has come in handy at last!

Senator XENOPHON—It is not a toy, CHAIR. It is an essential work tool!

CHAIR—Yes, it is, sorry. An essential work tool—that is right.

Ms Jones—It is under the heading ‘Types of matters for which assistance is not available’ and it comes under subsection (d).

Senator XENOPHON—Can you read it.

Ms Jones—‘Cases with any one of the following characteristics will not be funded’. Criterion (d) is:

It raises a question already under public discussion by Commonwealth or State or Territory Governments with a view to policy reform.

Senator XENOPHON—But this is not a matter that is subject to discussion by any state or territory government. The proposal to amend the legislation at a Commonwealth level to overturn it is a matter that is subject to discussion. That is something that has been introduced by not a member of the government. It is a non-government bill. So how does that fit in?

Mr Wilkins—I will let Katherine explain the logic.

Ms Jones—It was on the basis that if the private members’ bill before the Commonwealth parliament was passed then that would have an effect on the Queensland legislation.

Senator XENOPHON—But the criterion is that it is a matter that is under discussion between governments.

Mr Wilkins—No, not ‘between governments’.

Ms Jones—No, it is public discussion ‘by Commonwealth or state or territory governments with a view to policy reform’, so it is a subject of discussion by either of those levels of government.

Senator XENOPHON—But surely the intent of that, on any reasonable interpretation of the document, is that it anticipates that if governments are trying to sort out a policy issue, you ought not to be—and I accept what Mr Wilkins says—spending money on a legal aid challenge if there is a consideration by a state or territory or the Commonwealth government to deal with the issue. Does that mean that if I lob a private senator's bill in on an issue for which someone is seeking legal aid, even though it might not have a hope in hell of going through either chamber, then that will block the legal aid application? I would have thought that the reading of that is that, if it is about saving precious public money for legal aid, it is about governments about to make a decision or in the process of making a decision that would render, as you say, any challenge odious.

Mr Wilkins—It is a fine point as to where you draw the line in terms of something that possibly could get up or may not get up or probably will get up. But there is a prospect—and it is being, as you know, considered by the parliament—that, with the current climate and the numbers in the parliament, this may in fact change.

Senator XENOPHON—But the wording is quite different. The criterion by which this application was rejected is quite different from the circumstances in which this matter is being considered by the parliament, by having a private member's bill.

Mr Wilkins—It does raise a question which is under discussion and which may be resolved through a policy process. We do not want money spent on litigation to resolve policy issues, essentially, that will be resolved elsewhere.

Senator XENOPHON—But the policy process is not one of government. The Queensland government does not want to change the wild rivers legislation. The Commonwealth government does not want to change it. There is a distinction, though, isn't there?

Mr Wilkins—The House economics committee is currently looking at precisely these questions, as I understand it. We did not take it to be a charade.

Senator XENOPHON—In terms of the Cape York community that has sought the legal aid funding, you can understand why some see this as a decision that has shut down their opportunity to have this legislation challenged?

Mr Wilkins—I can understand maybe if they adopt that point of view. But the view we took was that there was some prospect of this being resolved in parliament rather than in the courts.

Senator XENOPHON—Sure, but that is quite different from the criterion.

Mr Wilkins—No, I am talking about the logic that lies behind the criterion. If you take the strict interpretation, you would just rule them out. What I am trying to go to is the rationale that underlies that.

Senator XENOPHON—Can I suggest to you that there probably have not been any similar rejections in recent years.

Mr Wilkins—I do not know, but we can look into that.

Senator XENOPHON—It is quite extraordinary that there was a rejection on this basis, isn't it?

Mr Wilkins—I do not know. I think cases being funded under this scheme are fairly rare and extraordinary in that sense.

Senator XENOPHON—But I am talking about the rejection on this ground, on this basis.

Mr Wilkins—We do not get many applications, so you are probably right.

Senator XENOPHON—I will finish up shortly so that I can get my iPad back. The application for legal aid was made on 27 April 2010—as I have been informed in correspondence from Mr Richie Ah Mat, the Chairperson of the Cape York Land Council Aboriginal Corporation—and a decision was made in November by the department. How long does it normally take to deal with these applications?

Ms Jones—In relation to that application, there was actually a significant amount of contact between the department and the Cape York Land Council around their application, seeking further information, seeking clarification of the nature of the application, so it was not simply that we received the application and then did a slow process of assessing it. There was actually quite a lot of discussion back and forth between us and the council.

Senator XENOPHON—To save time, could you provide details on notice, even a chronology, of that? I do not necessarily need to see the documents. If I got permission from the applicants, maybe I could see the

documents. Maybe that could resolve that issue. Normally these applications are dealt with in—what, two or three months?

Ms Jones—It will always depend on the amount of information that is provided with applications in relation to test-case type schemes. It is quite often the case that the department has to go back and forth quite a few times with the applicants to get additional information.

Senator XENOPHON—But can you give me a time frame, even a range, that it has normally taken? They are not that frequent, these test case applications, as I think Mr Wilkins has indicated. What is the time frame? What is the quickest an application has been dealt with previously and what is the longest an application has been dealt with previously, for test cases?

Ms Jones—I would have to take that on notice. We aim for an average turnaround of usually three to four weeks to assess an application like this, but it really will depend on the nature of the application. So I could take it on notice in terms of the average time for these types of applications.

Senator XENOPHON—You do not think it would be unfair to say that there was any filibustering on the part of the department in terms of dealing with this application?

Ms Jones—That is right.

Senator XENOPHON—You do not accept that?

Ms Jones—No. We worked with the Cape York Land Council in terms of information. I appreciate that they might have been frustrated in terms of some of the time frames, but there was quite a lot of back and forth between us and them.

Senator XENOPHON—If you could provide me with details of that; in fact, I will get a consent from the Cape York Land Council to get any documentation. It seems the letter of Mr Arnaudo—and I will finish off on this—the Attorney-General's Department letter, referred to a letter dated 20 September 2010 to the Attorney-General about the application, and the letter goes on to say:

The Attorney-General has referred your letter to me. I apologise for the delay in formally replying to you.

So there seems to have been a lot of toing and froing in relation to this and, as a result, they now do not have the funds to challenge the wild rivers declarations. So does it mean that the application is in abeyance? If, for instance, the bill introduced by, I think, the opposition leader in the lower house is not successful, does it mean that this application will be revived?

Mr Wilkins—They could reapply, I think is the point. One of the key things here, which I suppose I personally would like to be convinced of, is that the case has reasonable prospects of success, which is also a criterion.

Senator XENOPHON—But it was not rejected on that basis.

Mr Wilkins—No, but I would be interested in that. I am not the determiner in this case.

Senator XENOPHON—No, I understand that, but this really puzzles me. There was a lot of toing and froing for a number of months. In the end it was knocked out on the basis that it was before the House—even I do not think it could be argued that it has been considered by government as such; it is a private member's bill—but up to the time that it was rejected, was the issue of the reasonable prospects of success argument ever used to knock back the application?

Mr Wilkins—I do not think so. No?

Ms Jones—No.

Senator XENOPHON—Sorry, can you just place it on record?

Mr Wilkins—It was not, no.

Senator XENOPHON—Therefore, if it was not, doesn't that imply that you had plenty of time to assess the potential merits of the application?

Mr Wilkins—That is a fair comment. No, it was decided on the basis that we indicated to you.

Senator XENOPHON—So, Mr Wilkins, you withdraw—

Mr Wilkins—I am just saying what my personal view is.

Senator XENOPHON—I understand that from a policy point of view you are not going to fund something that does not have a hope in hell of succeeding, but that was not the case here; it seems to have passed the reasonable prospects of success threshold.

Mr Wilkins—But I think you are asking whether it ticks all the other boxes, except that one. Is that what you are asking?

Senator XENOPHON—I am asking whether the reasonable prospects of success box was not an impediment to the application; that the only impediment was the issue of it being before parliament or being considered by government, I think, in terms of the criteria.

Mr Wilkins—We did not need to go to that proposition apparently. We did not need to go to that proposition because it failed on the other criterion. So there would still be that question.

Senator XENOPHON—So you are saying from 27 April to 8 November the merits or otherwise of the case were not considered?

Ms Jones—Quite often with difficult or complex test case applications the department will actually seek independent counsel advice as to the merits of the application, and we did seek independent advice in relation to this application.

Senator XENOPHON—So independent advice was sought and that advice said that it did not have merit or did have merit or potential merit?

Mr Wilkins—We are a bit reluctant to discuss that because of the impact it may have on the applicants and, if litigation is already on foot, it might not be in the interests of justice or their interests. But maybe we could brief you separately about that.

Senator XENOPHON—I think I am being wound up here by my colleagues. Was it rejected on the basis—

Mr Wilkins—The opinion was not good.

Senator XENOPHON—Okay. Finally, this argument that because it is before the parliament it should be knocked out: there was a Senate inquiry, I think in May, much earlier, before it went to the House of Reps. Why wasn't it knocked out then, on that very criteria that you have referred to earlier?

Ms Jones—We were in the process of assessing the application and getting the independent advice.

Senator XENOPHON—I am really confused now. You knocked it out because it went before the House, because the Leader of the Opposition introduced the bill, on the criteria that you have given, as an extrapolation of the criteria, yet the bill was before the Senate a number of months earlier and the application was still being considered. Which is it? Is it because Senate bills do not count?

Mr Wilkins—The prospects of the current parliamentary inquiry are much higher than they might have been at that point in time.

Senator XENOPHON—This is a new paradigm. So it is a political decision?

Mr Wilkins—No, it is a decision based on the reality of how the parliament is functioning and whether things—

CHAIR—Mr Wilkins, can I just clarify? I think you are referring to an inquiry that came to this committee for inquiry, which was back in March, April, probably before the application for legal aid. But it is a different bill now, is it not, that has been introduced into the House?

Mr Wilkins—That is true.

Senator XENOPHON—It is substantially the same, Chair.

Mr Wilkins—No, that is true.

CHAIR—But there are aspects of it which are different, so it is a different piece of legislation as well.

Senator XENOPHON—Chair, it has the same effect: to overturn the Queensland government's legislation.

CHAIR—That is true. But, Senator Xenophon, it is not the piece of legislation we were given as legal and con to inquire into last March. It might have the same effect, but it is different.

Senator XENOPHON—Chair, I am grateful for the time and I am grateful to the officers for their evidence, thank you. I will get my paperwork.

CHAIR—Do we have any other questions for 1.3, Justice Services?

Senator BRANDIS—I am not sure if the questions I have are 1.3 or 1.2. They could be either.

CHAIR—We have sent 1.2 home actually.

Senator BRANDIS—I am sure Mr Wilkins would know the answer anyway. Mr Wilkins, I want to raise with you the question of Mr Assange and WikiLeaks.

CHAIR—Sorry, can we just clarify then what program that would be?

Senator BRANDIS—Let me ask my question, please, and once the question is asked, then I am sure Mr Wilkins will be able to work out where it is to be fielded.

Mr Wilkins, I want to ask you a couple of questions about Mr Assange and WikiLeaks. On 3 December the Prime Minister announced that she had established an investigative unit within the government, charged with scrutinising the leaked cables.

Mr Wilkins—What date was that?

Senator BRANDIS—3 December, as recorded in the *Canberra Times* on 4 December. Can you tell us if the investigative unit which the Prime Minister announced on 3 December included officers from your department?

CHAIR—Before you do that, you are going to tell me what program that is in so that I can work out which officers are coming or going?

Mr Wilkins—I do not know of any officers involved in an investigative unit.

Senator BRANDIS—So if an investigative unit in relation—

Mr Wilkins—I have not seen the report. I do not know what we are referring to.

Senator BRANDIS—All right. I might be able to find—

Mr Wilkins—That is a newspaper report. I would have to check. Is it a press release?

Senator BRANDIS—It is a newspaper report of a press release. I should be able to give you the press release. But, in any event, let me read you the story:

The Prime Minister Julia Gillard has established an investigative unit within government, charged with scrutinising the leaked cables.

All I want to know for the moment is whether you are aware of any such unit and whether any such unit involves officers of your department.

Mr Wilkins—I am not sure that I am aware of any unit of that description.

Senator BRANDIS—Mr McDonald, do you know?
Mr Wilkins—I do not think he knows either.

Senator BRANDIS—I see a lot of activity down this end of the table.

Mr Wilkins—Yes, I know. We are trying to work out what it is that you are referring to, I think.

Senator BRANDIS—I have referred you to what was attributed to the Prime Minister in the *Canberra Times*.

Mr Wilkins—It might be better to ask the Department of the Prime Minister and Cabinet precisely—

Senator BRANDIS—No, Mr Wilkins—

Mr Wilkins—I have given you an answer.

Senator BRANDIS—So if such a unit were established, it did not involve any officers of your department?

Mr Wilkins—To my knowledge, no.

Senator BRANDIS—That is all right. That is a completely responsive answer. Thank you. Mr Wilkins, while we are on the WikiLeaks matter, as you are aware, the Prime Minister on 2 December said in relation to the placement of material on the WikiLeaks website by Mr Assange and those working for that organisation:

It's a grossly irresponsible thing to do and an illegal thing to do.

That was in response directly to a question concerning Mr Assange himself.

Mr Wilkins—Who said that?

Senator BRANDIS—The Prime Minister. What I would like to know is whether your department gave any advice to government about the legality or otherwise of the conduct of Mr Assange or WikiLeaks in relation to the posting of classified information on the WikiLeaks website.

Mr Wilkins—No.

Senator BRANDIS—Thank you.

CHAIR—And we got through all that without even working out which program those questions slotted into. If I can just try and get a handle on where we are at now. Sorry, Senator Trood.

Senator TROOD—Thank you. Perhaps you could clarify something for me, Mr Wilkins, because I specifically asked the Department of the Prime Minister and Cabinet this question last night and I was advised that the Prime Minister had received a briefing from the task force on which, I must say, your department was said to be represented, and advice regarding illegality or an absence of illegality was provided by your department. That was the evidence received last night from officers of the Department of the Prime Minister and Cabinet.

Mr Wilkins—I do not know of any such advice being given to anyone on legality and my officers, so far as I have made inquiries—and I am happy to make further inquiries—do not know of it either.

Senator TROOD—I take it from that that you are contradicting the evidence provided from Prime Minister and Cabinet last night.

Mr Wilkins—No. I am just telling you what I know. I do not know what the evidence was. I have not read *Hansard*. That would be your interpretation.

Senator TROOD—It is not so much an interpretation, Mr Wilkins.

Mr Wilkins—I have not read *Hansard*, Senator Trood.

Senator TROOD—I can assure you that was the evidence we were provided with. In fact, I think I was further encouraged, injuncted, to take the matter up with your department at the appropriate time, which of course is now.

Mr Wilkins—I cannot help you.

Senator TROOD—Do you know anything about this, Mr McDonald?

Mr G McDonald—No. I think there have been a few processes in this. Clearly, when some of the first Defence stuff was released, there were some people in Defence who went through and examined the material. Then when the second lot of material came out, there was some work done, looking at what material was there. We were not part of that at all. But later in the piece, there were some policy discussions about the issues, where there were meetings in PM&C. So it may be that people are getting mixed up as to which process was occurring. But there is absolutely no question that we have not provided any advice about whether an offence has been committed or anything like that. We leave that to the police. Our job is to simply brief on what the range of laws might be, to brief on how it might affect our department. In fact, most discussion is around issues like what you need to make sure we have proper security.

Senator BRANDIS—Mr McDonald, when the Prime Minister said on 2 December that what Mr Assange had done was ‘an illegal thing to do’, a proposition from which I might say the other ministers of the government in subsequent days retreated, that statement by the Prime Minister was not based on any advice generated within the Attorney-General’s Department?

Mr G McDonald—No, it was not.

Senator BRANDIS—Thank you.

CHAIR—All right. Let’s try and move on then. We have finished with 2 and with 1.3.

Senator BRANDIS—Senator Crossin, I do not want to embark on a new line of questioning, but I want to seek your guidance because I do not want to be confronted later in the evening with a suggestion that I should have asked these questions of somebody else. I want to explore the question of the terrorist David Hicks’s memoir *Guantanamo: My Journey* and the issue of whether or not a literary proceeds order under the Proceeds of Crime Act in relation to that particular book has been considered by the government and why, in any event, no such application has been made under the Proceeds of Crime Act.

I am assuming that the appropriate agency from whom to make that inquiry is the DPP or possibly the AFP, but out of an abundance of caution I want to raise with you now whether or not your department has been

involved in any way in the provision of advice concerning Mr Hicks's book *Guantanamo: My Journey* and why no decision has evidently been made to make the appropriate application under the Proceeds of Crime Act for an order in relation to the royalties from that book.

CHAIR—Mr Wilkins, before you answer that question, is that program 1.6?

Mr Wilkins—I think that the senator is right, that it is really a matter for the AFP and the DPP, but we have been involved in discussions with both.

Senator BRANDIS—You have?

Mr Wilkins—We have had some discussions with them, but we are not the decision-makers in this.

Senator BRANDIS—I understand.

CHAIR—I am happy for your questions to be answered, Senator Brandis.

Senator BRANDIS—Good.

CHAIR—I just want to now clear the decks with 1.2, 1.3 and 1.4. If there are no other questions in those three programs, then those officers could go.

Mr Wilkins—But the ones in 1.2 are the same as the ones in 1.6, so all I was saying is that it makes not much difference whether it comes under 1.2 or 1.6.

CHAIR—All right.

Senator BRANDIS—May I proceed, Madam Chair?

CHAIR—All right.

Senator BRANDIS—It seems to me, Mr Wilkins, having looked at Mr Hicks's book and knowing what is on the public record in relation to the history of the matter, including his pleas of guilty to certain terrorism related offences, that clearly there are grounds under section 152 of the Proceeds of Crime Act for an application to be made against him for the confiscation, by the making of a literary proceeds order, of the royalties or other profits earned by him from this book. In fact, I would go so far as to say that this is the very sort of case for which such provisions exist in the Proceeds of Crime Act. I am curious to know why no such application has been brought. Allowing for the fact, as you have rightly pointed out, that this is ultimately a matter for the DPP, can you tell the Senate, please, what discussions your department has been involved in and what advice it has given to whom in relation to the possible pursuit of Mr Hicks under the Proceeds of Crime Act?

Mr Wilkins—There have not been a huge number of discussions. We have discussed with the AFP and the DPP the general terms of the legislation you advert to. But, cognisant of the fact it is very much their decision, we have not really intruded much further than that.

Senator BRANDIS—When did these discussions happen, please, Mr Wilkins or Ms Chidgey?

Mr Wilkins—We do not have dates.

Senator BRANDIS—These discussions would have been minuted or otherwise recorded in some form, would they not?

Mr Wilkins—Probably not, but maybe the AFP did.

Senator BRANDIS—Who are the officers who participated in the discussions? Were you, Ms Chidgey, one of the participants?

Ms Chidgey—Yes, I participated in one discussion.

Senator BRANDIS—How many were there, to your knowledge?

Ms Chidgey—I am aware of one discussion—a formal meeting—that we had.

Senator BRANDIS—Are you aware of others?

Ms Chidgey—No.

Senator BRANDIS—You are aware of the one in which you participated.

Ms Chidgey—I was aware of one meeting, yes.

Senator BRANDIS—About when was that, please?

Ms Chidgey—Sometime before Christmas. I do not have a date.

Senator BRANDIS—Was it after the publication of Mr Hicks's book?

Ms Chidgey—Yes.

Senator BRANDIS—Who were the other participants in the discussion, please?

Ms Chidgey—There were other officers from the department, the AFP and the CDPP present.

Senator BRANDIS—This was kind of an interdepartmental agency ad hoc group, was it?

Ms Chidgey—Yes. It was an initial discussion.

Senator BRANDIS—Convened for what purpose?

Ms Chidgey—Just to discuss the matter. Particularly, the terms of the legislation was our contribution. We did not discuss any operational issues.

Senator BRANDIS—No, I understand that, but was the focus of the discussion specifically to consider or talk about whether or not an application could be brought under the Proceeds of Crime Act against David Hicks arising from the proceeds of his book?

Ms Chidgey—We were discussing the matter in more general terms, so there was no specific discussion of whether a proceeds of crime order could be sought, because that would depend on further inquiries and investigations being made.

Senator BRANDIS—Was the discussion specifically about Mr Hicks and his book?

Ms Chidgey—Yes.

Senator BRANDIS—Who convened the discussion, please?

Ms Chidgey—I believe it was the AFP, but I would need to confirm that.

Senator BRANDIS—And who was the lead officer from the AFP who was involved in that discussion, please?

Ms Chidgey—I am afraid I cannot recall.

Senator BRANDIS—Was there a minute prepared?

Ms Chidgey—You would need to ask the AFP.

Senator BRANDIS—Was a minute prepared by your department?

Ms Chidgey—No.

Senator BRANDIS—There would be some record at least of the discussion, if only your own diary. You would be able to identify, by reference to your diary, the date and place of the meeting.

Ms Chidgey—I do not know. I would need to check.

Senator BRANDIS—Would you take that on notice, please. I would like to know the date and place of the meeting and—if you are able to, through further inquiry, assist me—the names of the participants at the meeting. As well, I would like to know if there was any document generated recording the discussion. I would like a copy of that document. You have told me you do not think there was, but I would like you to check, please.

Ms Chidgey—It was not generated by the department.

Senator BRANDIS—Was a document circulated by any of the other agencies which your department received?

Ms Chidgey—Not that I am aware of.

Senator BRANDIS—Just check that for me, would you, please.

Senator HEFFERNAN—Could I just ask a question?

Senator BRANDIS—Is it on this same issue?

Senator HEFFERNAN—Yes, it certainly is.

CHAIR—Yes.

Senator HEFFERNAN—Given this was a matter that involved the proceeds of crime and national security issues, can I just ask how often you convene a meeting of that serious nature, where there are no notes, no recordings, no follow-up and no memory?

Mr Wilkins—Quite often.

Senator HEFFERNAN—How often does that happen on a matter of national security and proceeds of crime? What sort of a meeting do you call that?

Mr Wilkins—This is a meeting where people are simply exchanging some information and having a discussion. I think you are trying to make it into a much higher profile meeting.

Senator HEFFERNAN—No.

Mr Wilkins—It is not a formal—

Senator HEFFERNAN—This man is a terrorist. I would have thought there is a danger for everyone involved in that meeting if there are no notes made of any further allegations, of proceedings, out of that meeting.

Mr Wilkins—No, I do not agree with that.

Senator HEFFERNAN—Best of luck to you. We will come to it later, because I am going to be dealing with it.

CHAIR—Mr Wilkins, are the Australian Federal Police taking the lead on this?

Mr Wilkins—They or the DPP will need to.

CHAIR—So they would have been the ones who might have made notes of this meeting?

Mr Wilkins—Possibly.

Senator BRANDIS—I will ask them, Senator Crossin. One last question on this, Mr Wilkins or Ms Chidgey, please: did the meeting have an outcome? Were any decisions made or was this just sort of sitting around holding hands and drinking coffee?

Ms Chidgey—No decisions were made on the particular matter about what action would be taken, as the AFP is responsible for investigations and it is a matter for the DPP to ultimately, based on that, make a decision to make an application.

Senator BRANDIS—I understand that. I have read the legislation. Was your department asked by either the DPP or the AFP to do any further work in relation to the legislation or any other matter arising from the meeting?

Ms Chidgey—No, we were not.

Senator HEFFERNAN—Are you reading from notes there, by the way? You appear to be reading from notes which have obviously been made about a response to this meeting for which you have got no notes.

Mr Wilkins—They are not about the meeting.

Senator HEFFERNAN—You are reading from notes for the response, though, so obviously it was documented for you to have the notes.

CHAIR—Senator Heffernan, what is your question there?

Mr Wilkins—The notes are basically about, for example, Australia's law enforcement: what the act says, what the requirements of a foreign indictable offence might be. They are not about a meeting.

Senator BRANDIS—Was that what you were being asked about by the AFP and the DPP: your views about whether or not, to put it crudely, Mr Hicks fell, in your view, within the terms of this section of the Proceeds of Crime Act?

Mr Wilkins—I think we were asked the elements that were required, because clearly you would have to go off and do some investigations and bring them within the section.

Senator BRANDIS—Sure. So the AFP and the DPP were coming to you, as the Attorney-General's Department, asking for your guidance about what they needed to prove up to prosecute an offence under section 152 of the Proceeds of Crime Act?

Mr Wilkins—That would probably be overstating our role.

Senator BRANDIS—Is that what it amounts to?

Mr Wilkins—We were talking about what the elements of the offence were, but I think the DPP can read it as well.

Senator BRANDIS—I understand that completely, but the meeting had a purpose. It was not convened for nothing. If your views were being sought by the putative prosecuting authorities about what the elements of the offence were, that can only have been to better inform them about what they needed to do to prosecute the offence.

Mr Wilkins—Quite possibly, but I am not sure because I was not at the meeting, if that was the purpose of the meeting. I did not convene the meeting and I do not know the circumstances under which it was convened.

Senator HEFFERNAN—I just want to let you know, Madam Chair, that I have questions in relation to 1.1 and 1.6 regarding the proceeds of crime, the conduct of the Australian Crime Commission and the New South Wales national crime authority.

CHAIR—We have dealt with 1.1, Senator Heffernan, and 1.3 and 1.4. I am now up to 1.5 on the program, which is Indigenous law and justice. I have Senator Ludlam down here for questions on that. He is still tied up in his committee, so I am not going to ask those people to go home. I will skip them and come back to them pending Senator Ludlam's availability. We will move to 1.6, national security and criminal justice. Senator Trood, I understand you have questions in this area.

Senator TROOD—I am seeking Mr Wilkins's clarification here, more than anything else, on the government's policy in relation to cybersecurity. The additional estimates for PM&C make it clear that the National Security and International Policy Group within PM&C now have responsibility for safeguarding Australia's interests in the cyberenvironment by providing a single point of coordination et cetera. Could you tell me, please, how this relates to the fact that the Attorney-General's Department also appears to be the lead agency. I am a bit confused as to who in fact is the lead agency here and, if in fact there has been a change in responsibility, could you please inform me as to when that occurred.

Mr Wilkins—I think it is relatively simple. There had not been hitherto a point of coordination. There are a number of different aspects in cyber. There are cyberdefence and military aspects that Defence is in charge of; there are cybersecurity and cybercrime that the Attorney-General's Department deals with; there are a variety of cyber issues in terms of regulation that ACMA and the Department of Broadband, Communications and the Digital Economy deal with. The role of the Prime Minister's department—this coordination department—is to coordinate those activities.

Senator TROOD—Across the whole of government. Is that right, Mr Wilkins?

Mr Wilkins—Yes. It is a coordination function. We do the work on the security policy and the crime policy in relation to cyber. Defence, DSD et cetera do work in relation to cyberespionage, if you want to call it that, and some of the military aspects. Senator Conroy's department does work on various aspects in relation to protection and safety for consumers. These are all coordinated by this new position or group in the Department of the Prime Minister and Cabinet. That is how it works.

Senator TROOD—That is straightforward, and I am grateful for that. Can you tell me when this change occurred—when the coordination within the Department of the Prime Minister and Cabinet began?

Mr Wilkins—I am not sure. I think it was immediately after the election. I think there was an announcement that there would be such a group set up within the Prime Minister's department, and that occurred in December.

Senator TROOD—Has your department been required to contribute any funding to this new coordination apparatus or not?

Mr Wilkins—A couple of people.

Senator TROOD—So a couple of your departmental staff have been seconded to PM&C for this purpose. Is that right?

Mr Wilkins—That is right.

Senator TROOD—Is that a temporary secondment or is it a permanent transfer?

Mr Wilkins—It is a secondment for as long as it takes, I suppose, and the people may change from time to time.

Senator TROOD—Has your department contributed any funding to that activity?

Mr Wilkins—We pay for the people.

Senator TROOD—Obviously, but are there any transfers of funding?

Mr Wilkins—No.

Senator TROOD—It is people we are concerned with?

Mr Wilkins—That is right.

Senator TROOD—That is what I wanted to know in that area, thank you very much.

Senator HEFFERNAN—Could I ask a couple of questions of the Attorney-General's Department?

CHAIR—Senator Heffernan, we are up to 1.6, national security and criminal justice.

Senator HEFFERNAN—Thank you very much. Could I have a crack?

CHAIR—Have you got questions in that area?

Senator HEFFERNAN—Which will include the Attorney-General's Department. I am sorry that the Australian Crime Commission has gone home, but—

CHAIR—We have done 1.1. If you have questions for 1.6, you can ask those.

Senator HEFFERNAN—All right. The departmental people will be able to cover for it. The New South Wales Crime Commission in recent times has been given some publicity. They have budgetary constraints, as we know almost all government departments have, including the Australian Crime Commission. One of the things that is happening in New South Wales—and I want to connect it to the intelligence base of both security and criminal activities in Australia—is that the New South Wales Crime Commission is doing deals with the senior crims in Sydney and New South Wales and dividing the spoils fifty-fifty in return for no prosecutions. Part of this money is being used to fund the ongoing costs of the New South Wales Crime Commission.

There was publicity last week, for instance, on the Ibrahim family. I have recently done a day's walking around the Cross in Sydney looking at the obvious parts of the criminal proceedings there—where a bug was placed in the Ibrahim house but someone in the New South Wales Crime Commission let on to the family that it was there, and it was removed.

My question to the Attorney-General—it would have been to the Australian Crime Commission and the Australian Federal Police and 1.6, national security and criminal justice—is: given the money flowing around and deals being done in back rooms with the major crime figures of Sydney in return for half the spoils in crimes that have been found out—and recently they found \$3 million in the roof of the sister of one of these criminal people—wouldn't this sort of activity lead to serious threats to both the integrity through the sharing of criminal information with the Commonwealth criminal agencies and the temptation of more junior people, like the guy who let on about the bug in the Ibrahims' house? Wouldn't this sort of activity, given that some of it is used to fund New South Wales Crime Commission work, lead to a lack of confidence in sharing information?

CHAIR—Mr Wilkins, before you answer that question, I am going to flag here that mentioning families and families' names in this way is bordering on some dangerous ground for this committee during estimates. So I might ask you to respond appropriately or point the senator in the right direction, please.

Senator HEFFERNAN—What I was responding to was stuff that was readily available in the New South Wales media this week.

CHAIR—Mr Wilkins, your answer then?

Mr Wilkins—If it were true—I noticed it was on the front page of the *Sun Herald*—then it may give rise to some concern. All I can say is that we have had good relationships with and good cooperation from the New South Wales Crime Commission, and I think you could ask the AFP and the ACC in due course whether they have too. I am not sure that I share the views expressed on the front page of the *Sun Herald*, and I will not go into the details of that particular report. In general terms, we have had good working relationships and found the New South Wales Crime Commission to be a very efficient organisation.

Senator HEFFERNAN—I do not know whether there are notes taken, but there are meetings where there is a division of the criminal proceeds between the criminal and the New South Wales Crime Commission on an agreed basis; the criminal proceeds that are shared with the New South Wales Crime Commission, and divided in return for no prosecution of the criminal. Doesn't this in effect set in train a culture where you buy the rights to the crime?

Mr Wilkins—I am not sure that that is what is happening. That is what I have said.

Senator HEFFERNAN—That is precisely what is happening.

Mr Wilkins—I am not sure that that is true. That is an interpretation.

Senator HEFFERNAN—If it were, wouldn't that be true?

Mr Wilkins—No, not necessarily.

Senator HEFFERNAN—It wouldn't be? You do not think that negotiating with criminals to get half the proceeds of their crimes in return for no prosecutions—'We'll give you 52 per cent.'

Mr Wilkins—Pursuing the profits of criminals is actually a good thing to do.

Senator HEFFERNAN—In return for no prosecution?

Mr Wilkins—I am not saying in return for no prosecution.

Senator HEFFERNAN—That is what is happening.

Mr Wilkins—That is what you say is happening.

Senator HEFFERNAN—With great respect, I have talked to the various officers, including federal agencies. That is what is happening.

CHAIR—Mr Wilkins, the question really is: is this a matter for the Attorney-General's or a matter for the Federal Police? The Australian Crime Commission has been sent home, so is it a matter for your department or for the AFP?

Mr Wilkins—You could raise it with the AFP, I suppose, and see what they—

Senator HEFFERNAN—But you are the lead agency on legal advice. If this was the case—

Mr Wilkins—I do not think it is the case.

Senator HEFFERNAN—Pretend it is not the case, but if it were the case.

Mr Wilkins—If what was the case?

Senator HEFFERNAN—If there was a division of spoils of criminal activity on an organised basis with confirmed meetings where they came to a division of the criminal spoil between a crime agency and the criminals, if that was the case, wouldn't that be putting everyone at risk of entrapment, blackmail, all sorts of risks of intelligence leaking from other agencies? If it were true, wouldn't that put all that at risk?

Mr Wilkins—I am not sure that it is true.

Senator HEFFERNAN—I am asking you to presume if it were but not necessarily that it is. If it were—

CHAIR—Senator Heffernan, as chair I am going to rule that question out of order, on the basis that you are asking the officers to undertake a presumption. This is additional budget—

Senator HEFFERNAN—This is the information that is on the public record.

CHAIR—Senator Heffernan, thank you!

Senator HEFFERNAN—It is on the public record.

Senator BRANDIS—The senator is entitled to ask a question based on a hypothesis, particularly I might say of an officer like this whose role is to provide advice to government. It is particularly relevant for Senator Heffernan to be able to put a hypothetical proposition to a witness, especially given the context that he has established, and ask this witness, whose role it is to advise the government, what his opinion of that set of facts would be.

CHAIR—Senator Brandis, thank you for your lecture at 10 past nine at night.

Senator BRANDIS—As a point of order, your ruling is completely outrageous—

CHAIR—I am speaking as the chair—

Senator BRANDIS—and outside the standing orders.

CHAIR—which you continually and rudely interrupt when my point of order is—

Senator BRANDIS—We know the Labor Party has a lot to cover up when it comes to crime in New South Wales.

CHAIR—When my point of order is in disagreement with your opinion, you continually interrupt that.

Senator BRANDIS—We know the Labor Party, of which you are a member, has a lot to cover up when it comes to crime in New South Wales.

CHAIR—I have ruled that question out of order.

Senator HEFFERNAN—Can I continue on in a different vein?

CHAIR—No, I have ruled that question out of order. I am happy to go to a 15-minute coffee break if that is what you want to do.

Senator HEFFERNAN—You do not need to have a break. I will ask a new question.

CHAIR—We have Senator Ludlam here now, so I am going to go to Senator Ludlam for his questioning. We will proceed to 1.3 for Senator Ludlam.

Senator HEFFERNAN—I will provide the diary notes of the New South Wales Crime Commission, the concerns raised privately by members of the New South Wales Crime Commission who think they are compromised and unhappy with the circumstances in having to exchange information.

CHAIR—Senator Ludlam, Mr Wilkins, we are going back to 1.3 as I have promised. I have ruled Senator Heffernan's questions out of order and we are going to go to Senator Ludlam.

Senator HEFFERNAN—With the Australian Crime Commission it is.

CHAIR—So Senator Ludlam, you have questions, thank you?

Senator BRANDIS—Of course you would. You are covering up for the New South Wales Labor Party.

CHAIR—Senator Ludlam, thank you.

Senator LUDLAM—Thank you. I thank the committee and I gather we have kept a few folk here a little bit later in the evening than they were expecting, so thank you for that. I have a couple of questions that relate to justice reinvestment, which is following up some questions I put to you at the last estimates and probably the one before that.

Mr Wilkins—Sorry. Yes.

Senator LUDLAM—The question is really a follow-up to what I put to you before: is this something that the Attorney-General has considered? I was very pleased to note the concept of justice reinvestment made it into a speech of the Attorney last year, but I am wondering how we are going with the concept of at least a pilot project? Are we discussing this with the state and territory attorneys? Can you provide us with an update of where we are in the adoption of this idea?

Mr Wilkins—The department has looked into it. I am discussing it with the Justice CEOs, the CEOs of the states and territories and New Zealand next weekend, if we end up in New Zealand under the circumstances—for the Standing Committee of Attorneys-General—and hopefully we can take it forward from there. As we said before, it is going to require some engagement on their side. We are hopeful that we will get some progress on it out of that meeting. I do not know whether Katherine Jones wants to add anything.

Ms Jones—The only thing I would add is that, within the department, we have been looking closely at some of the international experience with justice reinvestment. In particular, recently there has been some research done in relation to the London diamond initiative. That has been assessed by an independent academic reference group. Their initial report, which came out in July 2010, had some interesting observations in terms of some initial success with the justice reinvestment approach but the key outcome of that report was that it is too soon to tell whether it will have a significant impact in reducing rates of offending. We are certainly looking at that and also keeping a close eye on the experience in the United States.

Senator LUDLAM—Thank you, that is greatly appreciated. Thank you, Mr Wilkins, as well for your response. Can this be taken as a sign that the Commonwealth is keen to pursue this kind of initiative or is it too early to say so?

Mr Wilkins—We would like to pursue it. The question is finding a source of funding and some agreement with the states and territories to play ball. They will ask me where the money is coming from and I will—

Senator LUDLAM—You can tell them that it is them.

Mr Wilkins—We need to talk about that but, yes, the concept is that if you invest money upfront then you can save money.

Senator LUDLAM—The Commonwealth does not currently fund prisons, as far as I am aware—not directly.

Mr Wilkins—That is right. There may be some programs—around prisoners and prisoners' rehabilitation et cetera, and around Indigenous justice, where we can talk about this type of program, so we will see.

Senator LUDLAM—Without breaching confidence, have you engaged with any stakeholders anywhere in Australia? For example, Aboriginal legal services have been quite keen to pursue this idea. It has been put very firmly on the record by Tom Calma, former social justice commissioner.

Ms Jones—It is correct to say that some of the Aboriginal legal services are very interested in the justice reinvestment concept. In various meetings that I have participated in with them, they have raised that as something they would like to see picked up in different jurisdictions. In particular, in Western Australia it has been raised with us. We have looked closely at what the social justice commissioner has said about justice reinvestment in past reports.

Senator LUDLAM—Thank you very much. Mr Wilkins, can you just remind us of when you said that meeting was supposed to take place—if it does.

Mr Wilkins—4 March.

Senator LUDLAM—Next week, and it was scheduled for where in New Zealand?

Mr Wilkins—Wellington.

Senator LUDLAM—Is there any intention, subsequent to that meeting, to put anything on the public record or will we need to wait until May to hear back?

Mr Wilkins—I did not have any intention to put anything on the public record but I did intend to try to get it to proceed to a point where there could be something put on the public record. I am not quite sure what it is to put it on the public record. We just want to get some things going, that is all.

Senator LUDLAM—That will be great. I find these processes—obviously, as someone who does not get to attend these meetings—completely opaque. We rely very strongly on communiques or suchlike and they are at the discretion of the body itself.

Mr Wilkins—I see. I sometimes find them opaque too.

Senator LUDLAM—And you get to go! All right, I look forward to any progress at all, for reasons that I have put pretty clearly on the record a few times now.

CHAIR—That is all for 1.3. Senator Ludlam, I think you also had questions in 1.5, Indigenous law and justice.

Senator LUDLAM—That was where I was going.

CHAIR—So what about 1.3, justice services?

Senator LUDLAM—Not for me, Chair. I have done what I came to do.

[9.20 pm]

CHAIR—Senator Ludlam, I have you down as wanting to ask questions in 1.6, National security. We will move to that, if you have questions for those people.

Senator LUDLAM—Yes, I will do those, and I suspect this session will be equally brief.

CHAIR—If you can do that, we will then have finished with people in the department.

Senator LUDLAM—I just want to put a couple of questions briefly on an issue that was raised in finance and public admin yesterday relating to the continued nonexistence of a national security legislation monitor. Can you give us more information than we got yesterday as to when such an agency or an office might finally be established?

Mr Wilkins—No, we cannot give you any. Were you at the Prime Minister and Cabinet briefings or not?

Senator LUDLAM—Yesterday?

Mr Wilkins—Is that what you are referring to?

Senator LUDLAM—Yes, that was when it was raised.

Mr Wilkins—I cannot really add anything to what the National Security Adviser said at that estimates. It is a matter for PM&C.

Senator LUDLAM—That is fair enough. Let's talk about workload then. It is nearly 12 months since the parliament enacted enabling legislation to get this office on its feet. Obviously there is going to be an enormous backlog. We have since legislated quite an extensive package of reforms, if you would call them

that. Is there any notion now, given the enormous delays which the establishment of this office has been subject to, to perhaps give them more than two staff?

Mr Wilkins—I think you would need to talk to the Department of the Prime Minister and Cabinet about that too. It is going to be administered out of their department. You will understand that the concept is putting it at a distance from departments and agencies that are actually involved in these types of policymaking. So we are not responsible for—

Senator LUDLAM—So that bastion of independence, the Prime Minister's office.

Mr Wilkins—Sorry?

Senator LUDLAM—No, it is okay. So you do not have anything further to tell us, despite the fact that the monitor will be engaging with and assessing legislation which is fair and square the portfolio responsibility of the Attorney-General? Do you have a view as to whether the enormous time lag in appointing this officer will have any bearing on their workload or their resources needs once they finally are established?

Mr Wilkins—No, I do not really have a view on that. I think you are right: there has been more legislation passed in the period that the person has been chosen and appointed, but I am sure that the Prime Minister's administration will make the requisite decisions in relation to resourcing et cetera.

Senator LUDLAM—Do you think one part-time monitor and two staff are actually going to be up to the job? Are they going to be sufficient for the task that has been laid out for them?

Mr Wilkins—I am not sure. It is not really my call.

Senator LUDLAM—Will you be in a position to advise the Prime Minister's office, once the monitor's office is on its feet—

Mr Wilkins—I think the whole point of this is actually moving it out of our jurisdiction, if you do not mind me saying so. The idea that they are going to take advice from me about how to set this thing up and how it should work is entirely what the movement of the legislation and the person to the Department of the Prime Minister and Cabinet is exactly meant to avoid. So I do not really want to begin by wandering into the very area that we are trying to avoid, because somebody will then say, 'Hold on, you're giving opinions and ideas about the very person that's supposed to be monitoring you.'

Senator LUDLAM—I have not seen it interpreted that way before but thank you. Thanks, Chair, I have no other questions.

Senator PRATT—I have some questions under 1.6.

CHAIR—Senator Pratt.

Senator PRATT—I want to return to the question of cybercrime. I understand that the Attorney-General and the Minister for Home Affairs have released a public discussion paper on the accession to the Council of Europe Convention on Cybercrime. Clearly, cybercrime is a significant issue. I am interested in the status of the convention. I suppose there is an international instrument. I find it somewhat unusual that that seems to have developed as the key instrument to address cybercrime. It seems to me that it is somewhat problematic that we might be struggling to find well-developed instruments to do that. It is terrific that Europe is leading the way in that regard, but clearly we would want some strong international instruments to control cybercrime. So, yes, your comment on the European convention of cybercrime and its significance and how robust it might be to suit the needs—

Senator BRANDIS—Is there a question, Senator Pratt?

Senator PRATT—I am sorry, Chair, I am losing my voice. It is causing me some difficulty in my questions.

CHAIR—Continue, Senator Pratt.

Senator PRATT—Thank you very much.

CHAIR—You are entitled to ask your question.

Senator PRATT—I think Mr Wilkins understands what I am asking, and I might leave it at that and indulge you, Senator Brandis.

Senator BRANDIS—So it was not a question after all? I have got some questions.

CHAIR—Senator Pratt has got the call and Mr Wilkins is answering those questions.

Senator PRATT—Thank you.

Mr Wilkins—The European convention is seen as the leading convention in this area of cybercrime and it is fair to say that the international community generally, our allies, our close allies—who are not necessarily European—also consider it to be the leading or key international instrument dealing with cybercrime, despite its name—the ‘European’ convention. It does traverse the field it measures, in terms of the types of crime and the types of ways that one would expect institutional arrangements to be set up in countries that reflect, at the moment, adequate practice. Possibly it could be improved on, but it is the best convention which is extant and it represents good practice. Certainly there is a lot of encouragement of a number of countries to sign up to this type of regime and, if it is taken up widely, it will create a set of offences in a variety of jurisdictions and a level of cooperation which should give greater security and safety and confidence to people in terms of their use of the internet. That is the general reason why we want to be part of it. It is fair to say that a lot of the requirements of the convention are already taken care of in the statute book by the Australian parliament, and that has been largely a bipartisan matter, as I understand it.

Senator PRATT—Could I ask the extent to which Australian law currently adheres to that convention?

Mr Wilkins—So that we get it chapter and verse, I might ask Mr McDonald if he would not mind taking you through that, but my understanding is that pretty much the legislation does give effect to the requirements in the convention.

Mr G McDonald—That is correct. We have quite modern computer offences which are drafted with the cybercrime convention in mind. They have been in place for some time. There are some areas where we need to have some improvements. One of them is to do with preservation of some data when you identify a crime and having provisions to cover that. There are issues about having a 24/7 contact point for law enforcement—I think that is pretty well addressed now—and there is some streamlining in our legislation concerning the sharing of some data quickly, having streamlined data sharing in relation to intercepted communications.

Senator PRATT—What about issues such as copyright, infringement of copyright, forgery and fraud?

Mr G McDonald—Yes. I do not know much about the copyright side, except that there is some issue about the geographical jurisdiction of the Copyright Act. That is an issue for which there may be some small amendments required.

Senator PRATT—In order for Australia to meet the obligations under the convention?

Mr G McDonald—Yes.

Senator PRATT—What kind of consultation is taking place?

Mr G McDonald—We released a discussion paper on 17 February concerning the proposed accession. That is part of the normal process when you do one of these treaties. Opportunities for comments will close on 14 March, so in about a month. Then the results of that consultation and discussion of what it all involves will occur before the Joint Standing Committee on Treaties.

Senator PRATT—I understand that one of the things within the convention is for authorities from one country to be allowed to collect data in another. If Australia is allowing other countries to collect data here, what kinds of provisions and safeguards might we need to allow that to happen?

Mr G McDonald—The legislation itself—and we are doing work on the legislation for this at this moment—is about sharing of data. Clearly the collection of data would not be done by a foreign agency in Australia. It would be done through arrangements, just as you would have arrangements in relation to other aspects of criminal investigations. Under our current law, if I want to search someone’s house because a person is suspected of committing an offence in Denmark or somewhere, they have arrangements where the Federal Police or state police can do the search on their behalf. It is just streamlining those arrangements so that we can collect any evidence required. Computer crime is an area where you can already use mutual assistance to collect information.

Senator PRATT—What do you mean by ‘mutual assistance’?

Mr G McDonald—That is mutual law enforcement assistance and there are laws about that.

Mr Wilkins—It is an established way in which countries exchange evidence.

Mr G McDonald—And it is all authorised as if you are getting authority within your own country.

Senator PRATT—That is all I have on cybercrime, but I do have other questions under this item, thank you, Chair.

Senator BRANDIS—Madam Chairman, the opposition has a lot of questions on the AFP, the DPP and other agencies as well. Estimates, as you know, is primarily a forum for the opposition and the crossbench parties, not a forum in which time is to be used up by government backbench senators. I would ask you, Madam Chairman, to urge some forbearance on your colleague so that in particular the AFP—

Senator PRATT—There is no standing order—

Senator BRANDIS—the largest agency in the portfolio, can be examined tonight.

Senator PRATT—You should have used your time today more wisely.

CHAIR—That might be a very accurate statement, Senator Pratt. But, Senator Brandis, all senators are in fact entitled to ask questions at estimates and I am going to let Senator Pratt keep going. I am mindful of the time. She has not asked any questions since perhaps midmorning. Senator Pratt, please continue.

Senator BRANDIS—Will we have it spill over on Friday?

CHAIR—If you would like to hold a private meeting, go right ahead, Senator Brandis. I do not actually think you are a voting member of the committee, but we are happy to have a private meeting if that is what you want. Senator Pratt, continue.

Senator PRATT—Thank you very much, Chair. I have a question with regard to the launch of the counterterrorism and—

Senator HEFFERNAN—Point of order, Chair.

CHAIR—Senator Heffernan?

Senator HEFFERNAN—Could we have some guidance as to when we may get to the Australian Federal Police?

CHAIR—We will be finishing 1.6 probably within the next 10 minutes. Then we have Customs and you will need to ask your colleagues how long they will question Customs.

Senator HEFFERNAN—So it will be 10 minutes till we know?

CHAIR—I also have Senator Xenophon down to ask questions in Customs. Once all that questioning is finished, we will get to the Federal Police. Senator Pratt, continue; thanks.

Senator PRATT—Thank you very much. Last year, I understand, the Attorney-General launched the Counter Terrorism Control Centre in ASIO. While I understand that with ASIO we cannot go into details and it is not within our remit, I am very keen to know what the purpose of the centre is, what it is intended to achieve and how that is designed to interact with other intelligence and law enforcement agencies, particularly given the nature of the discussions that we have had today within this portfolio.

Mr Wilkins—Maybe that question is best addressed to ASIO.

Senator PRATT—I had made a note to myself that I wanted to ask Mr McDonald that question, so it depends on whether he is prepared to answer that or not.

Mr Wilkins—Sure. We can give you some answer, but it is probably—

Senator PRATT—I am interested in the contextual answer. Clearly ASIO is an agency that serves the government in a cross-departmental sense, and that was the intention of my question.

Mr Wilkins—From our point of view, it is important to get this coordination and cooperation going between agencies and amongst agencies, and that is really what this represents. It is a little like the Fusion Centre with the Australian Crime Commission. It has some similarities with what we are trying to achieve in terms of pooling information and intelligence in relation to natural disasters. In the case of national security, that is what the ASIO initiative represents: better cooperation on analysis and the sort of information that is provided to the National Security Committee of cabinet. I do not know whether Mr McDonald wants to add anything to that?

Senator PRATT—Thank you.

Mr G McDonald—It is hard to improve on what has just been said.

Senator HEFFERNAN—ASIO is waiting outside.

Mr G McDonald—The simple answer is that it is about controlling the sharing of intelligence. It is a two-way thing. Clearly the law enforcement agencies are putting in intelligence that they come across, as well as the security agencies. It is about making sure that everything is linked up, because there is a huge amount of

information out there, and it ensures that the best analysts from each of the organisations can look at the material and make sense of it, and it is all done within existing legal frameworks in terms of sharing of information.

Senator PRATT—Including an interdepartmental sharing of that information—hence why I wanted to ask the question.

Mr Wilkins—Yes, it should obviate some of the things which you might have read or heard about some of the intelligence failures in the US after 9-11. This type of facility should help overcome that sort of stuff in the case of Australia.

Senator PRATT—Leading on from that, I understand that there has been some funding for projects aimed at countering extremism in young Australians and I understand that there has been quite an interest in that from broad based community organisations for that round of funding. I am not sure what it is called, but I understand it is aimed at countering violent extremism. I think they are youth grants of some sort. I am keen to know what the objectives of that funding are and how that has been received.

Ms Lowe—You are quite correct, there is a grants program in place to support community organisations in countering violent extremism at the grassroots levels. The successful recipients of those grants were announced today. There were seven successful recipients.

We had quite a lot of applications for those grants, which we took as an indication of the level of support, interest and demand for that sort of service.

Senator PRATT—How will these programs be evaluated?

Ms Lowe—The guidelines, including the evaluation requirements, are available on the internet. All of those documents are available. In addition, we are developing quite a robust evaluation strategy for the program as a whole, of which the grants are a component.

Senator PRATT—I understand these programs are for addressing those who might be vulnerable to extremist views of that sort. How is it that one frames a program to address that?

Ms Lowe—In a variety of ways. If we focus just on this grants program, what this program is intended to do is to provide mentoring services to young people and in fact provide young people with the skills to themselves become mentors within communities and to provide strong leadership. Young people that are vulnerable to a range of influences may be influenced by charismatic personalities. A vulnerable youth could be exposed to a range of influences, so that is why it is very strong on putting a good investment into our community to ensure that we have strong leaders within our community who provide an alternative to some of those more charismatic but perhaps more extreme personalities that seem to plug some of the gaps.

Senator PRATT—So communities themselves have asked for this funding and put out the call and said, ‘These are the kinds of tools that we need to address this within our own community’?

Ms Lowe—That is right.

Senator BARNETT—On a point of order, Chair: Senator Pratt knows very well the answers to the questions she is asking can be obtained directly from the minister’s office, bearing in mind an announcement has been made today and the information, as the officer has indicated, is on the website. She is trying to block coalition senators and opposition senators from asking questions that are relevant to estimates—

Senator PRATT— I have done my research for these questions from the website.

CHAIR—Senator Pratt, order!

Senator BARNETT—and not making adjournment speeches or blocking relevant questions.

Senator PRATT—That is not what I—

CHAIR—Senator Pratt, that is not helpful.

Senator BARNETT—I draw the chair to that point.

CHAIR—Senator Barnett, there are many instances where you ask questions and the response is that the answers can be found on the website, so Senator Pratt is not alone in this instance. I have given Senator Pratt the right to ask questions, as I indicated 10 minutes ago, for another 10 minutes, so by my reckoning she has a few minutes left. Senator Pratt, please proceed.

Senator PRATT—Thank you very much. I will conclude my questioning by saying yes, I have gleaned from the internet that these grants have just been made available to such community organisations to address

extremist views amongst young people in our community. From within that framework I would like to ask what it is that community organisations have been asking for and looking for that they have sought to have addressed through these grants.

Ms Lowe—Perhaps a piece of information that was not in the press release today or available on the internet is that the Attorney-General has conducted a series of community engagement forums in Sydney and Melbourne. It may have been in the press release. These youth mentoring grants were a direct result of the feedback we got from the communities as a result of those forums, where concern was expressed by a range of community groups in Sydney and in Melbourne about the capacity of leaders to provide support to young people in particular. Young people are identified as being particularly at risk and of concern to community leaders, including youth representatives.

The development of the youth mentoring grants was very much in direct response to the concerns expressed by communities about the need to provide their young people with the skills to take up strong leadership roles within their communities—conflict resolution skills, media presentation skills, those types of skills. It was very much in response to community feedback at the community engagement forums.

Senator PRATT—Thank you very much. I do not believe that information was available publicly, so I am very pleased to be able to receive that today.

Senator BOYCE—I understand they are on 1.6. We were not entirely sure where to ask these questions, so I will ask them here and see what happens. They are related to what might be done to assist cult survivors, people who have been emotionally and psychologically broken, in some cases, by their involvement in cults. I wanted to start by asking what involvement attorneys-general had in the recently released *National plan to reduce violence against women and their children*, which is a COAG initiative released in the last couple of weeks.

Mr Wilkins—It is considerable. I will try to get somebody who is going to give you a fairly long brief on this, I suspect.

Senator BOYCE—A what?

Mr Wilkins—A long explanation about it.

Ms Kelly—The department was involved in that initiative. Unfortunately, the officer with the detailed knowledge has been excused because this would have been under 1.1, but we can take it on notice and provide you with full information.

Senator BOYCE—That would be good. Do you agree with the definition at the beginning of the report which says that domestic violence includes physical, sexual, emotional and psychological abuse? Later, it says that psychological and emotional abuse can include a range of controlling behaviours such as control of finances, isolation from family and friends, continual humiliation, threats against children or being threatened with injury or death.

Ms Kelly—I do not have that document in front of me. I would obviously need to look at it in the context in which that definition appears, but I would be happy to do that and take it on notice and come back to you on that.

Senator BOYCE—Okay. My next inquiry relates to the analysis that is done on the laws in each state around domestic violence. On notice, can you provide to me—because I cannot quite work it out—which states define domestic violence as including emotional and psychological abuse.

Ms Kelly—Yes.

Senator BOYCE—I wanted then to go to the question of what, if anything, the department has done in relation to including definitions of psychological and emotional abuse into the definitions of violence in a way that would assist cult survivors.

Mr Wilkins—Senator, all those people went away. We were told that 1.1 was finished.

Senator BOYCE—Sorry; I was told it was either under 1.2 or 1.6.

CHAIR—We have actually got these questions down under 1.6.

Senator BOYCE—I did inquire before estimates.

CHAIR—Sorry, Senator Boyce, you are right. Mr Wilkins, that was the advice given to the committee as well.

Mr Wilkins—We will attempt to answer.

Mr Minogue—One of the aspects where we have been involved in relation to that national plan and the definitions of family violence is in relation to the family law system and those issues that the Family Court would deal with. There is a consultation process and exposure draft legislation that has been out for consultation I think since December of last year. They do look at expanding the definition of family violence to include controlling and intimidating patterns of behaviour. That process is still continuing.

Where I cannot assist you though is in relation to the state regimes which would be relevant to the issue of cult survivors, which is more about the criminality of family violence—the assault and deprivation of liberty, those kinds of issues. That is not related to the family law system that we are involved in. There might be others who can address some of the more criminal elements in the state regimes but that is not something that I can directly assist you with. I am happy to take that on notice and see if there is something we can do with that.

Senator BOYCE—If you could take it on notice, because this plan was a COAG initiative.

Mr Minogue—Sure.

Senator BOYCE—This analysis of the legal situation in each state was part of a COAG analysis. Thank you.

CHAIR—Thanks, Senator Boyce. I think that takes us totally to the end of all of the questions for the department. Senator Trood, sorry. You have one before they go.

Senator TROOD—Mr Wilkins, you may have some information for me in relation to questions I asked earlier in the day about intercountry adoption.

Mr Wilkins—Yes. I read that onto the record.

Senator TROOD—I just want to clarify: has that been done? It has been read onto the record?

Mr Wilkins—Yes, I have read it onto the record and I have given Hansard the piece of paper.

Senator TROOD—Thank you.

CHAIR—Thank you. I will ask officers from Customs to come forward. Senator Boswell, I think you are waiting for questions, but you will just have to wait a minute. Mr Wilkins?

Mr Wilkins—Sorry. Just one quick one, Madam Chair. I have got a breakdown of the information that Senator Humphries asked about the AGDRP by state, rejections of claims. Is that right, Senator?

Senator HUMPHRIES—That is right.

Mr Wilkins—It is sort of a table—in tabular form. We will table that.

CHAIR—Yes, thank you, if you would like to table that. Margaret will get that off you, thanks. Customs, then.

[9.51 pm]

Australian Customs and Border Protection Service

CHAIR—Mr Carmody, good evening to you and your colleagues. Welcome to the additional estimates. Do you have an opening statement?

Mr Carmody—No.

CHAIR—All right. Senator Boswell, questions from you.

Senator BOSWELL—Thank you. My questions relate to the importation of grey outboard motors and grey boats. Do you understand what the term ‘grey’ means?

Mr Carmody—I am not getting a lot of recognition, no. Perhaps if you expand.

Senator BOSWELL—A grey outboard motor is a motor that may be new but is not sent by the manufacturer. It is a motor that is may be bought new, it has no backup by the manufacturer and is sent over to Australia in containers. Because the dollar is so high, some of them are bought from bankrupt dealers. But they are flooding into Australia and I want to ask a question on them.

Mr Carmody—Perhaps if you ask the question and we will see if we have someone who can help you.

Senator BOSWELL—There are a number of these outboard motors and boats that do not comply with the standards in Australia. What is the process of examining these motors to make sure that they do comply?

Mr Carmody—I am sorry, we do not have anyone who can help, but we are happy to take it on notice and get answers as soon as we possibly can.

Senator BOSWELL—All right. I have been sitting here for hours. But I will give you a question on notice. I will put it in the terms of my belief that the outboard motors and the boats are not complying and I would ask, if there is non-compliance, that you or your department stop them from coming into Australia.

Mr Carmody—Thank you. I apologise that we cannot help you tonight, but if you give us that on notice, we will act on it appropriately.

Senator BOSWELL—If a boat or a motor is not complying with the standards set in Australia, what would the process be of stopping them coming in?

Mr Carmody—I think the issue is whether it is a prohibited import. To the best of my knowledge, it is not a prohibited import.

Senator BOSWELL—No, it would not be a prohibited import

Mr Carmody—And if it is not prohibited I am not sure that, at the border, we can do anything in relation to it.

Senator BOSWELL—Surely we have standards for safety?

Senator Ludwig—I think the issue you raise is an interesting one. What I think Customs is trying to work through is whether or not it actually is an area which they have been given authority over to manage at the border or whether it is a compliance issue. In this instance I take it to be whether they are certified correct engines and it could be department of transport or somewhere else that looks after those matters. But we will take it on notice and see.

Senator BOSWELL—I will give you the question on notice so that you have got all the detail on it. Mr Carmody, if it is not in your bailiwick, can you direct me to the correct department?

Mr Carmody—Yes. We will look at it from our perspective. If it not ours—and I do not think it is a prohibited import—we will ascertain which agency is appropriate and notify you of that.

Senator BOSWELL—Thank you.

CHAIR—Senator Boswell, is that all you have got?

Senator BOSWELL—That is all I have, Madam Chair. I have waited three hours for that.

CHAIR—Senator Xenophon, I understand you have questions for Customs.

Senator XENOPHON—Mr Carmody, if I can just run through a few questions. You may want to take some of them on notice. How many applications for dumping do you receive on average each year?

Mr Carmody—We can start to answer some of these if you want to.

Senator XENOPHON—Actually, I think the best thing to do is list a number of them and then for some ask for greater elaboration. I am conscious of the time and other senators have questions. So how many applications for dumping do you receive on average each year? Of these, how many are progressing to investigations? On what basis are applications denied? What assistance is provided to applicants? Could you elaborate on that briefly and take the others on notice.

Ms Pitman—I can give you figures for the year 2009-10, current as at 21 February 2011. Please stop me if this is not what you want.

Senator XENOPHON—I only have five minutes and I just want to get through as much as I can.

CHAIR—Senator Xenophon, you can have as long as you like.

Ms Pitman—Using that year as an indicative base, we had 18 cases initiated. Of those initiated, we completed 18. We made two preliminary affirmative determinations. We had 11 sent to the minister for a decision and eight decisions made. I am sorry, I have forgotten the rest of your question.

Senator XENOPHON—What assistance is provided to applicants and, of the investigations carried out by Customs, how many result in dumping duties being applied?

Ms Pitman—We will just find a comparable figure for the number of measures applied. The assistance we provide starts well before a case is initiated. We have staff who provide advice to prospective applicants for trade measures investigations, and that is necessary because it is quite a complex area. We understood that

applicants do need to understand very clearly the range of issues that we are covering off in those investigations.

Senator XENOPHON—Sure.

Ms Pitman—So we spend more or less time, depending on how well developed a claim is, talking to potential applicants. It may be months, or in some cases years, before they apply.

Senator XENOPHON—Thank you. I will put a number of these on notice. I want to go to the issue of where there is a lack of cooperation on the part of the party that is alleged to be dumping the goods, because that is one of the common complaints I get, especially from small and medium enterprises. They do not have the resources to fight this; it is extraordinarily expensive. What happens where there is a lack of cooperation? Is there a reversal of the onus? Is there a presumption made where there is a lack of cooperation on the part of the party that is alleged to be doing the dumping?

Ms Pitman—It depends on the circumstances of the case, so what I say is a generalisation. We are frequently looking at claims that involve large numbers of exporters, or multiple exporters. Our approach to dealing with that circumstance is to look at those exporters who do cooperate specifically, so we will look in detail at their information, and for those who do not cooperate we calculate dumping measures, if they are applicable, based on an ‘all other exporters’ rate. What we are saying is that we will extrapolate from what we know to those exporters who choose not to participate.

Senator XENOPHON—When decisions are appealed and reviewed by the Trade Measures Review Officer, does the review officer have expertise in that particular market or do you consult industry experts? How are you informed in making that decision?

Mr Carmody—The Trade Measures Review Officer is with Attorney-General’s.

Mr Bouwhuis—I will take that question. Generally we work through the applications, so, if you are looking at what sort of evidence, evidence is the claim within the application. I do not have specific expertise in particular industries, and one might come up in aluminium, so if I need anything extra then I work through the Customs files or I have the ability to call for consultants and get expert advice, if need be.

Senator XENOPHON—Do the TMRO review officers have responsibilities outside reviewing dumping decisions or is it a dedicated branch just dealing with dumping cases?

Mr Bouwhuis—The only resources for the Trade Measures Review Officer are myself—I am the Trade Measures Review Officer—and I draw on expertise from a trade section within my branch. I use their expertise to assist me with the files.

Senator XENOPHON—That is all you do? You just do trade measures matters—or do you do other things? Mr Manning is shaking his head.

Mr Bouwhuis—No. I also manage a branch. I am also Assistant Secretary of the Office of International Law, so I look after the International Law and Trade Branch.

Senator XENOPHON—So it is a part-time position? You have a full-time position, but the trade measures review is only part of your duties?

Mr Bouwhuis—Yes, that is correct.

Senator XENOPHON—How many other TMROs are there? That is it?

Mr Bouwhuis—I am the only TMRO.

Senator XENOPHON—You are it.

Mr Bouwhuis—Yes.

Senator XENOPHON—Okay—very important job. Chair, I plan to put some questions on notice. Thank you very much.

CHAIR—Thank you, Senator Xenophon. You will put the rest on notice, then?

Senator XENOPHON—Yes, I will.

CHAIR—Senator Barnett, do you have questions for Customs?

Senator BARNETT—No, I do not.

CHAIR—Is there anyone else with questions for Customs? Mr Carmody, thank you.

[10.05 pm]

Australian Federal Police

CHAIR—I welcome officers from the Australian Federal Police. Mr Negus, good evening, and welcome to you and your officers.

Mr Negus—Good evening, Madam Chair.

CHAIR—Do you have an opening statement?

Mr Negus—No, I do not.

CHAIR—All right, we will go to questions. Senator Heffernan, you can go first.

Senator HEFFERNAN—Thank you, Mr Negus. My congratulations on some of the great work that the AFP has achieved in the last 12 months. My questions go to the integrity not only of our national security but also our criminal intelligence. Obviously there are budgetary constraints in the Australian Crime Commission and in our policing agencies, and the New South Wales Crime Commission is no different to others. There has been recent publicity involving the sharing of the proceeds of criminal activities by some of the major crime families and criminals in Sydney between the New South Wales Crime Commission and the criminals. This has involved tens of millions of dollars and, in the case of some, much in excess of tens of millions of dollars. It is done by a process where they allegedly decide that it would be easier to split the proceeds rather than risk prosecution. We all know that a lot of good work gets done by the policing agencies and a case gets to court and the court, as we all know if we have been to court, really is not necessarily driven by the truth; it is driven by the law, and a lot of law is set by precedent. So there is now in place a culture for the New South Wales Crime Commission to come to an arrangement with major criminals, in lieu of prosecution, to share the proceeds. My first question is: do you have an exchange of information with the New South Wales Crime Commission?

Mr Negus—Yes, we do.

Senator HEFFERNAN—You have my full sympathy in the important role that you play in knowing who to trust, but if you are dealing with an agency that actively negotiates with criminals to share the proceeds of crime—in a recent investigation which was on the front page of some of the papers someone in the New South Wales Crime Commission allegedly let a major crime family, which I named earlier and will not name again, know that there was a bug in the house and they were heard discussing it on the bug before they found the bug—wouldn't this raise concerns for the risk of both blackmail entrapment and the exchange of information that should not be exchanged with the criminals, and wouldn't that put your agency at risk?

Mr Negus—In any organised crime investigation, the operational security of the investigation is paramount and, of course, our officers' lives can sometimes depend on that operational security being in place. We have had a long relationship with the New South Wales Crime Commission, as has the Australian Crime Commission. We have exchanged intelligence with them over many years and whilst, as you said, there are recent allegations of improper release of information those matters are dealt with on a case-by-case basis and are dealt with with the full force of the law, if they can be proven.

I do not have any ongoing problems with the New South Wales Crime Commission about sharing information. They have been trusted partners of ours in a range of very successful operations, where we have seized large amounts of narcotics and people have been arrested and put before the courts.

Senator HEFFERNAN—I do not understand the culture difference. I certainly have had discussions with the Australian Crime Commission on several issues, which obviously we are not going to talk about here, and I have had some contact with the New South Wales Crime Commission. Obviously some of the money that is collected from the criminals in New South Wales is funding the budget of the New South Wales Crime Commission. So obviously there are people who are no-go zones because of the agreements they have made with the proceeds of crime division between the crime agency and the criminals. Would you be concerned if that was happening in the AFP?

Mr Negus—It does not happen in the AFP. All I can say is that the workings of the New South Wales Crime Commission are determined under the New South Wales legislation in which they are enacted. They have been operating since the late eighties and operate under that legislation under their own ministerial supervision, so I cannot really comment on the workings of that.

Senator HEFFERNAN—Fair enough.

Senator BRANDIS—(*inaudible*)

Mr Negus—It is hypothetical in many ways. We do have the proceeds of crime trust fund into which, obviously, all confiscated assets at a Commonwealth level are paid and we do get access to those. Whilst it is, again, several steps removed from the New South Wales Crime Commission model, it is of sorts—

Senator HEFFERNAN—It certainly is not in return for protection from criminal proceedings as it is with the New South Wales Crime Commission. You do it after the capture and there they are. By the way, with all these drive-by shootings and shooting people in the leg and the knee et cetera, it is almost Al Capone times in parts of Sydney. There was a recent case in New South Wales where the criminal family involved was part of the same criminal families that are negotiating with the New South Wales Crime Commission to avoid prosecution in return for half the proceeds: ‘Whoops, we’ve caught that. Give us half of that \$10 million. You’re let off on that crime.’ Now the crime family goes off and commits a couple more; they get away with it; then they get caught again: ‘Oops, we’ll negotiate and take half that money.’

Where does that lead to? What about young policemen in the New South Wales Crime Commission? I have spoken to people in the New South Wales Crime Commission who are concerned about the integrity because of the temptation surrounding these negotiations. Where does that leave the Australian government and the Australian police and the nation in highly sensitive security and terrorist type exchanges of information, where you know there are negotiations by a major crime authority with criminals for money, part of which is used to fund the criminal agency? Isn’t the risk of temptation increased exponentially for entrapment, blackmail et cetera in those sorts of proceedings?

Mr Negus—It is really difficult for me to comment on the workings of the day-to-day operations of the Crime Commission. Everything that you have just described is allowed for under their legislation—they do so under lawful means—and really it is a matter for the New South Wales parliament to decide whether or not that is an appropriate way forward.

Senator HEFFERNAN—The Attorney-General’s Department is an excellent agency and you have done some fantastic work in everything from overseas child sex expeditions to God knows where to the sudden improvement in our capture of the drug trade. Isn’t it something that we ought take up as a federal government, as a considerable risk to the systemic integrity of our criminal intelligence base, if we know about this? What happens with these things, of course, is that you have criminal lawyers who become too close to the criminals and they go to drinks and they go to the footy box together and eventually they are part of the ‘Yes, we’ll turn a blind eye to that and we’ll talk to this bloke and we’ll get him to do that.’

Isn’t allowing this to continue just taking a little trip down the path to a disaster? The New South Wales government, for God’s sake—you would spew if you knew what I knew about some of the things that go on there. Where can the feds say, ‘Hang on, enough is enough’? These guys bring in drugs in containers. If you are under 18 in New South Wales, you can get an MSIC pass—a security pass—to go onto the wharf and you can lend that pass to someone else to use.

There are all sorts of breakdowns in security, but there is the absolute temptation of participating in the proceeds of crime—‘Oops, we’ll take that little bag off to the side,’ and, ‘Listen, old buddy, if you tell us where that bug is, here’s a parcel for you’—because we are actually negotiating with these people. The agency that we all rely on is the Australian Federal Police. Isn’t it time we said: ‘Well, hang on, you say you get criminal proceeds, but that’s after you’ve been through the full process. There are no compromises and no deals.’ But with this other crowd there is the deal. There is a risk. There are too many lawyers in the system: ‘There’s a risk, if you go to court, on what the outcome will be. Let’s avoid the risk. Let’s take half. We’re a bit short on the budget this month. Let’s take half the proceeds and avoid the risk. You can get on your way and go and import some more heroin or whatever.’ Does it concern you that an agency with which you have to exchange very sensitive information has that culture?

Mr Negus—You are right, we do exchange very sensitive information with the New South Wales Crime Commission. If there was any evidence or any suggestion of those sorts of behaviours taking place, we would certainly investigate it or bring it to the appropriate authorities within the New South Wales environment. But again, without evidence of what you are talking about here, it is very difficult for me to talk about the New South Wales Crime Commission, which performs the functions you are talking about here—removing the assets from criminals without prosecution—under the appropriate legislation enacted in New South Wales.

Senator HEFFERNAN—You would have read recently on the front page, if you read the Sunday papers—there is never much news in the Sunday papers, by the way—about the bug that was disclosed by someone in the agency, allegedly. Isn’t that something that you ought to be investigating as a concern? If someone is prepared to do that, they are probably prepared to do anything, if there is enough money.

Mr Negus—Any breach of operational security is treated very seriously, as I said. Our members' lives—

Senator HEFFERNAN—So will you be investigating that?

Mr Negus—Who will be investigating that, sorry?

Senator HEFFERNAN—What has happened with—I am not allowed to name the family, but everyone knows who I am talking about—the Kings Cross family that had a bug placed in their home.

Senator BRANDIS—You mentioned it before.

Senator HEFFERNAN—I did. I do not want to upset Madam Chair. They had a bug placed in their house and it was disclosed by someone in the New South Wales crime agency, who may have been part of the negotiating team that took half the proceeds of the previous crime. Isn't that something you ought to be looking at?

Mr Negus—That does not necessarily fall within the remit of the Australian Federal Police, but I am sure the agencies concerned would be treating it very seriously and investigating it accordingly.

Senator HEFFERNAN—I can only say that some people in the New South Wales Crime Commission have been to see me and they are very concerned about the changing culture in the commission, because no-one knows who to trust. Senator Brandis, have you got any follow-up?

CHAIR—Senator Brandis will have the call when I give him the call. Do you have any further questions?

Senator HEFFERNAN—Not for the moment.

CHAIR—Senator Furner, I understand you have questions for the Australian Federal Police.

Senator FURNER—Indeed, Chair.

CHAIR—We will go to you for 10 minutes.

Senator HEFFERNAN—Pertinent to this matter!

Senator FURNER—Firstly, can I go to the recruitment of AFP officers, in particular since the commitment of the then opposition in 2007 at the election. There was a commitment for 500 officers to be recruited to the AFP. Could you provide some information as to where we are at in terms of those recruitments? Also, are we ahead of schedule?

Mr Negus—Yes, I can and, yes, we are ahead of schedule. The government commitment was for 500 officers over five years. It was 30 in the first year, 30 in the second year, then 40, and then 200 and 200 respectively. At the moment we are 181 officers ahead of that target. In fact, we have an increase of 241 officers above the level of the commitment at the election. We are doing that because we have been able to minimise our supplier expenses. We have reinvested that into our employees to make that steep slope, which would have been at the end of the 200 and 200, a little bit gentler for us. We will still come in on target as per the new policy initiative that was approved, but it will be a softer landing, rather than having to recruit 200 in each of the final years. But we are well ahead of target.

Senator FURNER—That is fantastic. You mentioned that you were 181 ahead of target. At what stage in the schedule was that reached?

Mr Negus—That is as we currently sit. This financial year is 40 staff, the next financial year is 200 and the one after that is 200. So we are in the middle of the five-year period. As I said, even though it was a large ramp-up at the end, we have managed to smooth that out through the process.

Senator FURNER—If I could take you to the process in terms of the Beale review, in particular could you provide an update to the committee on progress in the recruitment of sworn AFP officers to undertake policing roles at airports as part of the all-in model?

Mr Drennan—At the current time, as part of the transition process which is taking place over a three- to five-year time frame, we have already transitioned 126 members into the all-in sworn model, and there are an additional 47 members who are on training courses as we speak.

Senator FURNER—When will those 47 come online?

Mr Drennan—There are two courses—one finishes on 4 March and the other one is June.

Senator FURNER—I want to congratulate the AFP on their recent drug seizures. That is a brilliant job well done. Can I get some information on the amount of kilograms of cocaine that has been seized in the last six months of the current financial year?

Mr Negus—Thank you for the question. We are just finding a few details. There have been a couple of large seizures of cocaine particularly. You would be aware of one on the North Coast of New South Wales late last year, where there was well over 400 kilograms of cocaine on a vessel which had sailed from South America and met a mother ship—a mother ship met a vessel coming out from Australia and returned back. A number of arrests were made, and those matters are still before the court.

In the last 12 months or so there have been well over 1,000 kilograms of narcotics and precursor chemicals seized, and a range of people have been brought before the courts. We have seen a rise in certainly cocaine. That large seizure is one example, but there have been a range of other smaller seizures, again disproportionately for what we have seen in previous years with cocaine, so it is something that we are working very hard on.

Along those lines, I came back from the United States late last year, where I had meetings with the Drug Enforcement Administration and also the FBI. We are looking to place an AFP officer in Los Angeles to deal with, again, the surge in cocaine coming out of predominantly South America but through Mexican cartels into Australia. They see Australia as a very attractive market. The price paid here is higher than in most other parts of the world. Again, because of the issues around that, we have sought to place a person on the west coast of the United States to work with American authorities on issues affecting Australia.

Senator FURNER—In relation to the cost of cocaine and its street value in Australia, how does that relate to other countries as you have just explained?

Mr Negus—There is a bit of a rule of thumb which we have been using—lately that has varied a bit, so I will put some caveats around its accuracy—but a kilo of cocaine in South America can be brought for as little as \$2,000; in the west coast of America it can be purchased for as little as \$20,000; and in Australia it can go for anywhere between \$100,000 and \$200,000, depending on market circumstances at the time. So you can see significant mark-ups in each of those environments which make Australia a pretty attractive destination, particularly if you look at the strength of the Australian dollar versus the US dollar and how that might translate back into cartels around the world. It is something that we have been talking about with our state colleagues as well, and we have been working with Customs and our state colleagues in a variety of joint operations to make sure we are addressing this as quickly as we can, and the recent seizures we have had are good evidence that we are at least getting some traction in that area.

Senator FURNER—Additionally, can you provide the same information in respect of heroin over the last six months or six months of the financial year?

Mr Negus—The seizures of heroin have been less, although we have had one major seizure of around 160 kilograms of heroin. There have been some smaller seizures as well and, whilst the trend is not as alarming as that with cocaine, it is still obviously an alarming issue for Australia; heroin is still making its way into this country in large amounts. Usage patterns are still seen to be stable, if not increasing slightly, over the last couple of years, and there are still deaths on the streets from heroin overdoses. So it is something we are working on. We have seen obviously in recent years the rise of amphetamines and amphetamine-type stimulants as being a major problem as well. Local manufacture of amphetamines and precursor chemicals again, as I have said, is becoming a major issue. So there have been some significant heroin seizures; not to the same level as the cocaine but, significantly, still some people being put before the courts for those matters.

Senator FURNER—How are firearm and explosive detection dog teams in Australian airports being rolled out and delivered and are we on schedule there?

Mr Drennan—The additional funding for the AFP firearm and explosive dogs was provided in February this year. That was for an additional 17 canines and 11 handlers. We have brought on 14 of those dogs and 10 handlers and the other three will be brought on in the next couple of months.

Senator FURNER—What sorts of dogs are you using in that area now?

Mr Drennan—They are predominantly labradors and they are trained to detect firearms and explosives.

Senator BRANDIS—Commissioner Negus, I have got some questions for you in relation to Mr David Hicks, in relation to the proposed East Timor regional processing centre, in relation to WikiLeaks, and in relation to Christmas Island and the AFP's engagement with asylum seekers in detention on Christmas Island. I want to turn to the David Hicks matter first. As you are aware, last year David Hicks published a book, a memoir called *Guantanamo: My Journey*. I do not know if you heard the evidence from Mr Wilkins and Ms Chidgey from the Attorney-General's Department to the effect that sometime last year, after that book was published, there was a meeting involving officers of the Attorney-General's Department, the DPP and the AFP

concerning Hicks's book and the possibility—I think that is a fair paraphrase of the evidence—of applying to it the Proceeds of Crime Act. Can you, or any relevant officer with the knowledge, please confirm to us that your agency was represented at that meeting?

Mr Negus—Yes, I can, and I think I can assist in some of the other issues that you raised as well.

Senator BRANDIS—Please. It might be best if I ask you a reasonably open-ended question and let you expand on it in your own way, Commissioner Negus. What I would really like to know is, what was the purpose and substance of the meeting and what conclusions did the meeting reach?

Mr Negus—Perhaps I should go back just a few months before that meeting took place. On 24 September there were a range of media articles which articulated the fact that Mr Hicks would be releasing a book. The AFP became aware of those and again was interested in the context of the legislation and what might be applied at a future date. On 27 September the AFP actually generated an internal referral to start an investigation to see whether that would be appropriate and whether Mr Hicks's autobiography would actually fall within the Proceeds of Crime Act and literary proceeds laws. The meeting you talk about was on 13 October, I am advised. It was attended by the AFP, by the Commonwealth DPP and the Attorney-General's Department at the request of the AFP, to discuss the legislation and how it might be applied.

Senator BRANDIS—That is very helpful. If I may paraphrase, you wanted to get some clearer guidance about how the legislation might apply, potentially, to this Hicks book and whether an investigation was warranted?

Mr Negus—We had commenced an investigation and we were engaging with our partner agencies to look at the applicability of the legislation and to make sure that we had properly considered some of those issues.

Senator BRANDIS—Did you reach a conclusion about the applicability of the legislation?

Mr Negus—The investigation continued and on 8 October, prior to that meeting taking place, we had written to the Commonwealth DPP and spoken to them about the applicability of the legislation. We then had the meeting with those stakeholders that I talked about. We then had various conversations with the Director of Public Prosecutions back and forwards between then and 23 December. On 23 December we referred a range of material to the Commonwealth Director of Public Prosecutions for further advice.

Senator BRANDIS—Has that advice been received?

Mr Negus—No, it has not. Again I should say that, whilst the matter is still an active investigation and we are having discussions with the Commonwealth Director of Public Prosecutions about the next steps to be taken, we are somewhat bound in what we can say publicly about the nature of those investigations.

Senator BRANDIS—I understand that perfectly. Your evidence is that the investigation into whether an application under the Proceeds of Crime Act in relation to this book is open to be pursued is still under way?

Mr Negus—That is right.

Senator BRANDIS—In view of that I do not think I will take that too much further for the moment. Can I just ask you this though: when you said you referred certain matters to the Commonwealth DPP for inquiry, I think you said—you had made some inquiries of the DPP—it has not got yet to the stage, has it, at which you have sent a brief to the DPP?

Mr Negus—I think again that would step into dangerous ground, for us to confirm or deny the status at which the investigation lies.

Senator BRANDIS—Nevertheless, it is an ongoing live investigation at the moment?

Mr Negus—A live investigation and we are engaged with the DPP about what the next steps are.

Senator BRANDIS—That is very helpful, Commissioner Negus. In view of those answers I will not pursue that any further tonight. Let me turn then to another topic. That is the proposed East Timor regional processing centre. You will be aware that in July the Prime Minister announced that the Australian government was in discussions with regional governments, including the government of East Timor, with a view to establishing a regional processing centre for asylum seekers in East Timor. Leaving to one side the question of whether or not that statement by the Prime Minister was a lie or not, but just taking the statement at face value for the purposes of this exercise, what if any involvement did the Australian Federal Police have, prior to the Prime Minister's announcement, in the development of this proposal?

Mr Negus—We have had no involvement in the development of that proposal, that I am aware of.

Senator BRANDIS—At any time?

Mr Negus—At any time. We certainly provide advice to government on a range of different things around the people-smuggling environment, but the starting of some sort of detention centre is not something we have been involved in.

Senator BRANDIS—I am not doubting the truthfulness of your evidence. I just find it very difficult to believe that the views of the Australian Federal Police about the proposed East Timor regional processing centre have never been sought at any time. Is that your evidence, Commissioner Negus? Is that your evidence?

Mr Negus—I have just been informed that certainly those issues are discussed at lower levels, at things like the Border Protection Task Force, but the AFP's role in this is to provide operational advice on the people-smuggling environment, not necessarily the policy settings that would be around a processing centre.

Senator BRANDIS—I understand that, but the Border Protection Task Force, as we all know, is one of the key agencies in relation to the fight against people smuggling. Your evidence is that at a senior level the advice of the AFP has never been sought on this proposal?

Mr Negus—The advice of the AFP is provided through those task forces, but again exclusively on operational activity.

Senator BRANDIS—How many officers do you have currently deployed on Christmas Island?

Mr Negus—Excuse me while we find that. It changes on a daily basis.

Senator BRANDIS—For those who are assisting you, it might assist them if I foreshadow the next couple of questions. I would like to know how many officers you have on Christmas Island at the moment and, assuming those officers are rotated on a periodic basis, how many officers are involved in aggregate in the rotation?

Mr Negus—We have approximately 99 officers working on people smuggling across the region and within Australia. Christmas Island is unique because we do perform the community policing role on Christmas Island, so we do have around half a dozen officers there who are performing community policing in the normal community of—

Senator BRANDIS—Let us leave them to one side. They are the cops on the beat on Christmas Island, aren't they? I am interested more specifically in the officers who are specifically tasked to deal with people smugglers and asylum seekers.

Mr Negus—It would vary between 10 and 15, depending on the work that was on hand.

Senator BRANDIS—In addition to that 10 to 15, how many other officers are at any time set aside within your staff establishment to be rotated to Christmas Island?

Mr Negus—No-one is necessarily set aside. At certain times we have had additional officers deployed there because of some of the unrest in the detention centre. Those people have gone there for periods of time and then returned to Australia once the threat level has been assessed as being not required.

Senator BRANDIS—Remind me of the date of the riot at the Christmas Island Detention Centre late last year.

Mr Negus—I do not have that at hand. I can tell you, just while my officers are seeing whether we do have the date of the riot last year, we currently have 16 people—so I was slightly out with 10 to 15, there was actually 16—and we have four operational police as well doing the community policing. Sorry, I will correct myself there. It is four operational police doing the follow-up inquiries in relation to SIEV 221, which was the tragedy that occurred just before Christmas.

Senator BRANDIS—So you have 16 officers on Christmas Island assigned to dealing with people smugglers and asylum seekers and four officers as well doing follow-up work, investigatory work, following the tragic smashing of the boat against the rocks at the end of last year?

Mr Negus—That is correct.

Senator BRANDIS—I was going to ask you about the riot that occurred. How many officers were deployed in total to deal with the riot?

Mr Negus—I am just not sure whether we have that. We could certainly provide it to you on notice.

Senator BRANDIS—You might take that on notice.

Mr Negus—Yes.

Senator BRANDIS—Let us concentrate on the 16 officers deployed to deal with people smugglers and asylum seekers and the four investigating the consequences of SIEV 221. That is 20. How does that compare with this time 12 months ago?

Mr Negus—The four officers are obviously there for a particular investigation, so they would not have been there. My figures of 10 to 15 are probably reasonably consistent over the last 12 months. It depends on how many boats have come in. Those officers conduct interviews and do debriefs of passengers, as well as being involved in a range of other intelligence and evidence collection processes.

Senator BRANDIS—What is the case load of those officers at the moment? How many asylum seekers and alleged people smugglers are there with whom the officers are working at the moment?

Mr Negus—They are talking to the passengers of those vessels. The prosecutions remain in regard to the crews and I do have those—

Senator BRANDIS—We heard evidence earlier on from Mr Wilkins that at the moment there are 280 prosecutions under way of people smugglers. If you have another figure, please let us know what it is. I want to take you through the sequence from the investigation, which you told me at a previous estimates hearing involves interviewing these people, to the prosecution stage. We will just deal with those two phases, if we may.

Mr Negus—Yes, certainly. The figures that I can provide are more useful in the fact that they are broken up into prosecutions that have commenced.

Senator BRANDIS—That would be extremely useful.

Mr Negus—Currently there are 157 crew members in immigration detention.

Senator BRANDIS—That is on Christmas Island?

Mr Negus—No, at various places across the country. Those people have not yet been charged but there are investigations under way into their role as crew for bringing asylum seekers into Australia. They total 157. As of 20 January, 192 crew have been charged and are before the court. To date, there are an additional 114 crew who have been convicted of people-smuggling offences.

Senator BRANDIS—How many of those 114 who have been convicted are currently appealing against either their conviction or sentence and how many of them have exhausted their rights or not chosen to exercise any appeal rights?

Mr Negus—We would not have those figures at hand.

Senator BRANDIS—That 114 is the total number of crew members convicted of people-smuggling offences since when?

Mr Negus—September 2008 is the figure we usually use, because it goes back to when we saw the start of the increase.

Senator BRANDIS—That is when you saw the start of the increase. That was a month after the government changed the policy. So 114 have been convicted since September 2008, 192 have been charged and are currently before the courts, and 157 are in immigration detention?

Mr Negus—That is right.

Senator BRANDIS—What about the asylum seekers? I think you have told me at a previous estimates hearing that you routinely interview through interpreters each asylum seeker to establish their identity and to make appropriate security checks.

Mr Negus—We interview them in the context of collecting evidence against the crews and the people-smuggling organisers, again trying to work our way back up the chain to where these things were facilitated.

Senator BRANDIS—But you also make security assessments of them, don't you?

Mr Negus—That role is predominantly done by ASIO.

Senator BRANDIS—But ASIO does not do the initial interview with each and every asylum seeker, does it?

Mr Negus—Their process is quite separate and we do not get involved in that process. We would speak to the people who were the asylum seekers, just as we would speak to any witness or any victim of any other crime that we need to investigate.

Senator BRANDIS—I understand ASIO has a separate process and quite a separate job, but the initial interviews with these asylum seekers are conducted by your agency, are they not?

Mr Negus—They are, along with DIAC. There is a range of agencies who would have access to the asylum seekers.

Senator BRANDIS—But, if I can use an umbrella term, the first national security enforcement agency which usually sees these asylum seekers is the Australian Federal Police, isn't it?

Mr Negus—I am not sure how you would classify each of the agencies, but DIAC would usually speak to these individuals in the first instance and the AFP would then be given—

Senator BRANDIS—Perhaps artlessly I was not classifying DIAC as a national security agency in the way I would classify you and ASIO, for example.

Mr Negus—Yes, I was unsure of your classification, but we would usually have a chance to speak to those people next in the chain of events.

Senator BRANDIS—When you speak to the asylum seekers, or for that matter the people smugglers, you form some preliminary views, don't you, about whether they might be a risk to national security? If you form a negative view of them, you would pass that information up the chain to ASIO?

Mr Negus—Certainly any information which we would elicit, whether it be evidentiary or from a national security perspective, would be forwarded to the appropriate area, yes.

Senator BRANDIS—Obviously the evidentiary information would be forwarded to the appropriate prosecution authority, but information that might potentially result in a conclusion that this particular individual was a threat to national security would presumably, at least as well as being referred to the prosecutor, be referred to ASIO, would it not?

Mr Negus—Yes, it would.

Senator BRANDIS—I am obviously conscious of needing not to trespass on operational matters, but are you able to tell me, Commissioner Negus, in respect of how many of these people, whether they be people smugglers or crew, to use your more neutral word, and asylum seekers, have you made a negative assessment when it comes to national security or felt sufficiently concerned that you have passed the matter on to ASIO?

Mr Negus—I doubt whether we would have access to recording that sort of material. Each of those would be case by case. There are literally thousands of people whom we would talk to over a period of time. That information would, can I assure you, be passed in a timely fashion but we would not keep statistics, I would not think, of the number of pieces of information. These teams would work very closely together on Christmas Island and that would be a normal part of the exchange of information and intelligence as the whole-of-government approach falls into place.

Senator BRANDIS—It is interesting that you started keeping your statistics in September 2008. I think everybody in Australia now knows why that is; the significance of that date, I should say. Can you tell me, since September 2008, how many crew and asylum seekers in total you have interviewed?

Mr Negus—I would have to take that on notice. We could certainly give you a very close estimation if we do not have the exact figure.

Senator BRANDIS—All right, and would you disaggregate that for us, please, by years?

Mr Negus—Certainly.

Senator BRANDIS—Does the people-smuggling task force, which you have described at previous estimates hearings, meet on a reasonably frequent basis?

Mr Negus—Yes, it does.

Senator BRANDIS—What is the latest projection or estimate of the likely number of boat arrivals that the people-smuggling task force has arrived at?

Mr Negus—I do not attend those meetings personally.

Senator BRANDIS—If it focuses your attention, Commissioner Negus, I think the figure for calendar 2010 was 145 and that, as we all know, was a sharply upward trend. So have you made some preliminary assessments for 2011?

Mr Negus—It would be very difficult for me to give you any assessments.

Senator BRANDIS—That is not what I asked you.

Mr Negus—Sorry.

Senator BRANDIS—I asked you whether you had made any assessment or estimate.

Mr Negus—I am just double-checking because, as I said, I do not attend those meetings myself. But, no, we have not made any assessment in that regard.

Senator BRANDIS—Are you anticipating a reduction in the number of boat arrivals in 2011 by comparison with calendar 2010?

Mr Negus—No, we are not.

Senator BRANDIS—I might finally turn to another topic, if I may, please, Commissioner Negus. That is the subject of Mr Assange and WikiLeaks. Let me go back. On 29 November 2010, when asked about the conduct of Mr Julian Assange in posting on his website classified material, the Attorney-General said:

... Well, again, certainly from Australia's point of view, we think there are potentially a number of criminal laws that could have been breached by the release of this information. The Australian Federal Police are looking at that.

That is what Mr McClelland said on 29 November. On what date, please, did the Australian Federal Police commence to investigate any possible criminal offences that may have been committed by Mr Assange?

Mr Negus—I will just hand over to Deputy Commissioner Drennan, who dealt with that particular matter.

Mr Drennan—On 30 November, the AFP received a referral from the Attorney-General's Department relating to the WikiLeaks website.

Senator BRANDIS—30 November?

Mr Drennan—That is correct.

Senator BRANDIS—So when the Attorney-General said on 29 November that the Australian Federal Police were looking at that, in fact they were not looking at it then but they were asked the following day to look at it?

Mr Drennan—The first whole-of-government task force on it was commenced on 29 November.

Senator BRANDIS—At whose initiation, please?

Mr Drennan—Prime Minister and Cabinet. They were the chair of that.

Senator BRANDIS—The Department of the Prime Minister and Cabinet—

Mr Drennan—That is right.

Senator BRANDIS—requested that the AFP join a task force to examine this matter. Is that right?

Mr Drennan—It was a departmental committee, yes, in relation to the WikiLeaks matter.

Senator BRANDIS—Going back to your previous answer, was the first request for the AFP to investigate whether an offence against Australian criminal law had been committed on 30 November?

Mr Drennan—On 30 November we received the referral from the Attorney-General's Department.

Senator BRANDIS—What did that referral request you to do?

Mr Drennan—I do have the precise details here, but it was really to examine the release of the cables on the WikiLeaks website to see whether any Australian offences had been committed.

Senator BRANDIS—Of course, Commissioner, you do not ordinarily wait for the Attorney-General's Department to give you a referral before you start to investigate whether or not a crime may have been committed. In the ordinary course of events you initiate that investigation yourself.

Mr Negus—Can I just correct you on that.

Senator BRANDIS—Yes.

Mr Negus—We do receive referrals from a range of agencies. We sometimes would initiate them ourselves but more often than not the AFP would respond to a referral from another department or another agency. Can I just add, too, that the letter that came to the AFP from the Attorney-General's Department asked us to look at the continuing issues of the WikiLeaks cables and continue to examine material as it came to light to see whether any offences would be or could be identified as breaching Australian law.

Senator BRANDIS—That was the first reference, was it?

Mr Negus—As Deputy Commissioner Drennan said, there had been a task force meeting at which there was some discussion amongst a range of agencies. The formal letter arrived on 30 November, the following day.

Senator BRANDIS—Responsively to that letter of 30 November you commenced an investigation?

Mr Negus—We commenced an assessment of the material to see whether it, in our opinion, breached any Australian laws. There is a difference between an investigation and an assessment. That is all I will say.

Senator BRANDIS—So you did not commence an investigation on 30 November; you commenced an assessment?

Mr Negus—Assessment of the material that we knew at that time, to see whether it breached any Australian laws.

Senator BRANDIS—Did you, and if so on what date, advise the government of your view whether or not an offence had been committed?

Mr Drennan—On 17 December we advised the Secretary of the Attorney-General's Department, who referred the matter to us. We also advised the Attorney-General's office and we made a media release in relation to our findings.

Senator BRANDIS—Just summarise your findings for us in a few words.

Mr Drennan—Our findings were that we did not identify any criminal offence where Australia would have jurisdiction.

Senator BRANDIS—Was that the only time that you conveyed a view about the commission or otherwise of an offence against Australian criminal law to the government?

Mr Drennan—There were certainly discussions in the ongoing task force and, as we got closer to that date of 17 December, there were certainly discussions that, on what we had seen to date, we did not think that there would be criminal offences, but that was firmed up and finalised by the 17th.

Senator BRANDIS—So there was never a time when you had even a tentative view that a criminal offence against Australian law had been committed?

Mr Negus—It was under consideration during that entire period. Again, as you recall, there were cables being released almost on a daily basis during that period and each one of those again had to be assessed.

Senator BRANDIS—Apart from assessing the cables, by the way, did you do anything else? Did you, for example, get to grips with the question of the extent of the actual personal involvement by Mr Assange in the solicitation of the cables or the posting of the cables on the website?

Mr Negus—We attempted to obtain all the information we could from our US colleagues in regard to this. Because of the circumstances at the time, we were unsuccessful in gaining much more of an insight into what was happening.

Senator BRANDIS—The Prime Minister is a lawyer, although it is hard to discern sometimes, but on 2 December you are probably aware that she announced—

CHAIR—I hope, Senator Brandis—

Senator BRANDIS—Am I out of order?

CHAIR—I think you might need to withdraw that. It is a reflection on a sitting member of this parliament and the Prime Minister.

Senator BRANDIS—No, it is not. It is hard to discern the Prime Minister is a lawyer.

CHAIR—I think that is a reflection upon her capacity.

Senator BRANDIS—I do not.

CHAIR—I am asking you to withdraw it.

Senator BRANDIS—I will withdraw it, to indulge you, Chair.

CHAIR—Thank you. Please continue with your questions.

Senator BRANDIS—On 2 December the Prime Minister, whose legal insight is so blindingly clear to all Australian citizens—

CHAIR—You might need to withdraw that as well.

Senator BRANDIS—announced that what Mr Assange had done was ‘an illegal thing to do’. At the time the Prime Minister made that claim, the AFP had just begun its assessment. It certainly had not arrived at any conclusions about whether any Australian law had been breached by 2 December, had it?

Mr Negus—That is right.

Senator BRANDIS—And the conclusion, as you have said, Assistant Commissioner Drennan, was that there had not been. Thank you.

Senator PRATT—I just wanted to ask for confirmation that no foreign security personnel will be allowed to carry firearms during CHOGM.

Mr Negus—I think the department is probably in a better position to answer that.

Mr G McDonald—That is the general policy.

Senator PRATT—Secondly in relation to CHOGM—and you can take this on notice—I am interested to know what arrangements have been put in place to ensure that there are appropriate forums for the expression of community activism and messages to go to global leaders that will be gathering in Perth so that things that might turn into unruly protests are actually given a forum for constructive community engagement.

Mr Negus—Again I think it is probably more appropriate that the department take the question.

Mr Wilkins—I sit on a CHOGM group of secretaries and it is really a question for Prime Minister and Cabinet. They are organising this. We have a very narrow remit in terms of some of the security issues.

Senator PRATT—That is all right. I will put it on notice.

Mr Negus—I should say just for your information that the Western Australia Police are taking the lead in the security elements of this. Of course, the Commonwealth will have a role as part of providing the broader security package, but the AFP will not be leading the security package.

CHAIR—We have other questions for AFP then, Senator Parry, and we will not get to ASIO.

Senator PARRY—Thank you. I will truncate mine by just asking one question and requesting that the answer be provided on notice. Commissioner Negus, in relation to the Crimes Legislation Amendment (Serious and Organised Crime) Bill passed through the parliament last year, could you provide on notice to the committee whether any action has been taken in relation to unexplained wealth, if you can do that without any operational sensitivity, and are there any impediments in relation to the legislation? Is the legislation robust enough for operational aspects in relation to unexplained wealth provisions that were provided in that legislation?.

Mr Negus—Thanks, Senator. I am happy to take that on notice.

CHAIR—Senator Humphries, did you have questions for the AFP?

Senator HUMPHRIES—I do have questions, but I think I will have to put them on notice.

CHAIR—Any other questions for the AFP? Senator Trood.

Senator TROOD—Commissioner Negus, can you provide us with a report on the progress of Operation Rune, please, in relation to Securrency.

Mr Negus—That investigation, as I am sure you are well aware, has been going for some time and at the last estimates I think I informed the committee that I do get personal updates on that. I had one two weeks ago and again I am satisfied with the progress that is being made. There has been a range of operational activity across the world, and I am sure you have seen it reported widely in the newspapers, with warrants being executed in the UK, Spain and other locations. There have been no arrests made as yet in Australia but, as I said, the investigation is progressing and, as it is an operational matter continuing, I really cannot give you any more information than that, other than to say I am satisfied with the progress thus far.

Senator TROOD—So your investigations are continuing and, indeed, it is an operational activity in which you are anticipating making arrests, or at least seeking to. Is that right?

Mr Negus—Again, I would not want to step into the anticipation of arrests part, but we have executed search warrants, we have collected evidence, we have taken statements, and that has been publicly recorded. But, as I said, the investigation continues and I am satisfied that it is making progress.

CHAIR—I do not think there is any point in bringing on ASIO or any of the other agencies now, as we are 10 seconds off 11 o'clock. Can I thank everybody for their attendance at estimates for today. We will see you no doubt after the budget.

Committee adjourned at 11.00 pm

