



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

ESTIMATES

**(Consideration of Budget Estimates)**

MONDAY, 26 MAY 2003

CANBERRA

BY AUTHORITY OF THE SENATE



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**SENATE**

**LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE**

**Monday, 26 May 2003**

**Members:** Senator Payne (*Chair*), Senator Bolkus (*Deputy Chair*), Senators Greig, Ludwig, Mason and Scullion

**Senators in attendance:** Senators Bolkus, Jacinta Collins, Kirk, Ludwig, Payne and Scullion

**Committee met at 9.00 a.m.**

**ATTORNEY-GENERAL'S PORTFOLIO**

**In Attendance**

Senator Ellison, Minister for Justice and Customs

**Attorney-General's Department**

Mr Robert Cornall, Secretary  
Mr Ian Carnell, General Manager, Criminal Justice & Security  
Mr Ian Govey, General Manager, Civil Justice & Legal Services  
Dr James Poppo, Executive Adviser  
Mr Richard Oliver, General Manager, Corporate Services  
Mr Trevor Kennedy, Chief Finance Officer  
Mr Peter LeRoy, General Manager, Information and Knowledge Services  
Ms Kathy Leigh, First Assistant Secretary, Civil Justice Division  
Mr James Faulkner, Acting First Assistant Secretary, Office of Legal Services Coordination  
Mr Paul Griffiths, Assistant Secretary, Office of Legal Services Coordination  
Ms Philippa Lynch, First Assistant Secretary, Family Law and Legal Assistance  
Ms Sue Pidgeon, Assistant Secretary, Family Pathways  
Ms Renée Leon, Acting First Assistant Secretary, Office of International Law  
Mr Bill Campbell, Principal Adviser  
Mr James Graham, Acting Principal Legislative Counsel  
Mr Peter Ford, First Assistant Secretary, Information and Security Law Division  
Ms Janet Power, Acting First Assistant Secretary, Native Title Division  
Ms Kathryn Shugg, Assistant Secretary, Native Title Division.  
Ms Joanne Blackburn, First Assistant Secretary, Criminal Justice Division  
Mr Geoff McDonald, Assistant Secretary, Criminal Law Branch  
Mr Craig Harris, Assistant Secretary, Law Enforcement Branch  
Mr Chris Meaney, Assistant Secretary, Strategic Law Enforcement Branch  
Ms Robyn Frost, Director, International Crime Branch  
Mr Keith Holland, Assistant Secretary, Security Law and Justice Branch  
Mr David Templeman, Director General, Emergency Management Australia  
Ms Kathy Hilgert, Assistant Director, Business Management, Emergency Management Australia  
Mr Ed Tyrie, Executive Director, Protective Security Coordination Centre

**Administrative Appeals Tribunal**

Ms Jill Toohey, Acting Registrar  
Mr Steve Wise, Finance Manager

**Australian Federal Police**

Mr Mick Keelty, Commissioner  
Mr John Davies, Deputy Commissioner  
Ms Audrey Fagan, Executive Director Protection  
Mr Trevor Van Dam, Chief Operating Officer  
Mr Trevor Jones, Acting Chief Financial Officer

**Australian Crime Commission**

Mr Alastair Milroy, Chief Executive Officer  
Mr Lionel Newman, Acting National Director, Corporate

**Australian Customs Service**

Mr Lionel Woodward, Chief Executive Officer  
Mr John Drury, Deputy Chief Executive Officer  
Mr John Jeffery, Deputy Chief Executive Officer  
Rear Admiral Max Hancock, Director-General, Coastwatch  
Ms Marion Grant, National Director, Border Compliance and Enforcement  
Mr Phil Burns, National Director, Cargo and Trade  
Mr Alistair Cochrane, Chief Financial Officer  
Ms Gail Batman, National Director, Border Intelligence and Passengers  
Ms Jenny Peachey, National Director, Office of Business Systems  
Mr Murray Harrison, Chief Information Officer  
Ms Sue Pitman, National Manager, Trade Measures  
Mr Stephen Goggs, National Manager, CMR Transition

**Australian Government Solicitor**

Ms Rayne de Gruchy, Chief Executive Officer  
Mr David Riggs, Chief Financial Officer

**Australian Law Reform Commission**

Professor David Weisbrot, President  
Ms Rosemary Adams, Executive Director

**Australian Transaction Reports and Analysis Centre**

Mr Neil Jensen PSM, Director  
Mr Andrew Joyce, Senior Manager, Policy and Coordination  
Mr Alf Mazzitelli, Senior Manager, Corporate Resources

**Australian Security Intelligence Organisation**

Mr Dennis Richardson, Director-General

**CrimTrac**

Mr Jonathan Mobbs, Chief Executive Officer  
Mr Stewart Cross, Director, Business Operations  
Ms Nicole McLay, Chief Finance Officer

**Family Court of Australia**

Mr Richard Foster, CEO  
Ms Angela Filippello, Principal Registrar

**Federal Court of Australia**

Mr Warwick Soden, Registrar and Chief Executive  
Mr Gordon Foster, Executive Director, Corporate Services Branch

**Federal Magistrates Service**

Mr Peter May, Chief Executive Officer

**High Court of Australia**

Mr Christopher Doogan, Chief Executive and Principal Registrar  
Ms Carolyn Rogers, Senior Registrar  
Mr Lex Howard, Marshal

**Human Rights and Equal Opportunity Commission**

Ms Pru Goward, Sex Discrimination Commissioner  
Ms Diana Temby, Executive Director  
Mr Stephen Duffield, Director, Human Rights Unit  
Ms Meredith Wilkie, Director, Race Discrimination Unit  
Ms Sally Moyle, Director, Sex Discrimination Unit  
Ms Rocky Clifford, Director, Complaint Handling  
Ms Susan Roberts, Director, Legal Services  
Robyn Ephgrave, Manager, Finance and Services

**Insolvency and Trustee Service Australia**

Mr Terry Gallagher, Chief Executive  
Mr Peter Lowe, Executive Director  
Mr David Bergman, Legal/Policy Advisor

**National Native Title Tribunal**

Mr Christopher Doepel, Registrar  
Ms Marian Schoen, Director, Corporate Services & Public Affairs  
Mr Hugh Chevis, Director, Service Delivery  
Mr Erwin Winkler, Manager, Financial Services

**Office of Film and Literature Classification**

Mr Des Clark, Director  
Mr Paul Hunt, Deputy Director

**Office of the Director of Public Prosecutions**

Mr Damian Bugg QC, Director of Public Prosecutions  
Mr Grahame Delaney, First Deputy Director  
Mr John Thornton, Deputy Director, Legal & Practice Management  
Ms Stela Walker, Deputy Director, Corporate Management

**Office of the Privacy Commissioner**

Mr Malcolm Crompton, Federal Privacy Commissioner  
Mr Timothy Pilgrim, Deputy Federal Privacy Commissioner  
Robyn Ephgrave, Manager, Finance and Services

**CHAIR**—I declare open this public hearing of the Senate Legal and Constitutional Legislation Committee. On 13 May 2003 the Senate referred to the committee the particulars of proposed expenditure for the service of the year ending 30 June 2004 and particulars of certain proposed expenditure in respect of the year ending 30 June 2004 for the Attorney-General's and the Immigration and Multicultural and Indigenous Affairs portfolios. The

committee will consider the portfolios in the order in which they appear on the circulated agenda. The committee will commence proceedings today with the Attorney-General's department, and the committee will then hear from interstate and local agencies. The committee has authorised recording and rebroadcasting of its proceedings in accordance with the rules contained in the order of the Senate dated 31 August 1999. The committee has agreed to the date of 4 July for receipt of answers to questions taken on notice and additional information.

I welcome Mr Cornall, the Secretary to the Attorney-General's Department, and witnesses from associated agencies. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds in which any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. I also remind officers that an officer of a department of the Commonwealth or a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister.

Witnesses are also reminded that the evidence given to the committee is protected by parliamentary privilege. I also remind you that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. In opening this morning's proceedings, I note that there are no answers to questions on notice outstanding from the preceding round of additional budget estimates, and we thank you and the officers of your department and associated agencies for your responses in that regard. Is there any opening statement that you wish to make?

**Mr Cornall**—No, we are ready to answer the senators' questions.

[9.03 a.m.]

#### **Attorney General's Department**

**CHAIR**—We will begin with general questions, as identified in the program as circulated.

**Senator LUDWIG**—In relation to general questions, I notice that output 1.1 also goes to alternative dispute resolution processes. On that issue, have there been any reports or further work done by the Attorney-General's Department in relation to improving alternative dispute resolution processes, specifically for the courts—not so much the Family Court as the Federal Court?

**Mr Cornall**—I will ask Ms Leigh to give you specifics but, as a general statement, the courts are very well aware of the advantages of mediation. I know that the Federal Court has had a mediation program for some time in appropriate matters, but Ms Leigh may have more details that can assist you—and Mr Govey will answer the question.

**Mr Govey**—I think there are three levels of answer to that question. Firstly, the courts have programs themselves in this area, and I assume that you will take that up with the courts. Secondly, there is the body for which the secretariat is in the Attorney-General's Department; that is, NADRAC—the National Alternative Dispute Resolution Advisory Council. That body does work in advising the Attorney-General in the area of alternative dispute resolution. It



meets on a regular basis and prepares reports. I cannot remember right now what the title of the last report was, but we could certainly provide that information to you fairly shortly.

Thirdly, there are two divisions within the Attorney-General's department that become involved in alternative dispute resolution: the Civil Justice Division and, particularly in the context of family law, the Family Law and Legal Assistance Division. Again, I do not think there is anything terribly specific that I can refer to from recent times, but the Family Law and Legal Assistance Division is responsible for program administration of PDR—the primary dispute resolution area—particularly in relation to family law. So it is an area of considerable attention, particularly in provision of program money.

**Senator LUDWIG**—I want to turn to the National Action Plan on Human Rights. When did the government decide to produce a revised National Action Plan on Human Rights?

**Ms Leigh**—It was first announced in December 1998 that the revision of the national action plan would be an objective for the government. There had previously been, as you would understand, national action plans submitted by Australia and the general proposition that Australia would update its national action plan was stated then.

**Senator LUDWIG**—Do you have a list or document which specifies the number of times that the national action plan working group has met since the decision was taken in 1998?

**Ms Leigh**—I could give you some information about when it has met because I have that with me. I am not certain that it is completely comprehensive but it would give you some indication. Perhaps if I outline the information I have and I can take it on notice that, if there were any further meetings, I could provide you with details.

**Senator LUDWIG**—That would be fine, thank you.

**Ms Leigh**—First of all, in early 1999 a working group of departments and agencies met to begin the discussion on this issue. It also met in December 2000, December 2001 and June 2002. I believe that is the most recent meeting. There have been drafts circulated outside of meetings for comment.

**Senator LUDWIG**—So it last met in June 2002?

**Ms Leigh**—That is correct.

**Senator LUDWIG**—Did they schedule a next meeting date at that last meeting?

**Ms Leigh**—Not that I am aware of but as I have said, there have been drafts circulated for comment. So subsequent to that last meeting, for example, in both August and October 2002 further drafts were circulated for comment amongst members of the working group.

**Senator LUDWIG**—Am I right to say that they have met approximately four times since December 1998?

**Ms Leigh**—They are the dates that I have before me. As I said, if there are further dates then I will provide them to you.

**Senator LUDWIG**—When you say 'draft', what exactly is that? You mention a 'draft'; what sort of draft document is it?

**Ms Leigh**—It is a draft of the revised national action plan.

**Senator LUDWIG**—Is that available to the committee? What stage is it at?

**Ms Leigh**—As I said, it is still in draft form and being circulated amongst departments so I would have thought it was a little premature.

**Senator LUDWIG**—When do you next intend to meet?

**Ms Leigh**—I do not have any details about an actual meeting that is scheduled at this stage.

**Senator LUDWIG**—And that draft was circulated in June 2002?

**Ms Leigh**—No, that was the last meeting. Drafts were subsequently circulated after that meeting in August 2002 and October 2002.

**Senator LUDWIG**—Was it the same draft or a different draft?

**Ms Leigh**—It would have been updated and then recirculated for further comments.

**Senator LUDWIG**—Who was updating it?

**Ms Leigh**—Our department would have been doing that based on the information coming in from the other departments and agencies.

**Senator LUDWIG**—So you first of all circulated it in August 2002, asked for comment and return of information?

**Ms Leigh**—I am not sure that is the first time it was circulated but since that last meeting, that is the action that has happened.

**Senator LUDWIG**—We might deal with it this way: which agencies are on the working group?

**Ms Leigh**—I would need to take that on notice, if I might, Senator.

**Senator LUDWIG**—Who represents the Attorney-General on the working group?

**Ms Leigh**—Officers of the Civil Justice Division.

**Senator LUDWIG**—Who has the coordination role?

**Ms Leigh**—The Civil Justice Division.

**Senator LUDWIG**—They then received comment back from the draft of August 2002? They updated it themselves? Or did they call another meeting to consider any additions?

**Ms Leigh**—My understanding is that there have not been any meetings since the June 2002 meeting, but that information coming in would have been taken into account in updating it.

**Senator LUDWIG**—And then another draft was circulated in October 2002?

**Ms Leigh**—That's correct, Senator.

**Senator LUDWIG**—Then what has been done by the coordination of the Civil Justice Division since then in relation to the national action plan draft?

**Ms Leigh**—There would have been further work done on that draft, but I do not have any more details on that. Work on this project does depend on other priorities, as with all our

work. The area that is responsible for this project is also responsible for the age discrimination legislation and so obviously they have to juggle those priorities.

**Senator LUDWIG**—What priority does this have?

**Ms Leigh**—It is more a matter of, when you are developing legislation like the age discrimination legislation, you are working to a parliamentary timetable. I am not saying it has any less priority but sometimes, when something needs to be done by a certain date, then obviously you step in to do that and then you return to the other project as the other timetable allows you.

**Senator LUDWIG**—When do you think you will return to the national action plan?

**Ms Leigh**—I believe work is happening at the moment on it, Senator. I do not have any date for a further meeting.

**Senator LUDWIG**—Has the draft national action plan been considered at a ministerial level?

**Ms Leigh**—In terms of a general approach it has been, but not in terms of the detail of the document.

**Senator LUDWIG**—Has the draft been forwarded to the minister?

**Ms Leigh**—I am not certain, Senator. I understand that the Attorney has approved the general approach. I am not sure whether the draft, as it was at that stage, was provided as an attachment to that brief to the Attorney. The point of the brief was to get approval for the overall approach, rather than the detail of the document.

**Senator LUDWIG**—Perhaps you could check to see whether that draft has gone to the minister, and when that happened and, in addition—you might need to take this on notice—the number of people or the staffing level that is working on it or the hours that they have worked on it since October 2002.

**Ms Leigh**—It would be difficult to give you precise hours, Senator, because that would not be recorded but by looking at the files we could give you some assessment as to the amount of work that has been done on it.

**Senator LUDWIG**—I was looking more at just the staffing or resource allocation. I am not sure how you allocate hours or work and how you assess it but—without going to a lot of trouble—the usual way you would work out the job assessment.

**Ms Leigh**—Yes, I can do that, Senator.

**Senator LUDWIG**—Has the draft been circulated more widely, such as to NGOs for their comment?

**Ms Leigh**—I do not believe it has at this stage, Senator.

**Senator LUDWIG**—You are not sure of when it is to be finalised, or put out to NGOs or to a wider audience for their consideration?

**Ms Leigh**—No, I don't have any time for that, although it is intended that that will occur.

**Senator LUDWIG**—Has HREOC been consulted? Or perhaps we could reverse it. Who has been consulted other than the agencies that you are going to provide a list to—that is, internal agencies? What about external bodies or independent commissions or NGOs?

**Ms Leigh**—NGOs have not been consulted as yet on the draft document. It is intended that they will be. HREOC are a member of that working group. I can also tell that you that, apart from our department, and the Department of Foreign Affairs, HREOC and ATSIC are members of the working group.

**Senator LUDWIG**—You said that you were going to provide that list. Who else—if you have the list in front of you?

**Ms Leigh**—They are all the organisations that I have in front of me. If there are further organisations I will provide those to you.

**Senator LUDWIG**—What is the next process going to be? You do not know when it is going to be finalised. Do you have an assumption date? It is not going to be 2005, one would imagine. When it is finalised, where will it go to from there?

**Ms Leigh**—Once it is settled between departments and agencies it will go the Attorney and the Minister for Foreign Affairs for consideration. Then, with their approval, it will go out to NGOs for their input and comment.

**Senator LUDWIG**—Do you know whether or not it is the intention of the government to table the revised action plan to the UN Commission on Human Rights?

**Ms Leigh**—The point of the national action plan is to submit it to the relevant UN body—that is the context in which they were first established—and the intention in updating it is also that it be submitted to the relevant UN body.

**Senator LUDWIG**—Do you know when?

**Ms Leigh**—I cannot give you a precise date.

**Senator LUDWIG**—It is coming up to five years since the government decided to produce the revised plan. I was curious as to why it was taking so long. Don't you have enough staff? Aren't you that keen?

**Ms Leigh**—It requires consultation with other agencies. As will be evident from the information I have been able to provide, we need to go out to other agencies and get comments. Having received the comments, we need to look at how they would fit into the draft, go back and ask questions to make sense of the comments and ensure that there is consistency. That does take some time.

**Senator LUDWIG**—It went out in October 2002 for comment—to how many different agencies?

**Ms Leigh**—At least the four that I mentioned but I think it would have gone to more. I need to confirm that.

**Senator LUDWIG**—Which ones are we waiting on comment back from?

**Ms Leigh**—I cannot tell you that. Can I take that question on notice?

**Senator LUDWIG**—Yes, please. Is that what we are waiting for now?

**Ms Leigh**—I would need to check exactly.

**Senator LUDWIG**—I am trying to establish the hiccup in the process. Are you waiting for comment to come back or have you received comment and are sitting on it?

**Ms Leigh**—I would need to check that.

**Senator LUDWIG**—You say that it is a priority of the government. How can you justify that statement when it has been five years and the last time the committee met was in June 2002? It does not seem to be much of a priority from where I sit.

**Ms Leigh**—It is one of the many priorities of the civil justice division.

**Senator LUDWIG**—What other priorities do you have currently?

**Ms Leigh**—In the human rights area, we have the age discrimination legislation, which you would be aware of; amendments to the Human Rights and Equal Opportunity Commission Act; amendments to the Sex Discrimination Act to deal with pregnancy and work; amendments to the Sex Discrimination Act to deal with IVF; we are involved in the issue of paid maternity leave; we are also doing considerable work in the disability area where there are three disability standards—transport, premises and education; we are working on and developing a UN convention on disability; we are involved in not only a competition policy review in relation to the Disability Discrimination Act but also considering some court cases touching on that act and advising the Attorney; and there are general issues that arise in relation to the Race Discrimination Act and litigation in that area. That is probably a quick overview of some of the big issues.

**Senator LUDWIG**—Do you need more staffing? If that is the workload that you have and if as you say it is a priority of the government, have you asked the Attorney-General whether you need more staff?

**Ms Leigh**—I am sure in the best possible world we would all like more staff. I think that we work hard on our priorities appropriately.

**Senator LUDWIG**—Mr Cornall, are you happy with the progress of the work to date in relation to the National Action Plan on Human Rights?

**Mr Cornall**—It is not something that I have personally considered. If you isolate it from other issues, I can see how you could say that it has not advanced as quickly as might have been desirable. But, when you have an appreciation of the overview of the work of the department and the priorities of the government generally, I think it fits into the context of those matters and it is being advanced within those other priorities as well.

**Senator LUDWIG**—Is there a priority listing? Do you ask the Civil Justice Division to prioritise their work and give you an overview of the work in progress and the priority attached to each? Is there a methodology that you use to determine which has greater or lesser priority?

**Mr Cornall**—Yes, there is. There are two ways we approach that. Firstly, the priorities are made known to the Attorney-General, so that if he has a different view of the priorities, as we are approaching them, he can ask us to reorder them. Secondly, we have a process within the department of reviewing the progress of matters with each division twice yearly.

**Senator LUDWIG**—Have you asked the Attorney-General, or has the Attorney-General asked you, whether the National Action Plan on Human Rights is progressing at an appropriate rate?

**Mr Cornall**—Has he asked me?

**Senator LUDWIG**—Yes. Has the Attorney-General or one of his officers requested or inquired as to the progress of the National Action Plan on Human Rights?

**Mr Cornall**—Not of me personally.

**Senator LUDWIG**—Have you made any comment to the Attorney-General in respect of the progress to date in relation to the national action plan?

**Mr Cornall**—No, I have not.

**Senator LUDWIG**—Is it right that the Attorney-General's Department is running the progress?

**Ms Leigh**—It is being run jointly with the Department of Foreign Affairs and Trade.

**Senator LUDWIG**—When you say 'jointly', is someone tasked with the responsibility of being the coordinator? I thought you said that it was the Civil Justice Division.

**Ms Leigh**—Sorry, I meant in relation to our own department—that was the part of the department.

**Senator LUDWIG**—Who is tasked with the joint responsibility?

**Ms Leigh**—Do you mean who in the Department of Foreign Affairs and Trade?

**Senator LUDWIG**—If you know that, that would be helpful too. But I would assume that, if there are two departments, someone must have overall control of the direction.

**Ms Leigh**—We are jointly responsible. The two ministers announced that this would happen, and we are jointly responsible for it.

**Senator LUDWIG**—But, at a movement level, is there an officer who is seconded from foreign affairs? Do you meet regularly with the department of foreign affairs? If so, when did you last meet?

**Ms Leigh**—We can keep in touch all the time by telephone et cetera. There is an officer in the Civil Justice Division and an officer in the department of foreign affairs working on this.

**Senator LUDWIG**—Is there a foreign affairs officer in the Civil Justice Division?

**Ms Leigh**—No, in the department of foreign affairs.

**Senator BOLKUS**—Who is the person in the Attorney-General's Department who has responsibility for this?

**Ms Leigh**—Do you want the name of the officer?

**Senator BOLKUS**—Yes.

**Ms Leigh**—I will check that for you.

**Senator BOLKUS**—You will take that on notice, will you?

**Ms Leigh**—Yes, please.

**Senator BOLKUS**—Can you tell us how many issues are still outstanding?

**Ms Leigh**—In relation to the national action plan?

**Senator BOLKUS**—Yes.

**Ms Leigh**—I do not think it is so much that there are particular issues outstanding—but, again, I could check that for you. I am quite sure that there is a draft that has had some considerable work done on it, but there are still comments coming in and matters that need to be followed up.

**Senator BOLKUS**—Comments coming in from whom?

**Ms Leigh**—From the other departments and agencies.

**Senator BOLKUS**—The other four or five departments?

**Ms Leigh**—There may be others. As I say, those are the organisations for which I have names with me.

**Senator BOLKUS**—So it does not seem like a long time to you?

**Ms Leigh**—I think it is a matter, as I said, of all of the work that is being done and juggling all of that work.

**Senator BOLKUS**—Mr Cornall, where does this rate on the AG's priority list that you have discussed with the Attorney-General?

**Mr Cornall**—I do not have the priority list in front of me. So I am sorry, but I cannot answer that question.

**Senator BOLKUS**—Can you table that list?

**Mr Cornall**—I can take that on notice. It is a matter of a brief to the Attorney. I would have to ask the Attorney if he is prepared for that to be done.

**Senator BOLKUS**—It is also a matter of the department's priorities. I am sure we are entitled to have a list of how your priorities stack up here.

**Mr Cornall**—If I can, I will take the question on notice.

**Senator BOLKUS**—Do you have any idea of how long this list is?

**Mr Cornall**—It is quite a long list. Ms Leigh indicated some of the issues that are presently on it and, yes, it is a long list of quite significant matters.

**Senator BOLKUS**—And you are asking us to believe that five years to generate an action plan in this area—or should we call it an inaction plan—is a reasonable amount of time.

**Mr Cornall**—No, I did not say that.

**Senator BOLKUS**—You were saying earlier that in the context of all the priorities you were not concerned about the slow progress here.

**Senator Ellison**—I think the question has been answered because Mr Cornall said that this was one of a number of priorities being dealt with and was being progressed with those other ones. To take it in isolation is unfair because you have to look at the other work which the

civil justice area is doing and it is up to the government to determine what resources it gives to a particular issue. We believe the resources are sufficient.

**Senator BOLKUS**—So, Minister, you are happy with—

**Senator Ellison**—I am happy with the progress of this matter, and those matters which have been taken on notice I will take up with the Attorney-General. We have a very busy department and this is one of a number of priorities. Another department is involved in this and I think you should refer questions to them as well.

**CHAIR**—Which will be possible next week.

**Senator BOLKUS**—You don't think five years is a long time?

**Senator Ellison**—We have to get these things right. If you think human rights is important, surely you would want it to be addressed in a proper fashion. It is not as if the total control of this matter is under the auspices of the civil justice section of the Attorney-General's Department. Foreign Affairs are involved as well, and we have heard that comment has been sought from other agencies. As you would know yourself, Senator Bolkus, that is not a process which lends itself to expedition because you are involving a lot of people in what is a very complex issue.

**Senator BOLKUS**—You might be right, but can we get some idea of what the outstanding dotting the i's and crossing the t's issues are all about? Ms Leigh?

**Ms Leigh**—Can I take that on notice?

**Senator BOLKUS**—Can you identify what the issues are for us?

**Ms Leigh**—I would need to investigate exactly what the progress is and therefore what information I would be able to provide to you.

**CHAIR**—Which is in fact the indication that Ms Leigh has already given, that she will take that on notice and come back to the committee.

**Senator BOLKUS**—The problem is that we have got officers here responsible for this area but no-one seems to know what is happening or not happening and the minister does not seem to care.

**Senator Ellison**—Senator Bolkus should not misrepresent what has been said. The fact is that we are in general questions, I understand—

**CHAIR**—I thought we were too, but from the theme of Senator Ludwig's questions I think we are in 1.1.

**Senator Ellison**—Then can we please define where we are and make sure that we get the relevant officers, because we are in general questions and Ms Leigh is answering those questions. We are tending to now drill down to detail—

**Senator BOLKUS**—So can we have the relevant officer here?

**Senator Ellison**—We are moving on to this section; I am not sure if it is in output 1.1—

**CHAIR**—It is in output 1.1, Minister. I had called general questions. I think Senator Ludwig went straight into 1.1. I had a question in the general area which at some stage we may come back to.



**Senator LUDWIG**—I started out in general but it just got more interesting as we went.

**CHAIR**—Riveting, Senator Ludwig; I agree. But that means we are in 1.1, Minister. If we do need further officers, it might be helpful to bring those people forward. Other than that, Ms Leigh has clearly taken on notice the detailed questions that both Senator Ludwig and Senator Bolkus have sought responses on and has undertaken to return to the committee with those answers.

**Senator LUDWIG**—You did indicate that you had questions in the general area, Chair.

**CHAIR**—Mr Cornall, I have a question in relation to the proposed military commissions for those held at Guantanamo Bay and a recent report indicating that matters were coming to a point where it was anticipated that recommendations will be made on who should be prosecuted quite soon. Those military commissions are expected to proceed, as I understand it from reports, relatively quickly. I wondered whether we had been advised if any of the Australian citizens held at Guantanamo Bay were in the group that was being considered for the first series of prosecutions and, in relation to those reports, whether the rules for trial, as they are described, have been examined by the Australian government and whether they meet with our acceptance as appropriately fair, as we would expect?

**Mr Cornall**—The United States authorities are at the point where they are considering advancing to the holding of military commissions. The details of those commissions have not yet been finalised. Discussions with Australian officers have indicated that, should there be any Australians involved in those commissions, there would be certain basic requirements—very similar to the requirements of a criminal trial—that we would regard as absolutely essential. We have also advised them, as they well know, that we have a total abhorrence of capital punishment. In terms of the finalisation of any details of these matters, nothing has yet been finalised.

**CHAIR**—One of the reports that I have seen indicates that the Pentagon is in the process of seeking civilian defence lawyers for trials. Does that mean that those who may be involved in trials will not have access to their choice of legal representative?

**Mr Cornall**—That matter has not been resolved.

**CHAIR**—Do we have a position on that?

**Mr Cornall**—Australia's position would be, as I think you could anticipate, that Australian lawyers should be involved.

**CHAIR**—And they should be the choice of those being defended?

**Mr Cornall**—I am not sure that the discussions have got to that detail.

**CHAIR**—Do you have any idea of the time frame in which this might be happening?

**Mr Cornall**—I think that the matters are being discussed at the present time and that we have said to the American government that these matters need to be resolved in the relatively near term because they have gone on for some time and a resolution should be reached as quickly as possible.

**CHAIR**—Do you know when you expect a response from the United States on that?

**Mr Cornall**—No, I do not.

**CHAIR**—Could you take on notice a question to update the committee if further information comes to light in the period of time during which we are seeking answers to questions on notice and provide us with any further information that is available in relation to the rules for trials that may be applied to these military commissions?

**Mr Cornall**—To the extent that I am able to answer those questions I will take that on notice.

**CHAIR**—Thank you. Senator Ludwig, are we now in general or 1.1?

**Senator LUDWIG**—The interesting part about that, Chair, is that I thought that was in 2.2, which is security law; but I am happy to follow up some general questions in relation to Mr Hicks and Mr Habib.

**CHAIR**—Is that acceptable, Mr Cornall?

**Mr Cornall**—Yes, certainly.

**Senator LUDWIG**—Has there been any change in the detention arrangements for Mr Hicks and Mr Habib since last supplementary estimates?

**Mr Cornall**—No, they are both held at Camp Delta.

**Senator LUDWIG**—Does the United States government still regard Mr Hicks and Mr Habib, as far as you are aware, as unlawful combatants rather than as prisoners of war?

**Mr Cornall**—That is correct.

**Senator LUDWIG**—Is that also the position of the Australian government? Do you also see it that way?

**Mr Cornall**—The Australian government's position is that it is a matter for the United States because they are held by the United States and that it is not an issue that Australia has to decide. Australia also is in a different position to the United States, as it has signed the first additional protocol for the Geneva Convention and the United States has not.

**Senator LUDWIG**—How would that change your view?

**Mr Cornall**—My understanding is that it expands the definition of prisoner of war. But if I am incorrect in this, Mr Campbell or Mr Ford will correct me.

**Senator LUDWIG**—Has the Australian government made any effort to have the legal status of Mr Hicks and Mr Habib determined by an independent judicial authority?

**Mr Cornall**—No, we have not.

**Senator LUDWIG**—Has that been a part of your consideration? Have you made any approaches to the United States to have their position determined by an independent judicial authority or have you simply left it to the United States?

**Mr Cornall**—When you say that, are you referring to determining their status as a prisoner of war?

**Senator LUDWIG**—Yes, their legal status.

**Mr Cornall**—The United States has adopted the position all along that the position is clear, there is no doubt and, therefore, there is nothing to be resolved by an independent commission.

**Senator LUDWIG**—The United States has made a determination and you say that is sufficient, although they are Australian citizens?

**Mr Cornall**—The United States position has been tested on a couple of occasions. There was an application in the United States by way of a writ of habeas corpus which, my recollection is, involved Mr Hicks as well as a number of other detainees. That application was not successful. There was an application in England, on behalf of an English detainee, and the English court determined that it had no jurisdiction in the matter. There was an application by a gentleman called Hamdi, who was held at the Norfolk naval brig, which I think is in Virginia. That application was unsuccessful as well. So there has been quite a bit of litigation about people detained as a result of the attacks on the United States and the war in Afghanistan, and none of those matters so far have resulted in any overturning of the situation in Guantanamo Bay.

**Senator LUDWIG**—Since we were last here in supplementary estimates, what has the A-G's department done about it? Have you sought any additional advice or have you just reviewed the decisions that have been made in courts?

**Mr Cornall**—The decisions I have just referred to?

**Senator LUDWIG**—Yes.

**Mr Cornall**—I cannot recall the exact dates of those decisions, so I am not sure they have been given necessarily since the last estimates. But there have been ongoing investigations of a security nature and a law enforcement nature, and there have been ongoing discussions between Australian officers from various areas—not just from this department but also from foreign affairs and so forth—with American authorities about the resolution of these matters or on bringing them to some conclusion.

**Senator LUDWIG**—What can you tell me about those ongoing discussions?

**Mr Cornall**—I do not believe I can tell you very much.

**Senator Ellison**—Madam Chair, there is an ongoing investigation in relation to Mr Hicks both by the United States and by Australia, and of course we cannot comment in relation to any investigation while it is ongoing. That is why Mr Hicks continues to be detained by the United States for security, intelligence and investigative purposes. The matter is still ongoing with him. If you ask what has happened since last time, the status is that there is still an ongoing investigation. That is the situation. There has been no conclusion of that investigation, as I understand it.

**Senator LUDWIG**—Who is doing that investigation?

**Senator Ellison**—It is the subject of investigation by United States authorities and Australian authorities. The matter is still ongoing, and that is where it is.

**Senator LUDWIG**—Which Australian authorities are investigating it?

**Senator Ellison**—I will take that on notice.

**Senator LUDWIG**—When was the last contact made with Mr Hicks or Mr Habib by Australian—

**Senator Ellison**—I will have to take that on notice.

**CHAIR**—Thank you, Minister.

**Senator LUDWIG**—Has it been ongoing, do you know?

**Senator Ellison**—Are you talking about the contact with Mr Hicks?

**Senator LUDWIG**—Yes.

**Mr Cornall**—Our direct contact with Mr Hicks has been in relation to the law enforcement and security investigations, because they are the only direct contacts that the Americans have allowed for any of the detainees in Guantanamo Bay. So they are the people who have seen them face to face.

**Senator LUDWIG**—In what context do they see them face to face? When you say ‘law enforcement’, what is the nature of the contact?

**Mr Cornall**—It is in the context of pursuing the investigations that they have been undertaking.

**Senator LUDWIG**—What are those investigations? Are you aware of the nature of those?

**Mr Cornall**—They are investigations into Mr Hicks’s activities in relation to the circumstances in which he was taken into detention.

**Senator LUDWIG**—What can Australia contribute to that? What are we contributing, or are we just investigating as well and where are we investigating?

**Senator Ellison**—Madam Chair, I think that gets into the investigation itself. Obviously we know the circumstances under which Mr Hicks was apprehended. The question of who is investigating this matter I will take on notice because, if it is more than one agency—which I suspect it is, I want to make sure I get it right for Senator Ludwig. We might even be able to get back fairly soon with that list.

**CHAIR**—That would be helpful.

**Senator Ellison**—As to the form of assistance and the extent of the investigation, we really cannot go into what it concerns. Obviously Mr Hicks is from Australia, and that is why we are vitally concerned in the matter.

**Senator BOLKUS**—When was he last questioned, Minister?

**Senator Ellison**—That is something I have taken on notice. We will try and get back to you with that as soon as we can.

**Senator BOLKUS**—Are you expecting that Australia will lay charges against him?

**Senator Ellison**—Obviously I could not pre-empt that. It would be improper for me to do so. That is pre-empting an investigation. That is something for Australian law enforcement authorities and, as I say, that matter is still ongoing.

**Senator BOLKUS**—So his status is still that of ‘unlawful combatant’ rather than ‘prisoner of war’?

**Senator Ellison**—That is as the secretary has said and as I understand it.

**Senator KIRK**—To date, in the course of the investigations that you have referred to into Mr Hicks's activities, has he received any legal advice?

**Mr Cornall**—No, not that I am aware of. The conditions under which we have been able to see Mr Hicks in the United States have prohibited any legal representation being made available to him at this stage. That is the case, as I understand it, for all of the detainees.

**Senator KIRK**—Why is that? Why do the conditions prohibit legal advice? Is that for security reasons?

**Mr Cornall**—They are the conditions that the United States has imposed. They have not explained the reasons to us.

**Senator KIRK**—Have you sought the reasons?

**Mr Cornall**—No.

**Senator KIRK**—Has Mr Hicks made representations to Australian authorities that he would like to receive legal advice?

**Mr Cornall**—Mr Hicks is receiving legal advice from a solicitor called Stephen Kenny on instructions given through Mr Hicks's family. Mr Kenny is a solicitor from Adelaide in the firm of Camatta Lempens. Mr Kenny corresponds regularly with the department about issues concerning Mr Hicks's detention, and we respond to his letters when they are received.

**Senator KIRK**—Then you pass on that information to Mr Hicks; is that right? Does he have direct contact with Mr Kenny?

**Mr Cornall**—No, none of the detainees do. They are able to send and receive correspondence through the International Committee of the Red Cross.

**Senator LUDWIG**—You have taken on notice the question of who has visited him. Could you also find out whether it has included consular officials or whether it has only been the investigative arms?

**Mr Cornall**—Again the United States authorities have refused any consular visits to detainees at Guantanamo Bay. So there have been no consular visits, as I understand it, to any detainee held in that facility.

**Senator LUDWIG**—Do you know what the state of health of Mr Hicks and Mr Habib is at present?

**Mr Cornall**—On the occasions when officers they have visited they have been able to ascertain that Mr Hicks and Mr Habib were in good health and being well looked after in the sense of being well fed and so forth. While Mr Hicks was in Guantanamo Bay, he had an operation which apparently went well. As we have said before, Mr Habib has a pre-existing medical condition for which he is being treated in that facility.

**Senator LUDWIG**—Do you know whether any effort by the Australian government was made to inform Mr Hicks's family that he had undergone an operation at Guantanamo Bay?

**Mr Cornall**—I am just trying to recall whether the information that he had undergone an operation came from a letter he had written to his family; I am sorry, I just do not recall the details of that. If you want me to take that question on notice, I will do so.

**Senator LUDWIG**—Yes, if you would not mind. As I understand it, there was an article in the *Australian* with the headline ‘Hicks family “kept in dark”’, which was dated 19 November 2002. I am inquiring about when officials of your department, or other departments that may represent the Australian government, knew and whether they then passed that information on to the family; and, if so, when, and, if not, why not?

**Mr Cornall**—I will take the question on notice.

**Senator LUDWIG**—Has the Australian government made any effort to put to the US that these men should be allowed to have legal representation?

**Mr Cornall**—I have mentioned the habeas corpus application before. My understanding is that Mr Hicks was party to that application—if I am wrong in that, I am sure someone will correct me now—and that he was represented in that application. So he has had some representation to that extent. In respect of his current detention, the United States has been extremely clear about the rules under which we can have any access to Mr Hicks, which are the same rules that apply to all of the other detainees, and they certainly do not permit legal representation at this stage. In terms of whether or not any criminal charges are brought against Mr Hicks in future, we are well aware of all the requirements of the criminal law process and all the steps that would need to be taken to ensure that a prosecution was brought against him in a regular and proper fashion; we are equally well aware that, if it is not, those points will be taken by the defence.

**Senator KIRK**—You have mentioned that there are rules between the United States and Australia as to various things such as communication, access and the like to Hicks and others who are there. Are these rules in writing?

**Mr Cornall**—No, I do not think so. They have permitted us to have access under very limited conditions and they have allowed us to come to Guantanamo Bay and have access to Mr Hicks under certain very specific conditions, and they have specified what those conditions are.

**Senator KIRK**—Are they in writing?

**Mr Cornall**—There may well be cables about it or something like that, but it has basically been that we can visit them, see them isolated from other people in the presence of United States authorities and ask them questions.

**Senator KIRK**—So those rules and conditions have been communicated both in writing and also verbally, orally?

**Mr Cornall**—I assume so, but I cannot recall. We are going back some time now to when the basis on which access was permitted was first agreed.

**Senator KIRK**—Could those cables and documents, if they exist, be provided to the committee?

**Mr Cornall**—We would have to see what is in the cables as to whether that is possible or not, but we can certainly confirm that the gist of what I have said was the subject of the cables, yes.

**Senator KIRK**—That would be helpful.

**Mr Cornall**—Some of these discussions were done by officers of other departments or officers of other agencies, and some of our information is not first-hand information in this area. We are a policy agency based in Canberra and we ourselves are neither conducting these investigations nor doing these interviews.

**Senator KIRK**—Those other agencies would be DFAT—

**Mr Cornall**—Law enforcement agencies and intelligence agencies. Also the Department of Foreign Affairs has a role in these sorts of matters.

**Senator LUDWIG**—Do you know when the last visit was made to Mr Hicks or Mr Habib by Australian officials?

**Mr Cornall**—I understand that the last law enforcement and/or intelligence visit was in November last year.

**Senator LUDWIG**—Would you be able to verify that date?

**Mr Cornall**—Yes, I would assume so.

**Senator LUDWIG**—Perhaps you had better take that on notice. In that visit or the visits before that, did Mr Hicks and Mr Habib provide information to the US as part of the visit or did they provide it to Australian officials? I am trying to understand exactly what happens with these visits—although I do not want to fall into the investigative function either.

**Mr Cornall**—These were Australian visits for Australians to question Mr Hicks. Obviously the United States have access to all of the detainees at any time and would undertake their own investigations and their own questioning.

**Senator LUDWIG**—Does the US provide reports to you about their investigations to date or the number of visits?

**Mr Cornall**—Not that I am aware of, and certainly not in any detail.

**Senator LUDWIG**—Have you requested that information?

**Mr Cornall**—I would assume that it has been the subject of discussions, but I do not know of any specific requests.

**Senator LUDWIG**—Have the United States communicated to Australia whether or not they intend to charge either Mr Hicks or Mr Habib with any crimes?

**Mr Cornall**—No decisions have been made in that regard at this stage.

**Senator BOLKUS**—Has there been any indication of a decision one way or another?

**Mr Cornall**—I am not really in a position to answer that question. There are discussions about how the matters in relation to detainees will be resolved, and those discussions have not been concluded.

**Senator BOLKUS**—Do those discussions include both of them being brought back to Australia?

**Mr Cornall**—I am not in a position to answer that question.

**Senator LUDWIG**—Does the Australian government intend to charge Mr Hicks or Mr Habib with any crime?

**Senator Ellison**—We cannot answer that, Madam Chair. As I said earlier in answer to a question from Senator Bolkus, we cannot pre-empt the result of any ongoing investigations. For reasons which are manifestly obvious, we just cannot pre-empt the outcome of those investigations.

**Senator LUDWIG**—Do you know when those investigations will be completed?

**Senator Ellison**—Again, we cannot pre-empt that because, by their very nature, the investigations are ongoing—they have not been completed—and we are unable to assess that.

**Senator LUDWIG**—A report on the ABC on 6 May 2003 announced the release of more prisoners from Guantanamo Bay and reported:

The impending release follows a letter from the Secretary of State, Colin Powell, to the Defence Secretary, Donald Rumsfeld, complaining that the detentions were jeopardising cooperation in fighting terrorism and that eight countries had demanded the release of their nationals.

Is Australia one of the eight countries?

**Senator Ellison**—To the extent that we are able to answer that question, we will take it on notice.

**Senator LUDWIG**—If it is not, could you explain why not in that answer.

**Senator Ellison**—Again, that will be given in the answer to the previous question.

**Senator LUDWIG**—I am a bit perplexed. Why wouldn't you know the answer?

**Senator Ellison**—I have not been dealing with that. It is more a matter for Foreign Affairs and we are concerned with the law enforcement side of things. You have Foreign Affairs involvement here and that really is a question which should be put at the estimates committee for the Foreign Affairs portfolio. But, having said that, we will see what we can do in answer.

**Senator LUDWIG**—Perhaps, in answer to that question, if you know or can identify the countries involved in that statement—whether or not it includes Australia—you could give us the names of the seven or the eight countries, as the case may be. That would be helpful.

**Senator Ellison**—Again, that will be done through Foreign Affairs, and there may be an issue there as to whether or not that is a matter between those countries and the United States. It is a government to government matter. However, I will see what we can do on that.

**Senator LUDWIG**—There was also an article in the *New York Times* on 4 May 2003 entitled 'A drifter's odyssey: from the outback to Guantanamo Bay'. The interesting part about that article is that it stated:

The United States no longer wants Mr Hicks. Seeking to win over detainees from its campaign against terrorism, the Bush Administration has asked the Australian Government to take custody of him and prosecute him. Australian officials say that Australia does not especially want him either. Senior



police and intelligence officials say that there is no evidence that he violated Australian law. Even so, the government has not pressed the United States for his release, Australian and United States officials say.

Could you comment on that. It seems to be at odds with what you are saying now.

**Mr Cornall**—It is at odds, and the article is incorrect. The United States has not made those statements to Australia.

**Senator LUDWIG**—So are you still pressing for the release of both Mr Hicks and Mr Habib?

**Mr Cornall**—I was addressing the significant part of the statement that you read out: they had determined not to deal with him and had pressed us to take him. I am saying that that is incorrect.

**Senator BOLKUS**—Minister, I wonder whether this is very much within your portfolio, but can you confirm that plans are being considered for the incarceration of both or either Habib or Hicks in Australia and whether consideration is being given as to which is the most appropriate venue to hold them in?

**Mr Cornall**—The only way this issue would arise is if there were a trial in America which resulted in a criminal penalty being imposed. Then the issue could arise as to whether or not there could be a transfer under the transfer of prisoners scheme. That is how the issue could come out.

**Senator BOLKUS**—That does not answer the question, though.

**Senator Ellison**—Are you talking about where they would be physically detained?

**Senator BOLKUS**—That is right.

**Mr Cornall**—I am saying that the question is premature, because the way it would arise would be in that fashion.

**Senator BOLKUS**—That is not necessarily so. They could in fact be brought over here and be charged in Australia and, as a consequence, they would have to be incarcerated here as well—unless you are telling us that that is not going to happen.

**Mr Cornall**—If they were prosecuted in Australia and found guilty in Australia, they would be incarcerated in Australia—yes, that would normally follow.

**Senator BOLKUS**—I am told that plans are being considered to identify the most appropriate place and way for these two—

**Senator Ellison**—You have to remember that the Commonwealth does not have prisons as such—the states and territories do, and we rely on them. So we would have to have the cooperation of a state or territory to do that. If your question is whether we have had any discussions with a state or territory in relation to that, I will take that on notice and see what I can advise the committee.

**Senator BOLKUS**—That is one aspect of a broader question, Minister. I would appreciate you taking that question on notice, but the broader question was whether the department itself may be giving consideration before having approached a state or territory.

**Senator Ellison**—I think Mr Cornall answered that when he spoke about the transfer of prisoners issue. You would understand that it is a sort of cart and horse situation. For the transfer of a prisoner you have to have the agreement of a state or territory to take the prisoner concerned. Just recently with our first successful transfer, that involved the cooperation of the Western Australian government. It was not something that the Commonwealth had the right or jurisdiction to determine. That is why I say that it is very much a question of looking at state or territory cooperation on this. We will take the question on notice and we will get back to the committee on that.

**Senator BOLKUS**—In that context, Minister, could you tell us whether consideration has been given as to which state or territory, if they have not been approached—and I am not so sure that is the case—is being considered?

**Senator Ellison**—We will do that.

**CHAIR**—Are there any further questions in this area before we move back to 1.1?

**Senator LUDWIG**—I have a few more questions in this area.

**Senator Ellison**—Are we going back to ‘general’?

**CHAIR**—No, we are just completing this area so we do not have to do it again later.

**Senator Ellison**—So we will not do 2.2 later on? We will try to get the answers to the questions on notice, if we can.

**CHAIR**—Thank you, Minister.

**Senator LUDWIG**—I will just check to make sure there is nothing else in 2.2.

**CHAIR**—There is more in the area of legal services, policy advice and security law than just this point.

**Senator LUDWIG**—There will be other questions on other matters in 2.2 and other legal services matters, but these questions are in relation—I guess more narrowly—to Mr Hicks and Mr Habib. Going back a little bit to unlawful combatants, how are the characteristics of ‘unlawful combatants’ described by the Australian government?

**Mr Cornall**—I do not think we do describe them. This is a description that the United States has applied to the people who are detained at Guantanamo Bay. The United States has determined the extent to which the principles of the Geneva Convention are to be applied to the people who are held there. These are not decisions that the Australian government has had to take.

**Senator LUDWIG**—In relation to Australian forces when they operated in Iraq, for example, how would they be classified if they operated out of uniform in that country during the war? Would they be classified as unlawful combatants by Australia?

**Mr Cornall**—You ask me to speculate on a question that I am really not best placed to answer. I will ask Mr Campbell to come to the table. He may well be able to assist us on this. It seems to me that there is a significant point to make about the situation in Iraq. Our position is that that combat was undertaken in accordance with the United Nations resolutions and was therefore justified in terms of its activity under those resolutions.

**Senator LUDWIG**—I understand that. I am more interested in trying to establish, firstly, if it is conceivable that an enemy state might attempt to treat Australian personnel as unlawful combatants if, for argument's sake, Australian forces operated out of uniform in a foreign country; and secondly, if they were captured out of uniform what the position would be.

**Mr Cornall**—Before Mr Campbell starts, hypothetical questions of this nature, without having all of the circumstances fully and clearly understood, are extremely difficult for us to answer in a precise and accurate way and may, therefore, lead to misunderstandings or be unintentionally misleading. Therefore I really have some reservations about answering questions in this format, but Mr Campbell may be able to help you.

**Mr Campbell**—I echo the comments made by the secretary that the actual application of the convention would require you to look at the individuals concerned. Also by way of background, I think the secretary mentioned earlier that we have different obligations to the United States in relation to prisoners of war, because we are a party to additional protocol 1 to the Geneva conventions, and the US are not. There are wider categories of persons included in the term 'prisoner of war' under additional protocol 1 than there are under Geneva convention III. Other than saying that, one would have to look at the circumstances of each individual. In the sense that the secretary has said this is hypothetical, I suppose it is a question that would have to be asked of the Department of Defence; but I am not aware of Australians operating out of uniform in the course of the conflict in Iraq.

**Senator LUDWIG**—What would be the rights and obligations of unlawful combatants under a national law as far as Australia is concerned, if that is more of a concrete—.

**Mr Campbell**—I cannot speculate, as the secretary has said, on the term 'unlawful combatant'. What I can say—what I reiterated before—is that the US is not a party to additional protocol 1; Australia is a party to additional protocol 1. Additional protocol 1 provides some fundamental guarantees in relation to persons who are not prisoners of war; but, as I said, the United States is not a party to that protocol—article 75 of additional protocol 1.

**Senator LUDWIG**—I understand your difficulties in that area. Perhaps we do not need to go any further than we have. Turning back to the US position in relation to the issue of prisoners being held for at least the duration of hostilities, do you understand it still to be the position—that prisoners would be held for the duration of hostilities?

**Mr Cornall**—I am not sure that they have ever put it in those terms. We have discussed here that, under the Geneva convention, prisoners of war can be held until the cessation of hostilities. We have used that as an example of the fact that, in a war situation, prisoners of war can be detained for an indefinite time without trial, charge, rights to bail and legal advice until hostilities cease. That is the context in which we have discussed it. I am not sure that the United States authorities have ever put it in precisely those terms.

**Senator LUDWIG**—There was a question on notice—No. 938—to Daryl Williams on 11 December 2002. I will find it and then re-visit the issue briefly. Is it still effectively the policy of the Australian government—and this troubles me—to allow foreign powers to detain and interrogate two Australian citizens indefinitely without charge? That is the position that they are in.

**Mr Cornall**—No, I do not think it is. Guantanamo Bay is an extraordinary situation which is being dealt with in a way that would not have been thought of years ago because we did not envisage the situation of dealing with non-state significant combatants.

**Senator LUDWIG**—We know that the US has already returned a number of Guantanamo Bay prisoners to their country of origin. Do you know whether the Australian government has made any inquiry as to how many have been released, on what grounds, and whether they would be charged in their own country?

**Mr Cornall**—My general understanding is that a very small number of the detainees have been released. I think it is fewer than 10; I do not have the exact number. My understanding is that they were released on the basis that they were no longer considered to be of security, law enforcement or intelligence interest to the United States. My understanding is that they have simply been released.

**Senator KIRK**—No charges were laid against those persons?

**Mr Cornall**—That is my understanding. Mr Ford may wish to add to this answer.

**Mr Ford**—I draw the committee's attention to a statement by the US on 28 October last year. It said that it 'will release people from detention when they are no longer of security, law enforcement or intelligence interest'. Since that time a small number of detainees have been released.

**Senator LUDWIG**—Going back to question on notice No. 938, the Attorney General stated, in answer:

Mr Hicks is being held in military custody in Guantanamo Bay, Cuba.

I recall that the US Ambassador, Mr Scheiffer, in a media interview last year, mentioned the duration of hostilities. Do you recall that?

**Mr Cornall**—I do not personally recall that, no.

**Senator LUDWIG**—Could you take it on notice. As I understood it, that was the way the Americans referred to it. The questions I have are about our position in relation to that statement. Can we establish that that is US position, what our view of it is and whether we have asked how long the hostilities will be. If it is in relation to the war on terrorism, it seems to be ongoing; if it is in relation to Afghanistan, it may have ended; if it is in relation to Iraq, there may be a transitional period. It would be helpful if you could look at those issues for the committee.

**Mr Cornall**—We will do that. I understand the difficulties in such an imprecise situation that we are in. At a recent estimates, my recollection is that I referred to the difficulties when you do not have armed forces, nation states or people who can enter into peace treaties or agreements to bring hostilities to an end. That is principally why Australian attention has been focused on particular individuals rather than the broader principles that you are adverting to.

**Senator LUDWIG**—Turning back to the Attorney-General's answer to question on notice No. 938, I have managed to find the section and it says:

The United States has said, among other things, that the detainees at Guantanamo Bay are unlawful combatants and, as such, may be held for at least the duration of the hostilities.

So we have established that the Attorney-General has at least said that in a reply to a question on notice from Mr McClelland.

**Mr Cornall**—That would be something we have discussed before. I was not aware that it had been said as directly as that but it certainly was my understanding of the approach that was being taken.

**Senator LUDWIG**—When you have a look at that can you then establish, in relation to that paragraph, which hostilities we are referring to in that answer? And in relation to ‘unlawful combatants’, it is a term that the Australian government seems to now be using. Do we have a description for it?

**Mr Cornall**—To the extent that we use it, I think that we use it because that is the term that the United States has adopted.

**Senator LUDWIG**—You think that, but is there an international definition of ‘unlawful combatant’ that we are aware of? I am sorry, we sent Mr Campbell away.

**CHAIR**—I thought Mr Campbell had answered that question.

**Mr Cornall**—No, Senator, I do not believe there is. If I am wrong, Mr Campbell will come and tell us.

**CHAIR**—He is not leaping to his feet, Mr Cornall.

**Senator BOLKUS**—You say it is the definition or the approach that the US government has taken, but have we taken advice as to whether the definition is appropriate in these circumstances?

**Mr Cornall**—We do not normally talk about the legal advice the government has asked for or been given.

**Senator BOLKUS**—Mr Cornall, you do not give us the advice but you do confirm whether advice has been asked for or sought, when, what and whatever. I am asking you whether advice has been sought.

**Mr Cornall**—That is not my understanding, Senator; my understanding was that for some years it has been the practice of all governments not to discuss whether they have asked for or received advice as well as the content of the advice.

**Senator BOLKUS**—Unfortunately for you, Mr Cornall, I can put my hand down here and find a response that we got from A-G’s in respect of HREOC confirming that advice had been sought, who from and what date. I am asking the same question in respect of this. Do you want me to get that advice?

**CHAIR**—It will not be necessary, Senator Bolkus.

**Mr Cornall**—I do not know the answer to the question anyway, Senator.

**Senator Ellison**—We will take that on notice because we do not have, in any event, the detail for that question.

**Senator BOLKUS**—You do not have details of what question, Minister?

**Senator Ellison**—I know what Senator Bolkus is referring to: there has been an answer given about advice—as to whether or not it has been sought—but not the detail of the advice.

**Senator BOLKUS**—I am asking whether advice has been sought, Minister.

**Senator Ellison**—Yes, and I am saying that we will have to take that on notice because we do not have the detail for that answer.

**Senator BOLKUS**—Was advice sought on the legal rights and obligations of unlawful combatants?

**CHAIR**—You are adding that to your question on notice, Senator Bolkus?

**Senator BOLKUS**—Yes, I am adding that; and if so, from whom?

**Senator LUDWIG**—On that same issue, are you saying then that the term ‘unlawful combatant’ has no official status in international law? In other words, we have been following a term that has been coined by the US or Donald Rumsfeld?

**Mr Cornall**—It is my understanding that it is a term that has been used in relation to the detainees at Guantanamo Bay, which does not have any precedent in international law, and it partly derives from the fact that the circumstances do not have any precedent.

**CHAIR**—There are no further questions in this area. I want to indicate that I appreciate the assistance of the officers in an area which is complex and detailed and where it is often difficult to provide the responses. You have taken a number of issues or matters on notice to respond to the committee. The minister has indicated that some of those may be answered more speedily than others, and the committee would certainly appreciate that assistance.

**Mr Cornall**—Chair, you asked me about the conditions under which military commissions would be held.

**CHAIR**—I asked about the rules of trial, yes.

**Mr Cornall**—Mr Ford has pointed out to me something I overlooked in my answer. The rules applicable to trials before military commissions were released by the United States on 30 April 2003 and these rules are additional to the procedures established by Secretary of Defense Donald Rumsfeld’s order of 21 March 2002. We can make those documents available to the committee.

**CHAIR**—If the rules were released on 30 April, have they been examined based on the fact that Australians may be involved in the military commissions to which they will apply?

**Mr Cornall**—Yes. I was conscious when I answered your question earlier of the general discussions about how military commissions should run if there is to be a military commission and it was against the background of our understanding of the principles that were being talked about.

**CHAIR**—So we have examined them?

**Mr Cornall**—We have certainly had a look at them, yes.

**CHAIR**—Are we satisfied that the appropriate protections and observations of basic human rights pertain to those rules of trial?

**Mr Cornall**—I believe the answer to that is yes, although we have expressed some views about how we would see the situation and the matter is as yet unresolved.

**CHAIR**—You indicated that any further information you could provide on that you would provide to the committee?

**Mr Cornall**—Yes.

[10.16 a.m.]

**CHAIR**—If there are no further questions in that part of 2.2, we will return to the program. Are there any further questions in 1.1, which is legal services and policy advice on courts and tribunals, ADR, administration law, human rights, evidence and procedural?

**Senator KIRK**—Yes. During the last estimates, some questions were asked about the government's opposition to the optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. As I recall, you told the committee that the Australian government voted against the protocol in the UN Economic and Social Council and abstained from voting when the protocol was adopted by the UN General Assembly. Is that correct?

**Ms Leigh**—That is correct.

**Senator KIRK**—Since the last round of estimates, has the government reconsidered its opposition to the protocol?

**Ms Leigh**—I do not believe there has been any significant change on that issue.

**Senator KIRK**—Could you recall for us what the government's current objections are to the protocol?

**Ms Leigh**—There were two aspects to the objection, both procedural and substantive. In relation to the procedural issue, Australia expressed a concern about the way the optional protocol was adopted by the commission on human rights. The chair prepared the text of the draft protocol and that was put to the vote in the commission on human rights. Although the protocol had been under negotiation for 10 years, the chair's text was tabled only at the last minute of the working group and the working group did not consider in detail nor reach consensus on that text. Then it was put to the vote, rather than being adopted by consensus as is desirable in human rights matters. That relates to the procedural concern.

The substantive concern relates to Australia's concerns about treaty body reform. As you are aware, the government has been concerned for some time that the United Nations human rights treaty monitoring bodies are not operating effectively and are in need of reform. There are a number of concerns, particularly about the lack of adequate mechanisms to filter out complaints that are clearly inadmissible, long delays caused by multiple submissions and inadequate reasons given for views expressed. In relation to these concerns, Australia considered it inappropriate to become a party to another instrument that established further monitoring by treaty bodies when it continued to have concerns about the existing processes.

**Senator KIRK**—When the protocol was being developed by the working group within the UN, did the Australian government attend meetings of that working group?

**Ms Leigh**—I do not have the details but I am sure that the Australian government would have been involved in that work.

**Senator KIRK**—So it was a member of the working group?

**Ms Leigh**—I would like to take things of that detail on notice, if I might.

**Senator KIRK**—I guess my question goes to whether or not the Australian government took the opportunity to raise the concerns that you raised just a moment ago about the substantive issues in relation to the protocol during the development of the protocol.

**Ms Leigh**—The Australian government has been promoting ways of dealing with those concerns for some time. The Australian government has launched a high level diplomatic initiative aimed at introducing best practice in relation to the operation of treaty bodies and the Australian government has hosted workshops on that matter. It has taken every opportunity available to promote that issue.

**Senator KIRK**—Did it take the opportunity to promote the issue amongst members of the working group?

**Ms Leigh**—I would need to check the precise details about the timing of that.

**Senator KIRK**—Could you expand upon the diplomatic initiatives that have been taken by the government in this regard.

**Ms Leigh**—As a general issue, Australia has been taking up this issue at the highest levels diplomatically. In terms of substantive actions by the government, the government has hosted some workshops aimed at developing practical responses to the key reform issues that it has raised. Australia also contributed money to the Office of the High Commissioner for Human Rights to help fund a study to identify best practice.

**Senator KIRK**—The workshops that were hosted, whereabouts were they held and who attended them?

**Ms Leigh**—I would need to take those details on notice.

**Senator KIRK**—What about the money contributed that you mentioned? Could you give us some details of that too? You mentioned money being contributed towards—

**Ms Leigh**—That's correct. I understand it was \$50,000.

**Senator KIRK**—What was the money for?

**Ms Leigh**—To assist in a study on best practice in reporting guidelines.

**Senator KIRK**—Has that study been completed?

**Ms Leigh**—I would need to take that on notice.

**Senator KIRK**—If it has been completed, could we have a copy of the completed report?

**Ms Leigh**—I would need to take that on notice. If it was, it would have been a UN document so I don't see why not, but I would just like to check for you.

**Senator KIRK**—Going back to the meetings of the working group, you said that you would take on notice a question about the attendance of Australia at those meetings. Could you also give us a list of the meetings that were missed by Australia—in other words, the number of meetings there were, and those that were attended and those that were not attended by Australia?



**Ms Leigh**—As I indicated, that group had been meeting for over 10 years but I will endeavour to get the relevant information for you.

**Senator KIRK**—Has the department taken note of the *Four Corners* program about Woomera that was broadcast last Monday, 19 May?

**Ms Leigh**—We are generally aware of it.

**Senator KIRK**—Has the department considered whether the conditions that were depicted in that program provide any basis for Australia reconsidering its opposition to the torture protocol that we have just been discussing?

**Ms Leigh**—I think in the first instance, issues about Woomera would be a matter for DIMIA.

**Senator KIRK**—Yes, but my question was whether the department has had regard to the program and thought about its opposition to the torture protocol and whether the program is any basis for the department reconsidering its opposition to the protocol.

**Senator Ellison**—Madam Chair, that is really a question for the government and I will take that. Any response or otherwise to that is one for the department of immigration, but I am not aware of any view of the government to relook at, or change, its attitude as outlined by Ms Leigh in relation to the protocol we have been talking about consequential to that *Four Corners* program. If there is any change, I will advise the committee, but at this stage I am not aware of any government change in attitude caused by that program. Of course, you will have the department of immigration on Wednesday and they will be able to answer that in more detail.

**CHAIR**—You took the words out of my mouth.

**Senator KIRK**—Has the department done any work on the use of torture in Iraq under the former regime of Saddam Hussein?

**Ms Leigh**—Mr Campbell would be better placed to answer that.

**Mr Campbell**—I am not aware of this department having done any work specifically on torture in Iraq, though that is an issue that would be taken up in the context of pursuing war crimes that might have occurred under the regime of Saddam Hussein. The phrase ‘legacy crimes’ has been coined because they were a legacy of the regime of Saddam Hussein.

Those sorts of issues are being followed up at the present time by the Office of Reconstruction and Humanitarian Affairs in Iraq and also will be the subject of some initial consideration in the visit I think the US Ambassador for War Crimes, Pierre Prosper, intends to undertake quite soon to Iraq to discuss the issue of war crimes with the Iraqi people and how they might be dealt with.

**Senator KIRK**—Has any consideration been given here in Australia to the question of war crimes and legacy crimes that you discussed? Have we provided any advice or formed any opinions that have been offered?

**Mr Campbell**—It is quite early days in relation to the investigation of war crimes in Iraq. While we have discussed the issue with the United States in the forum of the legal advisers,

including with Ambassador Prosper, it really has not gone much further than that at the moment. It is an important issue and an issue that is very important to the Iraqi people.

**Senator KIRK**—So there have been some initial discussions but no formal advice of any description provided.

**Mr Campbell**—No formal advice of any description, because it is a case of assessing what has happened.

**Senator KIRK**—In his televised address to the nation on 20 March announcing the government's decision to participate in military action in Iraq, the Prime Minister said:

The regime's hallmarks are summary and arbitrary executions, the use of rape as a political tool, enforced disappearances, arbitrary arrest and detention, widespread and systematic torture and decrees prescribing cruel and inhuman punishment as the penalty for offences.

In your view, isn't that what the torture protocol is designed to stop, those sorts of things that the Prime Minister outlined?

**Mr Campbell**—I think the convention against torture is designed to stop those sorts of things. I am not aware of whether Iraq was a party to the convention against torture.

**Senator KIRK**—Has the department considered whether Australia's opposition to the torture protocol that we have been discussing provides any sort of excuse for other regimes to avoid the protocol in the future.

**Mr Campbell**—I think that would be drawing quite a long bow. The fact of the matter is that Australia is a party to the convention against torture. It does report, as required, to the Committee against Torture. Ms Leigh has expressed the reasons why we have not supported the protocol. I cannot myself draw comparisons, and I would not draw comparisons, between the position of the Australian government on that matter and the torture that has obviously gone on in Iraq.

**Senator BOLKUS**—On that issue of war crimes in Iraq, I think you indicated that consideration was being given as to how to handle those sorts of circumstances. Is that the case?

**Mr Campbell**—Yes, consideration will have to be given that.

**Senator BOLKUS**—Are there any incidents that have been brought to the government's attention with respect to possible war crimes?

**Mr Campbell**—Specific complaints?

**Senator BOLKUS**—Specific incidents that might have been brought to the government's attention. If you are considering how to handle complaints or incidents of war crimes in Iraq, is there anything concrete that is part of that consideration?

**Mr Campbell**—I will have to take that on notice because I am not aware of specific complaints been made. There have certainly been reports by Human Rights Watch and other organisations about what has gone on in the regime of Saddam Hussein in Iraq in relation to the torture of people.

**Senator BOLKUS**—We are talking about Saddam's activities. During the course of the invasion, has anything been brought to this government's attention that might be considered to be a war crime?

**Mr Campbell**—Not that I am aware of.

**Senator BOLKUS**—I am just trying to work out the genesis of the consideration and whether it was anything more recent.

**Mr Campbell**—I am not sure. If you are talking about allegations of war crimes being committed by those who were involved in the action in Iraq, I am certainly not aware of anything being brought to the attention of the Australian government—and certainly not anything in relation to any Australian armed forces. You will be aware that there was some media commentary about an action that was brought in Belgium against certain personnel—not Australian personnel. I think even the press reports refer to the Belgian government distancing itself from that action being taken.

**Senator KIRK**—My understanding is that the government objects to that part of the protocol which would allow a UN subcommittee to visit Australian detention facilities. Is that the case?

**Ms Leigh**—Are you asking whether that is the aspect which the government objects to?

**Senator KIRK**—Yes. Is that part of the protocol to which the government objects?

**Ms Leigh**—That is correct. It is the standing nature of the invitation to visit which the government objects to.

**Senator KIRK**—I wonder whether or not the government intends, nevertheless, to comply with other requirements of the protocol—for example, to establish a national visiting body or bodies to prevent torture and other cruel, inhuman or degrading treatment.

**Ms Leigh**—The protocol does not apply to Australia. The vote was about whether the instrument would be established. Whether it binds any particular country depends on whether that country ratifies the protocol, and Australia has not ratified the protocol.

**Senator KIRK**—But in principle does Australia still intend to comply with the other requirements, such as establishing a national visiting body or bodies to prevent torture and other cruel or inhuman treatment in detention centres?

**Ms Leigh**—I do not believe that issue has arisen in those terms because Australia has not ratified the convention. Of course, the Australian government abhors torture and will take all steps that it considers appropriate to make that clear with other countries and within Australia. What those steps might be would be determined in accordance with the government's policies rather than with the content of the protocol.

**Senator KIRK**—Specifically in relation to such a requirement—that is, establishing a national visiting body or bodies to prevent torture—I wonder whether or not the government has given any consideration to establishing that.

**Ms Leigh**—I do not think there is anything specific on that that I could inform you about.

**Senator KIRK**—So no consideration has been given to establishing such a body?

**Ms Leigh**—As I say, that is an issue that arises if you are going to become a party to the protocol. At this stage the government does not intend to become a party to the protocol, so it does not arise specifically.

**Senator LUDWIG**—If the Australian government abhors torture, what is its real objection to signing the protocol?

**Ms Leigh**—It is to do with the invitation to visit being a standing invitation. The government has made quite clear that it will agree to visits by such committees only where there is a compelling reason to do so, and the government will decide on a case-by-case basis whether it is willing to agree to such visits. It is therefore not willing to bind itself to a protocol that constitutes a standing invitation and that would not provide an opportunity for the government to make a decision on a case-by-case basis.

**Senator LUDWIG**—So it is qualified abhorrence to torture?

**Ms Leigh**—I am sure the government would say no to that.

**Mr Cornall**—This is a process issue. It is an issue that goes to the process by which the United Nations interacts with Australia. It does not go to the underlying principles of the convention.

**Senator LUDWIG**—What is the current status of Australia's combined second and third reports under the UN Convention on the Rights of the Child?

**Ms Leigh**—Ms Leon will assist you with that, Senator.

**Ms Leon**—Australia's combined second and third report under the convention was due on 15 January this year. That date was agreed with the committee at the time that our last report was considered. At that time, the report was considered less than six months before our next report would have been due and so the committee agreed that Australia could submit a combined second and third report in January 2003. That is a practice that is consistent with the normal practice of that committee and of a number of other treaty bodies to ensure that there is a reasonable spacing of reports for states parties.

The report is very close to finalisation. A draft has been sent out to state and territory governments and NGOs. The comments made and the additional information provided by state and territory governments and the discussions we have had with NGOs have been taken into account in finalising the report. There will still be a process of ministerial clearance of the report but, subject to that, the report is very close to finalisation and will then be submitted to the UN.

**Senator LUDWIG**—How close is 'close'—in the next month?

**Ms Leon**—It is extremely close. It is at the stage of being finalised for submission to ministers for their consideration.

**Senator LUDWIG**—So it has not gone to the ministerial level at this point?

**Ms Leon**—Not as yet.

**Senator LUDWIG**—And are you waiting for comment back from certain agencies or a sign-off from certain agencies and, if so, which ones?

**Ms Leon**—The final version of the draft has been sent to the Department of Foreign Affairs and Trade and the Department of the Prime Minister and Cabinet for their final sign-off, but I am not anticipating that there will be significant issues raised in that consultation because the report has already been the subject of a fairly significant degree of consultation in its development. As I said, we have not got it finally cleared off as yet.

**Senator LUDWIG**—Are we waiting for the Department of the Prime Minister and Cabinet and the Department of Foreign Affairs and Trade to sign off on it before you can send it to the minister for final approval?

**Ms Leon**—We are.

**Senator LUDWIG**—Is any other body outstanding for consultation?

**Ms Leon**—No.

**Senator LUDWIG**—Only those two?

**Ms Leon**—Yes.

**Senator LUDWIG**—When was it sent to them?

**Ms Leon**—About 10 days ago.

**Senator LUDWIG**—Did you give them a deadline?

**Ms Leon**—Yes, and when I get back to the office after these estimates committee hearings I am expecting to hear back from them.

**Senator Ellison**—We had better not make this too long then!

**Ms Leon**—It was agreed by the departments that they would turn it around quite quickly, so I am not anticipating any lengthy delay in that respect, although obviously other departments are also subject to the priorities that might arise in their areas. I would expect that they would have other matters that might take their attention and delay their response, slightly, but I am not anticipating a lengthy delay.

**Senator LUDWIG**—What happens after that? We have combined the second and third reports under the convention and we are now calling this the second/third report—is that its name?

**Ms Leon**—It is called the combined second and third report.

**Senator LUDWIG**—When would the next report normally be due?

**Ms Leon**—That will depend somewhat on the committee. The Committee on the Rights of the Child, in common with a number of other treaty bodies, suffers significant delays in hearing and considering states party reports and it will not be until after the report is submitted that the committee will set a time for meeting with representatives of the Australian government and considering the report. If there is a significant delay before that hearing occurs that is likely to affect the date when the committee asks us to submit our next report.

**Senator LUDWIG**—Is there a committee that will meet at a certain date that you are aiming to get the combined report to, or do you not know when the committee will meet?

**Ms Leon**—That committee will schedule Australia's report when it gets to it but, although I could not tell you the exact state of the backlog before that committee at the moment, my understanding is that because of the backlog it can be at least one year and probably two years before a report gets considered. That may change for the Committee on the Rights of the Child in the near future because they have recently increased the numbers on the committee. But I do not think that, in the short term, that will immediately deal with the backlog of state party reports that the committee still has to consider. We would not be surprised if it is a couple of years before that report is considered by the committee.

**Mr Campbell**—I would just add that Australia is not the only one that has combined reports. This is a mechanism that is used by the committees to, in part, deal with the backlog that they have.

**Senator LUDWIG**—Who else would submit combined reports?

**Mr Campbell**—We can take that on notice.

**Senator LUDWIG**—Thank you. I will just turn to another area, but it is within the same output area. Has the human rights branch taken note of the ACT Bill of Rights Consultative Committee report, *Towards an ACT human rights act: report of the ACT Bill of Rights Consultative Committee*?

**Ms Leigh**—We are of course aware of it, but that is really a matter for the ACT government.

**Senator LUDWIG**—Did you participate in the ACT report process or the committee process?

**Ms Leigh**—No.

**Senator LUDWIG**—Was anyone seconded to help in the process?

**Ms Leigh**—No.

**Senator LUDWIG**—Were you consulted?

**Ms Leigh**—I believe that committee consulted very widely and wrote to a wide range of organisations. We did receive information informing us about public forums on the issue but, in terms of government to government consultations, we were not consulted.

**Senator LUDWIG**—Did they ask for a submission from your branch or from the Attorney-General?

**Ms Leigh**—I cannot recall whether any of those general communications that we received invited submissions, but there was not a specific invitation from the ACT government to the Commonwealth government to make a submission.

**Senator LUDWIG**—Did you consider whether you would?

**Ms Leigh**—As I said, it was a matter for the ACT government.

**Senator LUDWIG**—So you do not think it is of interest?

**Ms Leigh**—We are dedicating our resources to the Commonwealth government's work and the Commonwealth government's priorities. This was a matter for the ACT government.

**Senator KIRK**—Did anyone attend any of the forums or consultation processes that the ACT government held?

**Ms Leigh**—Not as a member of the Attorney-General's Department.

**Senator LUDWIG**—Has the government considered whether a similar consultative process is warranted on a national scale? If you have a look at the issue that was examined, on a national scale it is of some significance. I think the issue has been around since Federation—and before. I was surprised that you did not participate or do a submission. Have you considered on a broader scale whether there is a need to address this on a national scale?

**Ms Leigh**—No. I think the government has said that it does not believe that a bill of rights is the best way to go about ensuring the protection of human rights. But this is not a matter that I can give you any more information about in terms of the precise issue you have raised.

**Senator LUDWIG**—So it is not one of the issues on your priority list?

**Ms Leigh**—No.

**Senator LUDWIG**—Have you asked for a background or briefing in relation to the ACT report?

**Ms Leigh**—No.

**Senator LUDWIG**—Have you read the report?

**Ms Leigh**—No, I have not.

**Senator LUDWIG**—If I said that it found that 60 per cent of people in the ACT supported a legislative bill of rights, would that persuade you that this government should consider investigating whether Australians living outside—

**CHAIR**—I am not sure that is a matter for Ms Leigh to be persuaded on or otherwise.

**Senator LUDWIG**—Perhaps not. I am happy to put it to the minister, then.

**Senator Ellison**—If I understand the question correctly, it went to whether the policy of the Commonwealth government should be determined by the people of the ACT. Is that right?

**CHAIR**—I could not possibly comment, Minister, but I will allow Senator Ludwig to engage in that discussion.

**Senator Ellison**—I just want to make sure that I have this right. Are you asking whether this survey in the ACT should influence the Commonwealth's approach to this issue? Is that right, Senator Ludwig? I just want to make sure that I understand the question.

**Senator LUDWIG**—I will put it another way. If 60 per cent of the people in the ACT supported a legislative bill of rights, would that be persuasive enough for the federal government to at least consider the issue on a national scale? You do not find that persuasive?

**Senator Ellison**—I have to say that we have got six states and one other territory to consider as well. The government's position is very clear on this, that we have an existing framework which is an exceptionally good one. I myself believe that with the rule of law as we have in Australia we have got some of the best protections of human rights in the modern world, and that Australian is at the forefront in the world in relation to the protection of human rights in this country. You can always improve on that, but a Bill of Rights can bring

with it as many problems and solutions, and that is the problem with it, because by defining something in a list you invariably leave things out or invite other issues. With the evolution of law in this country we have seen a system come about which has been an exceedingly good one.

**Senator KIRK**—I understand that is the government's view, Minister, but seeing that such a large number of people in the ACT, 60 per cent, support a legislated Bill of Rights, I wonder whether it might be worth investigating on a national scale whether there are the same numbers across the other states and territories.

**Senator Ellison**—I have not seen any equivalent response in other states or territories. In my own state I do not think it would be a big issue at all.

**Senator KIRK**—Has the question been asked?

**Senator Ellison**—I am not even sure that it has been thought important enough to ask, and we have a government of a different political stripe at the state level. I am not so sure that it is a big issue. I certainly do not detect it in my travelling around Australia.

**Senator KIRK**—So your impression is that, if the question were to be put at a national level, the 60 per cent reflected in the ACT would not be reflected nationwide?

**Senator Ellison**—I am only talking from a personal basis, but my feedback is that it is not something that the Australian people at large consider necessary.

**CHAIR**—Thank you, Minister. With the greatest of application, I am having difficulty relating it to budget estimates, so I suggest that we try to pursue questions that pertain in some vague way to budget estimates.

**Senator Ellison**—And I should have limited my answers instead of making personal observations.

**CHAIR**—My reference was not to you, Minister. You were merely responding.

**Senator LUDWIG**—On this issue, without going on a caravanserai of opinions, I am more interested in whether or not the department or the minister had caused work to be done in this area. As the minister may or may not be aware, this issue has risen in Queensland quite extensively.

**Senator Ellison**—No work has been undertaken, as I understand.

**Senator LUDWIG**—We touched briefly on this earlier during general questions but, in terms of work and staffing in the human rights branch, what besides the Australian Human Rights Commission bill and the age discrimination bill has the human rights branch been working on? You went through a priority listing, or a listing at least, of work that you are dealing with. It ranged from the age discrimination amendments to HREOC sex discrimination, the amendments in relation to the IVF issues, paid maternity leave, disability reform, the UN convention, competition policy, where there were a couple of court cases, and also the race discrimination issue. Are there any other issues that you are working on outside of those that I have missed?

**Ms Leigh**—I also mentioned the amendments to the Sex Discrimination Act in relation to pregnancy and work. There are two amendments to the Sex Discrimination Act.



**Senator LUDWIG**—I think I said sex discrimination and then amendments to the IVF.

**Ms Leigh**—They are both amendments to the Sex Discrimination Act.

**Senator LUDWIG**—Were there any others?

**Ms Leigh**—I think they are the main ones. There are new issues arising all the time and of course a considerable proportion of the time of staff is spent in briefing the minister on issues arising or providing briefs for senior officers' meetings et cetera. But in terms of the projects that are being pursued they are the key ones.

**Senator LUDWIG**—How many staff do you currently hold in that branch?

**Ms Leigh**—At the moment there are 16 staff working on human rights in the division and we are in the process of recruiting three further staff. We are also in the process of bringing on an additional person on a temporary basis.

**Senator KIRK**—How long have the three vacancies existed?

**Ms Leigh**—One has existed since 12 May, one since 25 April and one since 23 May.

**Senator LUDWIG**—Is that your full complement of ongoing staff?

**Ms Leigh**—We try to move our staff, our resources, around flexibly in the division according to needs. At the moment that is how we assess the needs of the human rights work in the division. It constantly changes.

**Senator LUDWIG**—Is your work outsourced to other areas within the department?

**Ms Leigh**—I would not describe it as outsourced, Senator. Other areas of the department do work on human rights. You have heard Ms Leon here today talking about some human rights issues. The other key area of the department that would be doing work on human rights would be the Office of International Law. But human rights issues come up in a wide range of areas, so from time to time officers across the department may be dealing with a human rights issue.

**Senator LUDWIG**—Since the February 2002 estimates, how many staff have left the human rights branch?

**Ms Leigh**—Of the staff we had then, 12 have left. An additional seven joined during that period and also left. Those numbers do not include some personal assistants that we have had on a temporary basis through agencies which have commenced and left.

**Senator LUDWIG**—Have you worked out your turnover rate?

**Ms Leigh**—Not as a rate. I am not sure what it would be a rate against.

**Senator LUDWIG**—It is usually an indicator of how well you are going. Sometimes people use it as indicia to determine morale and other factors. If you are saying that 12 left and another seven joined and left, as this is a branch of fewer than 20 people, you have had nearly 100 per cent turnover in a short period.

**Ms Leigh**—I monitor all the departures from the division. I conduct exit interviews with all staff leaving. I also monitor it generally to be aware of the reasons for people leaving. Having done that, I do not believe that is any indication of a problem with morale.

**Senator LUDWIG**—Are there any old hands left to have a problem with morale?—that is the question. Or have you turned them over in the last 12 months so that they have not had their feet under the table long enough to have a problem, and when they find out they do, they go?

**Ms Leigh**—There are benefits and disadvantages with mobility. People moving around in the department means that they get an idea of the wide range of issues dealt with in the department. So when issues come up they are conscious of the linkages across the department. You would be aware that departments often get concerned about the department falling into silos and not being conscious of interrelated issues. Certainly mobility assists that. Of course, the downside is that people need to get on top of the area. But it is a bit of a balance. If people stay in the one area for a very long time then they lose touch with what is happening in other areas and they may even become a little stale. I think across the department a certain level of mobility is desirable and, indeed, we have programs in the department to ensure mobility.

**Senator LUDWIG**—But you are not seriously suggesting to me that mobility of this order is normal or should be encouraged, or should not send you warning signals that there is a problem within the area if 12 have left since we were last here, in February 2002, and seven joined and seven went? Who is the longest stayer there at the moment, or isn't there one who has 12 months service in that area?

**Ms Leigh**—I would need to check that for you but, as I have said, I have examined the reasons why people leave. People leave for promotions, they leave to go overseas to work for international organisations and they leave to accompany partners overseas. There is a wide range of reasons why people leave. Having examined the reasons, I have no concerns about it being a reflection of morale.

**Senator LUDWIG**—Are you concerned about the ability of the unit's corporate knowledge to function in that area?

**Ms Leigh**—As I have said that is always something that we are tussling with as an issue, but it is not something that is specific to that area.

**Senator LUDWIG**—Do you know how many people have been long-term employees there and what their service is in that branch?

**Ms Leigh**—I would need to check that to be certain I was giving you accurate information.

**Senator LUDWIG**—Do you know what the rate of absence is from sick leave or workers compensation?

**Ms Leigh**—Yes, I do.

**Senator LUDWIG**—In my mind, warning bells would have already rung if you have got that sort of staff turnover in an area of that size. They do not appear to have rung for you in this area.

**Ms Leigh**—As I have already said, I examine all departures from the division. I personally have an exit interview with every person who leaves the division and on that basis I can assure myself that there is no reason to be concerned about those departures.

**Senator LUDWIG**—What are you doing to address the issue of ensuring that people stay? Is there a problem with your interview process in the beginning rather than your exit interview then? If there is nothing wrong with your exit interview and everyone is leaving for legitimate reasons and they are telling you what those reasons are, then are you recruiting short-term people only? Don't you ask them the \$64 questions, 'How long are you going to be here?' and 'Where to next?'

**Ms Leigh**—The expectations of staff is a broader issue that the department is also looking at. It is certainly true that these days staff tend to have a shorter term expectation for staying in any one place.

**Senator LUDWIG**—But not this short a stay, surely.

**Ms Leigh**—But leaving that aside, I should also point out that sometimes we are deliberately recruiting people on a temporary basis. For example, if somebody takes leave to go and work in a minister's office or to go overseas then they will be returning to those positions and, so as not to end up with excess employees, we will deliberately recruit staff on a non-ongoing basis. Some of the departures are simply because those non-ongoing contracts have reached their term.

**Senator LUDWIG**—Sorry, I interrupted you; you were looking at the sick leave and the workers compensation issue.

**Ms Leigh**—I can take you through that. I think the last time we dealt with that was February 2002. The easiest way is to break it down because it is such a long period, if I could. The previous figures I gave you were to the end of 2001, so from 1 January 2002 to 31 December 2002 departmental records indicate that the percentage of hours for each of sick leave, including absences on workers compensation, annual leave and miscellaneous paid leave for employees remained below the departmental percentage. For that same period, absence on long service leave was slightly above the departmental average. Of course you would be aware that with long service leave you only need one person to take long service leave and it can change the percentages. Going to the next period, from 1 January this year to 30 April this year, for each of those four types of leave the rate has been below the departmental average. I can take you through and give you the exact figures if you like; I do have them.

**Senator LUDWIG**—I am happy to take that on notice if you want to update those figures from when we last spoke.

**Ms Leigh**—I have got them with me but I can equally take it on notice.

**Senator LUDWIG**—Or produce them for the committee rather than read them through.

**Ms Leigh**—I will do that.

**Senator LUDWIG**—Thank you. Has anyone in the human rights branch been given an award this financial year under the department's non-salary reward and recognition program?

**Ms Leigh**—The team working on the age discrimination legislation received one in the Australia Day awards. They were presented by the secretary; they are the secretary's Australia Day awards. We also have divisional awards, but the last time they were issued was at the end of last year.

**Senator LUDWIG**—And who were the divisional awards given to?

**Ms Leigh**—There were a number of groups. There was again the age discrimination team—all of the staff who were working on that—and an individual officer within that team, in recognition of her particular work on age discrimination and on a number of other human rights matters.

**Senator LUDWIG**—But departmentally there has been none in this financial year?

**Ms Leigh**—That is this financial year; I thought you were asking for calendar year.

**Senator LUDWIG**—Perhaps you could take that on notice. I am curious which award it was and what it was for.

**Ms Leigh**—Certainly.

**Senator LUDWIG**—Am I wrong in forming the impression that the human rights branch has a high turnover rate and morale is hard to establish because officers are not there long enough? That is the impression I get in that the turnover rate seems to be just shy of 100 per cent—at least since February 2002. It is hard to then use things like long service leave, annual leave and sick leave as an indicia because it seems that people are not staying there long enough. It is not your program to recruit them for less than 12 months, is it? That is the impression I am left with. Your answer to it seems to be, ‘Well, I conduct exit interviews, everyone is leaving for appropriate reasons and there is no concern there,’ and you do not have a concern at all with the way the branch is being staffed. Is that right?

**Ms Leigh**—I believe that the staff in that area are motivated and committed.

**Mr Cornall**—I think Ms Leigh has included in those figures the people who have been appointed for short-term set contracts.

**Senator LUDWIG**—That might be confusing.

**Mr Cornall**—It would probably be beneficial to extract them from the figures because clearly, if someone is away for a period of leave, maternity leave or whatever and you recruit a person just to fill that position for that time, it would be wrong to draw the sorts of conclusions you are leading to. The fact is that that contract comes to an end and the person does not continue in the division. Probably giving you all of those figures might have created something of a misleading impression.

**Senator LUDWIG**—That would be helpful because I have drawn the conclusion, notwithstanding what you say, that that staffing turnover is abnormal—unless there is a better explanation and, quite frankly, I have not heard one.

**Ms Leigh**—If it would assist, I could also provide for you, without going into the personal details of the individuals, some general explanations of the reasons for the departures.

**Senator LUDWIG**—I am happy for you to do that on notice, if you would prefer. Thank you.

**CHAIR**—I might make an observation. It is five past 11—and I recognise that we have done a portion of 2.2—and, if we continue at this rate, we will possibly be here in 2004. That might put the parliamentary program out slightly. Perhaps we can look at how much we can accomplish by the scheduled 1 p.m. lunch break. We do not have to do that on the record.

Senator Ludwig, perhaps you would not mind contemplating that. I will talk to you while Senator Kirk pursues her questions.

**Senator Ellison**—Madam Chair, just quickly—I am sorry; had I been on time I would have raised this earlier, but the plane was late—I raise two things. We have AUSTRAC listed for around three o'clock this afternoon. Mr Neil Jensen, who heads AUSTRAC, has to go overseas to a financial conference and has to catch a plane at 4.45 p.m.—not to go overseas but to go back to Melbourne or Sydney. I want to make sure that we can accommodate AUSTRAC. I know they are first on the list, but we have approximately three o'clock there. I do not know how many questions you have for AUSTRAC—there could be quite a lot—but I would like to know whether Mr Jensen could at least be able to leave here by four o'clock.

**CHAIR**—Minister, I am sure we can come to an agreement whereby a break is made in proceedings to hear AUSTRAC at 3 p.m. to enable Mr Jensen to participate in that process.

**Senator Ellison**—Thank you.

**CHAIR**—Then we will return to wherever we were up to in the program.

**Senator Ellison**—The other matter is that the New Zealand shadow minister for police is in Canberra and is seeking a meeting with me at 6 p.m. I know that the dinner break is at 6.30, so I indicate to the committee that I might have to go at six. Perhaps you might want to have dinner at six to seven.

**CHAIR**—I am sure the committee can facilitate that, Minister. Thank you for advising us.

**Senator KIRK**—I have some questions relating to the Australian Law Reform Commission. At pages 382 and 383 of the portfolio budget statements, the ALRC warns that, due to increased salary and rental costs in Sydney, the commission will have to reduce staff. Is that correct?

**Ms Leigh**—I wonder whether it would not be better to refer the question to the ALRC in the first instance when they are here tomorrow. I am happy to come back at that time.

**Senator KIRK**—That probably is the best thing.

**Mr Cornall**—Senator, are you referring specifically to the statement:

The only real opportunity to reverse the on-going trend of operating loss is through staff reductions.

Is that the statement you are referring to on page 382?

**Senator KIRK**—Yes. I am concerned about the staffing levels and, in particular, the fact that the commission over the past years has had to reduce its number of positions from 29 to 22. My question to the department is: when did the department discover that this was the case; and what is it intending to do about it?

**Mr Cornall**—This is an issue that all agencies face. All agencies are in a position where they are expected to manage with the allocated funding. Putting aside new policy proposals, funding is allocated with a small increment each year, which is reduced by the efficiency dividend. The amount of that increase is usually less than the amount of an increase in salary that people will be paid under certified agreements or workplace agreements. Therefore, we are all are faced with this issue about using resources better, prioritising workload and managing within the available funding allocation.

When you are in a position where you have basically fixed costs of rent, computer costs, libraries and so forth, one of your only variables is salary costs. You do have some variables in terms of the consultancies you might take on and so forth. But, in asking when we were aware of this issue with the Australian Law Reform Commission, the answer is that it is an issue for all agencies in government all the time.

**Senator KIRK**—So are you essentially saying that, whenever times are tough, staff have to be cut across all agencies?

**Mr Cornall**—You have to manage within the resources available to you. Different agencies will have different options, but you do not have a lot of options.

**Senator KIRK**—As I understand it, a reduction in the number of positions at the commission from 29 to 22 takes it down to its lowest staffing level since 1983. Is that your understanding?

**Mr Cornall**—I do not have that detailed understanding of it. I just do not know the answer to your question.

**Senator KIRK**—I was reading from where it is stated on page 383 of the report.

**Mr Cornall**—In that case, it will be correct.

**Senator KIRK**—Do you think it likely that further staff reductions will have to be made at the commission in future years?

**Mr Cornall**—It is open to an agency to put forward, with the department's assistance, a submission to the Department of Finance and Administration to consider the workload and consider the resources that are required. On occasions some of those applications are successful.

**Senator KIRK**—Has there been such an application made by the commission?

**Mr Cornall**—Not to my knowledge, no.

**Senator KIRK**—Can you take it on notice to determine that?

**Mr Cornall**—Yes.

**Senator KIRK**—Is the government taking any further steps to ensure that the ALRC will not have to face further staff cuts?

**Mr Cornall**—My understanding is that it has been allocated its budget and, like all of us, it is expected to work within that budget and to manage accordingly.

**Senator KIRK**—So, unless there is some further application by the commission, it is unlikely to receive any further funds?

**Mr Cornall**—That would be my understanding, yes.

**Senator KIRK**—How many references does the ALRC currently have?

**Ms Leigh**—There are two current references. Firstly, there is a review of measures designed to protect classified and security sensitive information. That was issued on 2 April this year and it is due to report in February next year. The other reference that it has on foot is

intellectual property rights over genetic materials and genetic related technologies. That was issued in December last year and it is due to report in June next year.

**Senator KIRK**—Has the department taken note that, on page 383 of the portfolio budget statements, the ALRC says that the foreshadowed staff reductions:

... would challenge the ability of the Commission to maintain its current output levels—either in terms of the number of references handled simultaneously or the timeframes in which they are completed.

**Ms Leigh**—I am not sure that I can add anything to the comment that the secretary has already made.

**Senator KIRK**—Have you any concerns about the commission's ability, given its reduction in staff, to meet the two deadlines you have mentioned in relation to the two references?

**Ms Leigh**—They have not advised us of any difficulties being envisaged.

**Senator KIRK**—Have you any concerns that, given this reduction in staff, those deadlines of June 2004 and February 2004 may need to be put back?

**Ms Leigh**—No, I have no reason to have any concern. If the ALRC had a concern, I am sure they would draw it to our attention.

**Senator KIRK**—Has the department any concerns about the ability of the ALRC to handle those two references in view of the reduction in its number of staff?

**Ms Leigh**—The ALRC has not put to me any concerns, and I therefore do not have any concerns.

**Senator KIRK**—Is the department generally not concerned at all—is it happy—for staff reductions to occur in the commission?

**Mr Cornall**—As I have explained before, all agencies are in the position where they are allocated funding. They have to manage within the funding that the government chooses to allocate to them. We are all in exactly the same position.

**Senator KIRK**—I understand that. So you do not have any particular view about the ALRC and the fact that its having to reduce staff may affect its output?

**Mr Cornall**—No; subject to the statement I made earlier that there are circumstances in which some agencies have been able to increase their base funding level by making an appropriate case to the Department of Finance and Administration and having that accepted. If the ALRC is of the view that is appropriate, that could be considered. But, as I say, that is the way that matter has to be dealt with.

**Senator KIRK**—You have said that no application has been made by the commission, but have there been any informal discussions about whether or not it might be appropriate for the commission to make an application to the department?

**Mr Cornall**—Not that I am aware of. When I last visited the commission, we discussed some aspects of finance, particularly those relating to the increased rental of their premises, but not in terms of making that application—no, not that I am aware of.

**Senator KIRK**—What were the discussions about the increase in rental costs in Sydney?

**Mr Cornall**—My recollection of them—this was a little while ago—is simply that they had moved to premises which were costing them more than their previous premises had and that was something that was going to put pressure on their reserves over a period of time.

**Senator KIRK**—Were they just informing you of that or were they making some kind of application for some assistance in that regard?

**Mr Cornall**—No. It was just part of a general discussion about how they were managing within their available resources.

**Senator KIRK**—Has the commission delivered its report to the government on the protection of human genetic information?

**Ms Leigh**—That report is due to be tabled this week.

**Senator KIRK**—What is the due date for that? Is it within time?

**Ms Leigh**—It is within time, yes.

**Senator KIRK**—So it was not due in March this year?

**Ms Leigh**—I am sorry; I thought you were asking me whether the tabling was within time. I would need to check exactly what the due date is, but I believe it is roughly when we expect it.

**Senator KIRK**—Did you say that it would be tabled at the end of this month?

**Ms Leigh**—It will be tabled this week. The ALRC could confirm that information for you.

**Senator KIRK**—Does the Attorney-General intend to make the report public?

**Ms Leigh**—Yes.

**Senator KIRK**—When will that happen?

**Ms Leigh**—That is the tabling process; the report will be tabled.

**Senator LUDWIG**—Turning to the Administrative Appeals Tribunal, the budget provides for \$32.6 million over four years to the Administrative Appeals Tribunal: \$7.7 million in 2003, \$8 million in 2004, \$8.3 million in 2005 and \$8.6 million in 2006. Page 144 of the PBS states:

The funding is required to maintain the Tribunal after Senate rejection of proposals to amalgamate this and other merit review tribunals and form a unified administration.

How was the funding calculated? That is the statement in the portfolio budget statement and that is your projected administrative costs. How did you come to that? How did you arrange those output costs?

**Ms Leigh**—The Department of Finance and Administration discusses that with our department and the Administrative Appeals Tribunal is consulted as well.

**Senator LUDWIG**—There does not seem to be any equivalent funding measures in the budget for the other merit tribunals that were to be rolled into the Administrative Review Tribunal, such as the Social Security Appeals Tribunal, the Migration Review Tribunal and the Refugee Review Tribunal.

**Ms Leigh**—They are covered by other portfolios.



**Senator LUDWIG**—If they are covered by other portfolios—and we take them out of the equation—why is additional funding only required for the AAT?

**Ms Leigh**—I do not think I understand your question, I am sorry.

**Senator LUDWIG**—The budget provides \$32.6 million over four years.

**Ms Leigh**—Yes.

**Senator LUDWIG**—You may want to have a look at page 144, which states that ‘the funding is required’. There is an increase from \$7.7 million in 2003 to \$8.6 million by the end of 2006. The other tribunals that were to be rolled in are not in that—because of course they are not there. Is there additional funding for the AAT? We can start with that premise.

**Mr Cornall**—I do not think there is. I will ask Mr Kennedy to correct this if I am wrong, but my recollection is that, when the AAT was expected to become part of the ART, the forward estimates were withdrawn from the AAT and put into the departmental funding. Now that the AAT is continuing, my understanding is that this is a reinstatement of the forward estimates for the AAT under its own budget allocation.

**Senator LUDWIG**—So there may not have been that increase?

**Mr Cornall**—That is my understanding. Mr Kennedy may be able to help us with this question.

**Mr Kennedy**—When the ART was established there were some savings made as a result of the amalgamation of the four tribunals. There were savings taken out of the Administrative Appeals Tribunal. Those savings have now been reinstated to the tribunal to provide its forward estimates funding. That is essentially what that \$32.6 million does.

**Senator LUDWIG**—As I understand it, it was stated in 2001 that the establishment of the Administrative Review Tribunal would generate cost savings of \$9 million. That is right, is it not?

**Mr Kennedy**—That is correct.

**Senator LUDWIG**—And that was out of Budget Paper No. 2. Is it correct to say that the \$7.7 million allocated to the AAT in the 2003-04 budget represents part of the forgone cost savings?

**Mr Kennedy**—That is correct. The \$9 million was spent across the four tribunals. As far as I am aware, some of the other tribunals have their own funding arrangements on an output-price basis with the Department of Finance and Administration. So they are funded slightly differently to the AAT.

**Senator LUDWIG**—So where is the other \$1.3 million?

**Mr Kennedy**—The \$1.3 million was with the other tribunals.

**Senator LUDWIG**—I see. The \$9 million in savings was not out of the Attorney-General’s budget; it was savings out of the various budgets that were portioned?

**Mr Kennedy**—That is correct.

**Senator LUDWIG**—Was it identified as a \$7.7 million saving out of the A-G’s budget? Or was it higher or lower than that originally? Where would it have been identified as that?

**Mr Kennedy**—It was actually \$7.9 million, and that was in the 2001 budget, from memory.

**Senator LUDWIG**—Does that account for the decrease in the AAT budget from \$27.198 million to \$27.115 million—in other words, the \$0.2 million? If you said that the identified savings were \$7.9 million and you have given back \$7.7 million, you still have \$0.2 million floating around. Is that the decrease for the appropriation in this budget from 2002 to 2003?

**Ms Leigh**—As Mr Cornall has explained, the budget was reinstated into the AAT appropriation. When that was being done, in discussions with the officers of Finance as part of the calculation of what the appropriate amount was that should be reinstated, savings were envisaged as the result of a number of measures that are happening and so that was factored into the amount that was reinstated to the AAT.

**Senator LUDWIG**—What was the saving going to be?

**Ms Leigh**—It was \$0.5 million.

**Senator LUDWIG**—How was that going to be saved—from staffing cuts or what?

**Ms Leigh**—It would be saved in three ways: one, the tribunal itself is looking at ways in which it can become more efficient; two, all of the tribunals, together with their relevant departments, are continuing to work on administrative efficiencies that may be gained jointly; and, three, when the government announced that it would not be proceeding with the ART, it announced that it would be proceeding with reforms to the AAT to improve its efficiency.

**Senator LUDWIG**—Is that the reason for the appropriation for the AAT decreasing in this budget from \$27.198 million to \$27.115 million?

**Ms Leigh**—I do not believe that the budget has actually decreased. I think it has gone up slightly.

**Mr Kennedy**—It is the case with the savings that, as Ms Leigh has mentioned—

**Senator LUDWIG**—So there is a small increase?

**Mr Kennedy**—there was a reduction and then there was an increase for things like indexation so that those sorts of increases did not cover the full amount of the \$500,000 efficiency savings.

**Senator LUDWIG**—So who wears the \$500,000 efficiencies?

**Mr Kennedy**—The AAT.

**Ms Leigh**—The Administrative Appeals Tribunal.

**Senator LUDWIG**—And are they meeting that? How do you determine that?

**Ms Leigh**—I have indicated the three ways that efficiencies are expected to be achieved.

**Senator LUDWIG**—Going back to when the ART was originally mooted, a \$15 million equity injection of upfront costs was associated with the establishment of the ART. That was in the 2001 Budget Paper No. 2 at page 49. It was stated that the capital injection would be used primarily to fund lease breaks and transitional staffing costs, including the engagement of consultants involved in the establishment of the ART. What happened to the \$15 million?

**Mr Kennedy**—The \$15 million will be returned to the budget.

**Senator LUDWIG**—How is that shown? Is that shown somewhere in the portfolio budget statement?

**Mr Kennedy**—The \$15 million was held against the department pending the establishment of the ART as it was proposed. It is not evident in our statements this year because it is looking ahead to budgeting for the 2003-04 financial year and the amount will be repaid to the budget in the 2002-03 year. But looking at the previous year's portfolio budget statement, the \$15 million was shown in the capital budget.

**Senator LUDWIG**—Why wouldn't you show it in this year's capital budget?

**Mr Kennedy**—Because it is going to be returned to the budget in the current financial year as the funding will not be required.

**Senator LUDWIG**—What do you call that? Is there a phrase? Is it 'money unspent'?

**Mr Kennedy**—Yes. It is capital funding that will not be spent. It is simply returned to the budget.

**Senator LUDWIG**—In what line in the portfolio budget statement is it held?

**Mr Kennedy**—Because it was appropriated a number of years ago it does not appear in any of the recent appropriations. It was simply factored into the department's cash and equity balances, pending the establishment of the ART. Then, effectively, what was intended was that that money would then be transferred to the ART to fund establishment costs. So it was merely shown in the department's statements as a holding position.

**Senator LUDWIG**—So the budget for the A-G's has \$15 million sitting in capital—in savings or cash somewhere—in addition to what it should have?

**Mr Kennedy**—It was in capital.

**Senator LUDWIG**—So where, out of this portfolio budget statement, will it be returned? Which line item will decrease as a consequence when they hand the money back? When will they hand the money back?

**Mr Kennedy**—The money will be repaid before the end of this financial year under the arrangement that we have with the department of finance. Because we are budgeting to repay that amount of money, at the end of the 2002-03 financial year the funding will have left the department. In 2003-04 it simply will not be shown anywhere; it will just be going back into the official public account. If we had a previous year's budget statement, which I do not have with me, I could make it a bit clearer as to exactly where it was represented.

**Senator LUDWIG**—I am trying to understand that there is \$15 million floating around somewhere, but you do not seem to be able to tell me where in the current portfolio budget statement, because it exists in last year's portfolio budget statement. Is that right?

**Mr Kennedy**—That is where it is shown—

**Senator LUDWIG**—Therefore, it is money the Attorney-General's Department cannot use, because you have to repay it before the end of this financial year. So I then went on to think, 'Have you already added the \$15 million onto your current line?' If not, why not? You

then have to repay \$15 million, or have you made allowances to pay \$15 million? What program might suffer as a consequence of that?

**Mr Cornall**—Mr Kennedy's response was that it is not shown at all in the 2003-04 portfolio budget statement because the capital sum will have been returned to the budget and it is no longer a relevant matter for us to disclose in the coming year's financial statements.

**Senator LUDWIG**—But it is money that you have and that you are going to hand back. That also confuses me: why you would not show it in your statement as a line of a return of \$15 million to the Treasury.

**Mr Cornall**—That is because it will occur before 1 July 2003.

**Senator LUDWIG**—Is there any other money that you hold that you are going to return?

**Mr Kennedy**—The funding was never part of the department's operating funding. It was always in an entirely separate appropriation—in bill 2—so it was never possible for the department to use it for anything other than the purpose for which it was appropriated.

**Senator LUDWIG**—If the chair does not mind, I might come back to this. I am going to have a bit more of a read and then I might just come back to this one area.

**CHAIR**—Can I also clarify that both the ALRC and the AAT are scheduled to appear separately as agencies tomorrow, I think. Will you still have questions for them?

**Senator LUDWIG**—Yes. To finish off the money side of the AAT, so to speak, has there been an increase or decrease in real terms for the AAT in their budget over the next year and the out-years?

**Mr Kennedy**—In real terms there has been a small decrease due to the \$500,000 efficiency saving that has been referred to.

**Senator LUDWIG**—Was the AAT consulted about this funding in the pre-budget process? In other words, were they informed of that?

**Mr Kennedy**—It was a decision of government. In that sense it occurred outside of the involvement of the AAT or the department.

**Senator LUDWIG**—So the answer is no.

**Mr Kennedy**—Yes, in that sense.

**Senator LUDWIG**—On 6 February 2003 the Attorney-General announced that the government was planning amendments to the AAT Act, stating that areas of amendment could include procedures of the tribunal, constitutional requirements and allowing greater use of ordinary members. What is the current state of development of these amendments? We have left the budget area.

**Ms Leigh**—They are at quite an advanced stage.

**Senator LUDWIG**—Can you define 'advanced'?

**Ms Leigh**—The legislation will certainly be introduced this year and we are hoping that it will be introduced in the winter sittings.

**Senator LUDWIG**—Has it been drafted? Does the Parliamentary Counsel have it?

**Ms Leigh**—Yes, the draft is well advanced.

**Senator LUDWIG**—Is the AAT being consulted in relation to the draft and the amendments?

**Ms Leigh**—The AAT provided significant input in the development of the proposed amendments and they will be further consulted before it is finalised.

**Senator LUDWIG**—Can you give us an outline of the purpose of the amendments? Are they for cost savings? What exactly are they for?

**Ms Leigh**—The Attorney put out a press release, as you identified, where he said that the reforms were aimed at enabling the AAT to flexibly manage its workload and to ensure that reviews are conducted as efficiently as possible.

**Senator LUDWIG**—So are they aimed at resulting in cost savings?

**Ms Leigh**—They are aimed at ensuring that the tribunal is as efficient as possible.

**Senator LUDWIG**—Will that include cost savings?

**Ms Leigh**—One would imagine that when one becomes more efficient at least some of those efficiencies would result in cost savings, yes.

**Senator LUDWIG**—You recall that in the last committee report this committee looked into the ART. Are those amendments going to follow up on some of those issues, or is it revisiting other areas?

**Ms Leigh**—I think it would probably be premature for me to go into that detail.

**Senator LUDWIG**—When will it become known? Is there a release date you are aiming for?

**Ms Leigh**—It will be a matter for the government as to when it introduces that legislation.

**Senator LUDWIG**—Minister?

**Senator Ellison**—I cannot add anything to what Ms Leigh has said.

**Senator LUDWIG**—Turning to the Family Court and Federal Magistrates Service as far as the department is concerned, on 22 May the Attorney-General announced that the government would be appointing four new federal magistrates in Newcastle, south-east Queensland, Adelaide and Melbourne. The advertisement for that appeared on Friday, if I recall. Funding of \$4.2 million over four years was announced in the budget to fund two of those magistrates. The Attorney-General's announcement states:

The other two appointments will be funded from within existing family law resources by appointing new magistrates rather than replacing former Family Court judges in Adelaide and Melbourne. This will involve the transfer of funds from the Family Court to the FMS.

When was the decision taken to take resources away from the Family Court? If you want to focus on one at a time in terms of Adelaide or Melbourne or both—or were they made at the same time?

**Senator Ellison**—I will take that up with the Attorney and get back to the committee on that.

**Senator LUDWIG**—Do you know which ones? If you take Newcastle, south-east Queensland, Adelaide and Melbourne—is it just any two?

**Senator Ellison**—I think that is something I will have to take on notice and take up with the Attorney and see what I can get back to the committee.

**Ms Leigh**—I could add a little information on that. An overall assessment was done and the decision about the positions was taken as a totality.

**Senator BOLKUS**—When you say an overall assessment was done—what was the assessment in respect to Adelaide and how was it concluded that Adelaide could live with one less Family Court judge?

**Ms Leigh**—Perhaps I should take a step back. When the government established the Federal Magistrates Service it made it clear that over time it would continue to monitor, as vacancies arose in the superior courts, whether it made sense to replace those positions with superior court judges or appoint additional federal magistrates because the Federal Magistrates Service has concurrent jurisdiction with those courts in relation to less complex matters. The intention had always been that over time the Federal Magistrates Service would appropriately grow to deal with the less complex work to free up the courts to deal with the more complex work. The intention was that there would be a shift of resources.

Over time, every time a judicial vacancy has occurred we have advised the Attorney on whether it would be an appropriate occasion to make an appointment to the Federal Magistrates Service in place of that judicial vacancy. In terms of how that issue was assessed, we had the situation of knowing that the government was intending to allocate additional resources in the budget and there were also two vacancies on the Family Court. We looked at the resources and the workloads of both the Family Court and the Federal Magistrates Service across Australia in relation to each registry. Leaving out those two judicial positions that were vacant, we looked at the workload within each of the Federal Magistrates Service and the Family Court and made an assessment as to which registries were under the greatest pressure. The allocation of those positions was made on that basis.

At the same time, as part of that consideration, there was also a vacancy in Brisbane in the Family Court and, as stated in that same press release, the Attorney decided to appoint a Family Court judge to that vacancy. We also had to consider whether that one should be replaced by a magistrate. We were in the position where there were three positions vacant plus the additional money and we were able therefore to give overall consideration to the needs across Australia.

**Senator BOLKUS**—There are a couple issues there. On what basis did you determine this aspect of pressure? How did you determine which registries were in fact under that greatest pressure?

**Ms Leigh**—We looked at non-divorce filings.

**Senator BOLKUS**—What did you look at in that respect—the numbers, the delays in processing?

**Ms Leigh**—We looked at the non-divorce filings and then the number of judicial resources in each registry and assessed on a monthly rate of filings to judicial resource per registry per court.

**Senator BOLKUS**—We can have that documentation and those statistics?

**Ms Leigh**—That was advice to the Attorney, so of course I would need to ask the Attorney.

**Senator BOLKUS**—And of course we will not get it. Now in terms of those statistics, what were the filings in Adelaide?

**Ms Leigh**—Can I take that on notice please?

**Senator BOLKUS**—Can you give us the filings in each registry in Adelaide?

**Ms Leigh**—I would like to take that on notice, if I might.

**Senator BOLKUS**—Sure. Could you provide statistics as to processing times for different categories of applications?

**Ms Leigh**—The court would be able to give you those. Of course, in relation to Family Court work, the nature of the work is generally similar all around Australia, so one would expect that the time taken to process the applications would be generally the same around Australia.

**Senator BOLKUS**—So you would look at the numbers of applications rather than the processing times?

**Ms Leigh**—That is the approach that we have taken. As I say, there is no reason to believe that they would be different between the registries.

**Senator BOLKUS**—And you felt, on that basis, that Adelaide and Melbourne were under the least pressure?

**Ms Leigh**—To the contrary, because Adelaide and Melbourne were both getting a magistrate, it was then a question of where it was best to put the resources. I should note that that press release also indicated that the difference between the cost of a magistrate and the cost of the judge would remain with the Family Court.

**Senator BOLKUS**—How did you determine that Adelaide did not need a judge? How many Family Court judges does Adelaide have at the moment?

**Ms Leigh**—Adelaide has four Family Court judges, one judicial registrar and one band 2 registrar.

**Senator BOLKUS**—You have told us how you determined which registries got the extra magistrate, but how did you determine that Adelaide did not need that extra judge?

**Ms Leigh**—I guess there are a couple of factors. It is a matter of looking at the comparative pressure on the Family Court in Adelaide compared to all the other Family Court registries, taking into account not having that judicial resource—so, without that judicial resource, what the workload pressure would be on the Adelaide Family Court registry compared to all the other Family Court registries and then looking at the Federal Magistrates Service in Adelaide and comparing the workload pressure on the Federal Magistrates Service

in Adelaide with the workload pressure on all the other Federal Magistrates Service registries across Australia.

**Senator BOLKUS**—That still does not explain how you came to the conclusion that Adelaide could do with one less Family Court judge. If you tell us that the workload was such that Adelaide, with Melbourne, was under the greatest pressure, how did you determine that a Family Court judge should not be the appropriate solution to Adelaide's pressure?

**Ms Leigh**—As I indicated, by comparing the workload on the Family Court registry in Adelaide with the other Family Court registries across Australia and then comparing the workload on the Federal Magistrates Service Adelaide registry with other Federal Magistrates Service registries across Australia. It is also—

**Senator BOLKUS**—You are inferring that the assessment was made after that comparison: that the pressure on Family Court judges in Adelaide was less than it was in other states, but the pressure on magistrates was greater than in other states. Is that the case?

**Ms Leigh**—Very roughly stated, yes.

**Senator BOLKUS**—How did you come to the conclusion that the pressure on Family Court judges in Adelaide was less than in other states? You have explained how you came to the conclusion in respect of the magistracy that there was greater pressure there. How did you distinguish one from the other? What separate sets of indicators did you use?

**Ms Leigh**—I need to mention a few other factors. As I indicated, the jurisdiction of the Federal Magistrates Service is concurrent with the Family Court insofar as the less complex matters are concerned. There is a capacity for the work to shift according to the available resources, and we would certainly expect that, with the appointment of an additional magistrate in Adelaide, work would flow to the Federal Magistrates Service that would have previously flowed to the Family Court.

**Senator BOLKUS**—You have said that before, but I would like you to answer my question.

**Ms Leigh**—I did not think that I had made that point and I thought it was relevant to the expected workload on the judges.

**Senator BOLKUS**—What indicators did you use to come to an assessment that Adelaide needed fewer judges on the one hand and more magistrates on the other? What was the indicator that led you to believe that Adelaide could do with one less judge?

**Ms Leigh**—With endless resources we would put more judges in everywhere, so talking in terms of 'could do with one less judge'—

**Senator BOLKUS**—But you have actually reduced the number of judges in Adelaide; you did not put more in, you took one out.

**Ms Leigh**—Before we did the assessment, we did it without that position. When we assess the workloads, we assess them without that judicial resource.

**Senator BOLKUS**—You are giving me everything other than what I am asking for and that is: what indicator did you use to come to the conclusion that Adelaide could do with one less judge?



**Senator Ellison**—I think the question was answered earlier about the level of workload and that was answered by Ms Leigh in relation to how they determined it.

**Senator BOLKUS**—Yes, Minister, but if you are following this the workload that Ms Leigh was talking about was the workload that led the department, purportedly, to come to a conclusion that there was a need for more magistrates in Adelaide. I want to know why the department came to the conclusion at the same time, and possibly on the same stats, that Adelaide needed one less judge. Is it a different character of cases you are talking about? I cannot work out, if the filings stats show—and you said filings was the important indicator—that there was pressure for extra resources there, why a magistrate and not a judge?

**Ms Leigh**—I am not sure I can take it much further than I have, but certainly there seemed to be significant pressure on the magistrates in Adelaide. As I have said, there was a limited bucket of resources so decisions had to be made.

**Senator BOLKUS**—Sure, but was there not similar pressure on the judges in Adelaide? How did you come to the conclusions that there was not?

**Ms Leigh**—I do not think I can take that any further than I have. There is another factor though—

**Senator BOLKUS**—Sorry, how have you tried to answer that so far?

**Ms Leigh**—By comparing the filings numbers.

**Senator BOLKUS**—And you have said to us that on the basis of the filings numbers there was pressure for an extra person in Adelaide.

**Ms Leigh**—It was considered that the best use of the available resources was to appoint a magistrate.

**Senator BOLKUS**—Why not a judge?

**Ms Leigh**—In addition to the magistrate, the difference between a magistrate's salary and a judge's salary is roughly the amount that it would cost for a band 2 registrar. The Attorney-General has said that that money will stay with the Family Court in each case so that the Family Court can appoint more band 2 registrars. One of the concerns that the Family Court has had is in relation to its ability to handle interim work, and that will assist the Family Court to do that. In terms of judicial resources, they will in fact gain a band 2 registrar.

**Senator BOLKUS**—So it was a financial decision. You would have maintained that extra judge if you did not have the pressure to find money to appoint a band 2 registrar?

**Ms Leigh**—As I have said, if you had endless resources then of course there are lots of things that any government would spend more money on, but when allocating the resources available that seemed to be the best use of the money—to provide a service for the people who need to use the Family Court and the Federal Magistrates Service.

**Senator BOLKUS**—But that does not deny that there was still pressure there for a Family Court judge to be continued; it was just a matter of where you put the resources.

**Ms Leigh**—It is a question of comparative pressure around Australia.

**Senator BOLKUS**—Once again, in terms of that comparative pressure, how did you make an assessment that Adelaide had less pressure on it for a judge to be appointed as opposed to other states?

**Ms Leigh**—I really do not think I can give you any more information than I have. I am very conscious that questions of judicial appointments are really matters for the government and I think I have pushed this as far as I can push it.

**Senator BOLKUS**—You said earlier that a *raison d'être* for the magistracy was to free up other aspects of the court. How do you free up the continuing pressure on the Family Court judges in Adelaide by taking away one of those positions?

**Ms Leigh**—The Federal Magistrates Service has concurrent jurisdiction with the Family Court so that magistrate will be taking on the less complex work. The volume throughput in the Federal Magistrates Service per magistrate is high because that is the point of the jurisdiction. It is a high volume jurisdiction because it is geared to handling less complex matters and to handling them quickly.

**Senator BOLKUS**—And you think that they would do that faster than Family Court judges handling the same cases?

**Ms Leigh**—It is geared to deal with the less complex cases. The Family Court has to establish itself to be able to deal with the full range of cases, including the most complex. The idea of the Federal Magistrates Service was to establish a specialist court that could specialise in dealing with less complex cases quickly.

**Senator BOLKUS**—Was any assessment made on the number of cases that would go from a judge to a magistrate in Adelaide, once you appointed a new magistrate?

**Ms Leigh**—When you say 'would go', do you mean in terms of how the statistics would change?

**Senator BOLKUS**—You are saying that the magistrates would take up a certain level of work. Was an assessment made of the level of work that would shift to the magistracy in South Australia?

**Ms Leigh**—There is a limit to how much of an assessment we can make of that because it will depend on where people choose to file. We expect the work to shift across based on the availability of resources.

**Senator BOLKUS**—So, had you appointed a judge there, the work would have stayed with the judges—but what work? You did not make an assessment as to what level of work would shift to the magistracy, did you?

**Ms Leigh**—There is also another factor—

**Senator BOLKUS**—Can you answer that question? You did not make an assessment of what level of work may shift from the judges to the magistracy in South Australia.

**Ms Leigh**—Based on our experience so far in South Australia, it is interesting that the resources there seem to have moved around according to the availability of judicial resources. So we would expect that—

**Senator BOLKUS**—Before this decision was made, did you make an assessment of what level of work may shift from one sector to the other? It is a yes or no answer. You do not want to give us a yes or no answer?

**Ms Leigh**—We were able to assess based on our experience but not in terms of specific numbers.

**Senator BOLKUS**—What did you assess? Did you make the decision to appoint a judge first and then make the assessment later? That is the impression I am left with.

**Ms Leigh**—No. We provided advice to the Attorney on the workload, as I have indicated, and the Attorney then made a decision based on the information we provided him.

**CHAIR**—As I understand this exchange, Senator Bolkus, there has been an indication that the further details in relation to your questions will be taken on notice and an answer provided to you on the policy matters that the Attorney-General can make a response on and that Ms Leigh will provide other information on the matters that are within her purview.

**Senator BOLKUS**—Thank you.

**Senator LUDWIG**—Just on that point—

**CHAIR**—Which point, Senator Ludwig?

**Senator LUDWIG**—The appointments. Why did the Attorney-General announce them in a media release when he could have done it in the budget?

**Ms Leigh**—It was done in both.

**Senator LUDWIG**—Where is that? I missed it.

**Ms Leigh**—It is in the budget papers, under the additional funding to the magistrates.

**Senator LUDWIG**—Are you talking about the announcement?

**Ms Leigh**—The announcement. There was a budget press release on 13 May announcing the additional funding to the Federal Magistrates Service.

**Mr Cornall**—It is also in the budget measures on page 18 of the portfolio budget statement.

**Senator LUDWIG**—That would also refer to taking resources away from the Family Court—in other words, the transfer? That is what I am referring to.

**Ms Leigh**—No, that is something that we need to be—

**Senator LUDWIG**—Did the budget show the transfer from the Family Court? That is what I meant on that point. I thought you were talking about the transfer.

**Ms Leigh**—I see. No, that is not in the budget papers.

**Mr Cornall**—The budget papers refer to the funding for the two additional magistrates.

**Senator LUDWIG**—Yes, but it does not refer to the transfer. Why doesn't it?

**Mr Cornall**—It is not a relevant issue, I do not think, in terms of this portfolio budget statement.

**Senator LUDWIG**—It is not a relevant issue?

**Mr Cornall**—I do not believe so. Can I just make a couple of points about what is being said. Firstly, appointments are matters for the Attorney-General. He can take advice from us but he is still able to make whatever decisions he wants to make about appointments. Secondly, the magistracy was established with, I suppose you might say, a relatively small number of magistrates. It was intended over time that it would grow and that there would be a realignment of resources between the Family Court and the Magistrates Service, depending on the volume of work and where the work was going. None of this is unexpected, but there would be some form of assessment made, and over time there may well be more magistrates appointed. But the magistrates will be very significantly devoted to family law work.

In terms of the family law resources able to work in Adelaide, you will have the options of judges or magistrates. The experience in some other places is to the effect that, for the simpler matters, people seem to prefer to go to the Magistrates Service because it is, I understand, quicker and cheaper. So it gives some flexibility and choices to the citizens of Adelaide as to where they go. So I do not see that it is necessarily reducing the family law services available to the people in Adelaide. It is simply giving them options as to whether they go to the Magistrates Service or to the Family Court. Similar decisions have been made in other places.

**Senator LUDWIG**—I didn't ask for a policy speech, if you recall. My question was on a budget issue, and I was not referring to Adelaide at all.

**CHAIR**—Senator Ludwig, just on that point, given the range of questions that have been pursued, I think Mr Cornall was only trying to assist the committee.

**Senator LUDWIG**—In terms of the budget, why wouldn't the transfer of funds be disclosed?

**Mr Kennedy**—The transfer of funds within the portfolio can be made at any point in the year. In this case the additional estimates bills would be likely to reflect that transfer from the Family Court to the FMS in regard to those particular appointments.

**Senator LUDWIG**—So they don't have to appear in this one but they do have to appear somewhere?

**Mr Kennedy**—They will have to appear somewhere at some point. That is correct, yes.

**Senator LUDWIG**—So the choice was made not to have them in this budget paper, this budget round, but to leave them for another time. That is a choice that can be made, I now comprehend.

**Mr Kennedy**—And that does happen from time to time, depending upon the expected timing of a particular event or initiative. That may happen in regard to the transfer of funds at a later stage than in a budget process.

**Senator LUDWIG**—Will the timing of the event be critical to it? If it is announced just before, you don't include it or, if you announce it afterwards, you obviously cannot and then you have to deal with it later. This seems to have been announced after the budget; therefore, as far as I can see, the department would have been aware of it. So the funding implication or the transfer would have been there. The next available time to include it would have been in this budget. Why would you not have included it then?

**Mr Kennedy**—The processes for finalising the budget and for drawing up the bills generally occur some time before the budget is announced. So it is around about early April when the numbers are generally locked into the budget process. So there are times when events may occur after the figures are actually locked into the budget, at which point transfers can be made at a further stage in the year.

**Senator LUDWIG**—When were the budget papers printed?

**Mr Kennedy**—They were printed, presumably, not long before budget night. In terms of the very complex processes for completing the bills and for drawing up all the information, I have not worked in the department of finance so I cannot give you all of the detail, but across the whole of the Commonwealth it is a major undertaking. Generally, numbers are locked down some time before the bills are actually processed and printed.

**Senator LUDWIG**—Is there a time when matters such as discretionary funding are finalised? Is it not after a certain date?

**Mr Kennedy**—I am not aware that there would be any particular final date after which things could not be put into the budget. It depends upon the significance of the particular matter and also the capacity to affect the transfer of funds at some later stage in the financial year. In this case, it is not a significant issue for the government as a whole and there is the capacity to make the transfer of the funds in that additional estimates process.

**Senator LUDWIG**—What date did the department finalise its figures? What date did you bed down your numbers?

**Mr Kennedy**—From memory, our date was around 8 April.

**Senator LUDWIG**—Do you know how much the transfer from the Family Court budget will be in each year from 2003 to 2006—that is, the out years?

**Mr Kennedy**—I do not have those figures.

**Senator LUDWIG**—Are they available?

**Mr Kennedy**—We will take that on notice.

**Senator LUDWIG**—I do not want to cut across the issues that Senator Bolkus raised, so if these issues have already been dealt with please indicate that and I will accept that they have already been taken on notice. The Attorney-General's announcement indicated that the Family Court will retain some funding to employ senior registrars. Is this the Family Court's existing SES band 2 registrars?

**Ms Leigh**—That is correct.

**Senator LUDWIG**—Will any new registrars be employed?

**Ms Leigh**—That will be a matter for the Family Court, because those appointments are not government appointments; they are employees of the Family Court.

**Senator LUDWIG**—So that is within their budget?

**Ms Leigh**—That is right. The Attorney has said that that money is to remain with the court and it is to be used for that purpose.

**Senator LUDWIG**—What money is that?

**Ms Leigh**—The difference between the cost of the magistrate and the cost of the judge.

**Senator LUDWIG**—Has that amount been identified?

**Ms Leigh**—I could not give you the precise figure here.

**Senator LUDWIG**—Is it enough to employ an SES band 2 registrar?

**Ms Leigh**—I am not sure that it is completely enough, but it is roughly in that order. It would be a significant contribution to the cost of a band 2 registrar.

**Senator LUDWIG**—So one at most?

**Ms Leigh**—That will be up to the court. You might imagine that that is where they will choose to put them, but where they choose to put them will be a matter for them.

**Senator LUDWIG**—Has the government done any work on what impact reducing the number of senior registrars will have on waiting times for interim orders in the Family Court?

**Ms Leigh**—The court is self-administering so, in the first instance, it is the court that would do that analysis.

**Senator LUDWIG**—I will have an opportunity to ask the court; I was just looking at it from the departmental view—whether or not you had looked at it and decided that work needed to be done.

**Ms Leigh**—Not in terms of assessing figures.

**Senator LUDWIG**—You do not think it needs to be done?

**Ms Leigh**—I did not say that.

**Senator LUDWIG**—Well, do you?

**Ms Leigh**—It is a matter for the court as to how it organises itself, but the court advises us that that is an efficient way of handling certain matters. It is in recognition of that the Attorney has said that this money can remain with the Family Court to be used for that purpose.

**Senator LUDWIG**—Who would give the guarantee—the government or the AAT—that the Family Court would not increase waiting times for interim orders?

**Ms Leigh**—You would have to direct that matter to the court.

**Senator LUDWIG**—So the government does not care?

**Ms Leigh**—I did not say that. As I explained, these are not actually government appointments; they are employees of the court.

**Senator LUDWIG**—But what I am looking at is waiting times. I am looking at people—clients—who have long waiting times at the moment and they do not want them to be longer. They may be longer if it all does not go to plan—or your plan, I assume. I wanted to know whether the government could give a guarantee that there will not be increased waiting times as a result of this transfer of the money from the Family Court to the Magistrates Service, including the expectation that the difference will be allowed to be used to employ SES band 2 registrars to fill the gap. In broad, that is the plan that is intended, from the government's perspective. It is not the Family Court planning this; it is the government. Is it your guarantee that the outcome will be that there will be no increase in waiting times for interim orders?

**Ms Leigh**—The logic of the government's decision is that it believes that this will actually increase efficiency for people needing to take family law matters to court, because it will increase the ability of the Federal Magistrates Service to handle matters. As I have indicated, they are a high-volume jurisdiction and they have demonstrated that they can handle matters quickly, and so the government believes that the appointment of these additional magistrates will improve the services available.

**Senator LUDWIG**—Where do I get my guarantee that the waiting times will not increase in the Family Court in Melbourne and Adelaide?

**Ms Leigh**—I do not believe that I am in a position to give you a guarantee.

**Senator Ellison**—I think it would be appropriate to ask this question of representatives of the Federal Magistrates Service and the Family Court, and it can be pursued further when they appear.

**Senator LUDWIG**—I can then ask it again of you, Minister.

**CHAIR**—In theory, that will be tomorrow.

**Senator LUDWIG**—The government recently passed legislation to give the Federal Magistrates Court jurisdiction over copyright matters. As I understand it, that is in addition to the court's existing jurisdiction in trade practices, bankruptcy, discrimination, administrative law, migration and family law matters. Have I left any out?

**Ms Leigh**—Have you mentioned human rights?

**Senator LUDWIG**—No. Has the department done any work on the impact on waiting times in family law matters of introducing copyright matters to the Federal Magistrates Court? What I am looking at is that there seems to be an expectation that—and correct me if I am wrong—the devolution of work from the Family Court to the Magistrates Court will improve access and waiting times for clients who are accessing the Family Court and that the Magistrates Court will be a quicker or simpler process and, therefore, will reduce waiting times. But the government keeps adding work to the Magistrates Service. Each time it adds some work, it impacts upon other work that it currently has before it, I would expect. Has the department done any work on the impact of these additional work areas to ensure that the original prime aim—that Family Court waiting times be reduced—is achieved?

**Ms Leigh**—Before that jurisdiction was conferred, there were detailed consultations with the Federal Magistrates Service and the Federal Court. In relation to the Federal Magistrates Service, they were happy to receive that jurisdiction. In terms of volume, it is quite small compared with the family law work.

**Senator LUDWIG**—Do you know how small?

**Ms Leigh**—Probably the best people to ask about that would be those in the Federal Magistrates Service, but the jurisdiction has only just been conferred so the number of cases that actually flow to the Federal Magistrates Service will not be known until we start to see that development.

**Senator LUDWIG**—On a broader scale, is there an intention to do any work on the impact of the conferral of jurisdiction on the Federal Magistrates Service to ensure that they can still

function in their prime tasks, because copyright would not be their prime task, I imagine, as important as it is. Their prime task was primarily to alleviate pressure on the Family Court and deal with some other matters.

**Ms Leigh**—I do not know that I would put it as the primary task. It has a wide range of jurisdictions and by far the largest workload is in the family law area, but all of these areas are important and they were all conferred on the Federal Magistrates Service with the same objective: that is, to confer less complex work on a court that would be able to adapt itself to dealing quickly with that work.

**Senator LUDWIG**—We accept that, but is work being considered to ensure that all of its tasks and the priorities that the government gives them are completed in a timely way?

**Ms Leigh**—We are constantly monitoring that. The Federal Magistrates Service and all of the courts produce statistics on their workloads. The Federal Magistrates Service in particular sends those to us on a regular basis and we have regular discussions in which we talk about how they are managing workloads.

**Senator LUDWIG**—Do they send you a report on their workload?

**Ms Leigh**—They send us a table of statistics for the last month, for example, to indicate how workloads are going. They have a system that you would be aware of—the Casetrack system—that enables them to analyse their workload in a whole range of ways. That is the basis of their analysis of their workload because, as I indicated, they are self-administering. But we have regular meetings with them and discuss that workload.

**Senator LUDWIG**—Is that table available to the committee?

**Ms Leigh**—That would be a matter to ask the Federal Magistrates Service.

**Senator LUDWIG**—Do they provide a copy to you?

**Ms Leigh**—Yes.

**Senator LUDWIG**—We will ask them again at that juncture. Is the department involved in consultations on proposed changes to the way the High Court determines special leave applications?

**Ms Leigh**—That issue of special leave applications is something that the High Court has raised. The department is aware of that and is looking at it.

**Senator LUDWIG**—When you say ‘looking at it’, can you be more specific?

**Ms Leigh**—It is one of many issues that has been raised both by the High Court and by the other federal courts. It certainly is something we are looking at in order to provide advice to the Attorney-General.

**Senator LUDWIG**—Is there a working group or a committee meeting that deals with it?

**Ms Leigh**—There is no meeting structure, but we would have conversations with the High Court as we look into it.

**Senator LUDWIG**—What are the objectives of the proposed changes? Have you got to that point in time?



**Ms Leigh**—Only in the sense of what the High Court has said and what Chief Justice Gleason has said publicly in speeches. They have put it forward as a way of dealing more efficiently with special leave applications. But that is something that would be better directed to the High Court tomorrow.

**Senator LUDWIG**—Have you canvassed any options that have been mooted?

**Ms Leigh**—We have been looking at it in a very preliminary way.

**Senator LUDWIG**—Is it likely to be finalised, or are you just going to continue to consult about it? Are you going to move ahead with this issue from your perspective, or are you going to wait for the High Court to come back and be more specific themselves?

**Ms Leigh**—I cannot recall whether we have asked them for more details or whether we are looking at it at the moment.

**Senator LUDWIG**—Could you take that on notice and get back to the committee.

**Ms Leigh**—Certainly.

**Senator LUDWIG**—Are you canvassing any change to the fee structure in terms of the imposition of fees for special leave applications?

**Ms Leigh**—I think ‘canvassing’ is putting it too highly.

**Senator LUDWIG**—You are not on the phone again discussing it, are you?

**Ms Leigh**—I am not aware of whether any officers have discussed that with officers of the High Court.

**Senator LUDWIG**—Are there any proposals to increase or decrease fees?

**Ms Leigh**—None that I can really report to the committee.

**Senator LUDWIG**—That you do not want to report to the committee, or that you can report but you are not allowed to?

**Ms Leigh**—If there were any, it would be a matter of government policy.

**Senator Ellison**—I am not aware of any policy or change in the fees policy.

**Senator LUDWIG**—I will leave some of those questions for when the High Court is here.

**Senator KIRK**—In relation to the judicial complaints protocol, it has now been about 15 months since allegations against Justice Kirby were made under parliamentary privilege and the Prime Minister told the parliament:

It is therefore time that the parliament, and in particular the government, gave more urgent consideration to a recommendation of the Law Reform Commission—most recently in recommendation 12, where it was recommended that the federal parliament should develop and adopt a protocol governing the receipt and investigation of serious complaints against federal judicial officers.

In February, the department indicated that a draft protocol had been provided to the judiciary at the end of last year and that the department was waiting for responses. Have you received responses to that?

**Ms Leigh**—When I got back to my desk after the last Senate hearing, I found in my in-tray a response from the High Court and I subsequently wrote to this committee to inform it of that. There have been no further responses.

**Senator KIRK**—Who else did you ask for responses from?

**Ms Leigh**—Each of the Federal Courts. The views of the Hon. James Thomas, a retired Queensland court of appeal judge, were also sought and we have had responses back from him.

**Senator KIRK**—Why that particular supreme court judge? Were the other supreme court judges approached?

**Ms Leigh**—He had written a book in the area and was recognised as a specialist in the area.

**Senator KIRK**—You say that each of the Federal Court judges were written to?

**Ms Leigh**—No; courts.

**Senator KIRK**—I am sorry; each of the courts. So you have not received any response from the federal Family Court at all?

**Ms Leigh**—Nor the FMS.

**Senator KIRK**—What have you done to follow up the responses from those courts?

**Ms Leigh**—We have inquired about likely progress on a response.

**Senator KIRK**—What was the outcome of those inquiries?

**Ms Leigh**—We understand that it is a matter that the judges within the courts are continuing to discuss.

**Senator KIRK**—How long will they be discussing it for? What sort of deadline have you imposed for them?

**Ms Leigh**—I think really that is something that would be better directed at the courts tomorrow.

**Senator KIRK**—Why is that? You presented the draft protocol to them and asked for their comments.

**Ms Leigh**—Yes.

**Senator KIRK**—Surely, you would put some sort of time frame on that; it has been six months.

**Ms Leigh**—We did indicate to them that we were hoping for a quick turnaround. But that apparently has not been possible.

**Senator KIRK**—No, it has not been very quick. It has now been nearly six months. What have you done to chase that up?

**Ms Leigh**—We have contacted the courts and inquired about progress.

**Senator KIRK**—Have they told you what their progress is?

**Ms Leigh**—They have said that the judges are continuing to discuss it.

**Senator KIRK**—Did they give you any sort of idea as to how long they would be discussing it for?

**Ms Leigh**—Not really, no.

**Senator KIRK**—Did you make any suggestions as to about how much time they have to discuss it—that is, a month or two months?

**Ms Leigh**—Originally, as I say, we indicated to them that the government was hoping to move quickly and that we were looking for a quick turnaround, and they are aware of that.

**Senator KIRK**—So you have not specified a time, a date, by which you would like to receive the responses and then, after that, there will be no opportunity for them to provide a response?

**Ms Leigh**—Not recently, no.

**Senator KIRK**—Not recently or not at all?

**Ms Leigh**—I think originally when we wrote to them, we may have indicated a time frame. That time frame has certainly passed, and since then we have not indicated a further time frame.

**Senator KIRK**—Have you perhaps thought about a time frame and presenting it to them?

**Ms Leigh**—As I say, they are quite aware that we are seeking and waiting for a response.

**Senator KIRK**—Realistically, how long are you going to give them? Are you going to give them another six months, another year? What is reasonable, in your view?

**Ms Leigh**—I do not know that any decision has been taken about that.

**Senator KIRK**—How serious is the department about actually getting the responses and therefore making this draft protocol into a protocol, into the real thing?

**Ms Leigh**—Of course, comments from the judiciary on this are quite important to ensure that the protocol does deal with the issues appropriately.

**Senator Ellison**—Madam Chair, this is an aspect which has to have the cooperation of the judiciary. We are seeking that and we are not going to be prescriptive. The government's view is that it is very important to have their cooperation. It is a bit like dealing with other agencies and departments when you develop an action plan on human rights. When you have other parties who are involved in a program or project, it is not entirely within your own realm to say when things will happen. Of course, we will pursue this; it is an important issue. But it is squarely in the court of the judges at the moment; that is where it lies.

**CHAIR**—Thank you, Minister.

**Senator LUDWIG**—Accepting what you have said, your short answer is that you are just happy to sit on your hands. But you can be proactive. I am sure that the department has been proactive in other areas, and I am sure that we will get to them. But, this issue having been around for a very long time, has the Attorney-General considered writing to the High Court or the High Court judges and setting out the circumstances and asking for the matter to be resolved? In the interim, we do not have a protocol and we could suffer another attack, which would be very unhelpful and the government would then be held accountable again.

**Senator Ellison**—I am sure that by ventilating this issue here at Senate estimates it will come to the attention of the judiciary. In any event, I will convey your comments and sentiments to the Attorney. If there is anything that I can add to that, I will advise the committee on what he plans to do.

**CHAIR**—Thank you for making that undertaking, Minister.

**Senator LUDWIG**—Why don't you write to them? What you are saying, with all due respect, is that you are hoping that this committee can put pressure on the judiciary. That is not the appropriate way of dealing with it. It is appropriate for the government to deal with it in a timely way.

**Senator Ellison**—It has been with the judiciary now for a time. It may be that the Attorney has had discussions which I am not aware of and there may not be a need to write to the judges. Rather than pre-empt things, I will take it up with the Attorney. If there is anything that I can advise you of, I will get back to the committee.

**CHAIR**—As you had indicated, Minister.

**Ms Leigh**—I add for the information of the committee that the department did write to the registrars of each of the four federal courts earlier this year in order to provide some more information in an attempt to assist the consideration by the judiciary of the draft protocol.

**Senator KIRK**—What other consultations have been undertaken? Have there been any consultations with the legal profession, the Law Council and other bodies?

**Ms Leigh**—Not at this stage. The government wants to seek the views of the judiciary in the first instance.

**Senator KIRK**—Are you going to wait until you receive the responses from the federal courts and then put it out to other bodies?

**Ms Leigh**—That will be a matter for the government to decide at the time. Ultimately, it will be a matter for the parliament. The parliament will be able to determine what consultation processes take place.

**Senator KIRK**—What further work needs to be done on the protocol? Is it the intention that, once you receive the responses from the federal courts, changes will be made to the protocol and that it will be worked on? Is it intended that those responses will be incorporated into the protocol?

**Ms Leigh**—I expect that the Attorney would want to take those comments into account and look at whether changes should be made.

**Senator KIRK**—What sort of time frame you have as your goal in order to complete this?

**Ms Leigh**—It is a little difficult to assess because it will depend on the nature of those comments as to how much further work they then require.

**Senator KIRK**—Do you have some kind of ballpark figure—say, the end of the year? What is your intention?

**Ms Leigh**—That is really a matter for the government. I do not have any more information on that.

**Senator Ellison**—There is no timetable proposed by the government on this matter.

**Senator LUDWIG**—I have questions on Auscript. Table 1.5 on page 34 of the portfolio budget statement lists a departmental special account called Auscript. The table indicates that the account was used for receipt of moneys owed to and payments on behalf of that organisation which was sold in June 1998. There was \$2.552 million in the account this financial year but the account was closed in January 2003. The table indicates that the account was covered by section 21 of the Financial Management Accountability Act, meaning that it was an account established by another act. Under what act was this special account established?

**Mr Kennedy**—It was established under section 21 of the FMA Act. In terms of the originating act, I do not have that detail with me. That was some time ago and I expect that it was to do with the establishment of the roles of Auscript at that time.

**Senator LUDWIG**—Would you have that available, or can you find that out?

**Mr Kennedy**—I can certainly try to find that out. As I say, it was quite a few years ago and I was not involved with it at that time, but I can try.

**Senator LUDWIG**—Thank you. What I was seeking, and you might need to take this on notice, was more detail about the purpose for which the special account was established and what sorts of payments were made in and out of that account. The opening balance was \$2.552 million as at 31 July 2002. Was the \$2.552 million the balance when the account was closed or was it zero? Where did the money go from there?

**Mr Kennedy**—I can give you some information on that. Prior to the establishment of the special accounts under the FMA Act, there were what were called group 1 or group 2 trust accounts that were used for business units, and Auscript was a business unit at that time and did not operate from appropriations. It was all cost recovery. When it received moneys they were paid into a trust account and Auscript also spent moneys from that trust account, in a similar way as the APS currently operates. With the FMA Act, those trust accounts were effectively closed and they were transferred to the new arrangements, which were the special accounts. That was the basis on which it was established as a special account. The money that was standing to the credit of that trust account when Auscript was sold was the amount that was transferred to and held by the department in a special account, and it just represented the cash reserves that Auscript had generated at the time because that asset was not part of the assets that were sold.

Essentially there have been very few transactions over the years in that particular account. The only transaction has been that we do have some archiving costs that the department has to meet. It is approximately \$10,000 a year. That has essentially been the only payment out of the trust account. With the special account effectively no longer being operational, we have been asked by the department of finance to have a look at those accounts and to actually close them off, which is what we have done.

**Senator LUDWIG**—Was it reallocated to another program? How does the money get dealt with?

**Mr Kennedy**—It was sitting entirely separately in a portion of the official public account, if you like. It was sitting entirely separate from the department's own funding.

**Senator LUDWIG**—So where does it go to from there?

**Mr Kennedy**—It was simply paid back into the official public account to close off the trust account. It just goes back into general government revenue.

**Senator LUDWIG**—And then what happens to the ongoing archival costs?

**Mr Kennedy**—We have another two or three years remaining and we will just be funding that until that time from within our existing cash reserves that the department has.

**Senator LUDWIG**—How much do you expect that to be?

**Mr Kennedy**—It will be approximately \$30,000 over a three-year period.

**Senator LUDWIG**—While we are on output 1.1, the budget was \$9.538 million but the estimated actual expenditure in the year's budget papers is \$10.039 million. You might help me with what accounts for the increase.

**Mr Kennedy**—What figures are you looking at?

**Senator LUDWIG**—Output 1.1 was \$9.538 million and the estimated actual expenditure was \$10.039 million.

**Mr Kennedy**—The reduction is due to—and this reason applies to all of the outputs in outcome 1—the removal of the capital use charge. The amount factored into the 2002-03 output prices across the department was \$7.7 million. That has been removed and, therefore, has the impact on the reduction of the output price.

**Senator LUDWIG**—Why was it removed? Is it an accounting issue?

**Mr Kennedy**—That is an interesting question.

**Mr Cornell**—I think that is a question best directed to Finance. It goes to the overall structure of the financial accounts of the Commonwealth.

**Senator LUDWIG**—I was happy for Mr Kennedy to have a brief stab at it. I will not hold him to it, I promise.

**Mr Kennedy**—I will make a very brief comment. I think the government wants agencies to focus less on managing that sort of 'commercial' process than they had been and more on the ordinary operations of an agency and to forget about things such as factoring in a cost of capital.

**Senator LUDWIG**—You are right. I will leave it to Senator Conroy. Some of these questions will obviously need to be directed to the Federal Magistrates Service and the High Court. Can the relevant Attorney-General's officer be present when they are called?

**Ms Leigh**—Yes. I was intending to return tomorrow for that part of the hearings.

**Senator LUDWIG**—Thank you, Ms Leigh. I am also wondering whether a departmental officer who deals with the hands-on work—that is, someone below you who is tasked with that work—will be present as well.

**Ms Leigh**—Could you give me an indication of the particular area?

**Senator LUDWIG**—In relation to the High Court, I am interested in those issues dealing with the proposals and how they were canvassed. Do not take this the wrong way but your answers were non-specific, and I was wondering whether that was a reflection of the further up the chain you go, the broader the answer sometimes becomes.

**Ms Leigh**—Certainly. But, if you like, before I come back tomorrow, I could find out some more about that.

**Senator LUDWIG**—In relation to the Federal Magistrates Service, I was particularly interested in those areas where the government might consider adding further work. For argument's sake, we have discussed a range of matters this morning, and copyright has been added. Is there any intention to add more areas, such as workplace relations, to that area? If there is, is there a working group or a discussion group? In some of your answers to me, you have said that it is being discussed. It has to be discussed by someone with someone else, I assume. Who are the people involved in those discussions? If they could come to the table, it might facilitate some of the questioning.

**Mr Cornall**—Ms Leigh has indicated she will try to pursue those issues now that you have clearly identified what it is that you require the detail on. I understand it is the practice that the senior officers of the department respond to the questions of senators. Depending on the level of any person who might be involved in this, I think it would be inappropriate for us to go lower than the SES level in terms of giving evidence to this committee.

**Senator LUDWIG**—I will accept your advice on that. If there are people involved at a lower level than that, perhaps you could indicate that it is held at that level and we can deal with it on notice.

**Mr Cornall**—If Ms Leigh ascertains the answers to your questions, that may be sufficient for your purposes.

**Senator LUDWIG**—Thank you. We can move to output 1.2.

[12.35 p.m.]

**CHAIR**—We will move to output 1.2, Support for the Attorney-General as first law officer, advice on constitutional policy and promotion of Australian legal services internationally. Ms Leigh, thank you for your assistance in that marathon process there. I invite the relevant officers for this area to come to the table.

**Senator KIRK**—I have some questions arising out of the resignation of the Governor-General. First, was the Constitutional Policy Unit or anyone else in the department involved in advising on or drafting amendments to the letters patent relating to the office of Governor-General?

**Mr Faulkner**—No. The Constitutional Policy Unit was not involved.

**Mr Cornall**—The Office of Legislative Drafting was involved in the drafting of the revision to the letters patent.

**CHAIR**—Thank you, Mr Cornall; I appreciate that answer. I want to indicate to the committee that, whilst I think this committee has an open and productive approach to its processes, I am concerned that it is 12.37 p.m. and we have only completed output 1.1 and a

small portion of output 2.2. I personally fail to see the link between the involvement of the Attorney-General's Department in matters concerning the letters patent and budget estimates. I am trying to draw the link, but it is very difficult to do that. Senator Kirk, in view of the time frame in which we are now working, I would really appreciate some assistance in confining questions as far as possible to matters that pertain to budget estimates.

**Senator KIRK**—Madam Chair, the questions relate to the workload of the department, and that is what I was going to.

**CHAIR**—Perhaps if you could tell me where in the portfolio budget statements they relate, that would be even more relevant. But please continue, and we will see how it goes.

**Senator KIRK**—Mr Cornall, you said it was the Office of Legislative Drafting?

**Mr Cornall**—Yes, I did.

**Senator KIRK**—When was the legislative drafting unit first asked for advice in relation to the amendments?

**Mr Cornall**—I will have to take advice from another officer.

**Mr Graham**—The Office of Legislative Drafting is not a policy area. Our function is, principally, drafting regulations, but we also do other statutory instruments and we advise on drafting issues. We were involved in advising on drafting issues for the letters patent. I cannot recall the date, but it was the Saturday a couple of weeks ago before the announcements were made that we were asked for our advice on the wording.

**Senator KIRK**—So you were asked for advice on a Saturday?

**Mr Graham**—Yes.

**Senator KIRK**—Was work done on the Saturday, then?

**Mr Graham**—Yes.

**Senator KIRK**—Were staff called in?

**Mr Graham**—I was called in.

**Senator KIRK**—When was that advice provided?

**Mr Graham**—It was later on that Saturday.

**Senator LUDWIG**—What advice was that?

**Senator Ellison**—As we have mentioned before, we do not go into the subject or the substance of the advice. The fact is that we do say that advice was given and that is it. But it is not advice to go—

**Senator LUDWIG**—I understand that but it was worth asking the question.

**Mr Cornall**—Senator, this is not principally a matter of responsibility for this department. We had a very peripheral involvement, in terms of drafting advice, so the questions are really more appropriately directed to the Prime Minister's department.

**Senator LUDWIG**—They will be, but I just wanted to establish the area of involvement that the A-G's department might have. I expect that most of your answers will be, 'We don't have any direct dealing with that issue' or 'We dealt with that in a peripheral sense'. I am just



trying to establish what your peripheral sense was in fact, and what you actually did deal with. I guess if I cannot ask for the advice then who asked for the advice?

**Senator Ellison**—It is the same issue: advice was given and that is the evidence.

**Senator LUDWIG**—When was it provided? When was it asked for? Was it on the Saturday?

**Senator Ellison**—Yes, that is what Mr Graham said.

**Senator LUDWIG**—And it was provided on the Saturday?

**Mr Graham**—Yes.

**Senator LUDWIG**—And you cannot tell me by whom?

**Senator BOLKUS**—You can actually. Once again I have evidence from as recently as last week.

**Mr Cornall**—We have already said by the Office of Legislative Drafting.

**Senator BOLKUS**—But by whom in particular?

**Senator Ellison**—By Mr Graham, I think.

**Mr Graham**—By myself, yes.

**Senator KIRK**—Did you seek any external advice or was it all done from within your office?

**Senator Ellison**—I think, to the extent that we are able, we will take that on notice with the usual caveats as to providing advice.

**Senator BOLKUS**—Just on that, Minister; it is obviously something within this officer's knowledge about whether advice was served and from whom. It is normal in these processes for those questions to be answered as well as questions, for instance, as to how much the advice cost. I do not know why the officer is not being allowed to answer this.

**Senator Ellison**—The fact is I do not know if OLD charge out by the hour—I have not seen the rate—

**Senator BOLKUS**—Maybe OLD got advice from someone outside of OLD?

**Senator Ellison**—Mr Graham has been answering questions—

**Senator BOLKUS**—So let him do it.

**Senator Ellison**—and I have just taken a question on notice. Perhaps you can continue with your questions.

**Senator BOLKUS**—Was advice sought from someone else?

**Mr Graham**—Not by OLD; is that the question?

**Senator BOLKUS**—Was advice provided by anyone else, to your knowledge? What are you trying to hide?

**Senator Ellison**—That is a question which should be addressed to PM&C. It is a matter which falls within their responsibility and it is not an appropriate question for this officer to

answer because the obtaining of that advice would be their responsibility. I am not saying whether or not it was, but that is a question which should go to PM&C.

**Senator KIRK**—Once the advice was provided by your office to whoever, were there any further requests for further advice or for redrafting or changes to the advice or further questions put to you?

**Mr Graham**—The process of responding to questions and giving advice took, from memory, about 2½ hours and that was the end of our involvement.

**Senator KIRK**—And that was done on a Saturday afternoon, did you say?

**Mr Graham**—On a Saturday afternoon, yes.

**Senator KIRK**—Was there any follow up required on the Sunday?

**Mr Graham**—No, not from our office.

**Senator LUDWIG**—Did you return the work to the client? Or was it directed somewhere else?

**Mr Graham**—Yes, it was directed back to the client.

**Senator LUDWIG**—Did they give any other advice to you in relation to this issue, like the Australian Government Solicitor; were they involved?

**Mr Graham**—Again, I think that is a question for PM&C.

**Senator LUDWIG**—Did you see any advice from the Government Solicitor?

**Mr Graham**—I didn't see any.

**Senator BOLKUS**—Are you telling us that, if advice was provided outside your office, it wasn't in any way provided through your office, or paid for by your office?

**Mr Graham**—Yes.

**Senator BOLKUS**—So it could have been organised by PM&C?

**Senator Ellison**—That is why we are saying it is a matter for PM&C, the responsible party. Mr Graham has answered the question to the limit of his knowledge.

**Senator KIRK**—Is it exceptional for you to be asked to work on a Saturday and to be giving advice in these circumstances?

**Mr Graham**—It happens from time to time.

**Senator KIRK**—When was the last time?

**Senator Ellison**—Madam Chair, I think you can take it as read that most officials at Mr Graham's level work on weekends more often than 'from time to time'. That is certainly my experience.

**Mr Cornall**—Can I just add to the minister's statement that the Office of Legislative Drafting is, as Mr Graham said, a division which provides a service to other government agencies or for the Attorney-General's portfolio and, to that extent, it is not quite so driven by the policy emergencies as some other areas. But it is very common for people in the department to work on weekends, depending on what the emergencies of the time are.

**Senator KIRK**—I have no doubt. The question was whether or not advice is sought on Saturdays.

**Mr Cornall**—You keep saying ‘advice’. I just want to make the point that Mr Graham’s area is responsible for drafting, not for providing advice. It is responsible for drafting a document.

**Senator KIRK**—Has the Constitutional Policy Unit or anyone else in the department given any consideration or done any work to reforming the processes for appointing and/or removing the Governor-General?

**Mr Faulkner**—I can only speak for the Constitutional Policy Unit, but I haven’t been involved in any such work.

**Senator KIRK**—Can anyone else speak for any other part of the department?

**Mr Cornall**—Not that I am aware, Senator, no.

**Senator LUDWIG**—What about advice to enhance the checking process of the position? Have you done any work on that?

**Mr Faulkner**—No.

**Senator LUDWIG**—What about you, Mr Govey?

**Mr Govey**—No, I am not aware of anything, either, Senator.

**Senator LUDWIG**—So is there any indication at the ministerial level that there has been a request to enhance the checking process or advice being sought from the department?

**Senator Ellison**—I am not aware of any ministerial direction or decision, but I will take that on notice, Madam Chair. If there is anything that needs to be added to that I will get back to the committee.

**Senator LUDWIG**—Do you think it would be desirable to have an enhanced checking process?

**Senator Ellison**—I think that is a question for another estimates committee. That is not my area of responsibility. It is a question to the Prime Minister.

**Senator LUDWIG**—What about in respect of legal advice?

**Senator Ellison**—Legal advice as to who should be appointed?

**Senator LUDWIG**—You would expect that there would be a view of the Attorney-General, or this department, about background checks, about the appropriateness of them, about—

**Senator Ellison**—The appointment of the Governor-General is a matter for the Prime Minister and it is really to the Prime Minister that you should direct your question. The Prime Minister determines that, and the Attorney-General carries out any request to the Prime Minister. So really it is a matter of directing your question to that matter in another estimates committee.

**Senator LUDWIG**—Yes, but I think it is still appropriate to ask the Attorney-General’s Department what area they might suggest because—

**Senator Ellison**—That is a matter of policy.

**Senator LUDWIG**—It is a matter that ASIO already do background checks. The department requires background checks to be done more broadly. The AFP, I think, does as well, if you read the portfolio budget statements in detail. Therefore, it is within the area of the Attorney-General's portfolio to consider background checks. What I am asking you is: have you considered whether in this instance it is worth considering them more broadly to encompass the Governor-General? It is a role that is undertaken by the Attorney-General and its portfolio and its agencies?

**Senator Ellison**—As I have said, I am not aware of this matter having been considered. If it was to be considered then that would be the Attorney-General's area. I have said that I will take it on notice and, if I have anything to add, I will get back to the committee. But, as to whether or not it is desirable, that is a question which should be directed to the Prime Minister's office, and that is in another estimates committee.

**Senator LUDWIG**—Who wouldn't get checked nowadays?

**Senator Ellison**—We do not.

**Senator LUDWIG**—But I suspect that everybody else at this table would be.

**CHAIR**—A point well made, Minister.

**Senator Ellison**—We get elected and sworn in with no check on any of us. I am talking about senators, of course.

**Senator LUDWIG**—I mean more specifically government appointments.

**Senator Ellison**—As to the government appointments which are not security checked, there must be many in the Australian Public Service and elsewhere. That is not something that I deal with.

**Senator LUDWIG**—More broadly, and this is within the A-G's area, do protocols exist for dealing with background checks for appointment to official positions?

**Mr Cornall**—Obviously a number of positions require a certain level of security clearance, depending on the nature of the work and the sorts of tasks that will be undertaken. Where that occurs, it is quite common for us to specify that in the advertisement for the position, so the answer is yes. Senior officers of the department and agencies are the subject of certain security processes before they are appointed.

**Senator LUDWIG**—Is there a protocol? Do you determine which ones will have a background check and how in depth the background check will be depending on the nature of the position or the circumstances or the required security level clearance?

**Mr Cornall**—There are certainly established practices. I am not sure that we have a protocol specifically. I do not know the answer to that. Certain issues are raised in the *Commonwealth Protective Security Manual* and the level of clearance required determines the extent of the checking, and that in turn will depend on the position and the sort of material that the office holder will be dealing with.

**Senator LUDWIG**—If we do not call it a protocol, is there an explanation as to when it is required? You must have an indicator of when you would then put a statement in the advertisement that a background check will be undertaken.

**Mr Cornall**—I simply do not know the processes followed at a detailed level. With senior appointments, I am very conscious of the sorts of advertisements that we place as to positions requiring security clearances and so forth, but as to the processes within the department at a human resource level, I am not sure what they have in terms of a written procedure.

**Senator LUDWIG**—Would you mind taking that on notice.

**Mr Cornall**—I will take that on notice.

**CHAIR**—Are there any further questions on 1.2?

**Senator LUDWIG**—Yes. In relation to the review of legal outsourcing arrangements, in particular, is there any monitoring of the purchase of legal services by the Commonwealth? That is the specific area that I want to address next. That gives you time to find a relevant officer if you need to. On the size of the Commonwealth's legal service, in the department's March 1997 report on the review of the Attorney-General's legal practice, it was estimated that the value of all legal services provided to the Commonwealth was in the order of \$198 million in 1995-96. Has that figure been updated since then? What would the current figure be?

**Mr Govey**—A little while ago the Attorney-General wrote to all ministers and sought responses to a very detailed questionnaire which would enable the department, through an independent consultant, to undertake the review that you are talking about. The process is not yet complete but we have received a lot of information from agencies which will enable an assessment to be made about the overall spending on legal services post the new arrangements that commenced on 1 September 1999. As I say, we are expecting that review to be completed shortly.

**Senator LUDWIG**—Who undertook the review?

**Mr Govey**—Ms Sue Tongue from a company called Sherton Pty Ltd.

**Senator LUDWIG**—Was there an RFP or a particular reference that was given to the consultancy as to what they would do and how they would go about their task?

**Mr Govey**—There were terms of reference provided.

**Senator LUDWIG**—Can they be made available to the committee?

**Mr Govey**—We will take that on notice.

**Senator LUDWIG**—How much was the consultancy?

**Mr Govey**—I would need to take that on notice as well—unless Mr Griffiths has the answer.

**Mr Griffiths**—The exact figure for the consultancy will not be known until it is concluded, but it is expected to cost roughly \$22,500.

**Senator LUDWIG**—When was that reference given? Was it by done by the Attorney-General or was it done by an interdepartmental memo?

**Mr Govey**—It was done by the department.

**Senator LUDWIG**—When did it commence?

**Mr Griffiths**—The consultant was engaged during the month of April. I am afraid I do not have the exact date. It was either late March or early April.

**Senator LUDWIG**—So we do not have an estimate at the moment but the consultant will work on an estimate and come up with an answer? When are they due to report—shortly?

**Mr Govey**—That is correct.

**Senator LUDWIG**—I am loathe to say this: is ‘shortly’ in the next couple of months?

**Mr Govey**—That is correct.

**Senator LUDWIG**—Is there a process that the consultant is asked to go through? Do they ask all of the agencies within the Attorney-General’s Department how much they spend on legal services and they then add those figures up, or is there a more sophisticated model that they employ?

**Mr Govey**—The information we receive as a result of the survey will provide us with the raw material. My understanding is that the consultant takes all that information and produces a report on not just the question of the amount of legal expenditure but also the review of the Office of Legal Services Coordination—its functions and how well it has been performing—as well a review of how well the permitted outsourcing of legal services has worked.

**Senator LUDWIG**—Will that report be made public?

**Mr Govey**—That will be a matter for the Attorney-General.

**Senator LUDWIG**—Can you see whether it can be made available to the committee?

**Mr Govey**—We can take that on notice and refer it to the Attorney.

**Senator LUDWIG**—Does that report get tabled for the Attorney-General’s consideration?

**Mr Govey**—That is right. The idea is that the report will come to the department and then we will provide it to the Attorney.

**Senator LUDWIG**—But the Attorney-General did not ask for it?

**Mr Govey**—The review originated from comments made by government ministers in the Senate at the time the Judiciary Amendment Bill was being debated. I think that was in late 1998.

**Senator LUDWIG**—Did the Attorney-General write to you and request that a review be carried out?

**Mr Govey**—We made recommendations to the Attorney-General about giving effect to that commitment. I might have been wrong about the time of the debate. The debate on the bill may well have been in early 1999. In fact, I think it was early 1999.

**Mr Griffiths**—It was 9 March 1999.

**Senator LUDWIG**—What was asked at that time? What was the commitment?

**Mr Griffiths**—There were two relevant statements. One was made by Senator Vanstone during the debate in the Senate when she was representing the Attorney-General and then, two days later, on 11 March, a statement was made by the Attorney-General himself when the bill was returned to the House. I have relatively small quotes from *Hansard* that I can read if you wish.

**Senator LUDWIG**—Or you can just make them available—take them on notice.

**Mr Griffiths**—I will do that.

**Senator LUDWIG**—In terms of monitoring compliance by agencies within the legal services directions issued by the Attorney-General, how do you then do that? If you have to get a survey under way to find out what you spend, how do you actually monitor their expenses?

**Mr Griffiths**—The process that we followed on this occasion was to develop a survey form in consultation with the Australian Bureau of Statistics. That survey form was then sent by the Attorney-General to each of his ministerial colleagues, asking them to have their departments and portfolio agencies complete the data requested in the survey and also provide more general comments for consideration by the reviewer.

**CHAIR**—Thank you, Mr Griffiths.

**Proceedings suspended from 1.00 p.m. to 2.01 p.m.**

**CHAIR**—When we adjourned at 1 p.m. we were moving at record pace through output 1.2, support for the Attorney-General as first law officer, advice on constitutional policy and promotion of Australian legal services internationally. We shall continue with that.

**Senator LUDWIG**—Just before the break, I was questioning you in relation to the review of legal outsourcing arrangements, specifically to determine the monitoring process or, in effect, how you estimate the spending on legal services. Do you ask each agency to give you an overview or a forward estimate of what they will spend?

**Mr Govey**—For the purposes of this survey, we were interested in just taking a snapshot of where expenditure—

**Senator LUDWIG**—Can you move away from the survey and answer more generally, or is the survey the only way you—

**Mr Govey**—The survey is the only way because, more generally, the Attorney-General's Department does not have a responsibility for and, for the most part, even an interest in monitoring agencies' budgets or expenditure on legal services. That is very much a matter for the agencies themselves.

**Senator LUDWIG**—I see. That helps. Is there a mechanism for monitoring compliance by agencies with the legal service directions issued by the Attorney-General, or are no directions issued?

**Mr Govey**—There have been directions issued.

**Senator LUDWIG**—I thought that.

**Mr Govey**—In fact, directions have been in force since day one, and the Office of Legal Services Coordination is responsible for monitoring that. There is a policy, which I think is on the web site for the office, which sets out, in effect, a compliance policy. The office generally looks after that policy and brings breaches of the legal services directions to the attention of agencies and, I think in most cases, of the Attorney-General.

**Senator LUDWIG**—How do you monitor that compliance?

**Mr Govey**—Mr Griffiths can provide more specific information but, in general terms, things come to our attention. For example, if counsel are engaged outside of the permitted thresholds without our approval, we tend to find out about it because the cases are quite often prominent and we would notice that a particular person was engaged and, for example, was not on the database as having an approved Commonwealth rate.

**Senator LUDWIG**—Mr Griffiths, do you have anything to add?

**Mr Griffiths**—Probably there is a range of ways in which matters come to our attention. For example, one of the legal services directions requires departments and agencies, and their legal service providers, to provide reports of significant litigation so that we can examine it and see, for example, whether it has whole-of-government issues. You can keep track of litigation through simple things like reading the news clips, keeping track of the media, talking periodically, of course, with the key legal service providers like the Australian Government Solicitor and other legal service providers. Other matters, for example, a model litigant complaint, might come to attention through ministerial correspondence, complaining to the Attorney-General about a breach of the model litigant obligation by the Commonwealth or its legal service providers. So it would be a range of methods—meeting periodically with the general counsel or their equivalent in the key government departments and agencies, meeting periodically with the Australian Government Solicitor or Blakes, Phillips Fox or Freehills, for example.

**Senator LUDWIG**—Are breaches reported to you, and how do you investigate them?

**Mr Griffiths**—Depending on the nature of the claim, if a breach of the directions is reported to us, or alleged to us, we would write usually to the department or agency concerned and/or their legal service provider and ask for a report on the claim that had been made. In a particularly significant or serious matter, we might examine the primary papers, the files themselves. That is done very sparingly. Usually, you are able to rely on a report that is provided by the department or its legal service provider.

**Senator LUDWIG**—What arrangements then do you have in place? It seems that it is ad hoc. Is that an appropriate description for your monitoring process of the directions?

**Mr Griffiths**—Ad hoc probably has a more negative connotation than I would like to own up to. We would probably call it more of a light touch, unstructured system that we use.

**Senator LUDWIG**—How many breaches of the legal service directions have been found or identified from the Office of Legal Services Coordination since directions were first issued?



**Mr Griffiths**—Senator, as you know, you have a question on notice about that, and we are, at the moment, preparing a response to your answer, which will go back to 1 September 1999. I can give you figures—

**Senator LUDWIG**—I am happy for you to just take that on notice.

**Mr Griffiths**—Thank you.

**Senator LUDWIG**—Will you also then include what arrangements you have in place to monitor those agencies?

**Mr Griffiths**—Yes.

**Senator LUDWIG**—Specifically, on appropriate selection methods, what are used to engage legal service providers; and how do you then satisfy reporting requirements and maintain adequate documentation into each agency?

**Mr Griffiths**—I might mention that that will be one of the matters that will be addressed in the consultant's report that we mentioned before lunch. The consultant is examining not just the Commonwealth legal spend, but also the role and the functions of the Office of Legal Services Coordination.

**Senator LUDWIG**—I might put some more questions on notice in that area. I have a question in relation to the budget expenditure—this question is more directed to Mr Kennedy but he is not at the table. Output 1.2 was \$5.109 million but the estimated actual expenditure was \$3.328 million. What accounts for the discrepancy?

**Mr Kennedy**—That is the capital use charge that has been abolished.

**Senator LUDWIG**—For the entire amount?

**Mr Kennedy**—For the entire amount. That will be a negative amount and there will be some small amounts for indexation on top of it. That is the reason for the reduction.

**Senator LUDWIG**—Thank you very much. I will not ask any more about that. Who should I ask more directly about what it is, how it has been worked out and how it has been proportioned among each department or output? I think we have already had this question. What I was trying to ascertain was how you determine that the share for output 1.2 is that amount. Is there a formula that Finance and Public Administration use? I am happy to direct that question to Finance and Public Administration. There does not seem to be a flat charge across all the outputs; it varies according to the output.

**Mr Kennedy**—The capital use charge was based on an agency's net assets—the difference between total assets and total liabilities. The rate was 11 per cent, which is a rate that was set by the government as a cost of capital. Every budget funded agency was subject to a charge on its net assets. For the department, we calculated a figure for 2002-03 of \$7.7 million. That was allocated across all the outputs on the basis of staffing numbers. We allocate our overheads generally on the basis of staffing numbers and this was one of those elements. Every output has a proportional share of that capital use charge in 2002-03.

**Senator LUDWIG**—It seems that the amount in output 1.2 it is disproportionate to the other amounts. Is that just the way it looks to me? I am happy to be corrected.

**Mr Kennedy**—The reduction is going from \$3.3 million to \$3.1 million. Comparing it to output 1.3, which is going from \$13.8 million to \$12.8 million, that is approximately four times the size. So just looking at those two outputs there is some proportionality between them.

[2.12 p.m.]

**CHAIR**—We will move to 1.3, Legal services and policy advice on family law and legal assistance and the administration of government programs providing legal assistance and family law related services.

**Mr Govey**—I might follow up on two matters from this morning. There was a request for the list of the agencies represented on the national action plan working group. I will provide that list to the committee. Similarly, I talked very generally about the work that was being undertaken in the ADR field by NADRAC. I have a document which sets out the work that they have been and are undertaking in recent times.

**CHAIR**—We will receive both of those documents.

**Senator KIRK**—I have some questions about Commonwealth funding for legal aid to begin with. On page 40 of the portfolio budget statement, notes 1 and 2 indicate that legal aid funding of \$1.156 million and \$0.892 million—totalling \$2.048 million—has been moved from 2002-03 to 2003-04. Could you tell us why the funding has been moved.

**Ms Lynch**—That is the carryover of the expensive criminal cases fund from the previous financial year to this year.

**Senator KIRK**—So why was that amount not spent last year?

**Ms Lynch**—The fund is intended to be an accumulating fund and, as commissions need money from it, they approach the Commonwealth. So it is money that is on top of the money that is paid to commissions under their four-year agreements. It is a fund administered by the Commonwealth that is intended to accumulate to allow for cases as they occur.

**Senator KIRK**—So it is common for it to be carried over in that way?

**Ms Lynch**—Yes.

**Senator KIRK**—The fourth dot point on the second half of page 57 of the portfolio budget statements mentions that legal aid funding of \$2 million has been previously moved from 2001-02 to 2002-03. What accounts for that movement?

**Ms Lynch**—I think that is the additional \$2 million for expensive criminal cases. There was a carryover from the current financial year to next year, and there will be an additional \$2 million going into the fund from 1 July.

**Senator KIRK**—It mentions at the top of the list that the money ‘relates primarily to new measures and factors listed below’. Is that a new measure?

**Ms Lynch**—No. The \$4 million for expensive criminal cases was part of the 2000 budget. It came in from 1 July as part of the extra \$63.1 million put into legal aid from 1 July 2000.

**Senator KIRK**—Who is conducting the negotiation of the new legal aid agreements on behalf of the Commonwealth?

**Ms Lynch**—Formal negotiations have not started, but at present the legal aid section in my division is working and discussing issues with the commissions. So the answer would be that officers in my division are working at this stage with legal aid commissioners in preliminary discussions. There is not a formal offer on the table or anything like that at this stage.

**Senator KIRK**—When are you expecting that the formal negotiations will begin?

**Ms Lynch**—A formal offer would not be on the table until much later this year, but we have had preliminary discussions on a number of issues. The commissions have been asked to advise us if they wish to raise any issues, and we have foreshadowed a couple of issues that we are interested in looking at. National Legal Aid met in February and officers in the department participated. We will meet with them again next week, and one of the topics for discussion will be issues arising in the renegotiation. So it is still at a preliminary stage but it is certainly on everyone's agenda.

**Senator KIRK**—Did you say later on in the year?

**Ms Lynch**—I would expect a formal offer to be made later on in the year. It will be some time before we are at that stage.

**Senator KIRK**—What sort of time frame are you looking at?

**Ms Lynch**—Around October is the time frame we would be looking at.

**Senator KIRK**—Have any staff recently been moved within the department to handle these legal aid negotiations?

**Ms Lynch**—Yes, the legal aid section has had an additional EL2 made available to it. At present there is one EL2 working full time on renegotiation issues, and an additional EL2 resource has moved from a different section to carry on the day-to-day legal aid issues. So at present there are two EL2s working in the legal aid area.

**Senator KIRK**—Where did that first EL2 come from? Did they come from another department?

**Ms Lynch**—No. There are two EL2s in the section. One is a permanent officer in the division and the other is on secondment from outside the division but within the department.

**Senator KIRK**—Have any informal discussions occurred with the Australian Grants Commission and legal aid commissions on the funding distribution model?

**Ms Lynch**—Yes. If you can bear with me, I can take you through what has happened. I think Senator Ludwig asked me about this at the last estimates hearings. On 25 February 2003 National Legal Aid met, and at that stage the department had provided National Legal Aid with two possible funding distribution models that they had requested us to work on. One is what is loosely called the simple model, which is independent of any commission specific data. The other model is a reworking of the current model—the one that was the basis of the 2000 agreements—but taking out some of the variables and factors that were used in that model.

They were both presented to National Legal Aid on 28 February. We met with representatives of National Legal Aid last week to further discuss those models. The department is now asking the Grants Commission to reconfigure the original 1999 Walker

model with 2001 census data and the CGC's most recent cost weight indices in order to present another possibility to the NLA. So there have been ongoing discussions and they will continue. I suspect we will probably discuss it next week at the National Legal Aid meeting.

**Senator KIRK**—So no final model has been decided upon?

**Ms Lynch**—No.

**Senator KIRK**—Any time frame for when that is likely to occur?

**Ms Lynch**—No, I don't have a time frame for that but we are continuing discussions with the commissions and having some more work done by the Grants Commission at their request.

**Senator KIRK**—When the model is decided upon, can the committee be provided with a copy?

**Ms Lynch**—Yes, but I am not in a position to tell you when that is likely to happen.

**Senator KIRK**—What you were just discussing, were they informal discussions or formal discussions settling on the model?

**Ms Lynch**—I am not sure the distinction is relevant at this point. They are ongoing discussions. The background to it is that in March 2001 the Commonwealth circulated a paper to the commissions dealing with some of the issues that the commissions had raised about the current model. Further work was done. Further models were put to the commissions incorporating some of the concerns or interests that they had expressed. So it is not a formal negotiation in the sense of we have made a formal offer which they are looking at. It is more of an iterative process at this stage, I suppose.

**Senator KIRK**—So the formal offer will be made down the track, from what you are saying?

**Ms Lynch**—Yes. The final distribution model would be wrapped up in the longer-term negotiations of the new legal aid agreements.

**Senator KIRK**—And there is no timetable for those yet?

**Ms Lynch**—There is no set timetable for when it would start.

**Senator KIRK**—Finally, will the Commonwealth be lifting the restriction on the use of Commonwealth legal aid funding for matters arising under state law?

**Ms Lynch**—No; that is not proposed to be changed.

**Senator KIRK**—My next questions are in relation to the Australian Law Online Program.

**Ms Lynch**—I can answer those, but Ms Pigeon is here as well and she is across the detail.

**Senator KIRK**—The budget provides \$5.4 million over four years for the continuation of Australian Law Online, including the Family Law Hotline and Family Law Online. I notice, though, that there is no mention in the budget papers of the Regional Law Hotline. What is happening to that?

**Ms Pidgeon**—The regional hotline component of Australian Law Online has ongoing funding and therefore did not need to be part of this budget measure.

**Senator KIRK**—So there is no proposal to abolish it in any way?

**Ms Pidgeon**—Certainly not.

**Senator KIRK**—And it has adequate funding to continue, from what you have said?

**Ms Pidgeon**—Yes.

**Senator LUDWIG**—Could you update the figures in terms of the number of calls you have had to both Australian Law Online and the Regional Law Hotline and break them down by region? I think you have been doing that quite regularly for us.

**Ms Pidgeon**—That is right. I have some updates to hand to you which include the number of calls by month overall and to the Regional Law Hotline. It does have state regions, I believe. It has electorates where we are able to identify that.

**Senator LUDWIG**—Thank you. When will the funding run out for the Regional Law Hotline? You say it is budgeted. Whereabouts in the budget is it?

**Ms Pidgeon**—It is part of the Community Legal Services Program and it is recurrent funding.

**Senator LUDWIG**—Will it go through at the same level or will it increase?

**Ms Pidgeon**—It will be the same level plus the usual price adjustment for indexation that we have in the program each year.

**Senator LUDWIG**—Is that for every out year?

**Ms Pidgeon**—Yes.

**Senator LUDWIG**—Have there been any mooted changes to the funding?

**Ms Pidgeon**—There are no proposed changes to the funding, no.

**Senator KIRK**—I understand that nine rural and regional community legal services receive funding under the Australian Law Online program. Is that correct?

**Ms Pidgeon**—That is correct.

**Senator KIRK**—Is that funding going to continue? Are there any proposed changes to the funding?

**Ms Pidgeon**—It is continuing for the moment. We are looking at options for making the Regional Law Hotline as effective as possible. No decisions have been made yet, and it may be that there will be no change in the short run. In the long run it will be a matter for a decision to be made.

**Senator KIRK**—You said that you were considering your options. How does that manifest itself? Is there a review going on into it?

**Ms Pidgeon**—No, there is a submission with the Attorney-General with a number of options for the Attorney-General's consideration.

**Senator LUDWIG**—What options are there and why would you need to change them?

**Ms Pidgeon**—Given that that is part of our advice to the Attorney-General, I think it would be a bit premature at this stage to discuss that.

**Senator LUDWIG**—What can you tell me?

**Ms Pidgeon**—We are looking at different ways that we could provide the same service to regional and rural communities. It may continue to include community legal services or there may be other ways that we could provide the same service.

**Senator LUDWIG**—Why? Is there a review that has said that is not working effectively?

**Ms Pidgeon**—The number of regional hotline calls is lower than we expected, and we would like to increase its effectiveness by, for example, including other regional areas that are not yet included.

**Senator LUDWIG**—Are those the numbers by region that you have handed up today?

**Ms Pidgeon**—Yes.

**Senator LUDWIG**—What was the target number?

**Ms Pidgeon**—I do not think there was a target number, but certainly the numbers are low compared with where we would like them to be. I am not aware of any target numbers.

**Senator LUDWIG**—Where would you like them to be—that must be your target, surely?

**Ms Pidgeon**—I would like to it have complete regional coverage, but at the moment it is in 14 designated areas. I am looking at making it more effective geographically.

**Senator LUDWIG**—So it has failed and needs to be revamped?

**Ms Pidgeon**—I wouldn't have said it has failed. It is providing a service, but it could provide a broader service to more people.

**Senator LUDWIG**—How?

**Ms Pidgeon**—Those are the options the Attorney is looking at.

**Senator LUDWIG**—Does it have sufficient resources? Does it need more resources?

**Ms Pidgeon**—No, I believe it has sufficient resources. I think it is simply a matter of looking at how the most effective use can be made of those resources.

**Senator BOLKUS**—Which one of the 14 or so has worked under capacity?

**Ms Pidgeon**—I would not want to single out any one in particular—I do not think it is a question of one or a number working under capacity. I think that the geographic coverage can now be increased if we look at it becoming a broader service. Fourteen regions is terrific, but we also have some areas that we could cover.

**Senator BOLKUS**—But you are implying that you are not getting the maximum output from the current locations. Which ones are you not getting that output from?

**Ms Pidgeon**—The community legal services would themselves that they are not as busy as they expected to be.

**Senator KIRK**—Have you consulted with the community legal services in this regard?

**Ms Pidgeon**—Yes, certainly.

**Senator KIRK**—Have they been kept informed of the nature of the submission that you have made?

**Ms Pidgeon**—Certainly. Through the National Association of Community Legal Centres, they are aware that there are options being put to the Attorney-General.

**Senator LUDWIG**—What does that mean—because there would be a reallocation of resources away from CLCs in this area?

**Ms Pidgeon**—It is a possible option, but not necessarily the one that will be chosen.

**Senator LUDWIG**—Have you discussed that with CLCs? Are they being kept informed so that they can plan?

**Ms Pidgeon**—As I said, they are aware, through the National Association of Community Legal Centres, that that is one of the options.

**Senator LUDWIG**—What options have been discussed with the CLCs? You have mentioned, which is remove funding from them.

**Ms Pidgeon**—We have discussed with CLCs what their experiences are with the Regional Law Hotline. They have given us their views on different things that could be done. We do not discuss with the CLCs, specifically, the options we will put to the Attorney-General. That is a matter of our policy advice to the Attorney.

**Senator LUDWIG**—What can you table in relation to this exchange you have had with CLCs? Is there a document that you have produced, a report or an outline of issues that you have discussed with the CLCs?

**Ms Pidgeon**—The discussion with CLCs has been at meetings rather than in a document.

**Senator LUDWIG**—Were minutes or meeting notes taken?

**Ms Pidgeon**—No, not specifically.

**Senator LUDWIG**—How do you know that is the view of the CLCs?

**Ms Pidgeon**—Because the national association has—

**Senator LUDWIG**—So you had meetings and no-one took notes?

**Ms Pidgeon**—We had meetings upon which we made decisions about which way to go forward. We did not keep minutes as such.

**Senator LUDWIG**—Did the CLCs make a written submission to you about their view?

**Ms Pidgeon**—The CLCs, through the national association, asked to meet with us and they have done that a couple of times. We have had a couple of meetings where they have passed on their views.

**Senator LUDWIG**—How have they passed on their views?

**Ms Pidgeon**—They have passed them on orally at those meetings. We have taken those views on board and have then provided advice to the Attorney.

**Senator LUDWIG**—What were their views?

**Ms Pidgeon**—That it has not been used to the capacity that they had expected and that they were interested in looking at other ways of providing a service, perhaps with more outreach rather than based entirely on telephone service—that sort of thing.

**Senator LUDWIG**—What other ways did they canvass specifically, other than by telephone?

**Ms Pidgeon**—As I said, outreach was one of the things they canvassed. They would like to move away from having a telephone service, but this funding is for a telephone based initiative.

**Senator LUDWIG**—What options did they put up? Did you take any of their options on board?

**Ms Pidgeon**—Of course we took their comments on board. I cannot discuss the advice that we are providing to the Attorney.

**Senator LUDWIG**—When will it be finalised?

**Ms Pidgeon**—I cannot say. It is with the Attorney.

**Senator Ellison**—I will take that on notice and advise the committee.

**Senator LUDWIG**—Can the Attorney-General tell us what options have been considered if the department cannot. It is a crucial issue. As I understand it, at the moment you have a Regional Law Hotline being supported and the telephones do not seem to have worked—I will use the word ‘worked’ rather than failed. The position now is that the CLCs have made oral submissions—there are no documents it seems—which have then been formulated into suggestions of a way forward. The CLCs, I suspect, are aware that all this is happening—more so now—and they are probably wondering what is going to happen to the funding, what direction the department is going to take in the future and how these services are going to continue. I suspect that regional people are also very interested as to how the Law Online process is going to work and how it will work best for them.

**Senator Ellison**—I will take that up with the Attorney and get back to the committee. I will take that on notice.

**CHAIR**—Thank you, Minister—that will be appreciated.

**Senator KIRK**—I understand five legal aid commissions received their funding under the program—those in WA, SA, Victoria, Tasmania and the Northern Territory. What will happen to their funding?

**Ms Pidgeon**—At the moment, as with the community legal services, it will continue until a decision is made and then it will depend on what that decision is.

**Senator KIRK**—I understand that two call centres—one at Bunbury and one at Traralgon—received funding under the program. What will happen to them?

**Ms Pidgeon**—The Australian Law Online—along with the Family Law Hotline and the Family Law Online—is not subject to the submission that is with the Attorney. The call centres are used for the Family Law Hotline and Family Law Online and we propose that it would continue. There is no suggestion at any stage that it would not continue. So there is no impact on call centres.

**Senator KIRK**—There is not likely to be any staff changes or the like?

**Ms Pidgeon**—No. If we can make it more effective the staff could possibly go up.



**Senator KIRK**—When did work first commence on developing the community legal services information system?

**Ms Pidgeon**—I believe that was in 1999.

**Senator KIRK**—Could you just briefly outline for the committee what that system involves.

**Ms Pidgeon**—There is currently a system called NIS, which was developed some years ago and is getting old and is ready to be replaced. The new system will provide some more functionality for the centres. It does three things. It is a way for community legal services to provide the data they have to provide to the Commonwealth, and to states where the state also funds them. It is a way of providing their financial reports, which is something that the previous system did not do. It is also a way for them to case manage their own cases, so it is intended to be something they can use themselves for their own management and financial purposes. It is a system that has been developed by the Commonwealth with a major consultation process with the centres, given that they are going to be using it, and also with the state legal aid commissions because they will be using it as well for their part of the community legal services program.

**Senator KIRK**—What was the initial budget for the project?

**Ms Pidgeon**—I was not around at the time, but I believe that the initial budget did not take into account the full process. It was \$1.8 million initially, but that did not include the expected costs towards the end of the project which could not be predicted at that earlier time.

**Senator KIRK**—Have there been variations to the project budget over those four years?

**Ms Pidgeon**—Yes, there have. There have been variations partly because the time frame has extended longer than originally expected and also because we have found there were costs involved in parts of the program which were greater than had been predicted.

**Senator KIRK**—What sort of costs are we talking about? What sorts of variations in the budget are we talking about?

**Ms Pidgeon**—The budget originally assumed that there would be one company that would project manage the whole project and would subcontract an IT company to do the programming. That prime contractor would also conduct consultations and that sort of thing. Major consultation was involved in the initial year. The IT company was subcontracted. Unfortunately, in the following year the IT company and the prime contractor found it difficult to work together. There was a point where it looked as if the project would completely stall because of problems between those two companies, not between the Commonwealth and the companies. As a result of that, there was a decision made to move to a different arrangement where the initial project management company would not undertake that task but in fact be released from the contract and the IT programmer would be contracted direct. That necessary rearrangement of responsibilities took a lot of time because we had to completely renegotiate contracts, and unfortunately it also ended up with more costs because we took on the project management side of the contract ourselves and that created more cost.

**Senator KIRK**—How long did it take? What was the nature of the delay?

**Ms Pidgeon**—That was in 2001 and it took until March 2002 to have the contracts renegotiated. We lost the better part of a year. Some technical difficulties have caused some delays even since then, so, while we are very advanced now and in fact have set a time for rollout, it will be considerably later than we originally expected.

**Senator KIRK**—It sounds like quite a mess. How much extra did it cost the Commonwealth?

**Ms Pidgeon**—At the moment it looks as if we are going to go over the \$3 million mark, but that includes costs that were not originally included in the original costing. It does include a better system than we had originally envisaged as well. So the objectives have changed to some extent, but the costs are certainly now going into the \$3 million area from that early estimate of \$1.8 million.

**Senator KIRK**—So the total cost from 1999 through to the present time is in excess of \$3 million?

**Ms Pidgeon**—That is right. I should reiterate that that included a major consultation with the services. That was the major cost initially.

**Senator KIRK**—Was the \$1.8 million the initial—

**Ms Pidgeon**—That was the initial estimate, but we had not included in the estimate a number of parts of the final phase, because they could not be predicted at that stage.

**Senator KIRK**—Exactly what did the consultation cost in the initial budget? What else did it involve?

**Ms Pidgeon**—The initial budget would have paid for the consultation and a large part of the building of the system.

**Senator KIRK**—What company was the initial contract with?

**Ms Pidgeon**—Community Link Australia was the prime contractor.

**Senator KIRK**—What about Borland Australia?

**Ms Pidgeon**—They were the IT subcontractor.

**Senator KIRK**—That company is no longer being dealt with. Is that right?

**Ms Pidgeon**—No. Community Link Australia stopped being the prime contractor. We negotiated a direct contract with Borland Australia. Community Link Australia did continue in a small way. It provided the training and support for roll-out—particularly the training and materials—but that was a small part of what they were originally going to do.

**Senator KIRK**—In the course of these dealings, have variations been made to the terms of the initial contract?

**Ms Pidgeon**—We had to completely renegotiate the contracts when it became a contract direct with Borland. We did not have a contract with Borland initially. There was a contract between Borland and Community Link Australia. As with all IT, some changes would have been required along the way. In the pilot in particular, you identify things you would like to improve or do a little differently. There is always a change process under these sorts of contracts. That would not change the contract; it would just change the specifications. We

recently made one more change. Having gone through the pilot process and identified what we need to do before roll-out, we have released Borland from their contract. We are now going to be working directly with the programmer who worked with Borland to complete the project.

**Senator LUDWIG**—This sounds like an utter disaster. Who do you have a contract with now?

**Ms Pidgeon**—With the senior programmer who has been working on this all along.

**Senator LUDWIG**—Has he got a company?

**Ms Pidgeon**—No. We have contracted him directly to us. He is working directly for us.

**Senator LUDWIG**—Is this a fresh contract? You have gone through three contracts?

**Ms Pidgeon**—This is a contract for services. He, as an individual, will finish any changes. Borland has provided what it was contracted to provide, but we decided that we wanted to make some changes and it was more economical to get them done by using the programmer direct than by going through Borland.

**Senator LUDWIG**—So you have already doubled your expenditure in this area?

**Ms Pidgeon**—No, we have not doubled it. We are not near there yet.

**Senator LUDWIG**—You have not finished yet, have you? It is not out there, is it?

**Ms Pidgeon**—I would hope that we are not going to double it.

**Senator LUDWIG**—What did you budget for? What was the budget specifically designed to cover?

**Ms Pidgeon**—I would have to take it on notice to be precise, but I believe it would have covered the consultation period and the development of the software, but it would not necessarily have included all of the training and roll-out costs that would have come towards the end of the project. I will confirm that on notice.

**Senator LUDWIG**—How far away from roll-out are you?

**Ms Pidgeon**—We are starting roll-out on 1 July.

**Senator LUDWIG**—When will you complete roll-out?

**Ms Pidgeon**—We expect it to be within three to four months, but it depends. We are going to do a review at the end of the first month to see whether there are any issues that need to be addressed before we move to a broader roll-out. We hope it will take three to four months.

**Senator LUDWIG**—How many offices will that be rolled out to?

**Ms Pidgeon**—It will be rolled out to 126 offices.

**Senator LUDWIG**—Do you have an estimate of your final cost, and is there a system for feedback?

**Ms Pidgeon**—We had feedback right through the pilot, and very recently we had meetings with people involved in the pilot. We have a person employed with the National Association of Community Legal Centres purely for this project. He works as part of that organisation but

purely to provide feedback and input and to liaise between us and the community legal services. He is constantly providing feedback.

**Senator LUDWIG**—What is the cost of the contract for this person you have put on?

**Ms Pidgeon**—I do not know the figure. I think it is initially a three-month contract, but I have to take on notice how much it is.

**Senator LUDWIG**—Is there an option to renew it?

**Ms Pidgeon**—There would be of some kind.

**Senator LUDWIG**—I am happy for you to take that on notice.

**Ms Pidgeon**—I will.

**Senator LUDWIG**—What was the amount you started with?

**Ms Pidgeon**—The original estimate was \$1.8 million, which does not include, as I have said, the final stages.

**Senator LUDWIG**—How much have you spent so far?

**Ms Pidgeon**—I can give you an exact figure on that. In total, we will be just over the \$3 million mark. Depending on just how much we spend in the next month and a half, I believe that by then we would be at \$3.1 million.

**Senator LUDWIG**—Where does the expenditure come from? If you budgeted for \$1.8 million and you are now well over budget, where is that money being drawn from?

**Ms Pidgeon**—A large part of it is from the Community Legal Services program. We do have money for IT infrastructure. Some of it has been a transfer of unspent money from other programs.

**Senator LUDWIG**—Is it money that would have otherwise been spent on community legal services that is being spent on IT?

**Ms Pidgeon**—No. It is money that would otherwise have been spent on infrastructure and such. There is no service delivery suffering as a result of this.

**Senator LUDWIG**—Then what infrastructure has been forgone?

**Ms Pidgeon**—There has always been money for the IT work that we do for the community legal services. Also, when there has been unspent money in other programs that has not been needed for services, some of that has been transferred.

**Senator LUDWIG**—What other programs are you talking about?

**Ms Pidgeon**—I will have to take on notice just where the transfers have been from.

**Senator LUDWIG**—Are the other programs in service delivery?

**Ms Pidgeon**—We have not transferred any service delivery money that would otherwise have been used for service delivery.

**Senator LUDWIG**—What would be ‘infrastructure for CLCs’?

**Ms Pidgeon**—There are several things. As I have said, there is always a budget for IT and, because of the previous system, that has been a significant amount of money in the program.

We also obviously provide various projects from time to time, including organising meetings of the organisations. For example, last year some training was provided. I do not know all the details because I was not involved at that time, but I can provide some examples on notice, if you like.

**Senator LUDWIG**—Yes, if you would not mind. I had the idea that infrastructure was an office or something physical, but you seem to consider it to be ‘a meeting’.

**Ms Pidgeon**—We also pay for people—though obviously we have not used that money for the system—in the legal aid commissions in most of the states to manage the program within those states, and we also provide money to the national association.

**Senator LUDWIG**—Have there been any advances, any supplementation to cover this?

**Ms Pidgeon**—No.

**Senator LUDWIG**—The money has come from what you can grab out of the infrastructure budget for CLCs and other programs that you will be detailing to us.

**Ms Pidgeon**—Yes.

**Senator LUDWIG**—They are the two areas?

**Ms Pidgeon**—Yes.

**Senator LUDWIG**—What happens to that infrastructure budget and the other programs’ budgets? Do they get discontinued or not dealt with?

**Ms Pidgeon**—Obviously, the CLC infrastructure budget assumes that there would be money spent on IT and on this project. So that is not taking it away from anywhere else; that has not meant that we have not provided money to a service.

**Senator LUDWIG**—How much would have been issued originally for the infrastructure budgets for CLCs?

**Ms Pidgeon**—I do not know; I will have to take that on notice. That was some way back. I do not even know whether that will be identifiable, but I will see what can be done.

**Senator LUDWIG**—You cannot identify it, but you say there is a budget for it.

**Ms Pidgeon**—I said that I will have to find out where it originally came from, how far back in history we have to go to find out where it came from or what was the original basis for it.

**Senator LUDWIG**—So we are not talking about within this budget; we are talking about within previous budgets where there has been money.

**Ms Pidgeon**—I do not believe this was part of a specific budget measure. We will have to take that on notice. We are going back a long way before this system. The previous system was also paid for by the Commonwealth.

**Senator LUDWIG**—Mr Kennedy, can you help me with this? I am trying to identify what sort of budget we are talking about, how it would have been dealt with in previous budgets and how and by how much it would have been carried forward.

**Mr Kennedy**—I am not able to add anything further, unfortunately. It is something that goes back a little bit in time, and the budgets end up being priorities identified and expenditures made from those budgets. I am not sure of the history of it. We could take it on notice and have a look at that.

**Senator KIRK**—At the time of the development of the system back in 1999, when was it due to come into operation?

**Ms Pidgeon**—The rollout was supposed to start at the end of 2001—although obviously it would have taken until some months into 2002.

**Senator KIRK**—So, basically, it is 18 months behind schedule.

**Ms Pidgeon**—Yes; that would be right.

**Senator KIRK**—What effect has having it so far behind schedule had? Has it had any significant impact on the way things are operating?

**Ms Pidgeon**—It has not had an effect on the service delivery side, because they just keep using the old system. Obviously, the longer things take the more expensive they can be.

**Senator BOLKUS**—I am trying to get a fix on the program you have just been talking about. You say it commenced in 1999.

**Ms Pidgeon**—That is the project; yes.

**Senator BOLKUS**—Budget outlays were committed in 1999 for how many years?

**Ms Pidgeon**—I do not believe it was a specific budget measure; I think it was a matter of money from within the program, as I said. I will need to come back on notice with the details, but there was not specific new money for it; it was money that had been identified within the program.

**Senator BOLKUS**—Could you identify which program we are talking about?

**Ms Pidgeon**—It is the Community Legal Services program.

**Senator BOLKUS**—A certain amount of money was allocated in 1999 for this particular program?

**Ms Pidgeon**—It was allocated over at least two years. Obviously, it was not going to take just one year to do.

**Senator BOLKUS**—Doesn't anyone in the room have documentation to explain this to us?

**Ms Pidgeon**—Not in this room.

**Senator BOLKUS**—Are you sure? Mr Kennedy, you seem to be on top of all these figures; why aren't you on top of this one?

**Mr Kennedy**—I am sorry, but unfortunately I do not have any knowledge of that at the particular time.

**Senator BOLKUS**—We are given the impression that there is an endless pool of resources from which this program can be reviewed, fixed up, re-reviewed and whatever. But the reality

is that whatever money has been applied for this particular process is coming from a budget commitment to CLCs. Is that not the case?

**Ms Pidgeon**—My understanding is that there has been a longstanding component of the CLC program for infrastructure. Ninety per cent—and in some years more—does go out to community legal services. But there is always money that we pay; for example, we pay money to legal aid commissions to help manage the project, we pay for the national association and we pay for IT.

**Senator BOLKUS**—Because of this blow-up here—as I think Senator Ludwig said, this disaster—money that otherwise would have been going to CLCs has been applied in this area.

**Ms Pidgeon**—No. None of this money would have gone to CLCs as such.

**Senator BOLKUS**—Where would it have gone?

**Ms Pidgeon**—It would always have been used on this project; it is just that it would have been completed in a shorter time if it had not been for the problems we had with the two companies.

**Senator BOLKUS**—There was no budget outlay for the third or fourth year; there was only budget outlay for two years.

**Ms Pidgeon**—But there was money in the infrastructure part of the program that would have been able to—

**Senator BOLKUS**—But that would have been applied elsewhere. Had this program taken the anticipated two years to be perfected, that money in the third and fourth years would have been going to other infrastructure needs of CLCs.

**Ms Pidgeon**—It may well have been directed to upgrading their IT equipment, which is one of the things we have actually done as part of this project.

**Senator BOLKUS**—It may very well have gone here, there or wherever. But the bottom line is that that money would have gone to CLCs for infrastructure.

**Ms Pidgeon**—Not necessarily. As we have said, some of the money has been transferred from non service delivery parts of other programs.

**Senator BOLKUS**—Other programs in the broader department? From my experience, the department—

**Ms Pidgeon**—I need to take on notice just exactly where.

**Senator BOLKUS**—You just made the assertion. On what basis did you make that?

**Ms Pidgeon**—I am aware that there was a transfer and I am aware that it did not affect service delivery, but I do not have the detail at hand.

**Senator BOLKUS**—If you are aware that there was a transfer, where did it come from?

**Ms Pidgeon**—I did not undertake the detail of that transfer myself. I need to take that on notice so that I can get the facts right.

**Senator BOLKUS**—But there was one transfer that you have identified. Would that have covered the extra funding required because of this blowing out?

**Ms Pidgeon**—Look, we are going into an area where other people involved in it were involved in the detail.

**Senator BOLKUS**—No, we are going into an error where there has been a mishandling—and I do not mean a misappropriation but an inept handling—of departmental funds and we are trying to get to the bottom of it. If you come back to us with answers to questions on notice then we will have to get you back in here again to try and re-examine it on the basis of what you provide to us. I am trying to get on top of it now.

**Ms Pidgeon**—I do not believe there has been mishandling at all. We were faced with a very difficult situation where two private companies found they could not work together anymore. We were faced as a result of that with the prospect of possibly expensive litigation; we were certainly faced with the prospect of not having a system at all. The work that we have had to do with this system has been to rescue it from a situation created by the falling out of those two private companies. I do not think that you should call that mishandling.

**Senator BOLKUS**—How much extra do you reckon you have spent on this?

**Ms Pidgeon**—As I said, the original estimate did not take into account some of the costs towards the end because they were not estimated at that stage. I have undertaken to give you, on notice, the details of what was included in the original estimate.

**Senator BOLKUS**—Who was in charge of implementation of this?

**Ms Pidgeon**—It has been the family law and legal assistance division, with the information and knowledge services part of the department also involved in the last two years.

**Senator BOLKUS**—Who within the family law division? Who was the officer?

**Ms Pidgeon**—Specifically? No one person since it started in 1999.

**Senator BOLKUS**—So is that why it is fallen all over the place—no one person had responsibility?

**Ms Pidgeon**—No. The reason it got into trouble was the falling out of the two private companies.

**Senator BOLKUS**—But who had the job of presiding over the implementation of this? It must have been someone.

**Ms Pidgeon**—It has been various branch heads. I came into the picture about a year and a half ago when I became the branch and then division head for a while.

**Senator BOLKUS**—Who was the branch head before you?

**Ms Pidgeon**—There were a couple in the year before me.

**Senator BOLKUS**—So who were they?

**Ms Pidgeon**—Chris Meaney was one and Janet Power was another.

**Senator Ellison**—I did indicate previously that three o'clock was our agreed time for AUSTRAC.

**CHAIR**—Senator Ludwig, would this be an appropriate time to make that break? Will you want to return to 1.3?



**Senator KIRK**—Yes.

**Mr Cornall**—While the officers are changing positions, Ms Leigh has a matter to report on from this morning.

**Ms Leigh**—This morning I was asked questions about the department's involvement in the ACT government's work on a Bill of Rights. I would like to add to the information that I provided this morning. At the request of this ACT government, the Attorney was on an advisers panel which commented on material to be used at the deliberative poll that the ACT government ran and the department provided comments on behalf of the Attorney to the ACT government or to the organisers of that deliberative poll on that material. It was in the nature of technical comments.

**CHAIR**—I appreciate the update. If there are no further questions flowing out of that, we can go to AUSTRAC.

[2.58 p.m.]

#### **Australian Transaction Reports and Analysis Centre**

**Senator LUDWIG**—Just in relation to the portfolio budget statement, at page 216, a total of \$4.8 million has been provided to fund additional staff across core areas. Can you give a breakdown of where those staff will be allocated and the nature of the work that they will do?

**Mr Jensen**—The breakdown is pretty much across the whole organisation. We have created a new international section because of the amount of work that has arisen over the past 12 months, particularly in respect of working with financial intelligence units overseas, entering into a memorandum of understanding and requests from and the provision of information to those organisations.

In our money-laundering monitoring area we have a number of analysts who will be looking particularly at the use of data-mining technology to assist in getting the cream of financial intelligence off the amount that we are currently generating. Our partner liaison and support area will be assisting the law enforcement agencies with training and other analytical work.

In our reporting and compliance area, which is on the regulatory side, we have a number of positions which will deal with assessing or inspecting cash dealers to ensure that they are reporting to us and will provide guidance and guidelines to them as well. We will have a small number of IT support people—programmers and people who assist with facilities—to implement the work that needs to be done, plus some general support areas including security, corporate and our policy area.

**Senator LUDWIG**—Have you been able to identify how many staff you need?

**Mr Jensen**—Yes. In respect of that funding there are currently approximately 34 positions, with a small number of IT support positions. At this stage, IT support will depend on the programs that we develop and will only use a small number of people.

**Senator LUDWIG**—Are the 34 positions permanent?

**Mr Jensen**—They are 12-month positions.

**Senator LUDWIG**—So they are contract?

**Mr Jensen**—They will be non-ongoing staff for 12 months.

**Senator LUDWIG**—That is the term that is used. They are non-ongoing and they are on a 12-month contract with an option to renew for longer periods if necessary?

**Mr Jensen**—The funding is subject to a review of structure and funding proposals. We will report to the government in the next six months or so, looking at the future of the organisation and ensuring that we are meeting best practice in both of those areas. We will determine the future then.

**Senator LUDWIG**—Is that review currently under way, or is it going to be proposed?

**Mr Jensen**—We have commenced that review.

**Senator LUDWIG**—Is that for the whole organisation—the direction of AUSTRAC and the nature of the work it does?

**Mr Jensen**—That is correct.

**Senator LUDWIG**—Are there terms of reference? Is it an internal review or an external review? Has it been required by the Attorney-General or is it generated by you?

**Mr Jensen**—It has been required by the government.

**Senator LUDWIG**—How has that come about? Did they ring you up; did they send you terms of reference?

**Mr Jensen**—The terms of reference were pretty much left with us to put the proposal forward but the basis of it is looking at cost recovery proposals, as is identified on the page that you have referred to.

**Senator LUDWIG**—I was going to come to what that was, but we seem to have got there a little earlier. AUSTRAC is implementing a cost recovery model to take effect before the 2004-05 budget, enabling the continuation of increased levels of service—is that what we are talking about?

**Mr Jensen**—That is correct. That is part of it. The other part is looking at the general structure of the organisation.

**Senator LUDWIG**—Where has that come from?

**Mr Jensen**—That is the internal process.

**Senator LUDWIG**—So you have a direction from the Attorney-General to look at a cost recovery model to take effect from or before the 2004-05 budget—is that right?

**Mr Jensen**—It is from the government rather than directly from the Attorney-General.

**Senator LUDWIG**—I am not sure who the government is, in this instance.

**Mr Cornall**—The funding was provided for one year, through the Expenditure Review Committee process, on the basis that this would be looked at and the position would then be reconsidered for the other out years in next year's budget process.

**Senator LUDWIG**—And the Expenditure Review Committee only requires the cost recovery model to be looked at?

**Mr Cornall**—Ongoing funding generally will need to be looked at, but one of the aspects that will be taken into account is whether a cost recovery model could apply to reduce the cost to the budget.

**Senator LUDWIG**—Where does that suggestion come from? Do the Expenditure Review Committee have a model in mind, or do they simply ask AUSTRAC to come up with one?

**Mr Cornall**—It was a suggestion from the Department of Finance and Administration, but I do not think the discussions have got to that point of saying what the model might be and how it might be done.

**Senator LUDWIG**—So these are early days yet?

**Mr Cornall**—That is correct.

**Senator LUDWIG**—Have you started work on a cost recovery model?

**Mr Jensen**—We have had discussions with a consultant on undertaking the work and we are hoping for an early report on that.

**Senator LUDWIG**—What are your projections for a cost recovery? Did you discuss this with the consultant or give terms of reference to the consultant?

**Mr Jensen**—We are preparing the terms of reference, and the consultant will advise us on different types of cost recovery and the process of cost recovery. We have not predetermined what that will be.

**Senator LUDWIG**—Is there a target that you are looking for?

**Mr Jensen**—A target in what sense?

**Senator LUDWIG**—Of how much money you want to recover—cost recovery. Do you want to recover all of it?

**Mr Jensen**—We look at the general issue and they will advise us on areas that are capable of being cost recovered and areas that may not be.

**Senator LUDWIG**—What areas?

**Mr Jensen**—They will advise us on that.

**Senator LUDWIG**—Who is the consultant?

**Mr Jensen**—The consultant is Access Economics.

**Senator LUDWIG**—How much are you paying them? Is there a contract?

**Mr Jensen**—Yes, it is approximately \$50,000.

**Senator LUDWIG**—Has the department of finance given you an indication of the level of cost recovery that it would expect?

**Mr Jensen**—No, that has not been indicated to us at this point in time.

**Senator LUDWIG**—Who is driving it then? You could write back and say, ‘We are doing as good as we are.’ You recover some costs already, don’t you?

**Mr Jensen**—No, we do not.

**Senator LUDWIG**—So your base level is zero?

**Mr Jensen**—Yes.

**Senator LUDWIG**—They have just said, ‘Show me the money’?

**Mr Jensen**—What we have been asked to do at this point is to look at a cost recovery model in respect of the funding that has been indicated here. There are two tranches of funding: A Safer Australia, which is \$4.8 million, and the National Illicit Drugs Strategy which is \$3.4 million. We have been asked to look at a cost recovery program in respect of that funding. The underlying budget funding is still there. We have not specifically been asked to look at a cost recovery for that, but that would be considered in the whole process.

**Senator LUDWIG**—So you are not going to look at cost recovery with all the MOUs?

**Mr Jensen**—We are looking at the general issue of cost recovery and at components of that: where and how it may be applied. There may be different styles of cost recovery, for example, there may be a subscription component or a user access component. We are going to have a look at all of those aspects of it and determine what the best possible approach is.

**Senator LUDWIG**—Who do you have MOUs with at the moment?

**Mr Jensen**—At the moment, there are some 25 MOUs in our domestic partner agencies: the major Commonwealth law enforcement agencies, the tax office and other Commonwealth agencies.

**Senator LUDWIG**—I am happy for you to take that on notice if you are able to provide a list. So there are 25 MOUs, plus those overseas as well?

**Mr Jensen**—That would need to be looked at in the whole program. Whether it would be feasible to recover costs from overseas agencies or not is an issue we need to look at.

**Senator LUDWIG**—So that includes the states and private companies as well?

**Mr Jensen**—Not private companies. We only provide data to government, but there is the aspect of our regulatory role and what should be done there as well.

**Senator LUDWIG**—And what about state governments?

**Mr Jensen**—State governments, state police forces, state revenue offices—

**Senator LUDWIG**—Have they been advised that this is happening?

**Mr Jensen**—We have only just initiated it and we will have a look at what possibilities are there and then consult with them.

**Senator LUDWIG**—So right now the services are effectively free then?

**Mr Jensen**—That is correct.

**Senator LUDWIG**—Unless I heard incorrectly, you said originally that it was going to be looked at only for NIDS and those programs, but it is broader than that isn't it?

**Mr Jensen**—At this point we have been specifically directed at those programs. The reason I say it is broader than that is that we look generally at the issue of cost recovery and how it can be applied across the organisation.

**Senator LUDWIG**—I see. Is the consultant is going to look at only those programs or the broader ones?

**Mr Jensen**—It will look at two things. The first thing is the types of programs that may be feasible and then we will need to look at how that can be applied across various areas of our partner agencies and our program.

**Senator LUDWIG**—Is there an implementation timetable? When does the department of finance expect you have an answer to them? Yesterday by the sounds of it.

**Mr Jensen**—In terms of the detail in the PBS, it says ‘To take effect before the 2004-05 budget.’

**Senator LUDWIG**—So they want it all wrapped up by then?

**Mr Jensen**—I would assume so.

**Senator LUDWIG**—So, effectively, there will be a charge for intelligence? That is what you are doing, isn't it? You have been asked to work out a fee for intelligence services that you provide to internal and overseas agencies and state governments.

**Mr Jensen**—That is the likelihood of it, yes.

**Senator LUDWIG**—Is there a precedent on that? I do not know whether ASIO do it.

**Mr Jensen**—It is difficult to say that there is a precedent because we are a single type of agency, but other agencies do charge for their services in different ways.

**Senator LUDWIG**—What happens when people say, ‘We like the service but we cannot afford it anymore’?

**Mr Jensen**—That is something we need to look at and consider in the overall proposal.

**Senator LUDWIG**—Do you obtain information from the states? Is there a two-way communication?

**Mr Jensen**—There is a two-way communication, but generally speaking the answer to that is limited. In terms of the transaction reports, we mainly get our information from the private sector and then we make that available predominately to law enforcement and revenue agencies. There may be information that they provide to us, for example, to assist us in applying our intelligence to certain matters. One other issue is that Customs do provide us with a service in collecting reports from cross-border currency movements into and out of Australia and in making those reports available to us.

**Senator LUDWIG**—In this model there could be the potential to open up a charge upon you as well. If you then start charging others, the consequences are others could charge you.

**Mr Jensen**—That is correct.

**Senator LUDWIG**—Is the consultant also going to look at that side of the equation?

**Mr Jensen**—The consultant will consider all of the relevant factors in that, and I would consider that to be a relevant factor.

**Senator LUDWIG**—Where do you think there is scope for cost recovery?

**Mr Jensen**—I would look to the consultants to advise us on that specifically.

**Senator LUDWIG**—What if he has no idea? Surely you have to provide him with some guidance. It is your organisation, isn't it?

**Mr Jensen**—Yes. We will be providing him with an understanding of the work we do and the organisations we deal with. We will consult with the organisations to evaluate their ability to meet a program, and that will then be put forward.

**Senator LUDWIG**—What details do you have on how you will use your current expenditure to enhance your financial intelligence capability in the area of the National Illicit Drug Strategy?

**Mr Jensen**—There are a range of things there. We are specifically looking at psycho-stimulant type drugs and, if I can put it in these terms, at footprinting the conduct that the law enforcement agencies are already seeing but putting a focus of financial transactions or financial intelligence on that. We will be linking more closely with our overseas sister organisations, financial intelligence units, in terms of what they are finding at the moment and what the links are between them and Australia. We will also be looking at the cash dealer side of things to ensure that we are getting all of the relevant information from the relevant areas so that we can apply our technology to that. The final point is that we are looking at data mining technology to get a closer look at the type of conduct, the specific conduct, to provide better intelligence to the law enforcement agencies.

**Senator LUDWIG**—It looks like you have to have a proposal by 2004, and you will be charging for that. Do you know what the level of charging will be?

**Mr Jensen**—For that particular service?

**Senator LUDWIG**—Yes.

**Mr Jensen**—At this point in time, no. I do not know the answer to that. We would need to evaluate that over the period of time. It depends on the type of program that would fit best for the organisation and for the partners to be able to meet any costs that would be allocated. Without having sat down with the consultants and gone through a range of different programs, it is very difficult at this point in time to come back and give a specific answer to that. I would say that it is probably at least four or five months away before we get to that point.

**Senator LUDWIG**—What types of drugs do you target as part of the National Illicit Drug Strategy?

**Mr Jensen**—In this particular case, we would be looking at, for example, ecstasy—as I say, the psycho-stimulant type drugs. We would be looking at where they come from, what the process is in getting them into Australia and the underlying factors. Our important interest in that is looking at the financial aspects and coming up with a program that will automatically provide us with intelligence out of our system to go back to law enforcement agencies with.

**Senator LUDWIG**—We spoke about the MOUs, but are there any other organisations or outside agencies which you can enter into agreements with for access and use of your financial transaction report information?

**Mr Jensen**—Only those specifically referred to in the legislation, either as the domestic agencies, which are specifically listed, or the international FIUs—financial intelligence units—that we can enter into an agreement with.

**Senator LUDWIG**—Will you be able to provide a list of those?

**Mr Jensen**—Certainly.

**Senator LUDWIG**—Can you include the agreements. Obviously, that will be the total of agreements and with whom and if it is more than one agreement per agency.

**Mr Jensen**—It is one agreement per agency.

**Senator LUDWIG**—So it will cover the entire agency?

**Mr Jensen**—The entire relationship, yes.

**Senator LUDWIG**—And, depending on what the MOU says, they can gain access. Is there a template MOU, or is it tailor-made depending on the nature of the organisation that you are interfacing with and the information you want to provide?

**Mr Jensen**—There is actually both: there is the MOU and the schedule to the MOU. The MOU is pretty much a template for all organisations and the schedule sets down the type of access and the number of staff that they can have accessing our data and in what ways they can access the different types of data. So it covers both of those.

**Senator LUDWIG**—Could that table reflect that information as well?

**Mr Jensen**—Certainly. It is a different agreement with the international agencies but, again, it is a pro forma type of agreement.

**Senator LUDWIG**—In relation to fraud, is there no additional money to combat fraud in the budget for AUSTRAC?

**Mr Jensen**—Not specifically fraud, but the \$4.8 million covers our core business areas, if you like, so it also covers fraud—although primarily the work that is being looked at is counterterrorism type terrorist financing activities.

**Senator LUDWIG**—In regard to high-risk cash dealers, there is an additional \$1.8 million. What is that?

**Mr Jensen**—That is ongoing funding under the National Illicit Drug Strategy that commenced about four years ago.

**Senator LUDWIG**—It says here that it has already been included in the forward estimates.

**Mr Jensen**—That is correct, yes.

**Senator LUDWIG**—Is that for all the out years? Is there an additional \$1.8 million or is that part of the—

**Mr Jensen**—That is part of the ongoing funding.

**Senator LUDWIG**—And it has been identified as part of the National Illicit Drug Strategy to be used for high-risk cash dealers?

**Mr Jensen**—That is correct.

**Senator LUDWIG**—In table 1.3, 'Receipts from independent sources', on page 214 it has 'Total estimated revenue' of \$286,000 and \$236,000 in the 'Other' category. What is that exactly? There is no further projection of it, so is it a one-off?

**Mr Jensen**—That was a one-off amount of funding that we got under the NIDS—National Illicit Drug Strategy—program is to assist us with the pilot project on data mining technology. That provided the technology that we needed.

**Senator LUDWIG**—Where did that money come from?

**Mr Jensen**—That came jointly from the Australian Federal Police, the Australian Customs Service and, at the time, the National Crime Authority.

**Senator LUDWIG**—Was there a report on that about data mining?

**Mr Jensen**—That is correct, yes.

**Senator LUDWIG**—Is that finished now?

**Mr Jensen**—It is ongoing. The pilot program was put into effect, and this funding was to provide the software that was necessary. We have ongoing use of the software and we are continuing to develop that. It fits within our ongoing programs.

**Senator LUDWIG**—Is that also going to be part of your cost recovery process, if it is successful?

**Mr Jensen**—It will be considered in the whole process, because it will be providing a component of the financial intelligence that we provide.

**Senator LUDWIG**—There is a note to your outcome 1, ‘Resourcing’, on table 2.1.1 on page 218, which says:

AUSTRAC has a special account titled *Law Enforcement Projects*. This account has a zero balance and has been inactive for several years.

Is it that you do not have any law enforcement projects?

**Mr Jensen**—It was an account that was set up by the Department of Finance and Administration some years ago which has never been operated on.

**Mr Mazzitelli**—That account was set up back in, I think, the mid-1990s to work on what was known as the AUSTRAC messaging infrastructure, financial law enforcement agency grid. It was the early stages of email amongst the law enforcement community. It was one-off funding provided to AUSTRAC to work in that area. Funding has since lapsed and the account has been inactive since then.

**Senator LUDWIG**—Isn’t the data mining a special project, or is it not one of those ones that fits underneath that?

**Mr Mazzitelli**—No; it was funded from other agencies rather than from the government.

**Senator LUDWIG**—What efforts have been made to improve relations with neighbouring countries, particularly with cash dealing and the like?

**Mr Jensen**—We have undertaken quite a bit of work, particularly with Indonesia, to assist them to get their financial intelligence unit up and running. Through some AusAID funding provided to us we currently have one officer in the organisation in Indonesia assisting them to develop their standard operating procedures and undertake their work. We look at it as a future benefit to us to have a good working relationship with them. We are also looking at how we can potentially develop further into South-East Asia and the Pacific. We also have



provided assistance to Vanuatu to help train their limited staff in the use of technology to analyse data. We are developing ongoing relationships within South-East Asia and the Pacific with a number of the developing FIUs and will continue to do that work.

**Senator LUDWIG**—How would a cost recovery model affect those relations if you then had to charge?

**Mr Jensen**—It is certainly an aspect that we need to look very closely at in terms of whether we can charge for those services; whether it is feasible and whether it is acceptable. That needs to be assessed, and I do not have an answer for that at this stage.

**Senator LUDWIG**—There is also a line:

In addition to outcome resourcing, a Capital injection of \$2.498m has been provided in 2003-04 to fund the acquisition of plant and equipment to undertake measures as outlined in Table 1.2.

Are those the issues that we were talking about earlier, or is that something different again?

**Mr Jensen**—That is part of the funding for this year. That is a one-off capital injection for accommodation and for IT equipment, if I can put it in those general terms.

**Senator LUDWIG**—What accommodation?

**Mr Jensen**—For the extra staffing that we are able to put on for the next 12 months. Some of those staff will be outposted into law enforcement agencies as well, so they will not be entirely stationed within our premises.

**Senator LUDWIG**—So you will you need to lease bigger premises to accommodate the additional staff?

**Mr Jensen**—That is correct.

**Senator LUDWIG**—Is there floor area where you are now?

**Mr Jensen**—Yes, there is.

**Senator LUDWIG**—Then you can take that on for 12 months.

**Mr Jensen**—That is correct. We are negotiating with that at the moment.

**Senator Ellison**—Have we finished 1.3?

**CHAIR**—No, we are coming back to that now—which is why I have brought Ms Pidgeon back, and I think Ms Lynch is on her way.

#### **Attorney-General's Department**

**Senator LUDWIG**—What is the current status of the review of community legal services in New South Wales and Western Australia?

**Ms Pidgeon**—Western Australia is very advanced; in fact, it should be finishing up in the next few months. I understand that it is at the point of putting together a consultation paper, taking into account all the submissions that have been received.

**Senator LUDWIG**—Will there be a report?

**Ms Pidgeon**—There would normally be report. I understand there will be a report.

**Senator LUDWIG**—When will that be made available?

**Ms Pidgeon**—I do not have a time frame for that, but I would imagine it would be in the next few months.

**Ms Lynch**—Are you asking when it will be publicly available or distributed to parties?

**Senator LUDWIG**—I was going to get to that.

**Ms Lynch**—My brief suggests that there is a draft consultation report which should be ready by June. I do not have a date for finalisation of the report, and public release would be a matter for the two attorneys involved.

**Senator LUDWIG**—So there will be a draft consultative report available to the Attorney-General?

**Ms Lynch**—No, I think it will be going back to parties involved in the review in June. My brief refers to having a draft consultation report for consideration completed by June.

**Senator LUDWIG**—So the final report would be some months after that.

**Ms Lynch**—Yes. I do not have an indication of how long it will take to finalise the report.

**Senator LUDWIG**—When that is finished it will go to whom?

**Ms Lynch**—The two attorneys involved.

**Senator LUDWIG**—Yes. So the report will then end up on Mr Cornall's table at some point in time, and it may or may not be public at that point.

**Ms Lynch**—That would be a matter for the two attorneys.

**Senator LUDWIG**—We might leave that until then, I guess. Do you have a costing of the review?

**Ms Pidgeon**—In New South Wales or Western Australia?

**Senator LUDWIG**—Both.

**Ms Pidgeon**—I do not have a precise costing. We had previously allocated \$50,000 for each review, as the Commonwealth contribution, but I do not have the actual costing and how much the whole review cost for both state and Commonwealth. I can take that on notice.

**Senator LUDWIG**—Please. So what is the status of the other outstanding report? We know where this one is, roughly.

**Ms Pidgeon**—New South Wales is still in its early stages. There is agreement on membership of the review committee, but a chair is yet to be appointed.

**Senator LUDWIG**—So it has not commenced yet.

**Ms Pidgeon**—No.

**Ms Lynch**—The New South Wales one has got agreed terms of reference, which I can hand you a copy of.

**Senator LUDWIG**—Yes, please. Did the Western Australian one have terms of reference?

**Ms Pidgeon**—It does have.

**Senator LUDWIG**—And can they be made available? I am happy for you to take that on notice.

**Ms Lynch**—I have got those with me as well, so I can hand them up.

**CHAIR**—Thank you. I will have those collected for you.

**Senator LUDWIG**—Do you have a figure on how much has been spent to date on those two reviews?

**Ms Pidgeon**—Because the reviews are joint reviews with the states, I do not have that, but I can provide that information on notice.

**Senator LUDWIG**—In relation to primary dispute resolution, 24 community organisations receive funding to provide family support services. How many of these organisations charge fees to users of these services?

**Ms Pidgeon**—My understanding is that all of the organisations charge fees but there are provisions for waiver of fees where the individuals concerned would have difficulty paying for them.

**Senator LUDWIG**—Do you know what fees each organisation charges?

**Ms Pidgeon**—Not personally. There are a large number of organisations involved across the whole family relationship services program, including the ones that are providing these services. They have their own fees policies. The program is actually administered by the Department of Family and Community Services. They may have more detailed information than we have on fees.

**Senator LUDWIG**—Do you have a monitoring process in place to make sure that the fees are not excessive?

**Ms Pidgeon**—That would be something that Family and Community Services may or may not have. We do not involved in that sort of close management of the program.

**Senator LUDWIG**—What part of the management of the program do you involve yourselves in?

**Ms Pidgeon**—We have the policy responsibility for part of the program and we also have the funding responsibility for part of the program, but the actual administration of the program is through the Family and Community Services department. We pay our part of the funding to that department and all the money goes to the organisations from that department.

**Senator LUDWIG**—Minister, what is your policy in relation to this? I understood it was to pursue a policy of outsourcing free counselling services from the Family Court to private fee-for-service operators. Is that still the aim?

**Ms Pidgeon**—I can answer that. This is not policy of outsourcing from the Family Court. It is Commonwealth policy that there should be community-based community and legal services, so outsourcing is not the appropriate word. It has not at any time been free; it is always had been on the basis of organisations charging fees where that is appropriate and not charging them where people have not got the capacity to pay.

**Senator LUDWIG**—Who monitors that to make sure that its in fact happens that those people—

**Ms Pidgeon**—The administration of the program is with the Family and Community Services portfolio, so any monitoring of the organisations would be by the department.

**Senator LUDWIG**—What I was getting at was that if the policy is yours and part of the funding is from the Attorney-General's Department—

**Ms Pidgeon**—The policy part of it is ours.

**Senator LUDWIG**—That is right. So how do you monitor that the policy is being implemented from your perspective, the perspective of your branch of Attorney-General's, and that the funding is being spent appropriately to ensure that the policy outcome is being achieved?

**Ms Pidgeon**—The application of the fees arrangements is not something that we have detailed monitoring of. Our policy objectives are in terms of there being accessible services, that we can try and make services available where the highest need is—those sorts of policy objectives. The detailed policy in relation to fees we have not been monitoring and I do not know whether Family and Community Services have an ongoing monitoring of that.

**Senator LUDWIG**—I might be missing something and perhaps you can help me. Isn't that fee integral to those first two issues, including accessibility? If it is too dear, you cannot go.

**Ms Pidgeon**—It is not something that we have under active monitoring.

**Senator LUDWIG**—How do you work out whether it is accessible? If there is an excess fee or a sufficient fee being charged and there is no exemption process or an exemption process is inadequate and these community organisations or whatever they might be are charging and then as a consequence the target audience, to put it that way, does not find it accessible, how do you work that out?

**Ms Pidgeon**—I have to say that it is not something that we have needed to put resources into monitoring, and if we did we would have to do it through the Department of Family and Community Services because we do not directly administer the program. But it is not something that has come up as an issue for people. If anything, there is a large amount of waiving of fees by organisations.

**Senator LUDWIG**—So Family and Community Services would be the ones that would have the contract.

**Ms Pidgeon**—Yes.

**Senator LUDWIG**—Right. Do you have a contract with Family and Community Services?

**Ms Pidgeon**—There is a business partnership agreement. We do not have a contract as such.

**Senator LUDWIG**—Is that available?

**Ms Pidgeon**—Yes. The existing one is quite old now and it is about to be reviewed. I could make the old one available if you like, but we would hope to have a new one in place in the next couple of months. Would you like the old one and the new one, or just the new one when it is in place?

**Senator LUDWIG**—I think we will have both if you have them.

**Ms Pidgeon**—That is not a problem.

**Senator LUDWIG**—You said that it is under review. I assume, from what you have said, that it has been working well. Why is it under review, then?

**Ms Pidgeon**—Our arrangement with the Department of Family and Community Services has been working well. The business partnership agreement was developed at a very early stage when responsibility for half the program moved and responsibility for administering the program entirely moved to the Family and Community Services portfolio. It was drafted at a time when we did not know how we would work together. It is a very detailed piece of paper, but we think that we could work more efficiently with a less prescriptive piece of paper, so we are reviewing it in the light of our experience.

**Senator LUDWIG**—So the government's primary aim is to support families to help them stay together?

**Ms Pidgeon**—The program has two aims. One is to help families stay together but, when families are separating, another aim is to provide—

**Senator LUDWIG**—Support services as needed?

**Ms Pidgeon**—Yes.

**Senator LUDWIG**—So there is a twin goal, and part of it is to ensure that the 24 community organisations can provide that service. What check do you have with Family and Community Services to see that they are achieving those twin goals?

**Ms Pidgeon**—Different parts of the program are evaluated at various times. There are a number of different sorts of services that are funded and, as usual with a program, we have reviews and evaluations—usually external reviews—of particular parts, which give us that information.

**Senator LUDWIG**—How many external reviews have you done in the last 12 months?

**Ms Pidgeon**—There is not currently an external review of any part of our department, although a general review of the overall program by Family and Community Services is starting up for this coming year. The most recent evaluation was of the contact services program.

**Senator LUDWIG**—Did I miss something? Didn't you just tell me that one of the mechanisms you used was an external review?

**Ms Pidgeon**—Yes.

**Senator LUDWIG**—Then I asked you: 'In the last 12 months have there been any?' and you said, 'No.'

**Ms Pidgeon**—Not in the last 12 months. There was one in the previous 12 months.

**Senator LUDWIG**—So that is one in the last two years. Is that right?

**Ms Pidgeon**—This is a rolling program. You do not do external reviews every year, but you have rolling programs. Plus there are audits.

**Senator LUDWIG**—So are you saying that one in two years is appropriate?

**Ms Pidgeon**—It is for an external review, because they are quite expensive; we do not have a lot of money. The family and community services department also has an audit program, which audits the contracts they have with these sorts of organisations.

**Senator LUDWIG**—Thank you. Chair, the questions I have next go to financial assistance to witnesses appearing before the royal commissions. I understand that the department is going to deal with the royal commissions, but I am not sure which outcome they would come under.

**CHAIR**—Yes, indeed. We had some correspondence on that matter.

**Mr Cornall**—This is the appropriate area to talk about financial assistance.

**Senator LUDWIG**—I thought it may have been here, but I just wanted to check. How much has been provided to date in financial assistance to witnesses appearing before the HIH royal commission?

**Ms Lynch**—The update of the material that we handed up before tells you where we are with commitment and actual amounts paid.

**Senator LUDWIG**—I can cross out a page of questions, can I?

**Ms Lynch**—I should note, though, that we discovered that we had done a little bit of miscounting with the material we handed up in February, so we gave the committee a corrected version of the February hand-up on Friday. This is now the next update of the February material. It shows you that, so far, in relation to the BCI royal commission we have made commitments of about \$4.2 million and have paid out about \$1.2 million. In relation to HIH we have committed about \$3.3 million and paid out about \$1.9 million.

**Senator LUDWIG**—Are any applications outstanding?

**Ms Lynch**—Yes. There are currently about 23 applications outstanding in the BCI royal commission plus three requests for extensions outstanding. There are no outstanding applications with respect to HIH, but there are three outstanding requests for extensions.

**Senator LUDWIG**—Is there an estimate as to how much that will cost?

**Ms Lynch**—No, I do not have an estimate of how much might be involved in the outstanding extensions or applications. Some of those applications are still waiting further information from the solicitors or the applicants involved.

**Senator LUDWIG**—Would you normally do an assessment as to how much is outstanding in terms of cost? Where does the money come from?

**Ms Lynch**—In relation to applications that have been dealt with, we make the commitment and then we pay against that commitment. So we know that, potentially, we have 7.5 outstanding. I take on notice the amount that might be involved in the remaining applications that are still pending.

**Senator LUDWIG**—Is there a way that you can assess that?

**Ms Lynch**—You could potentially do it on the basis of what people have asked for, but we do not always fully—

**Senator LUDWIG**—That could be an overestimate or an underestimate.

**Ms Lynch**—Yes, that is right.

**Senator LUDWIG**—What about the proportion that are outstanding, that have already been dealt with?

**Ms Lynch**—Mr Govey has just pointed out that he thinks I said that we had 7.5 outstanding. We have 7.5 on commitment in the sense of—

**Senator LUDWIG**—I understood it as that. There were some that you paid out in the BCI. I was just doing the arithmetic and I had come to the same conclusion. Do you know what proportion is outstanding as against what you have dealt with?

**Ms Lynch**—I could calculate that from the figures that I have.

**Senator LUDWIG**—If they are already there—

**Ms Lynch**—What I have is the handout, the same as the ones from last time that show you the amount committed and total amount paid out. If I had a calculator here, I could get the figures.

**Senator LUDWIG**—No, it will not be necessary, thank you. Those documents will be sufficient.

**Ms Lynch**—While we are on that subject, when we sent in the corrected papers on Friday, one thing that we meant to draw to your attention but did not was that, in the table, we broke up figures between amounts paid to particular solicitors against number of people involved. There had been a miscalculation in the February one. So I need to draw your attention to the fact that we have made that correction. In the February paper as originally provided, it said that solicitor I had 48 applicants when, in fact, it was 52 and that solicitor K had 52 applicants when, in fact, it was 47. So there are a couple of changes made to the February document. These are now the correct figures as of 23 May.

**Senator LUDWIG**—If there is a dispute, as there seems to be, over the amount of financial assistance, who taxes it? Is it referred off for taxation or is it a negotiated outcome?

**Ms Lynch**—People send in their accounts, which are then gone through by officers in the department. I know there are a certain amount of questions to and fro in areas. I am not aware whether anyone has actually sought a review yet of a decision to accept or reject particular bills. I am not aware—although I could take it on notice—whether anyone has sought a review of a decision to make the initial grant in the first place. It would be open to people to seek a review of the initial grant when it was decided how much we would commit and then it would also be open to people to seek a second opinion within the department in relation to disputed costs.

**Senator LUDWIG**—Does that suggest to you that they have been overgenerous if nobody has called you to task over the amount that they have received?

**Ms Lynch**—I know there have been cases where we have not provided the full assistance that was sought.

**Senator LUDWIG**—Is there a breakdown of the actual percentage or in terms of each individual claim as to how much you are satisfied with the amount that has been requested?

**Ms Lynch**—I do not think I understand your question.

**Senator LUDWIG**—If solicitor A has put in a claim for financial assistance on behalf of someone for X dollars, how many times have you come up with X dollars or X minus \$100 or X minus \$200?

**Ms Lynch**—I think I need to take that one on notice about the exact number of cases where we had given people less than they had asked for.

**Senator LUDWIG**—You see, my point is that if each time that the solicitor or person representing the person seeks financial assistance you satisfy the claim, there is unlikely to be a request for a review, is there?

**Ms Lynch**—I can see the point you are making.

**Senator LUDWIG**—No-one is going to ask for a review of an amount they got.

**Ms Lynch**—No, but on the other hand we also have had applications for extensions where people have found they were going to incur more costs than they had anticipated at the time they put the application in. Those references to extensions would be where people have come back to us and said that either their initial assessment was not correct or we have not provided enough because they have been required to provide further assistance.

**Senator LUDWIG**—And have you met those additional requests as well?

**Ms Lynch**—Those extensions would be considered the same way an application is in the first place, yes.

**Senator LUDWIG**—I would not mind a bank account like that. If you meet those, there is not going to be a review either. What is your check in the system? If you keep meeting all the costs, even with extensions, there will never be a review. But that would call into question how generous you were being, really.

**Ms Leigh**—There are also limits on the rates that are paid. It is 80 per cent of the Federal Court scale for solicitors' fees. Counsels' fees are \$148 an hour, up to \$1,184 a day, for junior counsel and up to \$2,400 a day for senior counsel. Solicitors and counsel are being paid at a fixed rate that is not their commercial rate.

**Senator LUDWIG**—That is the top rate.

**Ms Lynch**—Yes, it is the top rate. It is 80 per cent of Federal Court scale for solicitors. I have misread the counsel fees; I apologise. Counsel fees are \$1,184 to \$1,600 a day for junior counsel and \$1,600 to \$2,400 a day for senior counsel. People only get paid at that rate and there is an assessment of whether the work for which they are seeking assistance is reasonable.

**Senator LUDWIG**—But they are not taxed. You only deal with the internal review, as you have said.

**Ms Lynch**—Do you mean taxed in the sense of the way it is done with a taxing officer in a court?

**Senator LUDWIG**—Yes.



**Ms Lynch**—No. But they submit detailed accounts, which are then gone through by officers in the department.

**Senator LUDWIG**—As a check in the system, have you asked for one of them to be taxed?

**Ms Lynch**—No.

**Senator LUDWIG**—That would give you an idea of how the court might then view it as a bill. It is not unusual to have bills taxed.

**Mr Cornall**—You tax party-party bills. These are in effect solicitor-client bills and they are not in a court environment, so I do not think that option is available. The issue is to validate the bills against the fee levels that have been agreed and to ensure that the services provided appear to be the services necessary and not excessive services.

**Senator LUDWIG**—I agree with you that that is the aim. I am trying to determine whether that has occurred. I take it it has.

**Mr Cornall**—That is my understanding. Part of this mechanism is to ensure that when the fees are established in the initial grant and the commitment is made to a certain level that those sorts of factors are taken into account.

**Senator LUDWIG**—Output 1.3 additionally shows \$10.909 million, whereas actual estimate expenditure was \$13.796 million. Is that that capital usage charge again, Mr Kennedy?

**Mr Kennedy**—That is correct.

**Senator LUDWIG**—Is that all of it?

**Mr Kennedy**—What page reference? Page 39?

**Senator LUDWIG**—Yes.

**Mr Kennedy**—Output 1.3 is going from \$13.8 million to \$12.8 million. That is the capital use charge again.

**Senator LUDWIG**—That accounts for the whole difference?

**Mr Kennedy**—That accounts for the whole difference, yes.

**Senator LUDWIG**—Is the issue of the International Criminal Court also in this area?

**Mr Cornall**—No, that is the criminal justice area.

**Senator LUDWIG**—That is which output?

**Mr Cornall**—Output 2.1.

**Senator LUDWIG**—That is a long way away.

**CHAIR**—We will be there eventually, though, won't we, Senator Ludwig? We will take a short break.

**Ms Lynch**—Before we break, I think Mr Kennedy needs to clarify a response I gave to Senator Kirk a little earlier about the \$2 million set out on page 57 of the PBS. I think I had

indicated it was \$2 million coming into expensive criminal cases this year, but it is in fact the carryover of expensive criminal cases.

**Mr Kennedy**—That is correct. That particular dot point is intended to explain one of the reasons for the increase in total appropriations, going from 02-03 to 03-04. Unfortunately, what has just caused some confusion is that the carryover is referred to on page 57 as going from 01-02 to 02-03, and that should have been from 02-03 to 03-04.

**Senator LUDWIG**—So you have found an error.

**Mr Kennedy**—Yes. Unfortunately we have missed that, so apologies to the committee for that.

**Senator LUDWIG**—That helps us. Thank you very much.

**CHAIR**—We will have a brief adjournment.

**Proceedings suspended from 3.51 p.m. to 4.04 p.m.**

**CHAIR**—Minister, to provide an update to you, Mr Cornall, the committee and all of the attending officers, after consultation with committee members I can indicate that the committee regards output 1.4 as dealt with—so those officers are able to go. We have nothing further in output 1.5; we have no questions at this time in relation to output 1.6. We would seek, in relation to output 1.7, that those officers perhaps make themselves available at the time of the appearance of the National Native Title Tribunal in tomorrow's schedule, to assist the committee. We would be grateful for that. I want to thank those officers who have waited patiently to see if we did need to pursue those areas today.

I can also advise that we have dealt with all the matters that were to be raised in output 2.2, so those officers are also not required. Officers for output 2.5: I can indicate that there are no questions in that area this afternoon.

Having dealt with AUSTRAC, in relation to the other portfolio agencies can I indicate that we will, as indicated on the program, come to the Australian Customs Service at 7.30 p.m. It is envisaged that that will take approximately two hours to examine, and we would then like to return to the Canberra based agencies, listed as CrimTrac, the AGS, the DPP and ITSA, at approximately 9.30 this evening, with a view to dealing with all of those Canberra agencies by the end of the committee sittings tonight. Does that provide some clarity, Minister?

**Senator Ellison**—I am most grateful to the committee and to you for that. That is of great assistance.

[4.06 p.m.]

**CHAIR**—Good. In line with those arrangements, we will go to output 2.1, and Senator Ludwig will start with questions in that area. I understand that Senator Jacinta Collins also has questions in that area and will come back to the committee room as soon as she is able to. Again I thank officers for their patience in waiting until this point in the day for these arrangements to be confirmed.

**Senator LUDWIG**—For the Criminal Justice Division, the budget provided \$7.5 million over four years for Australia's funding contribution to the International Criminal Court:

\$2 million in 2002, \$1.3 million in 2003-04 and \$1.4 in each of the following three out-years. How was Australia's contribution assessed?

**Ms Blackburn**—Contributions to the ICC are allocated using the UN scale of assessment, which is adjusted to reflect the number of ICC state parties. Australia's share of the total of each of the required contributions is currently at 3.37 per cent. The numbers that you have read out are the projected contributions required from Australia.

**Senator LUDWIG**—Where did that percentage that you mentioned come from?

**Ms Blackburn**—I cannot answer that question.

**Senator LUDWIG**—Can you take that on notice?

**Ms Blackburn**—Yes, of course.

**Senator LUDWIG**—Does it fall due at a particular date?

**Ms Blackburn**—Yes, it does: 1 January in each calendar year.

**Senator LUDWIG**—Do you know what the total budget is for the International Criminal Court?

**Ms Blackburn**—No, I do not have that information with me, but we can take that on notice and provide it to you.

**Senator LUDWIG**—Are you aware of whether or not the International Criminal Court's total budget is funded by contributions from state parties?

**Ms Blackburn**—That was my understanding. I will confirm that, if there is any change to that answer.

**Senator LUDWIG**—All right. If there is a difference, I am curious to find out what proportion is funded from those contributions and where the other funding comes from, if there are different sources of funding.

**Ms Blackburn**—Indeed.

**Senator LUDWIG**—In February the secretary of the department, Mr Cornall, indicated that, if Australia could not gain consensus support for its candidate for prosecutor, Australia would put forward a nomination anyway and seek a vote. That was in the transcript on 10 February at the Legal and Constitutional estimates. Australia did not nominate a candidate and Argentina's candidate was elected unopposed. What happened to the course of action that you had outlined?

**Mr Cornall**—After those hearings—and I have to refresh my memory on this—the head of the Assembly of State Parties, Prince Zeid, put in place a process by which he was intending to have the matter resolved and, as a result of that, the candidate you referred to was the selected candidate. There was quite a lot of diplomatic interchange about the process and how it should be managed, and I cannot recall all of the detail of that at the present time. The fact is that Australia did nominate a candidate and did pursue the appointment of that candidate with a considerable amount of vigour, but it was unsuccessful.

**Senator LUDWIG**—Seventy-eight out of 89 state parties voted 'yes' and that was 10 March 2003. Did Australia participate in the vote?

**Mr Cornall**—I cannot answer that question. There was a committee process and the committee made a recommendation. I am happy to explain this to you, but I do not have the details at my fingertips.

**Senator LUDWIG**—I thought that there was a vote and that 78 state parties voted as at March this year. If there was a consensus, there would not have been a vote.

**Mr Cornall**—There was a preliminary process to find a consensus candidate by Prince Zeid that preceded it. That is my recollection.

**Ms Blackburn**—It was a consensus proposal. There was a vote but it was a technicality to the extent that the candidate who was put forward was a consensus candidate accepted by all parties.

**Senator LUDWIG**—And so 78 state parties voted out of the possible 89?

**Ms Blackburn**—I do not have those figures.

**Senator LUDWIG**—Did Australia vote?

**Ms Blackburn**—I will take that on notice.

**Senator LUDWIG**—You do not know?

**Ms Blackburn**—No, I am sorry, I do not have that information here.

**Senator LUDWIG**—Why wouldn't you have it here? You know that I have been asking about the International Criminal Court for some time now.

**Ms Blackburn**—Because primary responsibility for the management of those relationships at the UN meeting of the Assembly of State Parties in New York is held by the Department of Foreign Affairs and Trade. The Attorney-General's Department participates in the delegations as an adviser to the delegations.

**Senator LUDWIG**—Do you get to go overseas in the delegation?

**Ms Blackburn**—No, I do not attend the Assembly of State Parties meetings. An officer of the Attorney-General's Department has attended them in a capacity as an adviser to that delegation.

**Senator LUDWIG**—What persuaded you to adopt a consensus approach rather than put it to a vote?

**Ms Blackburn**—It was a very strong preference of Prince Zeid that the prosecutor had to be a person who had the full support of all state parties, and the process that was undertaken was designed to achieve that outcome.

**Senator LUDWIG**—And did the Attorney-General's Department agree to that?

**Ms Blackburn**—Australia supported the search for a consensus candidate, yes.

**Senator LUDWIG**—Did the Attorney-General make personal representations to the head of the Assembly of State Parties about Australia's wish to put forward a candidate for prosecutor? What I am trying to get at is that the last time we were here you had missed out on one position, you were then going to go—extremely strongly as I understood it—for the

position of prosecutor, and since then you have missed out on that. So you have not done very well in terms of getting the position.

**Mr Cornall**—I think that that is not a fair appreciation of all the issues involved.

**Senator LUDWIG**—I am giving you an opportunity to give me a fair appreciation of the issues.

**Mr Cornall**—As I said before, there was a lot of diplomatic negotiation about the process. Prince Zeid indicated he was proposing to go about this in a different way than we had originally understood him to be going about it. There was concern about ensuring that there was a balance of representation of countries and groups of countries and also legal systems amongst the judges and the prosecutors. These are some of the issues that were taken into account in coming to the consensus that the candidate who was appointed as the special prosecutor was representing an area or a group that had been underrepresented in other areas of the International Criminal Court appointments.

**Senator LUDWIG**—How many prosecutors are there now?

**Ms Blackburn**—One.

**Senator LUDWIG**—Is Australia next in line or do we go in the pot again? Is it on a rotational basis? For how long has the current prosecutor got the job?

**Ms Blackburn**—Nine years.

**Senator LUDWIG**—We might both discuss this again in nine years time.

**Mr Cornall**—There has been no foreshadowing of what might happen at the end of that time.

**Senator LUDWIG**—Are the judges in for the same period?

**Ms Blackburn**—The judges have nine-year terms but the initial appointments were through a ballot process staggered across three-, six- and nine-year terms so that obviously you did not have the whole bench turning over at the same time. There will be further election for some judges in three years time.

**Senator LUDWIG**—Is Australia organising a candidate to be put up for that? Are we considering it?

**Ms Blackburn**—I do not know. It is possibly a bit early.

**Senator Ellison**—I am not sure that some of these questions are not really foreign affairs questions as well. We will answer them as best we can, Madam Chair, but there may be some that we will have to take on notice and on others that we will have to defer to the Department of Foreign Affairs.

**CHAIR**—I appreciate that, Minister. I am sure that, if the officers indicate they are questions which would be more appropriately addressed to Foreign Affairs, we can seek some assistance in having those asked also. We appreciate the officers' assistance.

**Ms Blackburn**—I have been able to get some information for some of your earlier questions. The total budget for the court at this stage is €7.7 million. We referred to the Australian percentage contribution. It uses the UN scale of assessment, which I understand is

made up from world gross national product pro rata, with some adjustments, and then it is also adjusted for the difference between UN and ICC membership. On the question of the vote that was taken for the prosecutor, 78 countries attended the meeting on 21 to 23 April, which explains the differential between the 78 and the number you were quoting. Only 78 countries attended the meeting. Australia did attend, and Australia did vote yes for the candidate.

**Senator LUDWIG**—Thank you very much.

**CHAIR**—Thank you for that update, Ms Blackburn.

**Senator LUDWIG**—You do not think that it was disappointing that Australia was not represented amongst the judges or the prosecutor? Can you elaborate on your reasoning for that?

**Mr Cornall**—I do not think I said that. I think we were disappointed that we were not successful in the appointment of the prosecutor.

**Senator LUDWIG**—Are you going to try to seize the next opportunity? How do you redress it in the longer term?

**Mr Cornall**—These are decisions for the government to make at the time that the opportunity to have either judges or a prosecutor appointed arises. On the timetable that Ms Blackburn outlined, the first opportunity for that would be three years from now when the first group of judges retire from their positions.

**Senator LUDWIG**—Does the government maintain its in principle support for an article 98 agreement with the United States that would prevent Australia from surrendering US nationals to the International Criminal Court?

**Ms Blackburn**—Australia and the United States remain in negotiation on an article 98 agreement.

**Senator LUDWIG**—When is that likely to be finalised?

**Ms Blackburn**—I do not know.

**Senator LUDWIG**—Who is dealing with it? Is it officers from the Attorney-General's Department? Is it you? Who is negotiating it?

**Ms Blackburn**—Officers of the Attorney-General's Department are involved in the negotiating team.

**Senator LUDWIG**—So negotiations are still ongoing—they have not concluded?

**Ms Blackburn**—That is correct.

**Senator LUDWIG**—Which officers? Are they in your branch? What branch are they in?

**Ms Blackburn**—Officers of my division are involved in those discussions.

**Senator LUDWIG**—Is there any idea of when the negotiations will be completed?

**Ms Blackburn**—No, sorry, I cannot predict that.

**Senator LUDWIG**—In February the department indicated that the Australian government had provided the US with amendments to the US-proposed text of this agreement. Is that right?

**Ms Blackburn**—That is correct.

**Senator LUDWIG**—Are they available? What are they?

**Ms Blackburn**—No, they are not available; they are part of a continuing government to government negotiation between Australia and the United States. It would be inappropriate to make them public.

**Senator LUDWIG**—What would you call the status of the current negotiations?

**Ms Blackburn**—They are continuing.

**Senator LUDWIG**—What further steps are needed to complete the agreement?

**Ms Blackburn**—Agreement between the officials who are negotiating on both sides.

**Senator LUDWIG**—Is it in a final draft and just waiting for the nod or are they still negotiating over the text?

**Ms Blackburn**—Negotiations are continuing.

**Senator LUDWIG**—You cannot say either—or you do not want to say either?

**Ms Blackburn**—There is nothing more to add to that. Negotiating an agreement is a matter of communication between both parties to the negotiations. Communications between Australia and the US on a possible agreement are continuing.

**Senator LUDWIG**—When the agreement is finalised, will it be subject to the usual treaty-making process?

**Ms Blackburn**—Of course.

**Senator LUDWIG**—Has Australia been approached by any other countries to enter article 98 agreements?

**Ms Blackburn**—Not that I am aware of.

**Senator LUDWIG**—Could you check?

**Ms Blackburn**—I can certainly check, yes.

**Senator LUDWIG**—You may not be aware, but someone in your department may already be starting to do it.

**Ms Blackburn**—I would expect to be aware of it, if there had been. At this stage, I am not aware of any. I will certainly confirm that that is the case.

**Senator LUDWIG**—Is there a prima facie decision, at first instance, whether or not you will negotiate other article 98 agreements?

**Ms Blackburn**—I am not aware of any decision being taken in that vein.

**Senator LUDWIG**—The agreement on the privileges and immunities of the International Criminal Court was open for signature on 10 September 2002. Is that right? I will rephrase that: where is the agreement on the privileges and immunities of the ICC at the moment?

**Ms Blackburn**—I am advised that we have received it and we are examining it.

**Senator LUDWIG**—So you were not aware of it, but your departmental officers were?

**Ms Blackburn**—Departmental officers were certainly aware of it. It is good to have people who keep track of everything that is going on.

**Senator LUDWIG**—It was opened on 10 September 2002. Has the Australian government decided to sign this agreement?

**Ms Blackburn**—No; as I am presently advised, the Australian government is presently considering the text of it and has not made a decision on that.

**Senator LUDWIG**—Is there a delay for any purpose?

**Ms Blackburn**—No, not that I know of.

**Senator LUDWIG**—Would you check with that departmental official again?

**Ms Blackburn**—I will. No, this is just one of the many priority activities we are presently dealing with in conjunction with the Department of Foreign Affairs and Trade.

**Senator LUDWIG**—So there is nothing in the agreement that stands out as being controversial and requires a delay or more than usual scrutiny?

**Ms Blackburn**—No, the situation at the moment is simply that we have not yet concluded the examination of it to the point where we can form a view and the government can make a decision.

**Senator LUDWIG**—Would signing it be subject to the usual treaty-making processes as well?

**Ms Blackburn**—There are a lot of people nodding at me.

**Senator LUDWIG**—There seems to be. I am not on treaties anymore, so I do not get any inside information; I have got to ask it here.

**Ms Blackburn**—Neither am I. The answer appears to be yes.

**Senator LUDWIG**—It does. That is all I have in that area. I am still on output 2.1 but I am happy to have a break if others want to ask more questions.

**Senator JACINTA COLLINS**—The minister will not be surprised that I would like to explore the issues of Australia's recent success with a provisional arrest warrant in Sweden. Firstly, what was the nature of the warrant with respect to, and correct my pronunciation if it is wrong, Khaleed Daoed?

**Ms Blackburn**—I understand the case you are referring to but I cannot understand precisely what information you are seeking from us.

**Senator Ellison**—It is a provisional arrest warrant which we issue in any extradition situation. It is a warrant in the first instance to secure the person being detained whilst you prepare a formal request for extradition.

**Senator JACINTA COLLINS**—In relation to which charges?

**Senator Ellison**—The charges are breaches of sections 232A and 233(1)(a) of the Migration Act 1958 and section 81 of the Proceeds of Crime Act 1987. The first section, 232A



of the Migration Act, provides the offence of organising the bringing into Australia of groups of non-citizens and carries a penalty of 10 years imprisonment and/or a fine of \$A110,000. The second section, 233(1)(a) of the Migration Act, provides the offence of taking part in the bringing into Australia of non-citizens in circumstances in which it could be reasonably inferred that the non-citizen intended to enter Australia in contravention of the act and related offences. It carries a penalty of 20 years imprisonment and/or a fine of \$A220,000. The third matter I mentioned, section 81 of the Proceeds of Crime Act, provides for the offence of money laundering and carries a penalty of 20 years imprisonment. Those are the matters for which Mr Khaleed Daoed is being sought for extradition and the subject of Australia's request for him to be surrendered to Australia.

**Senator JACINTA COLLINS**—Minister, was Sweden the country of refuge for Khaleed, with the assistance of the UNHCR?

**Senator Ellison**—Are you asking had he gone there as a refugee?

**Senator JACINTA COLLINS**—Yes.

**Senator Ellison**—I would have to check on that; I will take that on notice.

**Senator JACINTA COLLINS**—My other question is: since the Indonesians had arrested Khaleed and then released him to the care of the UNHCR, where he then presumably achieved refuge in a European country, are you aware of what has changed in relation to the investigations in respect to those crimes?

**Senator Ellison**—The premise of your question is that the Indonesians had arrested Mr Daoed and then released him to the UNHCR. I am not aware of that, so I would have to take that aspect on notice because that is something which I would have to check and get back to the committee on. But are you asking if that is a fact to be considered?

**Senator JACINTA COLLINS**—No, what I am asking is, with regard to his arrest in Indonesia in January 2002, I think it was, what has changed in relation to the prosecution of this man that he was released in January 2002 or thereabouts but now we can succeed with a provisional arrest warrant in relation to such crimes?

**Senator Ellison**—I know that this has been the subject of a longstanding investigation by the Australian Federal Police and the department of immigration and that evidence was being obtained, and it could well be that the evidence obtained founded the basis for these charges. But really I cannot go any further in relation to that because it is operational.

**Senator JACINTA COLLINS**—Minister, you may want to take this on notice, but could one of the factors be the absence in Indonesia of the people-smuggling legislation that we are still waiting, are we not, for them to implement?

**Senator Ellison**—Certainly, the fact that Sweden has anti people-smuggling laws makes our prospects of extradition much stronger. But I thought you were referring in the first instance to the case against Mr Daoed, whether there had been a change in the strength of that case or, in fact, whether there had been a change in circumstances for us to found the charges in any event.

**Senator JACINTA COLLINS**—I am asking about both.

**Senator Ellison**—I guess that is something for the Australian Federal Police and the department of immigration to answer. I really do not think it is appropriate for me to answer that.

**Senator JACINTA COLLINS**—I will leave that for the AFP when we come to them. As I understand, when Mr Daoed was arrested in Indonesia, so was a man by the name of Miythem Kamil Radhia, one of two brothers, it was reported, who was also involved with Abu Quassey. Is there any provisional arrest warrant in relation to this individual?

**Senator Ellison**—Madam Chair, we did not publicise our interest in Mr Daoed prior to his arrest. I really feel that to answer that question may well, one way or the other, prejudice any action that we might want to take. I am not saying yes or no, but I think that is something that you should really direct to the Australian Federal Police. They are really the people who should answer that question.

**CHAIR**—Thank you, Minister. For the rest of the committee's benefit, we appreciate your caution, and Senator Collins will continue to seek the information and we will see how we go.

**Senator JACINTA COLLINS**—Minister, I appreciate those aspects of it. I will continue to ask and continue to accept that operational factors may preclude this information being appropriately made public. I also accept your advice that the AFP might be in a better position to make that judgment than perhaps even yourself in this circumstance. A further report has been that some of the group of Mandaean Christians that departed from SIEV-X are now in Australia. Can you advise the committee whether you understand that to be the case?

**Senator Ellison**—That is something which I think is best directed to the department of immigration who will be giving evidence on Wednesday.

**Senator JACINTA COLLINS**—We move now to the question of Abu Quassey. I understand that he is detained in Egypt now until 15 June. Are you aware of what the charges are?

**Ms Frost**—Senator, we have not received any information as to any charges that have been or may be laid against Mr Quassey in Egypt as yet.

**Senator JACINTA COLLINS**—How long is it now since he went to Egypt?

**Ms Frost**—I understand that he was removed from Indonesia on 24 April.

**Senator JACINTA COLLINS**—Have we instigated any attempt at extradition from Egypt at this point?

**Ms Frost**—Yes, we are seeking his extradition from Egypt.

**Senator JACINTA COLLINS**—We have formally done so at this stage?

**Ms Frost**—We have formalised an extradition request to Egypt, yes.

**Senator JACINTA COLLINS**—What is the progress of that at this point?

**Ms Frost**—My understanding is that we have yet to receive any notice from Egypt as to whether they will agree to our request or not.

**Senator JACINTA COLLINS**—And they have not yet responded. Have we sought from them the nature of the charges under which he is currently being held?

**Ms Frost**—My understanding is that our embassy in Cairo has been in quite close contact with the Egyptian authorities and has sought that information, but we have not received any information as yet.

**Senator JACINTA COLLINS**—Do we know how, on 24 April, he made his way to Egypt?

**Ms Frost**—I do not think we have actually ever received formal advice as to how he made his way to Egypt. My understanding is that he may possibly have transited through Riyadh in Saudi Arabia.

**Senator JACINTA COLLINS**—In relation to Saudi Arabia, is that one of the countries through which our alert notice would have had no impact?

**Ms Frost**—Yes.

**Senator JACINTA COLLINS**—Did we receive any prior warning that he would be leaving Indonesia on 24 April?

**Ms Frost**—I would have to take that on notice.

**Senator JACINTA COLLINS**—Are you aware of whether the Australian Federal Police made any attempt to intercept his journey to Egypt?

**Senator Ellison**—That is a matter best answered by the Australian Federal Police. They are coming to give evidence—

**Senator JACINTA COLLINS**—Tomorrow night.

**Senator Ellison**—And the best evidence rule is direct.

**Senator JACINTA COLLINS**—Indeed. I know the minister has made public comments to the extent that we will seek the extradition of Abu Quassey, but if that fails we will assist and cooperate with the Egyptians on whatever charges they might proceed with. Minister, would that include waiving the standard conditions on temporary protective visas in relation to potential witnesses who are currently in Australia?

**Senator Ellison**—Are you saying that, if there was someone in Australia who could give evidence, we would allow them to stay in Australia in order to assist in the inquiry?

**Senator JACINTA COLLINS**—No. Would you let them travel to Egypt?

**Senator Ellison**—That is a matter for both the minister for immigration and myself. I would certainly be willing to look at anything of that nature, but I would have to discuss that with the minister for immigration.

**Senator JACINTA COLLINS**—But you are aware that it would be a restraint in the way the current temporary protective visas apply?

**Senator Ellison**—In what way?

**Senator JACINTA COLLINS**—A condition of the visa, as it currently is, is that the person concerned cannot leave Australia.

**Senator Ellison**—If that were a condition of their visa, I would certainly look at that myself, and I am sure that the minister for immigration would be wanting to assist in whatever way possible as well.

**Senator JACINTA COLLINS**—My final question is for A-G's generally. I hope that the officers who are able to assist me are present. If they are not, you may need to take this on notice. Recently, we received a copy of the brief that went to the Prime Minister on 24 October 2001 in relation to SIEV-X sinking. In that brief there was a section heading, 'Boat sank in Indonesian waters'. We have since been advised that that heading was based on information provided by the agencies listed in the consultation section of that brief. A-G's was one of the agencies listed in that consultation section. Can you advise the committee whether any information that A-G's provided in this process led to the section heading 'Boat sank in Indonesian waters'?

**Mr Cornall**—Are we able to see the brief you are referring to?

**Senator JACINTA COLLINS**—Certainly.

**Senator Ellison**—Chair, whilst I appreciate that there may be some broad ranging questions in budget estimates 2003-04, and that we have taken questions in relation to that in relation to current matters, there has been extensive Senate inquiry in relation to this matter, in both the certain maritime incident inquiry and previous estimates. Is this matter not old ground which has been traversed before? The secretary is looking at that now, but there really should be some sort of limit to the range of questions put to us in relation to matters which have been investigated elsewhere over a long period of time.

**CHAIR**—That is a point I made on another matter earlier today, so I was listening with interest to the progress of the questions. Senator Collins, we are obviously trying to confine our interest to matters pertaining to the budget estimates 2003-04. I understand that these are matters which you have been pursuing over a series of committees in recent times. I will seek a response from Mr Cornall, if he wishes to make one now, and then we will see how we go.

**Mr Cornall**—It is only that, to ensure that any answer we give Senator Collins is completely accurate, we would need to take the question on notice and get a copy of the memo.

**Senator JACINTA COLLINS**—Thank you. I appreciate that. I have some other questions in relation to Abu Quassey. We might avoid some duplication if I can scan these for a moment.

**Senator LUDWIG**—I will ask some general questions while we wait. In table 2.1.2, 'Total resources for Outcome 2', on page 51—Mr Kennedy, your presence will be of great assistance—output 2.1 puts the estimated actual for 2002-03 at \$128,000 and the budget estimate for 2003-04 at \$27,000. What accounts for the difference? The same happens in output 2.2, which goes from \$58,000 to \$29,000. Most of these tend to project similar amounts, with an occasional rise here or there. Some—like the hand gun buyback, which started at three and went to 55, and the national counterterrorism committee, which went from five to 17—change dramatically, but there is a reasonable note attached to them that explains the change. However, there is no such note for these. While I am sure there is a reasonable explanation, I wonder what it is.

**Mr Kennedy**—The reason for the reductions is the cessation of what is called the Agency Banking Incentive Scheme. It is a scheme that the government put in place under accrual budgeting which enabled agencies to generate interest income on their cash holdings. That particular scheme will cease on 1 July 2003, so the estimated actuals for 2002-03 include estimates for interest income that we will no longer receive in 2003-04.

**Senator LUDWIG**—Is that counted as a reduction or a reprogramming? Where has the money gone?

**Mr Kennedy**—We have had an equal increase in appropriations to offset the reduction in interest income.

**Senator LUDWIG**—So that is the reason for the stated reduction in revenue and expenses from 2004-05, which is mentioned on page 57. How much of that is the capital? Do you have a total amount for the capital charge? That is also effectively a reduction, isn't it?

**Mr Kennedy**—That is correct.

**Senator LUDWIG**—Why wouldn't you mention it in there as a reduction?

**Mr Kennedy**—Is that the note at the top of page 57? Is that where you are referring to?

**Senator LUDWIG**—Yes.

**Mr Kennedy**—The only reason for that is that—and we have noted it elsewhere—that particular note is going from 2003-04 to 2004-05. The effect of the change in the Agency Banking Incentive Scheme is not relevant to those years, because that occurred at the beginning of 2003-04. Go to the bottom of page 56, where there is some reference to the changes from 2002-03 to 2003-04. That is where we mention both the capital use charge and the Agency Banking Incentive Scheme.

**Senator LUDWIG**—So it is not regarded as revenue or an expense?

**Mr Kennedy**—It is essentially neutral.

**Senator LUDWIG**—I understand. That is why it does not get highlighted there but it gets put in the analysis of budget of financial statements at 7.9 earlier on. Then on page 58, it is revenue from ordinary activities which seems to project a diminution over the out years, from an estimated actual for 2002-03 of \$149.842 million to a forward estimate in 2006 of \$120.327 million. What would account for that? Why do you say that your revenue from ordinary activities will decrease? Is this on the basis that you are not going to get the user fee charge in place?

**Mr Kennedy**—The reason is to do with the way in which our budget measures have been funded. In 2003-04 the department will be provided with an additional \$4 million for the Building Safer Communities program. That program will be reviewed for the 2004-05 budget process. Similarly, with the National Security Hotline there is funding in 2003-04 of \$6 million but that program will be reviewed in the 2004-05 budget process. Another significant example is the additional guarding funding of \$20.7 million in 2003-04 which will be again reviewed for the 2004-05 budget process. So there are some large items of money which cease at the end of 2003-04 and are subject to review for continuation in future years.

**Senator LUDWIG**—When you go down the page, you have got expenses from ordinary activities excluding borrowings of \$164 million in the actual but by the time you get to the forward estimates, it has dropped by \$44-odd million. Does that also account for the drop?

**Mr Kennedy**—Yes, it does.

**Senator LUDWIG**—About \$44 million, is that right?

**Mr Kennedy**—It is about \$50 million overall, yes.

**Senator LUDWIG**—That was all the general questions I had in relation to those budgetary figures, thanks.

**CHAIR**—Senator Collins, in relation to the matters that you were pursuing?

**Senator JACINTA COLLINS**—Yes, I have about three questions further in relation to the provisional arrest warrant with respect to Abu Quassey.

**CHAIR**—Thank you.

**Senator JACINTA COLLINS**—Minister, is it not true that the extradition requests made to Abu Quassey included many countries with whom Australia has no extradition relationship, including China, Iran, Syria and Jordan?

**Senator Ellison**—Madam Chair, for a start we did not make extradition requests as outlined by Senator Collins so let us get that straight. What we did do is issue provisional warrants which, I mentioned earlier, would have enabled the person concerned to have been detained. That at least would have been a mechanism for us to restrict Mr Abu Quassey's movements and then take appropriate action.

**Senator JACINTA COLLINS**—Minister, is it usual for Australia to issue provisional warrants with respect to countries with whom we do not have a general extradition relationship?

**Senator Ellison**—It is certainly possible to do that. Whether or not it has been done before is a question I would have to take on notice.

**Senator JACINTA COLLINS**—I am interested in what either the general policy or practice is in that respect. Whilst I can see significant advantages to us getting our hands on Abu Quassey, I also understand that there are significant risks involved in terms of reciprocal relationships in such matters which has been part of a practice regarding those countries with whom we might seek either extradition or provisional warrants from. Am I erring in my understanding of such matters?

**Ms Blackburn**—The making of a provisional arrest request does not of itself enliven a reciprocal obligation on the recipient of the request or, indeed, the maker of the request.

**Senator JACINTA COLLINS**—What would?

**Ms Blackburn**—Conclusion of an extradition treaty.

**Senator JACINTA COLLINS**—Are you suggesting that the process of seeking, in its preliminary stages, through something like a provisional warrant, in no way encourages other countries to believe there could be reciprocal obligations?

**Ms Blackburn**—The making of a provisional arrest request of itself does nothing more than ask the country to consider whether, in the event that they locate the person to whom the warrant relates, they might take him into custody pending further discussions with the government making the request.

**Senator JACINTA COLLINS**—Has this been our practice in the past?

**Ms Blackburn**—We have taken that question on notice. I cannot answer that question.

**Senator JACINTA COLLINS**—With the question on notice, whether it is a practice or a policy, I would appreciate having that response dealt with. We may well find that it is not a formal policy, but if in the past the practice has been not to seek either extradition or provisional warrants from countries with whom we do not have a general extradition relationship, I would like that addressed on notice. Perhaps you may be able to deal with this in terms of our discussion of the risks involved here: has any one of the countries to whom we made the provisional warrant sought a reciprocal response in relation to a request for extradition?

**Ms Blackburn**—I will take that on notice.

**Senator JACINTA COLLINS**—Does that mean you cannot answer that at the moment?

**Ms Blackburn**—That is correct. I cannot answer that question.

**Senator JACINTA COLLINS**—You do not know if this has occurred?

**Ms Blackburn**—I do not have sufficient information with me to enable me to answer that question. I do not know and I will take it on notice.

**Senator Ellison**—It is not really something which comes out of budget estimates 2003-04. It is understandable that Ms Blackburn does not necessarily have that information at her fingertips. I might just add that the policy is very much that, if we are seeking someone who is charged with offences in Australia, we do employ whatever lawful means we can to secure their attendance in Australia to face justice. Of course, it has been said, unfairly and wrongly, that the government has not done everything possible to get Mr Abu Quassey into Australia because we are fearful of the evidence he might give. It seems that if we do not do one thing we are damned, and if we do the other we are damned. We will take those questions on notice, but I would remind the committee that we are dealing with budget estimates and we are tending to stray a bit.

**CHAIR**—I appreciate the point, Minister. As we adverted to earlier, when Senator Collins indicated that she had three further questions in this area, I thought it was probably more efficient to deal with them than not. Senator Collins, how much more do you have?

**Senator JACINTA COLLINS**—I can pretty much wind up that point. The only issue that I am seeking to explore here relates directly to the budget estimates, and that is our policy in relation to seeking extraditions. I am mildly surprised, though, that an officer is able to respond not 'not to my knowledge but I will take it on notice' but rather simply does not want to respond to the question.

**Senator Ellison**—It is not 'does not want to'—

**CHAIR**—Ms Blackburn indicated quite clearly that she did not have the information with her, Senator Collins. I think it is unfair to cast it in that light.

**Ms Blackburn**—Perhaps if I could just add: the question, in terms of the policy, is one that we will take on notice in terms of advising you on whether or not it has been used in the past.

**Senator JACINTA COLLINS**—Thank you.

**Senator Ellison**—I might remind the committee that policy is, of course, in the domain of the minister.

**CHAIR**—Quite.

**Senator LUDWIG**—I think that has finalised 2.1.

[4.54 p.m.]

**CHAIR**—As noted, we have already concluded on output 2.2. We will move to output 2.3, Provide national leadership in the development of emergency management measures to reduce risk to communities and manage the consequences of disasters.

**Senator LUDWIG**—Is this the hotline?

**Mr Cornall**—The National Security Hotline is in output 2.4. This is Emergency Management Australia.

**CHAIR**—We had some advice earlier, which is obviously incorrect, that it was in 2.3.

**Senator LUDWIG**—What strategies have been put in place to protect Australia from the SARS epidemic?

**Mr Templeman**—You possibly need to appreciate that SARS is a health emergency matter. A lot has been commented on by the Commonwealth Chief Medical Officer, Professor Smallwood. Although we have worked very closely with the Department of Health and Ageing in making sure that there was a consistent understanding in the community about the threat and the nature of the precautions which have been taken in border protection and the like, it is essentially a matter which has had to be managed by the Health and Ageing portfolio. I suggest that questions about specific issues in relation to public health precautionary measures which have been taken in state and territory jurisdictions as well as the Commonwealth would need to be addressed to that portfolio.

**Senator LUDWIG**—What role have Emergency Management Australia played in dealing with the SARS epidemic?

**Mr Templeman**—The role we played in dealing with the SARS epidemic has been, as I have already indicated, to ensure that information about the threat was consistently explained to the community by our communicating the alerts from the Commonwealth Department of Health and Ageing to our state and territory emergency management counterparts so that they in turn could pass it to the relevant authorities within their jurisdictions so that there was no misunderstanding about the threat to Australia, the measures that were being undertaken at the borders and advice to people departing and coming into Australia.

**Senator LUDWIG**—What was your physical presence? What did you do on the emergency management side of things?



**Mr Templeman**—EMA did not provide that particular physical presence; that was provided by the public health agencies within the jurisdictions following the advice that was sought from them by the Department of Health and Ageing. So the people you saw at airports and other arrival facilities within Australia were predominantly provided by the respective jurisdictional public health agencies.

**Senator LUDWIG**—Forgive my error. I should ask the Department of Health and Ageing what strategies they have to deal with emergencies such as SARS—is that what you are telling the committee?

**Mr Templeman**—It is important to appreciate that within Australia the first response in terms of protection of life and property rests with a state or territory jurisdiction, no matter what emergency it is. The states and territories have the responsibility for the protection of life and property, and it is not until a state or territory is overwhelmed and seeks additional assistance through mutual aid or seeks assistance from the Commonwealth at the time of the declaration of an emergency that EMA gets activated.

**Senator LUDWIG**—Was it activated?

**Mr Templeman**—In that particular circumstance, EMA was not activated.

**Senator LUDWIG**—So there was no request for you to adopt a lead agency role in the SARS matter?

**Mr Templeman**—No, nor was there any request from any state or territory with regard to provision of Commonwealth assistance.

**Senator LUDWIG**—So it is not an emergency as defined under your charter?

**Mr Templeman**—It would be unfair to say that it was not a emergency. The emergency was really—

**Senator LUDWIG**—I meant under your charter.

**Mr Templeman**—The emergency was in relation to the perception management issues in dealing with the community. That in itself was an emergency: the communication of the threat so that it was properly understood by all Australians.

**Senator LUDWIG**—How did you then communicate that?

**Mr Templeman**—As I have already explained, the alerts that we received—which had been endorsed by the Commonwealth Chief Medical Officer, Professor Smallwood—were communicated to our emergency management counterparts in jurisdictions so that they, in turn, could communicate them to all relevant agencies down to local government level so that a consistent message went to all people in the community.

**Senator LUDWIG**—Where has your major emphasis been in the last 12 months?

**Mr Templeman**—In terms of operational response, we have had heavy involvement post and during Bali. Following on from that was Cyclone Zoe, which affected the Solomon Islands on 28 December. We were also involved in coordinating the heavy Commonwealth provision of support in response to the bushfires in the ACT, New South Wales and Victoria.

**Senator LUDWIG**—Can we separate those out? What role did you play in relation to Bali, Cyclone Zoe and the bushfires? I am just trying to get an understanding of the nature of your work.

**Mr Templeman**—Very briefly, in relation to Bali our role was working in partnership with the Department of Health and Ageing to coordinate the on-forwarding of the 66 severely injured patients who needed to be hospitalised in Australia once they were triaged through Darwin. We were also involved in the coordination of the repatriation of the remains of Australians from Bali to various jurisdictions in Australia.

Cyclone Zoe impacted the small island of Tikopia, which is 1,000 kilometres north-east of Honiara, on 28 December. It was a category 5 cyclone. The difficulties of that particular time were, essentially, in getting information as to the gravity of the event. With the defence organisation and AusAID, we were involved in coordinating a flyover to assess the impact of the damage. The aftermath of that was the subsequent deployment of an EMA officer to assist the national disaster management office in the Solomon Islands in the recovery effort. We have ongoing activity, in conjunction with AusAID, to assist in the improvement of that office's arrangements, which is the subject of a separate arrangement with ourselves and AusAID.

Our involvement in coordinating the provision of Commonwealth assistance in relation to bushfires goes back many years. But, since the end of 2001, we have seen an ongoing threat in Australia through significant bushfire activity. At the end of 2001 and in early 2002 the Sydney area was heavily impacted by bushfires, which required significant Commonwealth assistance. Then, from November last year right through to March this year—and even earlier, in the mid part of last year; bushfires started in New South Wales around July—EMA was involved in the coordination and provision of extensive Commonwealth assistance to support bushfire response activity in those three jurisdictions. Again, the majority of that was provided by the Defence Force.

**Senator LUDWIG**—That is much appreciated. Have you done any work in the Solomon Islands other than in relation to Cyclone Zoe?

**Mr Templeman**—No, not in the Pacific directly last year. Of course, we have worked with the South Pacific Applied Geoscience Commission in the context of trying to improve disaster awareness and education, and we have conducted awareness raising initiatives in the Pacific island countries generally to improve their capability to respond to any sort of emergency.

**Senator LUDWIG**—Thank you, I do not have any further questions for EMS.

**CHAIR**—Thank you very much, Mr Templeman. I do not think there are any further questions in this area.

Senator Ludwig, in terms of the time line we are now following we seem to have leapt ahead of ourselves rather more than I thought. I have a secretariat officer checking on whether any of the other agencies stayed in the building after I told them to leave. If we can find some, we will bring them on at the conclusion of 2.4. Other than that, we have Customs scheduled to appear at 7.30.

**Senator LUDWIG**—I can go back to 1.4. I can always fill in.

**CHAIR**—I have sent those officers away, though. That is the whole point.

**Senator Ellison**—We still have been 2.4 to go.

**CHAIR**—Yes, we do have 2.4. I am just not expecting you to take one hour and 20 minutes.

**Senator Ellison**—I am sure we will be able to locate the other agencies.

[5.05 p.m.]

**CHAIR**—Thank you, Minister. Output 2.4, Development and promotion of protective security policy, advice and common standards and practices, and the coordination of protective security services, including counter-terrorism and dignitary protection.

**Senator LUDWIG**—Is this the terrorism hotline?

**CHAIR**—Yes.

**Senator LUDWIG**—As I understand it, the Attorney-General on 30 April 2003 indicated that since 27 December the terrorism hotline had received more than 15,000 calls. It was reported that about half of those were described as information calls and that a large percentage of the information calls had provided extremely valuable information that resulted in a further investigation and that the Attorney-General was pleased with the quantity and quality of the calls to the terrorism hotline. To date, then, what is the figure of calls to the hotline?

**Mr Tyrie**—As of about 2 o'clock this afternoon, there had been about 18,200 to 18,300 calls.

**Senator LUDWIG**—What types of calls is the hotline receiving?

**Mr Tyrie**—As the Attorney said, they are basically divided into three categories. The figures I have relate to last week and the figure was 17,700 when my brief was prepared. The categories are comments and questions on the campaign itself, and that was about 6,500 of the calls; calls seeking information and assurance about national security arrangements accounted for about 1,700; and calls providing information in relation to suspicious activity accounted for about 9,300.

**Senator LUDWIG**—Is there a winnowing or chaffing process to work out which ones you follow up on? Do you apply a process to all of those or do you refer all of the ones in the 9,000 lot on to relevant authorities?

**Mr Tyrie**—All calls are referred to the appropriate authorities. They do the filtering, not the hotline.

**Senator LUDWIG**—Where do you refer them to? Is there a list of agencies that you refer them to? What process do you engage in for that referral? Do you ring them up and say, 'We've got 17,000 calls dealing with this issue'?

**Mr Tyrie**—As each call is received, there is an assessment as to whether it needs to go urgently. If it does, it goes by telephone immediately to the state and territory police jurisdictions. In general terms, the call is received and passed by an email system to the appropriate areas nominated by each of the jurisdictions.

**Senator LUDWIG**—Who determines where the call should go? Who categorises it as one for the AFP, one for ASIO or for the state police?

**Mr Tyrie**—The hotline operator.

**Senator LUDWIG**—Are they trained in this work?

**Mr Tyrie**—They have been trained since we set up the hotline in how to perform this. We have supervisors on who give them assistance.

**Senator LUDWIG**—Who trained them?

**Mr Tyrie**—PSCC staff.

**Senator LUDWIG**—Who are they?

**Mr Tyrie**—People employed by the Protective Security Coordination Centre on a full-time basis.

**Senator LUDWIG**—Is there a training program that they are given?

**Mr Tyrie**—There was when we set up the hotline.

**Senator LUDWIG**—How many hours of training were they given?

**Mr Tyrie**—I would have to take the question on notice, but it was about three days of training.

**Senator LUDWIG**—Were these people call centre operators who were trained for three days to deal with emergency or terrorism hotline matters?

**Mr Carnell**—Quite a number of the people we recruited had either police or military backgrounds, so they had a basis of information. They were not just raw recruits who were relying entirely on three days training.

**Senator LUDWIG**—How many are there in total?

**Mr Tyrie**—We recruited about 99 at the time we were setting up the call centre in anticipation of the number of calls we would get. Over the last five months we have refined it down to about 43.

**Senator LUDWIG**—Did you anticipate that you would receive more calls and then you would need less staff, or did you not know how many calls you would receive and you assumed?

**Mr Tyrie**—We did not initially know how many calls we would receive. We assumed and recruited on that number. As the five or six months have passed, we have gradually refined for the peaks. We get between 20 and 50 calls a day at the present time. We have received in excess of 300 at different times of the campaign.

**Senator LUDWIG**—How many of those 43 people have police or investigative backgrounds?

**Mr Tyrie**—I could not tell you exactly the number of the 43, but I can find out for you.

**Senator LUDWIG**—Please take that on notice. Do you know how many of the calls you have received have actually been investigated? Is there a way of improving the service by telling you which calls have and have not been investigated?

**Mr Tyrie**—We have continual contact with the jurisdictions. We have put in place some processes to obtain some feedback, and we are presently assessing the information that we are getting back from the jurisdictions. However, at the present time it is a very fluid situation with regard to how many are and how many are not followed up.

**Senator LUDWIG**—Would you have the information or would I have to ask each agency as to how many calls have been investigated, how many led to an arrest of some description and how many were hoaxes? In other words, are those numbers reported back to you?

**Mr Tyrie**—I will take the question on notice and provide you with that information as best I can.

**Senator LUDWIG**—Has there been a process of chasing hoax callers down and prosecuting them for tying up resources?

**Mr Tyrie**—A process was put in place for tracing hoax calls. Presently, from memory, about three people have been arrested and dealt with by the courts for making hoax calls.

**Senator LUDWIG**—So those details are now available. Have they finished the investigations and court processes?

**Mr Tyrie**—To the best of my memory, but I can provide you with that detail.

**Senator LUDWIG**—Yes, if you can. With the evolution of the terrorism hotline, has a cost been allocated to the program in total? What is your budget?

**Mr Tyrie**—As far as the budget is concerned, \$5.2 million was allocated for this year and \$6 million for next year.

**Senator LUDWIG**—But you are decreasing the number of staff. Is that right?

**Mr Tyrie**—Yes, we have decreased the number of staff.

**Senator LUDWIG**—What is your major cost?

**Mr Tyrie**—Salaries are our major cost at the present time.

**Senator LUDWIG**—Is your budget of \$5.3 million this year based on 43 staff?

**Mr Tyrie**—No, it was based on projections before we downgraded the staff levels.

**Senator LUDWIG**—What is your budget for next year?

**Mr Tyrie**—It is \$6 million.

**Senator LUDWIG**—Was that predicated on staffing numbers?

**Mr Tyrie**—Yes, on previous numbers.

**Senator LUDWIG**—Will you spend the \$5.3 million?

**Mr Tyrie**—Ask me in another three weeks time and I will tell you. I do not think so.

**Mr Carnell**—Because of the volatility of the numbers, our arrangement with the department of finance is that we will return moneys that we do not spend in this year's or next year's allocation. Equally, if there is an incident which causes a large spike in calls and we have to recruit numbers and we exceed the budget, they will look sympathetically at a bid for

additional resources for us. In a sense, the money is quarantined and would operate a little differently from other allocations. I got that right, didn't I, Mr Kennedy?

**Mr Kennedy**—Yes. It is also an issue of relativities, because the hotline commenced in December. Effectively, there is a half-year's funding for 2002-03, compared to a full year's for 2003-04.

**Senator LUDWIG**—What about the recruitment? How many people were originally recruited? You said that there were expectations of about 100, but how many people were actually recruited and trained?

**Mr Tyrie**—The whole 100 were trained at that time.

**Senator LUDWIG**—Were they all going to be full-time staff, or were there some part-time staff? Is there a breakdown of what your expectations were?

**Mr Tyrie**—They are on contract, and they are casual employees.

**Senator LUDWIG**—So the 100 were all casuals and all on contract?

**Mr Tyrie**—Yes.

**Senator LUDWIG**—Was an agreement or award in place? What contractual arrangement was determined?

**Mr Cornall**—They are on AWAs.

**Senator LUDWIG**—Was there a template AWA that covered all of them?

**Mr Cornall**—They are individual ones but in the same format. On the question of numbers and so on, when the campaign started it obviously had the whole publicity campaign and a lot of media comment. That was a peak time at which you would expect calls. The campaign is no longer running, so you would expect that the volume of calls would decrease and therefore the staffing levels would necessarily decrease as well. But it is still operating on a 24-hours-a-day, seven-days-a-week basis, and we have intentionally employed staff on a flexible basis so that we can decrease or increase staff numbers as necessary to meet the demand.

**Senator LUDWIG**—I understand that, but that does not go along with—and forgive me for saying this—what Mr Tyrie says, that originally the budget was \$5.3 million and there was an expectation of increasing that to about \$6 million. The expectation was that it was going to increase and that you would need more staff. Did I get that wrong?

**Mr Cornall**—The hotline did not start until December 2002, so this year we are only paying for a portion of the year, whereas the budget for next year is for the whole 12 months.

**Senator LUDWIG**—Proportionally, how many months was the \$5.3 million to cover?

**Mr Cornall**—Since December—six and a bit months.

**Senator LUDWIG**—So the \$6.2 million is to cover a full year?

**Mr Tyrie**—Yes.

**Mr Kennedy**—It is \$6.023 million.

**Senator LUDWIG**—That is not more than a 40 per cent reduction, is it? If you now have 40 staff, there has been a 60 per cent reduction from the 100. But the \$6.023 million as

compared with the \$5.3 million has not changed by the same order of magnitude, has it? You expected an increase. I am happy to be corrected on relativities, but that is what it looks like to me.

**Mr Tyrie**—In addition to employing the 90 staff, we had an overflow capacity which we put in place with Telstra. We worked out that in the initial stages we might receive in excess of 1,000 or 1,500 calls a day, and we needed the capacity to manage that if it turned out to be the case. So we had an overflow capacity at Telstra, which we had to pay for. That capacity and the need for that capacity have since diminished, so the cost has been dropping. But at the time we worked out the calculations for the budget, we still had a large number of calls coming in and the expectation that we might need that overflow capacity. There have been a number of variables during the planning of this process.

**Senator LUDWIG**—Was the agreement you had with Telstra a variable agreement or a fixed agreement for 12 months for a certain amount?

**Mr Tyrie**—It has been varied a number of times since we started, and it is about to be varied again.

**Senator LUDWIG**—Downwards?

**Mr Tyrie**—Yes.

**Senator LUDWIG**—When is that to be done?

**Mr Tyrie**—I think it is to be done this week.

**Senator LUDWIG**—What is the cost of the Telstra agreement?

**Mr Tyrie**—I cannot tell you offhand. It has varied. I would have to take that on notice.

**Senator LUDWIG**—Please do. Please indicate the total cost, at what points it was varied downwards and the cost it was then dropped to. That would be helpful. Where is the call centre housed? Is it a physical location holding all 40 people?

**Mr Tyrie**—It is a 24-hour, seven-day-a-week facility housed at the PSCC.

**Senator LUDWIG**—Who has overall control of the call centre? Is it the Attorney-General or is it someone else?

**Mr Cornall**—It is a part of Mr Tyrie's division within the Attorney-General's Department.

**Senator LUDWIG**—So the Attorney-General has overall—I could use the word 'control'—management. Is that right?

**Mr Tyrie**—That is right, yes.

**Senator LUDWIG**—Was part of the arrangement in establishing the hotline to have a call centre, or was it considered that a call centre should be set up within the Australian Federal Police or somewhere else? In other words, who determined that it would be this model that would be approached—that is, a call centre model?

**Mr Cornall**—This was part of the whole development of the campaign for national security, which was under the control of the Department of Prime Minister and Cabinet. That committee made the decision as to how they wanted the call centre to be conducted, and we were asked to take up that responsibility.

**Senator LUDWIG**—Did you also receive complaints from members of the public about terrorism advertisements or fridge magnets or other issues?

**Mr Tyrie**—As I mentioned to you, there were 6,500 calls or thereabouts with regard to comments and questions about the campaign itself.

**Senator LUDWIG**—Was that information broken down in terms of what the comment or complaint was about?

**Mr Tyrie**—Not to my knowledge, no.

**Senator LUDWIG**—Can you give me ‘for instance’?

**Mr Tyrie**—Comments on the campaign, whether it was criticism or otherwise.

**Senator LUDWIG**—Were any of those followed up?

**Mr Tyrie**—Do you mean passed on to an appropriate agency to follow up?

**Senator LUDWIG**—Yes, any agency.

**Mr Tyrie**—I would have to take that on notice; I cannot tell you offhand.

**Senator LUDWIG**—I was looking at a report in the *Canberra Times* of Saturday, 14 December 2002—I do not expect that you remember it—which indicated that 300 staff were needed for the call centre by Wednesday. Is that just the media getting excited?

**Mr Tyrie**—I do not recall 300 being needed by Wednesday, if that is towards the set-up date. We certainly needed approximately 100—unless it includes the overflow to Telstra.

**CHAIR**—As there are no further questions in this area, thank you very much for your assistance, Mr Tyrie and Mr Templeman. Happily I can advise that the representatives of the AGS are here and able to come to the table.

**Senator Ellison**—Madam Chair, I would just remind the committee that I have that commitment with the New Zealand shadow minister at 6 o’clock.

**CHAIR**—I understand that, Minister.

**Mr Cornall**—Madam Chair, I want to correct something that I said about AWAs. The call centre operators are employed as intermittent or irregular hours—that is, casual—employees. As a consequence of that, they receive a loading on the normal hourly pay rate in lieu of any entitlement to annual leave, sick leave, carer’s leave, maternity leave, paid parental leave et cetera, but they are otherwise employed under the terms of the department’s certified agreement. I want to correct that incorrect answer that I gave earlier.

**Senator LUDWIG**—Thank you very much.

[5.24 p.m.]

#### **Australian Government Solicitor**

**CHAIR**—Ms de Gruchy and Mr Riggs, thank you very much for coming back to the committee after having been advised that you would not be required until half past nine. We are very grateful for your assistance. Questions will now be put to the Australian Government Solicitor by Senator Ludwig.



**Senator LUDWIG**—I appreciate your coming back. Does the Australian Government Solicitor continue to represent the Commonwealth in native title matters and matters involving members of the stolen generation?

**Ms de Gruchy**—We certainly represent the Commonwealth in relation to native title matters that are in proceedings around the country. I would have to take on notice any question that related to the situation concerning what you termed the stolen generation.

**Senator LUDWIG**—I am happy for you to do that. There is obviously contention over the title but you broadly understand the area that we are looking at and for what that work might be.

**Ms de Gruchy**—Senator, you are aware of the fact that AGS represented the Commonwealth in relation to the major cases. I understand your question to relate to whether there are any subsequent proceedings.

**Senator LUDWIG**—Yes, and in how many such matters has the Australian Government Solicitor acted for the Commonwealth during the current and previous financial years? If you could include that in the information that you can provide, it would be helpful. I expect you would need to take that on notice.

**Ms de Gruchy**—Yes.

**Senator LUDWIG**—Do you have the total income to the Australian Government Solicitor from acting for the Commonwealth in the matters against Indigenous persons, or would you have to take that on notice?

**Ms de Gruchy**—I would have to take that on notice in the sense that your question seems to relate to proceedings against Indigenous people.

**Senator LUDWIG**—We could break it down between where you have actually assisted them or acted on their behalf at the direction of the Commonwealth and those where you have acted against their interests in relation to native title claims and other claims. In a court it is usually for or against, as I understand it, so you are going to be on one side of the fence or the other unless you are an intervener, in which case you can put that in a separate column. Does that help?

**Ms de Gruchy**—I take it that the question is broadly in relation to proceedings relating to Indigenous issues.

**Senator LUDWIG**—Yes, and then if you are able to break that down by matter it would be helpful. In the current and previous financial years the AGS has received instructions from the Commonwealth to initiate appeals against decisions favourable to Indigenous claimants in relation to native title. How many appeals have been lodged is the first issue. How many have failed, or succeeded as the case may be? What has the AGS's income been from those appeals? Can you provide that information to the committee? I understand you will probably need to take that on notice as well.

**Ms de Gruchy**—Yes, I would.

**Senator LUDWIG**—In relation to the review of legal outsourcing arrangements, earlier the Office of Legal Services Coordination indicated that it is carrying out a review of the 1999

changes to the way the Commonwealth purchases legal services. Do you have any involvement in that review? That is the review of outsourcing arrangements by the Office of Legal Services Coordination.

**Ms de Gruchy**—That is a review that is being undertaken by the Office of Legal Services Coordination. We have had some involvement in the sense that a number of our clients have sought our assistance in relation to their response to the review, but we have had no direct involvement in relation to the review.

**Senator LUDWIG**—So you have represented clients who are involved in the review: is that the way you would put it?

**Ms de Gruchy**—Not represented clients; assisted with responses about, for example, the cost of legal services.

**Senator LUDWIG**—So you have not responded to any surveys?

**Mr Riggs**—The AGS has not been surveyed; we have assisted clients in helping them to answer questions in the survey.

**Mr Govey**—As I understand it, the survey, or at least the questionnaires, were directed at the clients, so neither AGS nor any private law firms that were acting for agencies were the recipients of survey results.

**Senator LUDWIG**—I am just checking, Mr Govey, that is all. I never know where AGS sometimes sit as to whether they are inside or outside the tent. They still turn up here, so I assume they are partly within the tent. When you no longer appear I will know you are outside the tent. If you have only assisted clients in respect of filling out forms for those particular surveys, I will not ask you questions about that because I suspect that then breaches your client confidentiality. You have not then been directed with any surveys to fill out yourselves?

**Ms de Gruchy**—Not from the Office of Legal Services Coordination.

**Senator LUDWIG**—Anywhere else?

**Ms de Gruchy**—Not that I am aware of.

**Senator LUDWIG**—Turning to the royal commissions, is the Australian Government Solicitor's involvement in the two royal commissions now complete?

**Ms de Gruchy**—Our involvement in relation to providing services to the royal commissions is complete in the sense that the commissions are no longer operating and all of our personnel have returned to AGS or have gone on to other things.

**Senator LUDWIG**—Have they paid you yet? Have all your accounts been finalised?

**Mr Riggs**—Very nearly. Almost all accounts are now settled.

**Senator LUDWIG**—What has been the total income to the AGS from each of the royal commissions—and can you break that down by fees and disbursements?

**Mr Riggs**—We had originally imagined that the financial information would have been provided by the two royal commissions.

**Senator LUDWIG**—They are not here.

**Mr Riggs**—No, indeed not.

**CHAIR**—We have an indication that the department will assist where they can, Senator Ludwig.

**Mr Cornall**—We have the legal cost figures for both royal commissions, if you would like them to be tabled.

**Senator LUDWIG**—Yes, please.

**Mr Riggs**—Those numbers have been agreed to by AGS.

**Senator LUDWIG**—All right. So the department is providing that information on your behalf?

**Mr Riggs**—Yes.

**Senator LUDWIG**—That is much better way of dealing with it, isn't it? Have the staff who were working for the royal commissions all returned to the Australian Government Solicitor?

**Ms de Gruchy**—Not all of the staff have returned to the Australian Government Solicitor. All of the staff who were with the HIH royal commission commission, certainly towards the end of the commission, have returned to AGS. There were a couple of employees who were on term contract whose contracts ceased at an earlier period than the conclusion of the commission. In relation to the building and construction industry royal commission, not all of the people that we had on the commission were ongoing employees of AGS. A considerable number of the people have returned to AGS; some were on term contracts, which came to an end with the conclusion of the commission, and they have made their own arrangements concerning their careers at the end of their contracts; and a number of staff have taken leave without pay from us to pursue other opportunities.

**Senator LUDWIG**—So everyone could have come back, if they had wanted to?

**Ms de Gruchy**—We have to make an estimation of our requirements for staff. We did not require all the people that were on the commission to fulfil our ongoing needs.

**Senator LUDWIG**—Did you terminate anyone?

**Ms de Gruchy**—We did not terminate anyone who had ongoing employment with AGS. We allowed term contracts which were for the period of the commission to come to a natural conclusion at the end of the commission.

**Senator LUDWIG**—Has the AGS being retained to act on behalf of the Commonwealth in any illegal actions arising from the royal commissions or the work of the building industry task force?

**Ms de Gruchy**—As indicated to the committee previously, we do advise the Department of Employment and Workplace Relations and we also, in that light, assist on a fee-for-service basis the task force that has been established.

**Senator LUDWIG**—Are there no other departments involved in the two royal commissions—only the workplace relations department and the building industry interim task force?

**Ms de Gruchy**—Could you repeat your question in relation to the HIH royal commission?

**Senator LUDWIG**—It was plural. Has the AGS been retained to act on behalf of the Commonwealth in any legal actions arising from the royal commissions, plural, or the work of the building industry interim task force? Specifically, in terms of HIH, has the AGS being retained by the Attorney-General's Department to pursue any action?

**Ms de Gruchy**—AGS has been involved on behalf of the Commonwealth in relation to the commission generally speaking during the period of the commission and subsequent to it.

**Senator LUDWIG**—Is there an open retainer? What is happening there? Perhaps the Attorney-General's Department can help. Is that you, Mr Govey?

**Mr Govey**—I am certainly aware that there is some wind-up work occurring right now with Attorney-General's Department and Prime Minister and Cabinet involvement. There might also be some further work as time goes by. But I suspect it is too soon to be sure about that right now.

**Senator LUDWIG**—So there is no legal action that is currently on foot that you are funding in relation to the royal commissions into HIH and the building industry?

**Mr Govey**—I was not talking about the building and construction royal commission because that is being handled by DEWR and Ms de Gruchy's response dealt with that. I was limiting myself to HIH.

**Senator LUDWIG**—I was just checking, you see. You never know.

**Mr Govey**—I am not aware of anything in relation to BCI that involves the Attorney-General's Department but we do have a minor involvement in some wind-up elements of the HIH royal commission which involve AGS assisting us.

**Senator LUDWIG**—Can you give me the nature of that?

**Mr Govey**—In general terms, it is to do with what happens to the records of the royal commission and what agencies can have access to those records.

**Senator LUDWIG**—That is where I wanted to go to next. We seem to have second guessed one another. Does the AGS—and I will ask you first—have custody of any of the records of the royal commissions?

**Ms de Gruchy**—No.

**Senator LUDWIG**—Where have they been deposited?

**Mr Govey**—Primary responsibility for the records is with the Department of Prime Minister and Cabinet.

**Senator LUDWIG**—I see. So my questions have to go to Prime Minister and Cabinet in relation to where the records are now and what is being done with them. Under section 22 of the Archives Act they become the property of the Commonwealth. Who looks after it from that? Is Archives not under your area?

**Mr Govey**—No.

**Senator LUDWIG**—Does it then go to Prime Minister and Cabinet and that relevant department takes care of them from there?

**Mr Govey**—I think in general terms that is correct.

**Senator LUDWIG**—I am only guessing, so do not agree with me. The Prime Minister would be responsible for the administration of those records, I suspect, from here on in.

**Mr Govey**—That is right. Perhaps I should have added that we will have some records because of our involvement in the administrative aspects of the royal commissions and records to do with those matters with which we were directly involved, such as legal counsel. But they are our records.

**Senator LUDWIG**—Yes. Perhaps I should direct questions to Prime Minister and Cabinet.

**Mr Govey**—I can confirm from assistance provided by Mr Oliver that the hard copy and electronic records of the royal commission have been transferred to PM&C with, as I mentioned a moment ago, the exception of administrative records which are with the Attorney-General's Department. PM&C have the responsibility for retention, access and archiving of those records in accordance with the relevant policies and procedures. PM&C have also assumed responsibility for the commission's web site.

**Senator LUDWIG**—I take it you have now provided to this committee the breakdown of the cost of each royal commission to date and the payment categories provided earlier in estimates hearings. I have not seen the document yet.

**Mr Cornall**—What I gave you before was specifically the legal fees.

**Senator LUDWIG**—Yes. What about the breakdown? If we can short-circuit it, we usually ask a potpourri of questions in this area but specifically we want the total cost of each commission, the payment categories, the legal fees and so forth.

**Mr Cornall**—We do have a total breakdown of the other costs. Bear with me one second and I should be able to table those now.

**Senator LUDWIG**—That is all I had in relation to the AGS, in any event. Thank you.

**CHAIR**—Ms de Gruchy and Mr Riggs, I think we have served a double service there: you have assisted the committee very much, and the committee has dealt with your matters much earlier than we expected to, so thank you for that assistance. Senator Ludwig, I think Mr Terry Gallagher is here from ITSA.

**Senator LUDWIG**—I was talking to Mr Cornall about the royal commissions, so I just wanted to finish off on that.

**CHAIR**—Of course we will complete that area first.

**Mr Cornall**—Madam Chair, can I just make one explanation about the figures that we are tabling?

**CHAIR**—Is this in relation to the royal commissions?

**Mr Cornall**—Yes. In relation to the HIH royal commission there are two columns. One is expenditure to 31 March and the other is the forecast of expenditure to 31 May. Other columns are headed with different expenditures to different dates in relation to the BCI royal commission. I think they are clear on the surface of the document, but I just want you to understand that they are reporting on figures and estimates.

**CHAIR**—Thank you, Mr Cornall. Has Mr Cornall's response there assisted in finalising those royal commission matters, Senator Ludwig?

**Senator LUDWIG**—Yes; thank you.

[5.41 p.m.]

#### **Insolvency and Trustee Service Australia**

**CHAIR**—I thank the officers of the Insolvency and Trustee Service very much for assisting the committee in the processes this evening. I am sorry to have sent you away and then brought you back, but at least it means we will deal with matters pertaining to ITSA earlier for you.

**Senator LUDWIG**—Could you tell me what the status of the review of part 10 of the Bankruptcy Act is? Where are we with that?

**Mr Gallagher**—The part 10 review process has reached the stage where a report has been prepared and submitted to the Attorney.

**Senator LUDWIG**—So the report has been finalised?

**Mr Gallagher**—That is right.

**Senator LUDWIG**—How long has that taken?

**Mr Gallagher**—I am just trying to recall the dates. The issues paper for the part 10 was released on 9 October 2002, and that was the starting point of the review. We invited submissions, which were due by 17 January 2003. In the interim we conducted focus groups with various industry stakeholders.

**Senator LUDWIG**—So it is now complete and in the minister's hands?

**Mr Gallagher**—Yes. The process involved bringing together the responses from the people who were invited to make submissions, pulling the report together and then considering it at the consultative forum we convened for that purpose. They looked at the report and were happy with it, and it has now been submitted to the Attorney.

**Senator LUDWIG**—On what date was it submitted?

**Mr Gallagher**—I have not got an exact date, but it is within the last two weeks; it was probably a couple of weeks ago. I think it was submitted on 15 May.

**Senator LUDWIG**—Minister, when can we expect to see this one?

**Senator Ellison**—I will have to take that on notice. I do not have that information at this point.

**Senator LUDWIG**—You will soon understand why I asked that. Before we go to questions on the joint task force, has the part X review brought to light any untoward activities of which the government was previously unaware? You are aware of the joint task force on the use of bankruptcy and family law to avoid the payment of tax—and we will deal with that shortly. You detailed a number of practices that were untoward—if I can use that expression. Have any new ones been brought to light?

**Mr Gallagher**—David Bergman is my colleague who undertook quite a number of the consultations. Could I just say that the issues paper that was prepared basically set out some of the key matters that had been areas of concern. I do not think it is right to say that any new problems emerged during the consultations. Perhaps I could ask David to respond.

**Senator LUDWIG**—More broadly, were there any untoward activities, new or otherwise?

**Mr Bergman**—It is fair to say that the review reflected the sorts of concerns that probably led to it—the kinds of practices that were dealt with in the issues paper—friendly or unfriendly creditors, relationships between the debtor and some of the creditors that could undermine the integrity of the process, and certain types of deals that people do with creditors to secure their votes for the part X. The sense that we got from almost everyone that we spoke to during the review is that, yes, these sorts of practices do happen. They do have the potential to undermine the way that the system works but they are not widespread. They are limited to a certain number of cases. Also I think it is fair to say that the view of most people who took part in the review was that they did not necessarily represent structural problems with part X but they were important practical issues that we would have to deal with.

I suppose more broadly another issue that came out a number of times during the review was that there were practices or things that were happening that people saw as a problem and that there were already some remedies in the legislation that were not being used. So some issues were raised about the nature of part X in practice and whether what is in the act to deal with some of these things is sufficient or sufficiently accessible by the people who need to use it.

**Senator LUDWIG**—I am just not sure I understand that. Are you saying that the provisions were there but ITSA was not policing them, or are you saying that the provisions were there and no-one knew about them—in other words ITSA was not being educative enough?

**Mr Bergman**—Certainly education was an issue that came up, but the reality is that some of the remedies that are there can only be exercised by creditors. It is very expensive and it can be very time consuming and cumbersome to take those sorts of actions with no guarantee of success. There have been a number of cases over the years where the courts have been asked to look at a part X arrangement on the basis that there was a voting irregularity or something that happened at the meeting which one of the creditors is concerned about, but the act requires the court to look at not only whether that irregularity was present but also whether it would be in the interests of the creditors in general to set aside the arrangement. So there are some obstacles, I suppose you could call them, that are in the way of taking those actions. The inspector-general's role in applying to have a part X arrangement set aside is even more limited and, once again, it has to be in the interests of creditors. So the fact that something appears to have been wrong with the process does not necessarily mean that a court would take the view that it is appropriate to set it aside.

That was an issue that was discussed quite a lot during the process; certainly it came up at all of the focus groups we conducted. Without pre-empting what is in a report that has not yet been considered by the government, there was a feeling that that was an area we had to do something about. It is a combination of education and strengthening the abilities of trustees,

improving the way that ITSA does regulate these people by making sure that they are fully informed about what they can do to improve practices at meetings, and also to inform creditors; and of course there were suggestions for changes. Some of those were foreshadowed in the issues paper.

**Senator LUDWIG**—We cannot go to those specifically because they are now with the Attorney-General and waiting for the report to be finalised, I guess. That is right, isn't it?

**Mr Gallagher**—Yes.

**Senator LUDWIG**—I will try to structure my questions around that. Going to ITSA's role, have you challenged any part X arrangements in court recently?

**Mr Gallagher**—We have not changed arrangements. There has been a recent application made to the court to have a part X set aside.

**Senator LUDWIG**—You have the power to set aside part X, don't you?

**Mr Gallagher**—There is a power, yes, to apply to the court to have it set aside—for the inspector-general as well as for creditors.

**Senator LUDWIG**—Have you exercised that?

**Mr Gallagher**—It has been exercised—not all that frequently. There have been a couple of cases in the past year or so.

**Senator LUDWIG**—Can you give details of those matters? How many times would you have sought to set aside a part X arrangement?

**Mr Gallagher**—There were two matters in the last 12 months where that action was taken.

**Senator LUDWIG**—Can you give any details of those? What caused ITSA to bring such an action, and what was the outcome of the action in those two instances?

**Mr Bergman**—In one of the matters there were a number of problems with the proposal that was put. It was not very clear what sort of a proposal it was. One of the fundamental problems was that it was a solicitor who was acting as the controlling trustee in the case. He also sought to be appointed as the trustee. A solicitor cannot be a trustee; you have to be a registered trustee to be the trustee of a part X arrangement. That was really the basis of the application. In that case the court did set aside the matter.

**Senator LUDWIG**—What was the second matter; do you know?

**Mr Bergman**—If I could just add something to that: that was an application that was made by the inspector-general in conjunction with one of the creditors, and that addresses this issue that I was talking about a moment ago—we need to be able to demonstrate not only that there was some irregularity but also that it was in the interests of the creditors.

**Senator LUDWIG**—Was that with the tax office? Were they a significant creditor?

**Mr Bergman**—I am not aware that they were a creditor at all. The creditor who took the action with us was the Queensland Building Services Authority.

**Senator LUDWIG**—What about the other matter?



**Mr Gallagher**—There was another matter—I think the name was Sutherland—but I do not have all of the details of that enough to—

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

**Mr Gallagher**—We can take it on notice and let you know what the outcome of that was.

**Senator LUDWIG**—The report of the joint task force was finally released by the Attorney-General on 2 May 2003; and it was, as I understand it, modified so that any information that could assist a person to avoid tax was removed. What prompted you to release that in May? You do recall that I have been asking for it for some time. What prompted you to release it in May? It certainly was not me.

**Mr Gallagher**—There had been some calls from various industry sectors to release the report. We had issued an issues paper which, as the Attorney announced, identified some of the proposals to address the issues raised in the task force report. There was some concern from the industry representatives that, in the absence of the detail in the report, their capacity to respond may be inhibited. Those representations were made at various levels and ultimately the Attorney decided, in conjunction with the Assistant Treasurer, to release the report in its modified form, with those various offending sections taken out.

**Senator LUDWIG**—Had anyone made any freedom of information applications?

**Mr Gallagher**—Yes, there was a freedom of information application made.

**Senator LUDWIG**—Was that fulfilled?

**Mr Bergman**—The request was dealt with by the Attorney-General's Department and the decision was to release the report with modifications so that the exemptions claimed were on the basis that—

**Senator LUDWIG**—Is that why you then decided to release the report more generally?

**Mr Gallagher**—I think it was one of the factors, yes.

**Senator LUDWIG**—As you would have had to release it under FOI anyway?

**Mr Gallagher**—The report in its original form was not able to be issued, but it was in its modified form.

**Senator LUDWIG**—If that was the case, it begs the question why you did not produce it when I asked for it some time ago. If you recall, I did say ask—and I am open to correction—whether you needed to blank out any sections or modify it any way to make it suitable for this committee. I have a recollection that I did ask that, but I am happy to go back through the record and find that out. It is a moot point, but the issue for this committee at least is that, if we ask for a report and if you need to modify it and it can be made available, it should be made available. In this instance you chose not to and at a later date you then chose to release it in a modified form. I am just curious as to why you chose that course of action rather than release it in the modified form to the committee. I am looking at what prompted you. Did the Attorney-General finally prompt you?

**Mr Gallagher**—The decision was made by both ministers involved at the time not to release the report. Subsequently they made a decision to release it in that modified form.

**Senator Ellison**—I am not aware of the reasoning, but I think it is fair to say that that is a matter for the ministers and not the officials.

**CHAIR**—I think Mr Gallagher has made that clear.

**Senator Ellison**—If there is any question as to why there was a change in attitude, I will take it on notice.

**Senator LUDWIG**—Thank you, Minister. I think, as you may recall, that I also asked you during debate on the passage of the legislation as to why the report could not be made public—but I am happy to be corrected. But we will move on—having got it.

**Senator Ellison**—I will take it on notice.

**Senator LUDWIG**—Just for the record, when did the Attorney-General received the joint task force report?

**Mr Bergman**—The report was provided to both ministers in January 2001.

**Senator LUDWIG**—And it took the Attorney-General nearly 18 months to modify the report for public release?

**Mr Bergman**—That is correct.

**Mr Gallagher**—Just to clarify that: it was January 2002.

**Senator LUDWIG**—When was the decision made to release the report? I guess that question should go to you, Minister.

**Senator Ellison**—I do not know when that was done. We do not have that information. We will try to get that to you in the course of these estimates hearings.

**Senator LUDWIG**—In terms of the recommendations of the joint task force, are you now involved in progressing those recommendations? Where do we go from here in relation to that task force report? We have a part X review that has been undertaken; an issues paper; the part X report now finalised and with the Attorney-General; and recommendations from the joint task force. Will you be involved in progressing those recommendations?

**Mr Gallagher**—In consultation with the Attorney-General's Department, yes we will be involved. David may be able to provide some information on that.

**Mr Bergman**—The issues paper that was released in November dealt with five of those recommendations. There are proposed changes contained in that paper. They were issued for public consultation.

**Senator LUDWIG**—Could you detail the five recommendations? I am happy for you to take that on notice.

**Mr Bergman**—Of the five recommendations, the first would allow a trustee in bankruptcy to apply to the court to recover assets not held in the name of the bankrupt but which were acquired substantially using the bankrupt's income. The basis of that decision would be using principles very similar to those which exist in the Family Law Act. The second proposal would introduce a second-tier regime for collecting income contributions. These are contributions that a bankrupt can be required to pay if their income is over a certain threshold. It is difficult to recover those contributions from somebody who does not receive a salary or

wage or who does not receive all of their income from one source. So the proposal is to introduce an additional regime which a trustee could choose to invoke if in the circumstances it is appropriate to take control of that person's income and ensure that the payments are made to creditors. I am sorry if I get these out of order, by the way.

**Senator LUDWIG**—I will be able to match them up now. My problem was that I would have trouble tracking the five and might have got them wrong.

**Mr Bergman**—For the record I will refer to the actual report. They are recommendations 3, 4, 5, 9 and 11.

**Senator LUDWIG**—That is from the joint task force report?

**Mr Bergman**—Yes. Do you want me to go through the remaining ones?

**Senator LUDWIG**—No. That is a shorthand way of doing it, and I appreciate it.

**Mr Bergman**—Those proposals, it is fair to say, raise some fairly complex issues. We are continuing to receive submissions on those, which we have started considering. We will advance them next by bringing together some of the key interest groups from both the bankruptcy and the family law sectors to try to resolve some of those issues so that we can move forward with these proposals.

**Senator LUDWIG**—Will you then convene a working group and will it be within ITSA itself; or how will you progress them?

**Mr Bergman**—It will be a joint effort by ITSA and the relevant areas of the Attorney-General's Department, because there is a crossover here between bankruptcy and family law that we need to manage.

**Senator LUDWIG**—Are you able to tell me how many of those issues have been dealt with in the review that has been forwarded to the Attorney-General? I know you may not be able to do that, because it then might highlight which ones have been dealt with. Can you say that it is none of them, or are they separate again?

**Mr Bergman**—They are quite separate issues. Are you talking about the part X review?

**Senator LUDWIG**—Yes.

**Mr Bergman**—They are completely separate processes.

**Senator LUDWIG**—Have you contacted the other agency involved, which is Family and Community Services? They are aware of the joint task force report.

**Mr Bergman**—Family and Community Services are only involved in relation to a very small part of the report. I am not sure whether you are referring to the family law division.

**Senator LUDWIG**—I am sorry. Are you going to refer them to the family law division so that they can look at them?

**Mr Bergman**—The family law division have been very extensively involved in the process to date.

**Senator LUDWIG**—I mistook that; I am sorry. What work do you intend to do in the area of the Proceeds of Crime Act 2002, which came into effect on 1 January 2003? Have you

been tasked to undertake specific work from the perspective of ensuring that the legislation works?

**Mr Gallagher**—We have been tasked with additional activity in relation to the control of and dealing with property that is identified under the new legislation. Essentially, ITSA's role is in dealing with the assets that are the subject of court orders or that are otherwise confiscated. Additional resources were provided to us in the budget because of the extra activity that is expected to arise from that legislation.

**Senator LUDWIG**—It is to the tune of \$6.2 million over two years and is partly to fund prosecutions made by the DPP under the proceeds of crime legislation and for the control and realisation of seized assets by ITSA. How much is being allocated to which of those; and what role will you play in the control and realisation of seized assets?

**Mr Gallagher**—As I say, the numbers of resources that ITSA has or the proportion of that amount to ITSA is \$502,000 in the first year rising to \$706,000 in the second year. At the end of that period, there will be a review as to the ongoing provision of that.

**Senator LUDWIG**—How will that money be used?

**Mr Gallagher**—For ITSA, it is to provide additional staff resources to deal with property that is the subject of orders.

**Senator LUDWIG**—What would be your role?

**Mr Gallagher**—It is the role that we have now in relation to proceeds matters; that is, taking control of assets, making sure that they are properly protected and do not deteriorate and at the moment, is an after the prosecution of the offender, selling the assets and paying them to the confiscated assets reserve. The new legislation enables the proceeding to be a civil proceeding, and that is why there is expected to be increased activity. But essentially our role is dealing with the assets—taking control of the assets and maintaining them; continuing to operate in business, if the asset is a business; and ultimately selling the assets.

**Senator LUDWIG**—Will that also involve creditors' meetings if the assets are encumbered?

**Mr Gallagher**—No.

**Senator LUDWIG**—If you seize an asset and it has a charge or a floating charge which settles or there is an encumbrance on it, what happens to all of that? There then would be a creditor somewhere along the line, I suspect. Maybe I am asking the wrong people this question.

**Mr Gallagher**—I think these questions are probably better directed to the criminal law people in the department.

**CHAIR**—Those people are certainly not with us this evening.

**Senator LUDWIG**—You hope to get an unencumbered asset that you can dispose of. Is that your expectation?

**Mr Gallagher**—In dealing with the asset, the claims of other claimants to the asset are obviously taken into account. Where it coincides with bankruptcy, for example, and there are

creditors in the bankrupt estate, the legislation gives precedence to the Commonwealth in relation to the realisation of those assets.

**CHAIR**—As there are no further questions in this area, again, Mr Gallagher, Mr Lowe and Mr Bergman, I thank you for making your way back so quickly and assisting the committee with our deliberations. I know it was not hugely convenient for you, so we do appreciate it very much.

**Mr Cornall**—Madam Chair, I am under the impression that the DPP is not very far away.

**CHAIR**—Apparently the DPP is just a very short distance away.

**Senator LUDWIG**—If I had known that, I would have thought of something else.

**CHAIR**—Happily, we have thought of something else, Senator Ludwig.

**Mr Cornall**—Depending on the questions for CrimTrac, Mr Carnell is that on the board of CrimTrac and may be able to assist. There is one further correction I want to make to earlier evidence, if I could do that.

**CHAIR**—Certainly. Please make the correction now, Mr Cornall. We will talk about CrimTrac in a moment.

**Mr Cornall**—In relation to the casual employees of the hotline, I said that they were employed under AWAs and then I was corrected. I want to reinstate my answer. They are employed under AWAs as intermittent or irregular hours employees, and the AWAs have very similar provisions to the conditions applicable to shift workers under the department's certified agreement.

**Senator LUDWIG**—Yes. I knew that would be a complex question with a complex answer.

**Mr Cornall**—I signed all the documents and I wondered what I had signed if they were not AWAs, because I had gone through this before with our HR staff.

**CHAIR**—Do we have clarity in that area now?

**Senator LUDWIG**—I did expect that there would be clarity.

**CHAIR**—I am happy about that. Senator Ludwig, the offer on the table, as it were, is that Mr Carnell is happy to assist with CrimTrac, because we did send the officers away and they did not expect to need to return until 9.30 p.m. If Mr Carnell can assist with your questions in that area, it might facilitate disposing of CrimTrac as an item. We have made contact with the office of the DPP and they advise that they would be able to be here by now, 6.10 p.m., so I am sure they are not very far away. So shall we start on CrimTrac?

**Senator LUDWIG**—Yes, please.

**CHAIR**—Thank you for your help, Mr Carnell; we appreciate it.

**Senator LUDWIG**—Perhaps another way of expressing it is that, if there are issues that you cannot answer, they can be put on notice.

**Mr Carnell**—Thank you.

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**CrimTrac**

**Senator LUDWIG**—Can you provide an update of the development of the National Child Sex Offender System. In particular, who has CrimTrac consulted on the development of the system and when do you expect it to be complete—that is, up and running?

**Mr Carnell**—Phase 1 of that project is to provide police with improved factual information on known child sex offenders based on an agreed set of relevant offences. There are consultations with the jurisdictions under way at the moment. According to notes I have here, it is expected that the system will be available to police by the end of 2003. It will be a system for police use only. I hesitated over saying ‘by the end of 2003’, because I do know that there has been some impact on the broader project due to the hand gun buyback system. If that date of the end of 2003 is incorrect, I can certainly come back to the committee and give you a more correct date.

**Senator LUDWIG**—You might also be able to assist the committee by advising who was consulted on the development of the system. Take that on notice, unless you have that your fingertips.

**Mr Carnell**—No, I do not have that at my fingertips.

**Senator LUDWIG**—What resources have been committed to the development of the system?

**Mr Carnell**—The budget is about \$1 million.

**Senator LUDWIG**—Are you aware of whether the agency is on track—you indicated some hesitancy at the completion date of the end of 2003? Is it being ramped up in terms of its being on track or its projected development?

**Mr Carnell**—It is being done in conjunction with another project called the national minimum person profile where there is to be a pilot involving New South Wales and Victoria. That is largely on track at the moment. It is a project that the board are monitoring closely, because we do not want it to slip significantly. It has had some minor slippage—I think it was 37 days—when the board last looked at it. That is a project where there are clear milestones for each phase and we are keeping a close eye on it.

**Senator LUDWIG**—Chair, are we going through to 6.30?

**CHAIR**—Yes.

**Senator LUDWIG**—Did you want to deal with the DPP now, because the questions for CrimTrac are going to get more complex, I suspect?

**CHAIR**—I know Mr Carnell likes a challenge!

**Mr Carnell**—If they are terrible accounting questions, they have got their equivalent of Mr Kennedy, and she is probably the person you need for those questions.

**CHAIR**—She is, indeed.

**Senator LUDWIG**—What is starting to concern me is that they were becoming a little bit more complex.

**CHAIR**—I do think that is a good idea. Mr Carnell, thank you for assisting the committee in that area. We will come back to CrimTrac, as agreed earlier.

**Office of the Director of Public Prosecutions**

**CHAIR**—Mr Bugg, I express the committee's gratitude for returning earlier than we had previously arranged. We are very grateful for that, as it does mean, at the very least, that you will have your matters dealt with much earlier than planned.

**Mr Bugg**—And for that I am also grateful. Mr Delaney is parking the car, so someone else will come in for him.

**Senator LUDWIG**—As I understand it, the DPP were allocated \$800,000 last year for the purpose of providing advice on offences and prosecuting matters referred to them by the interim task force for the building and construction industry. How much of this has been spent to date?

**Mr Bugg**—Actual expenditure on legals is about \$10,000. I cannot give you the precise breakdown of that, because we have conducted one prosecution and we have not had the account from counsel for that yet. Obviously there has been in-house work done in relation to the matter which, as I might have mentioned last time, really does not figure in the costing that we were trying to calculate for you at the estimates hearings back in February. There were two counsel, one only for advising and the other for some court appearances, but I do not have the breakdown.

**Mr Thornton**—The estimate that we have is \$7,500 for counsel appearing and \$4,800 for counsel advising.

**Senator LUDWIG**—How many active matters in relation to the interim task force are still before the courts?

**Mr Thornton**—Four matters.

**Senator LUDWIG**—Where are they in their progression through the courts?

**Mr Thornton**—I think that one is before the courts in Victoria, one is before the courts in New South Wales, one is still under investigation in New South Wales and one is being reviewed on the possibility of an appeal.

**Senator LUDWIG**—So there are three matters on which you can give me some information. What, if anything, can you tell me about the one that is under investigation?

**Mr Thornton**—I do not have any details in relation to that.

**CHAIR**—Welcome, Mr Delaney. We are glad to see that the car got parked.

**Senator LUDWIG**—Mr Delaney, I asked whether there were any active matters before the courts. I was informed that there were three matters—one on appeal, two currently being dealt with in the courts and one under investigation. I am interested in the respondents to those matters that are in the courts, which ones are on appeal and what is alleged, in general terms. What can you tell me about the one under investigation?

**Mr Delaney**—I do not think there is much.

**Senator LUDWIG**—If it is under investigation then I understand.

**Mr Thornton**—I did not actually say that there was one under appeal; I said that there was one being considered.

**Senator LUDWIG**—That is my mistake. So you cannot tell me anything about the one being investigated?

**Mr Delaney**—No, except that it is a New South Wales matter and it is in the investigative phase. I do not think it would be appropriate to say much more.

**Senator LUDWIG**—What can you tell me about the other matters?

**Mr Delaney**—There is one other matter in New South Wales, which is an allegation of giving false evidence. That is next in court on 17 June.

**Senator LUDWIG**—Can you tell me who the respondent is?

**Mr Delaney**—The defendant?

**Senator LUDWIG**—Yes.

**Mr Delaney**—The defendant is a Mr Manna.

**Senator LUDWIG**—And the other matters?

**Mr Delaney**—I think you have spoken already of the Kingham matter. The defendant in the other matter in Victoria is a Mr Setka. That is an allegation of threatening and intimidating a witness before the Industrial Relations Commission. That is for mention on 30 May.

**Senator LUDWIG**—Which one is under consideration for appeal?

**Mr Delaney**—I would rather not give the name of that.

**Senator LUDWIG**—Can you give the nature of the matter, or would that give the game away?

**Mr Delaney**—It may well do so.

**Senator LUDWIG**—None have been finalised, then?

**Mr Delaney**—No. The matter of Kingham, depending on the director's decision in relation to an appeal, may be finalised in short order.

**Senator LUDWIG**—Are any other cases being prepared?

**Mr Delaney**—Not that I am aware of.

**Senator LUDWIG**—Cases are referred to you from the interim task force. Do you regularly take instructions from the task force or go back to them, or do you deal with it autonomously once the brief is handed to you? I am just trying to understand the process involved.

**Mr Delaney**—It depends on whether the lawyer involved considers that further information or evidence is necessary. There could well be advice given on the nature of the material received, with additional materials required—that sort of thing. It would vary from case to case.



**Senator LUDWIG**—For the reports of the two royal commissions, Commissioner Cole produced a confidential volume of recommended prosecutions. Have any matters been referred to you, Mr Bugg, by the Attorney-General for prosecution?

**Mr Delaney**—There have been no referrals from the Attorney-General. The only matters that we have had by way of referral are those to which Mr Delaney and Mr Thornton have spoken.

**Senator LUDWIG**—I understand ASIC is making preparations based on the HIH royal commission's findings. Have any matters from ASIC in relation to the royal commission been referred to you, Mr Bugg, for prosecution?

**Mr Bugg**—A matter, or part of a matter, that was under consideration by the royal commission had been referred to my office for consideration before the findings of the royal commission were handed down. So the answer is yes and no, in the sense that my office is currently considering a matter that was considered by the royal commission, but it commenced its consideration of part of that matter before the royal commission's findings were handed down.

**Senator LUDWIG**—Did it form part of the findings?

**Mr Bugg**—That matter?

**Senator LUDWIG**—Yes.

**Mr Bugg**—Part of what my office has been examining was certainly part of the findings of the royal commission.

**Senator LUDWIG**—What can you tell me about that—or are we faced with the same problem?

**Mr Bugg**—We are faced with the same difficulty, I am sorry.

**Senator LUDWIG**—I understand that. Will the cost of any prosecutions arising from the royal commissions be met from existing resources or will additional funding be required? It is a bit hard to tell at this stage, isn't it?

**Mr Bugg**—It is in the sense that that is a matter that is still under consideration in terms of the response to those particular recommendations. In the event that my office is undertaking prosecutions arising out of the recommendations of the royal commissions, following further examination of them by ASIC, obviously further resources will be needed.

**Senator LUDWIG**—Have you had or will you have discussions with the Attorney-General over the potential workload that could come from either of those two royal commissions?

**Mr Bugg**—Not directly with the Attorney as to resourcing implications for either matter. There have been some questions which my office has been asked to provide detail about in terms of estimates of resourcing in relation to the HIH royal commission. Any discussion as to resourcing was covered when we last appeared before you in relation to the building royal commission when you asked how that figure of \$800,000-odd was arrived at. That was a very broadly based consideration. It was a 'how long is a piece of string' question from both your

perspective and mine. So we really could not add any more, and I cannot add any more to what I gave you the last time we were before you.

**Senator LUDWIG**—Is that same process going to be undertaken in relation to the HIH royal commission?

**Mr Bugg**—Yes, with probably a little more precision in the sense that, if one looks at what the recommendations are, one has perhaps a clearer picture of what one could anticipate.

**Senator LUDWIG**—Has any sum been settled on yet?

**Mr Bugg**—No.

**Senator LUDWIG**—Is it fair to say that it is still in the negotiation stages?

**Mr Bugg**—That is a fair comment.

**Senator LUDWIG**—Thank you, Mr Bugg. I do not have any further questions in this area.

**CHAIR**—Thank you very much. Again, Mr Bugg and Mr Delaney, thank you very much for coming back to assist the committee and for ensuring that we were able to deal with you in an expeditious manner.

Before we adjourn, I will seek some advice from you, Senator Ludwig. We have advised CrimTrac to return at 9.30: should that give us enough time to complete the Customs considerations from 7.30?

**Senator LUDWIG**—I expect so.

**CHAIR**—Thank you. Just to ensure that nobody is in any doubt, there are no other agencies or aspects of the department scheduled to appear here this evening after we have concluded with CrimTrac, so, Mr Cornall, none of your other officers will be required.

#### **Proceedings suspended from 6.26 p.m. to 7.31 p.m.**

##### **Australian Customs Service**

**CHAIR**—Good evening, ladies and gentlemen. I welcome Mr Lionel Woodward and officers of the Australian Customs Service to this evening's consideration of the Legal and Constitutional Legislation Committee budget estimates 2003-04. I understand Senator Ludwig will be dealing with matters relating to the Australian Customs Service.

**Senator LUDWIG**—The first area deals with the budget allocation increase of \$39.236 million from the previous year of \$547.600 million. Total revenues are estimated to be \$772.624 million and the budget estimate for 2003 is increased to \$814.464 million. Page 301 of the portfolio budget statement states:

Counter-terrorism measures approved in the 2002-03 budget and additional estimates will continue, along with several internal initiatives undertaken to assist the Government deliver counter-terrorism control.

What are the internal initiatives?

**Mr Woodward**—I can go through a number of them. One concerns initiatives in relation to port security. We have been quite concerned about the extent of risk in ports. What we have done, using our existing resources, is to significantly increase the number of vessels boarded on their first arrival in an Australian port. That is certainly not 100 per cent but we have

increased that percentage to about 71 or 72 per cent. Another set of initiatives we have taken, which we did discuss on the last occasion, is a whole range of technologies we are trialling in relation to what is generally referred to as weapons of mass destruction—chemical, biological and nuclear detection. We have either purchased or taken action to obtain for trial, or in some cases to actually exploit, a range of technologies. I am sure you will recall the discussion we had last time when we went through the things we were thinking about.

**Senator LUDWIG**—But there are no new internal initiatives other than the ones you outlined before?

**Mr Woodward**—I am not sure whether, on the last occasion, we picked up first port boarding.

**Senator LUDWIG**—It does not ring a bell.

**Mr Woodward**—That may have been picked up.

**Senator LUDWIG**—Can you tell us about that then?

**Mr Woodward**—They are examples of activities we have undertaken. We have set up a counter-terrorism unit. We are certainly participating in a range of counter-terrorism trials—some driven by others, some we are driving ourselves as desktop counter-terrorism exercises. They are just examples. I can continue to provide more examples if you wish.

**Senator LUDWIG**—If you would not mind. What I can do is follow up some of those issues, if need be, with other questions on notice or this evening, depending on what the breakdown item is. If you wanted to, you could take it on notice. I would be happy for you to do that and try to describe the major initiatives and the cost of each output by initiative, if it is possible to do that. It would give us a better idea of what your expenditure would be this year and in the out years.

**Mr Woodward**—We can certainly do that and give you some indicative costings. All of the examples I have mentioned are things we have undertaken from within our budget, rather than budget funded.

**Senator LUDWIG**—What funds have been earmarked?

**Mr Woodward**—For counter-terrorism?

**Senator LUDWIG**—Yes.

**Mr Woodward**—The only counter-terrorism funding we have received is carryover funding from previous years for counter-terrorism related activities. The only new funding we receive this year relates to Southern Ocean patrolling, which is a bit over \$10 million. The \$56 million over four years which was picked up in the budget papers is a mechanism for dealing, in accounting terms, with cost recovery. An amount of \$16.3 million in a full year will be coming to us through government appropriations. The same amount, after being collected from industry, will go back into consolidated revenue.

Page 304 has the best table. Under the appropriations budget for 2003-04 the departmental outputs are listed. The first \$16.3 million is what I have just been describing. We get \$16.3 million appropriated to us but precisely the same amount, if our estimating is accurate, will go back into consolidated revenue. It is an accounting mechanism for dealing with the

fact that we are recovering that amount from industry. The \$9.6 million—there is a small capital amount in addition to that, which is on other pages—relates to Southern Ocean surveillance. There is also a reduction of \$3.85 million. A similar amount is coming out of AQIS's funding. A total of about \$7.7 million or \$7.8 million will go towards funding of Melbourne airport changes to deal with quarantine and related initiatives.

**Senator LUDWIG**—And that would be an expense.

**Mr Woodward**—That is right. If I can use non-accounting terms, we get \$9.6 million for Southern Ocean. We lose \$3.85 million, which is about \$6.3 million. We will actually get the \$16.3 million, which is in the table above it, and lose precisely the same amount.

**Senator LUDWIG**—And that accounts for why the 2003-04 budget estimate is \$814.464 million as against expenses of \$755.839 million. There is about \$16 million I guess.

**Mr Woodward**—Which page are you on?

**Senator LUDWIG**—If you go to map 2 on page 309 you can see the total price. Outcome 1, is \$814.464 million.

**Mr Woodward**—To get to \$814.464 million, there are government appropriations of \$586.863 million and revenue received free of charge of \$156.6 million.

**Senator LUDWIG**—If you go over to page 314—

**Mr Cochrane**—On page 323 there is a more clear breakdown of the revenue that we receive into revenues from government of \$586.8 million. The other revenue of \$156.9 million is the resources received free of charge and the goods and services of \$71 million, which is a section 31 revenue. That is with our contracts with DIMIA and the Australian Tax Office.

**Senator LUDWIG**—That increases from \$772.624 million and \$814.464 million to \$842.361 million. Most of that increase is accounted for by revenue that you will then acquit back. In other words, there is not another \$16 million in the kitty that you get to spend on counter-terrorism or anything else.

**Mr Cochrane**—No, there isn't. The way the system works is that we get appropriated the increased costs of the container x-ray facilities of \$16.3 million but the revenue is collected through the administrative side and goes straight into the official public account.

**Senator LUDWIG**—So you have to work harder then.

**Mr Cochrane**—Yes.

**Senator LUDWIG**—I understand. Some of them work differently, although I suppose there is an accounting convention they follow, but it is not always explained sufficiently clearly so that I can follow it. Could you give us an overview of the internal initiatives? The only new money then in the budget was for the Southern Ocean.

**Mr Woodward**—Patrolling, yes.

**Senator LUDWIG**—Was the implementation of the x-ray facilities the last budgeted amount; the carry over from that?

**Mr Woodward**—Yes.

**Senator LUDWIG**—And so protecting our borders and the counter-terrorism measures was also the carry over.

**Mr Woodward**—Everything else is carry over from previous years.

**Senator LUDWIG**—On page 326 is table 3.4, the departmental capital budget statement. Under the heading ‘Purchase of non-financial assets’ there is a reference to assets funded internally by departmental resources. In the estimated actual for 2003 the figure is \$62.180 million and in the budget estimate for 2004 that figure is half of that and continues at approximately that level for the forward estimates period. What accounts for that? Is there a larger expenditure in the estimate and then each out year after that—this budget and the following forward years—there is a significant decrease?

**Mr Cochrane**—The main source of that is the depreciation funding that we receive. It is all tied in with when we actually spend that physically. We have actually spent more this year than we are spending in outlying years. That is basically the reason the figure is larger this year.

**Senator LUDWIG**—What capital did you purchase that accounts for the \$30 million?

**Mr Cochrane**—There was a lot of container x-ray equipment, pallet x-rays.

**Senator LUDWIG**—That was from the capital injection that was made in the last period. It was around \$50 million of that.

**Mr Cochrane**—Something like that.

**Senator LUDWIG**—It was a round figure. Of that you spent a significant portion up-front as soon as you could. Is that right?

**Mr Cochrane**—Not quite. That is just the depreciation component.

**Senator LUDWIG**—Just the depreciation component?

**Mr Cochrane**—Basically that is the funding we received through depreciation which is technically funded internally.

**Senator LUDWIG**—You might have to take me through that.

**Mr Cochrane**—What we do is actually receive depreciation from the government and use that to purchase more assets. It just so happens that we receive depreciation on a year by year basis but we do not necessarily replace assets continually. What we have had is a catch-up of asset replacement.

**Senator LUDWIG**—You then keep it in a capital budget until you need to expend it; until something has had its life.

**Mr Cochrane**—Yes.

**Senator LUDWIG**—You can then repurchase at an opportune time, use the capital budget and then that shows an increase at that time, but it is replacing equipment that has depreciated, is no longer in service or whatever.

**Mr Cochrane**—Yes.

**Senator LUDWIG**—But it could still be patched up and used and you simply use the money to buy something new.

**Mr Cochrane**—The way the system operates is that we receive the money on a year by year basis but do not automatically spend it then.

**Senator LUDWIG**—Is there a figure you normally keep? Why is it then hovering around \$30 million to \$36 million? Is that what you would normally get year to year or what you would normally then expect to spend?

**Mr Cochrane**—What we are doing is projecting outwards. A reasonable spend pattern of what we receive is what we will spend in the forecast out years.

**Senator LUDWIG**—But that is not necessarily what is going to happen.

**Mr Cochrane**—No, it is not necessarily what is going to happen. It is too difficult to predict. We make the assumption that we are going to expend it in the year in which we receive it for outlying years.

**Senator LUDWIG**—So next year I should see even a smaller figure or a larger figure than the \$62 million.

**Mr Cochrane**—Yes, you will see a smaller figure than the \$62 million.

**Senator LUDWIG**—Then you might do a catch-up in a couple of years time.

**Mr Cochrane**—Depending. In some cases there is a lead time into the purchase as well.

**Senator LUDWIG**—Because some of the assets are lumpy in that sense.

**Mr Cochrane**—Yes, and also in future years the cash drawdowns are going to change as well. We are working through Finance as to what that will mean to us.

**Senator LUDWIG**—Are you able to provide a breakdown of the classification of staff who will be affected by this? As I understand it there is to be some reallocation of staffing in this budget. It appears to be a negative difference of 142. If you look at table 2.1.1: Total resources for outcome 1, the figure for staffing is 4,827 and the budget estimate for 2003-04 staffing is 4,685—a difference of about 142.

**Mr Woodward**—I do not think we can provide you with a breakdown. The 142 is derived by a reduction of about 155, and we are getting an increase through funding for the Southern Ocean which would allow us to recruit up to about 13 mariners. Mariners are quite special types so the simple reduction is about 155 for a full year. We have not at this stage worked out precisely where those numbers are going to come from.

It is absolutely clear from our budget position that we are going to need to drop at least that number, maybe a few more, to live within the budget. We will be doing it by a number of means: firstly, having a close look at wastage, looking at replacement of wastage, but we certainly will not be going through a process of freezing recruitment; secondly, looking very carefully at areas of activity we currently undertake—looking at anything we do now that we do not have to do and all, of course, in the context of our statutory responsibilities and government decisions.

**Senator LUDWIG**—When will you determine what classifications or what persons might be earmarked?

**Mr Woodward**—That will not be the process. The process will be covering the major areas I have mentioned, first of all, looking at what we do now and whether there are things we can either stop doing or reduce their intensity. That is looking at it from a functional point of view rather than what level or category a person may be. Secondly, we will be looking at employment in a more productive manner of those who are underemployed. That might mean that, instead of having three people who are not fully employed, we have two who are fully employed and drop one. But that is not a person of any particular level or category. Similarly, in relation to our recruitment activities generally, obviously there we will recruit fewer people at our trainee level than we have in the past. That activity will be curtailed significantly, but we will not be cutting out recruitment entirely. It is simply not possible for me to give you an answer in the way you are looking for.

**Senator LUDWIG**—I am looking for any answer, quite frankly. Are there going to be redundancies?

**Mr Woodward**—We are not going to go through a process of voluntary redundancies, which we have been through before. There will be some people who may well be asked to consider their future. We have, under the Public Service Act, incentive arrangements which do not involve full redundancy payments. There may be a small number of those offered. There will be others who, presumably, will be asked whether they would like to consider other opportunities in the Public Service, the private sector or wherever. But we are not embarking on a round of redundancies.

The obvious point I should make is that we will be doing what we have to do without any significant impact on our statutory or other responsibilities. We have done this on many occasions. I am sure you are aware of our history. The biggest single number of redundancies we had was in 1994-95: we had 439 redundancies and reduced our staffing levels by 490. The figures we are talking about I think we can manage.

**Senator LUDWIG**—Perhaps you can help me understand this: there are special projects which have staffing levels.

**Mr Woodward**—Are you talking about special projects?

**Senator LUDWIG**—Do you have any special projects with staffing currently attributed to them?

**Mr Woodward**—We have people working on projects all the time. The way we work now is that if there is a major exercise which needs to be undertaken, then we will grab people from anywhere in Canberra, from any of the regions. We put them together and have them working in a team, so they form and reform. Project work is a critical part of what we do and we are doing it all the time. We do not have a projects division or anything like that.

**Senator LUDWIG**—Do you allocate staffing by project? How do you allocate staffing requirements?

**Mr Woodward**—We have a matrix organisation so that within central office we have a normal divisional and branch structure with responsibilities allocated. Because of the nature

of Customs we have a large regional presence not only in the capital cities but also in major seaports. What we do is come up with a set of arrangements whereby prime responsibility for the preparation of an indication of what a functional area will do is covered in Canberra. Each of those areas prepare their budgets, which are then closely scrutinised and agreed. They do it in consultation with the regions. But, in addition, regions have their own budgets for their ongoing expenditure for which they bid. We have a process called the National Resource Allocation process which enables all of those bids to be considered against a background of the priorities which we have looked at and we make hard decisions.

**Senator LUDWIG**—Do you have a number of contractors or non-ongoing employees? In the budget estimates, this round and other rounds, different departments or agencies refer to either contractors or non-ongoing employees or those on contract.

**Mr Woodward**—Yes. We do have non-ongoing—

**Senator LUDWIG**—Do you call them that?

**Mr Woodward**—Yes, we do have non-ongoing. If I could just add one other piece of subtlety: we have quite a number of ongoing part-time employees. For example, at airports we may have a pattern of arrivals and departures of planes such that it makes sense to have people coming in for four, five or six hours and working those sorts of shifts. They complement the normal full-time people we have but, in addition, we have non-ongoing staff to deal with peak loads. Executive assistance is a fairly typical example.

**Senator LUDWIG**—You have explained the opportunities you have to redeploy people and the like within the organisation, but have you gone through an exercise in identifying those areas you need to address? Although you say the organisation is a matrix organisation, there will still be people based in Victoria, in Cairns and in Townsville who may not be able to fit within your matrix or be able to shift as easily. Is there a process you go through which is up and running now, or are you intending to?

**Mr Woodward**—No. We have started the process. At the moment we are still doing work to zero in on precisely the funding we will need for next year, but we have already started a process through a meeting of all our senior executives and regional directors, looking at options to enable us to live within the resources we have. We identified in that meeting 31 or 32 areas that we will be looking at. Some of them will probably not go very far; some of them have a lot going for them. We will be allocating responsibility for those assessments and taking decisions internally, if they are appropriate decisions to be taken within Customs. There may be some decisions which would need to go to government and we would be working out a process to get decisions taken on those.

**Senator LUDWIG**—Coming back to the non-ongoing employees, are they contractors as well, or do you differentiate between contractors—that is, employee contractors?

**Mr Woodward**—We would differentiate between contractors, those who are engaged. In other words, they have a contract for services as distinct from our non-ongoing employees, who are in fact employees but are employed for a defined period, normally for a defined task.

**Senator LUDWIG**—Are you examining the contracting area as well to determine whether or not you—



**Mr Woodward**—Nothing is excluded. Everything will be covered.

**Senator LUDWIG**—Are there any contracts to come up for renewal shortly?

**Mr Woodward**—I am again trying to draw a distinction between contracts of a significant kind—if I can just use as an example the Coastwatch contract—where it is indelibly cemented and we have a contractual obligation to pay certain funding, provided requirements are satisfied. At the other end we have individual contractors that we engage for particular tasks. In most cases they would be individuals but in some cases we may contract to a firm that provides a range of services where the ability to manage the process within our budget is perhaps a little easier than managing a Coastwatch contract or a major computing contract.

**Senator LUDWIG**—We can look at one area to try to get an understanding of it. How many staff would be allocated specifically to, say, the x-ray machines?

**Mr Woodward**—You would need to define that a bit closer because I think we have 80.

**Senator LUDWIG**—I know.

**Mr Woodward**—Do you mean the major ones in Sydney and Melbourne.

**Senator LUDWIG**—The major facilities.

**Mr Woodward**—Let me just explain why I find that very difficult. You have the people who operate the machine and there is the x-ray gear itself.

**Senator LUDWIG**—I have had an opportunity of examining that.

**Mr Woodward**—There are other people in the building. There are two x-rays in there and we also unpack containers that are in there. If you are looking for the number of people in the major sites of Sydney and Melbourne—and Brisbane will soon be running—engaged in what I can describe as pure x-ray work, I would need to get—

**Senator LUDWIG**—Could we home in on that. I have in my mind what I have seen when I have visited. You have what I call a major truck x-ray machine and hand machines which are used by people who unpack containers.

**Mr Woodward**—There is a pallet x-ray as well.

**Senator LUDWIG**—There are contractors who unpack and ongoing Customs employees who do some of the work in both the truck and examination of the pallet and container. There are also some non-ongoing employees who come in and do what looks more like security work than anything else?

**Mr Woodward**—I think the people packing and unpacking in the facility you have seen are in fact contractors. In other words, we have contracted to someone.

**Senator LUDWIG**—Yes. It is the Sydney firm I have in my mind.

**Mr Woodward**—We pay the firm an amount of money but they are not our employees.

**Senator LUDWIG**—I will not mention the contractor.

**Mr Woodward**—We can come up with a figure. Obviously the figure will differ between Sydney and Melbourne but I can give you a rough breakdown of the numbers engaged in that activity. I do not think anyone here has that figure at the moment. I would have thought at the

Sydney facility there would be something like 40 or 50 people but that is a guess. I would really need to check it out.

**Senator LUDWIG**—Is the number of staff that have been allocated in those facilities—Melbourne, Sydney and Brisbane—intended to be fixed in the sense of minor variation? Or is there expected to be—depending on the nature of the work and when they get up and running—an increase in the number of staff required?

**Mr Woodward**—I would be surprised if there is an increase. I have had no indication that we need more people at the facility, but remember that the workload will vary. If I can go further on that: we had in a one-week period in Sydney an extremely large cigarette seizure; within a day or two days, there was another very large cigarette seizure; and then there was a very large drug seizure. When you have that series of coincidences you probably need to have a look at the staffing. You have other people on site who may have nothing to do with Customs—Federal Police, for example.

**Senator LUDWIG**—When the x-rays come in and they are fully operational you will only have them in Sydney, Melbourne and Brisbane. How was the work done before that? When you look at the transitional phase are fewer staff needed as a consequence of the machines or is there a redeployment going on?

**Mr Woodward**—We did not have the big x-rays at all.

**Senator LUDWIG**—You would have done it by hand then, I guess.

**Mr Woodward**—We had smaller x-rays but a far heavier reliance on what we call targeting and profiling—picking boxes we thought might be winners and then physically unpacking and repacking. That was in a period where that search component was about 0.03. What we are now doing will give us the ability to increase the number of containers, either searched or examined, by seventeen to twentyfold.

**Senator LUDWIG**—In terms of staffing levels is it correct to say that the machines will require fewer staff and contractors and that you will then be able to increase the number of containers that are being x-rayed so you will actually have a greater output?

**Mr Woodward**—I cannot give you a mathematical formula.

**Senator LUDWIG**—I was not trying to get to one.

**Mr Woodward**—The point I was making was that containers searched before, compared with containers either x-rayed or searched, will show a seventeenfold increase. There will not be a seventeenfold decrease in the number of staff. It is really a determination of the number of people you need to do something we really have not been doing. It is a very different process.

**Senator LUDWIG**—Yes. Given the increase in capital expenditure and the upgrading of the various Customs roles and facilities, will the overall staffing levels be adequate to cope with the changing levels and changing demands?

**Mr Woodward**—Do you mean at the facilities?

**Senator LUDWIG**—No.

**Mr Woodward**—At Customs generally?

**Senator LUDWIG**—Yes, more broadly. Your role is changing; it is expanding.

**Mr Woodward**—There are a couple of things that drive us: firstly, our statutory responsibilities which we must discharge; and, secondly, government decisions which we are obliged to discharge. I am satisfied that by a very careful look at what we do and how we do it, we will manage to satisfy both of those requirements and live within our resources. But, as with many other agencies, it is going to be fairly tough and there some tough decisions will have to be made.

**Senator LUDWIG**—You do not envisage that any of the functions you perform now will be cut back?

**Mr Woodward**—Again that depends on—

**Senator LUDWIG**—Have you earmarked any?

**Mr Woodward**—We will be looking at a whole array of things that we currently do. In some areas it may be that we ought to apply more intensity than we are currently applying. By doing that we can actually cut back in other parts of what we now do. It would be premature for me at this stage to give you an outline of precisely what we are going to do. The process only really got going after the budget when we knew what the firm dimensions of the budget were and we had our senior executive discussion. All of that will become clear over the next couple of months. If there are any decisions that involve impact on services or government commitments, obviously the minister would be involved in taking appropriate decisions.

**Senator LUDWIG**—Perhaps we can effectively leave it and see how it goes next time we have estimates. I note that the US have implemented a container security initiative. Port security seems to be a major concern. In terms of the implementation of the US strategy, if the US implemented a container security initiative, what would be the implications for Australia and how do we then interface with that? What would be the downside or upside of that?

**Mr Woodward**—The CSI is being run in a couple of phases. The first phase was for US Customs to identify the 20 largest container ports in the world, and none of the Australian ports are anywhere near the top 20 so far as exporting to the US is concerned. They now have agreements either in place or in prospect in relation to, I think, 18 of the 20 major ports and have started on a process of identifying smaller ports. The US Commissioner for Customs and Border Protection was in Australia a couple of weeks ago. This was one of the subjects we spoke about.

There is no immediate prospect of that CSI type arrangement being applied to Australia. I am certainly not saying that it will never apply to Australia, but there is no prospect of it applying in the short term, for a number of reasons. An obvious reason is that all of our ports, in terms of exports to the US, are quite small. Secondly, the US commissioner took the opportunity to have a look at our systems and our approaches. He saw one of the facilities and some of the developments that we are undertaking in relation to our computer systems and was obviously very satisfied that we are able to properly manage our export processes and can react quickly to anything that either the US or anyone else identifies that could be of risk to the US.

**Senator LUDWIG**—It is fair to say at this point in time that, in terms of the CSI initiative, it has no impact upon Australian operations between—

**Mr Woodward**—There is no direct impact in terms of the application to Australia, but we are intimately involved in—

**Senator LUDWIG**—It would only arise if goods were passing through one of our ports en route to the US, wouldn't it?

**Mr Woodward**—They would probably put three or four people in Australia and, working with us, would have the opportunity—if we agreed—to have a look at any of our containers. I do not want to give the impression that we are not following that initiative closely. We are up to our ears in looking at container initiatives, because we can see a major change in the whole process for dealing with exports by sea, including initiatives that involve a very close examination from the point of production of goods to their movement to the port, onloading at the port, carriage by sea and then at the other end. We have had senior people involved in that process, because that part of it is being looked at by the World Customs Organisation rather than the International Maritime Organisation.

**Senator LUDWIG**—If goods were passing through Australia to the US from other countries, there is no need for us to do anything about it at this point in time or there are no goods that fit that description.

**Mr Woodward**—The point of interest is in relation to the last point of departure of those goods.

**Senator LUDWIG**—It would be Australia in that instance.

**Mr Woodward**—Let us say that a container was going from Singapore through Sydney to the US—and I am not sure how many would actually follow the process—

**Senator LUDWIG**—No, hypothetically, although we do not like that.

**Mr Woodward**—the CSI would apply to Sydney. The process that we would apply is that, if we have any reason to believe that there is something in that container that might be of interest either to the US or to us—we find that out through technology, and have an ability now under our new legislation to look at in-transit goods as well—we would identify it and either take action here or alert the US. Similarly, we would be relying heavily on intelligence coming out of the US and, to use your example, there may be some intelligence we get out of Singapore that would be helpful.

**Senator LUDWIG**—You started off by saying that, in terms of implementation of the CSI, it does not impact upon our ports—at least that is what I understood you to be saying. But in that scenario—that is, Singapore, Sydney and the US—there is some requirement that we have to apply.

**Mr Woodward**—It is something we would have done in any case. The point that I need to emphasise is that we are not putting into Australia CSI type initiatives which the US has negotiated with Rotterdam, Hong Kong et cetera. We are not putting those processes into place.

**Senator LUDWIG**—What processes are you putting in place? Are they any that are agreed to from the Americans' perspective?

**Mr Woodward**—There is nothing special that we are putting in, other than being responsible customs services in having a close look at any of our exports that might possibly contain anything of particular interest not only to the US but to any other country. We are better equipped, I think, with our current systems—let alone the new systems—to be able to do that.

**Senator LUDWIG**—Has the US talked to you about what processes you have in place for in-transit cargo?

**Mr Woodward**—We spent quite a bit of time, when the US commissioner was here, with some of his senior staff talking about the way in which we currently operate. In the light of those discussions, the US at this stage has decided that there is no need to put in place a Rotterdam type approach in Australia.

**Senator LUDWIG**—If we turn it around a little bit, have they agreed to accept our processes?

**Mr Woodward**—I go back to what I said before. First of all, there are not a lot of containers going from Australia to the US. Secondly, at this stage they are certainly satisfied with our systems, our procedures and the fact that about 10 per cent of the containers our x-ray facilities will be looking at will be export containers. They are quite satisfied with what we are doing and how we are doing it. There is no need, in their view, at this stage to change it. They may change their minds later.

**Senator LUDWIG**—Is that a view that they have expressed in writing?

**Mr Woodward**—No.

**Senator LUDWIG**—Is it in a report, is it a verbal agreement or is it what you have gleaned out of a committee meeting?

**Mr Woodward**—No, it was not gleaned. I was told. In other words, it is not something I have surmised from some vague discussion. It is not in writing, no.

**Senator LUDWIG**—I was trying to establish how you came to have that view.

**Mr Woodward**—After several days of discussion with the commissioner, involving me personally. I established that view by looking him in the eye and listening to what he was saying.

**Senator LUDWIG**—Can we go back to the x-ray machines? There is another one to be bought, isn't there?

**Mr Woodward**—Yes.

**Senator LUDWIG**—Are they still \$4.8 million a pop?

**Mr Woodward**—The ones we have bought for Sydney, Melbourne and Brisbane are roughly \$A5.5 million. The outstanding one is Fremantle, which will be a different configuration because there are fewer containers that go through Fremantle. The Sydney, Melbourne and Brisbane machines are six million electron volts. The one in Fremantle, if my

memory is right, is about 2.5 million electron volts—still extremely powerful and certainly capable of penetrating a container. It will not be of the physical immensity of the three eastern coast ones. It will have a control facility which will be separated from the main equipment, and we are absolutely convinced that it will satisfy the requirements that we have in Fremantle. We already have a location for it which will enable us to handle not only the x-ray component but a very large site for packing and unpacking in a covert situation.

**Senator LUDWIG**—Is the Fremantle facility being funded out of last year's funding?

**Mr Woodward**—We have been funded for the Fremantle facility in previous years, yes.

**Senator LUDWIG**—That has to come out of your current budget?

**Mr Woodward**—It will have to come out of money which we have been appropriating in previous years.

**Senator LUDWIG**—So it will come out of your current budget?

**Mr Woodward**—It will come out of the money that we have.

**Senator LUDWIG**—The money you have now.

**Mr Woodward**—The money that we have—but we have been given no money this year for it because we were given money before for it.

**Senator LUDWIG**—I hope you have it squirreled away. Where will the new machines be located?

**Mr Woodward**—Other than those four?

**Senator LUDWIG**—Yes.

**Mr Woodward**—Adelaide is obviously going to be another site. We will be looking to put a pallet x-ray into Adelaide. There has been pressure in relation to Darwin, but the container throughput in Darwin in the total scheme of things is very small and I do not think that will make the grade so far as investing in a machine is concerned.

**Senator LUDWIG**—There is an intention to buy a pallet machine for Adelaide, and that is it?

**Mr Woodward**—There is at least one more pallet x-ray, if my recollection is right.

**Ms Grant**—We were originally looking at pallet x-rays for the Brisbane container examination facility, for Adelaide, and for Fremantle, in conjunction with the container x-ray facility there. We are currently proceeding on planning for Adelaide and we are evaluating, in light of volumes to be done, Brisbane and Fremantle at this stage.

**Senator LUDWIG**—What additional enhancement would a pallet x-ray have over the truck x-ray? Why would you need both?

**Mr Woodward**—If you cast your mind back to the West Sydney facility that you looked at, you have the ability in the larger tray for a B-double truck to be totally x-rayed and you do not get precise images. In many cases you get an indication that there is something unusual about a particular part of it. Quite often that will be enough for the experts—far more expert than I could ever be—to say, 'We need to have a look at that particular part of the container.' It could be a 20-foot or a 40-foot container. If the goods that are in the container are capable

of going through a pallet x-ray—in other words, it is palletised or in a form that is similar to pallets—it makes sense to put it through a pallet.

**Senator LUDWIG**—You can then have a closer look.

**Mr Woodward**—If it is not palletised, you then have to put it through the very small x-ray machine which is very labour intensive. The second advantage of the pallet x-rays we have in Sydney is that they are two-dimensional. They transmit horizontally and vertically. You then have an image looking through the container as well as an image looking down from the top of the container. Some very dense products—some tiles are examples of this—are virtually impenetrable to x-rays and, through the vertical machine, we can start taking away tiles until you get to the point where you can x-ray the whole lot. In our experience it is certainly worth the investment, in a large-scale processing facility like Sydney or Melbourne.

**Senator LUDWIG**—Do you break down the facilities like Brisbane, Sydney and Melbourne, as a cost centre to work out how much they cost to run each year?

**Mr Woodward**—We know how much we expect them to cost each year. Do you want that?

**Senator LUDWIG**—Yes, and what they actually cost, if you have that.

**Mr Woodward**—They've only just got going! It is a bit hard yet to come up with the amount.

**Senator LUDWIG**—I thought Sydney was almost going.

**Mr Woodward**—They are both close to 100 a day. There are many parts of the process, including our targeting and the management of the transport process, which are still going.

**Senator LUDWIG**—I can appreciate that.

**Mr Woodward**—The staffing is evolving and the contractors are still becoming familiar with the process. The operating cost that we estimated for each of Melbourne and Sydney was \$2.7 million in staff, \$2.3 million in depreciation and maintenance and \$2 million in property. In addition, there is the purchase of equipment of about \$5.5 million. The costing for Brisbane is a bit different. I am not sure how much detail you want, but that gives you a rough indication of what we expected to spend.

**Senator LUDWIG**—That was costing for?

**Mr Woodward**—Sydney and Melbourne.

**Senator LUDWIG**—I am happy to hear from you about Brisbane.

**Mr Woodward**—Capital is \$5½ million and operating costs are about \$7 million. Brisbane will be a bit cheaper.

**Senator LUDWIG**—It will not have the pallet machine.

**Mr Woodward**—That does not include the transport component.

**Senator LUDWIG**—That is the contract.

**Mr Woodward**—Yes, the contract—the identification of the containers, the movement by Patricks.

**Senator LUDWIG**—Have you identified how much that will cost?

**Mr Woodward**—It will cost \$24 million a year overall. Of that, \$16.3 million is that figure we were talking about earlier on where you started.

**Senator LUDWIG**—Cost recovery?

**Mr Woodward**—Yes, \$16.3 million. We will have to find \$7.8 million ourselves and we are recovering \$16.3 million.

**Senator LUDWIG**—That makes it clear now. The waterfront is contributing \$16.3 million, which is then going to the cargo.

**Mr Woodward**—It depends on who you talk to as to who they think is actually paying the bill.

**Senator LUDWIG**—That is why I called it ‘the waterfront’. I am happy for you to identify them.

**Mr Woodward**—The industry.

**Senator LUDWIG**—Then you have to contribute \$7 million. Have there been any feasibility studies to show whether or not there should be full cost recovery?

**Mr Woodward**—I need to be very careful in what I say. There is full cost recovery. The additional \$7.8 million is because there is a statutory limit on how much we can recover. We are recovering the full amount that we can under the legislation, but we are still \$7.8 million short, I think. This means we have no funds from government to do that, so we have to find it ourselves.

**Senator LUDWIG**—That is the import processing charge payable by industry? No, that is another one again.

**Mr Woodward**—Yes.

**Senator LUDWIG**—We will get to that one shortly.

**Mr Woodward**—I am talking here about the transport component, the transport cycle; the identification of the containers—in other words, the payment to the stevedores, the transport of the containers to the facility and their return. That logistics component is about \$24 million a year, which prompted an increase of about \$14 per entry, which will recover about \$16.3 million. But the total cost is about \$24 million.

**Senator LUDWIG**—Why is there a statutory limit?

**Mr Woodward**—That is what parliament imposed some years ago, I think.

**Senator LUDWIG**—Is that under review?

**Mr Woodward**—No. The import processing charge is a charge that relates to imports and obviously not to exports, so your question was right and I was wrong in saying it is not related to import processing. I was really saying that this component relates to the logistics component of it.

**Senator LUDWIG**—No, I was going to come back to you on the import processing charge. I had not given up but I was very interested in the statutory limit.



**Mr Woodward**—The statutory limit does not apply to the logistics component. It applies to the import processing charge. This was introduced a few years ago and we thought it was reasonable at that time to set a limit in the statute that was based on what we thought would be the costs of processing entry or reporting plus 50 per cent—in other words, it could be increased up to a maximum of 50 per cent. I think one or two other changes have occurred and with this \$14 an entry increase it takes it to the 50 per cent increase which was provided for in the legislation a few years ago. The only way we can increase the entry charges at the moment is to increase the limit in the legislation. In any case with cargo re-engineering the whole way in which we manage the processes of imports and exports, the basis of charging is going to have to be revisited next year.

**Senator LUDWIG**—To sum up where we are at: at the moment you have a statutory scheme which is supposed to be full cost recovery but it is not.

**Mr Woodward**—This is for logistics you are talking about?

**Senator LUDWIG**—Yes.

**Mr Woodward**—That was the aim for logistics, but we could not do it because of the law.

**Senator LUDWIG**—That is called the import processing charge.

**Mr Woodward**—The mechanism we use to cover our logistics cost is the import processing charge.

**Senator LUDWIG**—And it is currently at \$14.35 per consignment.

**Mr Woodward**—No, that is the increase. It is about \$44, from memory, altogether.

**Senator LUDWIG**—That is at the 50 per cent mark now.

**Mr Woodward**—The original figure was somewhere around \$29 or \$30 as originally set in the legislation. The parliament provided for an increase of up to 50 per cent of that figure—in other words, another \$15 which was about \$45 maximum.

**Senator LUDWIG**—What is the actual cost then? Are we making money on that or are we losing?

**Mr Woodward**—Who is ‘we’ losing?

**Senator LUDWIG**—The taxpayer.

**Mr Woodward**—The taxpayer is not losing. Those who submit commercial entries are paying their \$44 and, in addition, Customs is having to find over and above that about \$7.8 million a year.

**Senator LUDWIG**—The taxpayer is funding the logistical costs to the tune of \$7 million?

**Mr Woodward**—Literally I think you are probably right, in that we have to decide not to do other things and if we decide not to do other things I suppose you could say the taxpayer is paying for it.

**Senator LUDWIG**—Is there any intention to review the charge?

**Mr Woodward**—When the new cargo systems come in next year there is already legislated a new charging regime. I am not sure how the figuring will actually go, but the

whole way in which we manage the cargo process will mean that we simply have to change the existing regime which will not be based on some of the terms that we currently use like commercial entries.

**Senator LUDWIG**—That is the logistics side of it. In terms of the transport area, the trucks, is that cost recovery?

**Mr Woodward**—That is what we have been talking about.

**Senator LUDWIG**—That is not going to be done that way next year.

**Mr Woodward**—That component will still be there.

**Senator LUDWIG**—The cost is not going to go away, is it? Someone has to bear that cost.

**Mr Woodward**—No, that cost is still going to be there. The import processing charge was based on the way in which Customs currently handles the imports based on entries and reports. In future there will be different mechanisms for dealing with it and a different way in which we recover our costs, but there will still be cost recovery and there will still be recovery of the logistics component.

**Senator LUDWIG**—The logistics component is \$56 million over four years.

**Mr Woodward**—That is right.

**Senator LUDWIG**—It is the intention to try to reduce the deficit, the \$7 million.

**Mr Woodward**—Unfortunately there are two \$7 million figures and they are completely unrelated.

**Senator LUDWIG**—Start with the first one then. It is late and I might have missed it.

**Mr Woodward**—I think it is probably better if you cut one of the \$7 million out altogether from your mind. If you talk about a full year, the second \$7 million you have raised deals with 2002-03; thus \$7 million we have found for the operations undertaken this year. If you think about a full year—July next year to June the following year—it will cost us \$24 million, of which \$16.3 million we will recover through the logistics component of the import processing charge and another \$7.8 million which Customs will have to find.

**Senator LUDWIG**—I have that one.

**Mr Woodward**—You can take the other \$7 million out of your mind because it is \$7 million we are getting this year for the logistics component, which is completely unrelated to the other \$7 million.

**Senator LUDWIG**—I follow. Minister, you were quoted in AAP report on 13 May as saying that 70 per cent of their cargo consignments were now being screened and 56 port areas and 88 wharves were monitored through closed-circuit television networks. I understand there is in the order of 300 ports in Australia. What security measures are in place to screen these and, if there are that many ports, how do you determine the priority as to which ports you then monitor? How many wharves do not have closed-circuit television networks? Is there any work being done to increase the number of ports that have closed-circuit television? It is the minister's statement but I am happy for you, Mr Woodward, to tell me about it.

**Mr Woodward**—There is a combination of initiatives being taken in the Transport and Regional Services portfolio. They are to cover maritime and port security. There was reference in that to 70 ports and 300 locations. Our CCTV initiative relates to 56 port locations and 223 sites, from memory. We identified the major ports we could cover using CCTV within the budget we had and which were manageable from two points of coordination—first of all, from each of the regional offices so that you have the ability for a regional office to look at ports within their parish; secondly, to manage centrally out of our Melbourne office where we have a 24 hours a day operation. There is one which was started some years ago before counter-terrorism got going which was focused on Customs, with greater responsibility for smuggling, drug work, crew coming off ships, immigration, defences, et cetera.

The more recent initiative which was announced by Mr Anderson picks up the need for more work to be done in each of the ports from the point of view of counter-terrorism and vessels going into those ports, with a major emphasis on security plans to be developed by the stevedores for those who are involved in port operations and shipping lines. Those security plans need to be monitored not by Customs but by the department of transport. Obviously we will be working reasonably closely with Transport because you cannot draw that sort of a dividing line between Customs responsibilities and that sort of security work.

**Senator LUDWIG**—How will you then cover the remaining ports that are not within that catchment? That is the question people ask, whether you like it or not. You then make an announcement that you are covering X number, Minister, all in good faith. People will then come to the conclusion that there are this many that do not have CCT that are not covered by x-ray machines—and we have already heard some of that. There are also those that do not have pallet machines and those that have no screening in place but they are ports which have significant interest.

**Mr Woodward**—The premise the question is based on is that security depends on CCTVs.

**Senator LUDWIG**—Or physical presence.

**Mr Woodward**—I suggest that there are other mechanisms that we have that we use also. Firstly, physical presence: there would be people in some of the ports which are not going to be covered by CCTV and who are either there or based on a patrolling basis. Secondly, what is absolutely critical in all of those ports is dealing with the local community. They could be from a small isolated Aboriginal community to a community in an area or in a port where yachts frequent the ports. We are dealing with those involved in the industry, with locals, and getting intelligence out of them.

We also have our Coastwatch ability, which covers many of the isolated areas which are not covered by CCTV, and we have intelligence as well. We rely on others, including other nations in the South Pacific, for some of the small craft which find their way. We can never say we have a perfect system but I think we have many things to cover in those ports where we do not have CCTV.

**Senator LUDWIG**—What can you tell me about fraud detecting document readers that have been installed in Sydney international airport or other airports?

**Mr Woodward**—From a technical point of view or how we are going?

**Senator LUDWIG**—Both, I suspect. I do not know whether I have seen one yet.

**Mr Woodward**—I have certainly seen them in Sydney. My voice is starting to expire and Gail Batman has arrived and she is the leading expert on these things.

**Senator LUDWIG**—I did notice that. I must have struck another area.

**Mr Woodward**—I think I will pass over to her.

**Ms Batman**—We have spent quite a lot of time evaluating what is currently available. We have had about eight working in Sydney airport for about four or five weeks to look at some of the operational issues, how they fit into the business practices, how long they take, how many passports are rejected at the initial primary line process and how many need some secondary examination. Last week we concluded that.

**Senator LUDWIG**—This is the passport readers, is it?

**Ms Batman**—The passport readers, yes.

**Senator LUDWIG**—So there is another name for them called fraud detecting document readers.

**Ms Batman**—Those are the ones.

**Senator LUDWIG**—I have seen them, haven't I?

**Ms Batman**—You have seen them, yes.

**Senator LUDWIG**—I thought there was some other reader you have that you were not showing us.

**Ms Batman**—I guess 'travel documents' is a broader term than 'passports'. Sometimes people travel on a non-passport travel document.

**Senator LUDWIG**—Where are we up to with that? You were trialling it with air crew.

**Ms Batman**—No.

**Senator LUDWIG**—That is another one again?

**Ms Batman**—That is another piece of technology. I am sorry, Senator.

**Senator LUDWIG**—I will get to that one too next.

**Ms Batman**—The document reader is a sort of rectangular box that sits on the module at the primary line.

**Senator LUDWIG**—Then you did not show us those.

**Ms Batman**—I have shown them to a few people.

**Senator LUDWIG**—You showed us the passport biometrics.

**Ms Batman**—These ones fit into the primary module. You put the passport down on the face page. It reads the machine readable zone, which basically is just the data elements on the passport—name, passport number, that sort of thing.

**Senator LUDWIG**—Does that do the photo matching of the face?

**Ms Batman**—No, completely separate.

**Senator LUDWIG**—That is the passport biometrics.

**Ms Batman**—It is completely separate to that. It checks the security features in the passport. There are ultraviolet passport security features and ones that appear under infrared light. It does both of those and it also will check the laminate—the page that is covered, the photo and the data. It tells whether there is any lift in that, whether it is too thick and whether it has been tampered with in any way. The document readers, although they are sort of a small box, contain quite a lot of software. They contain the security features of all the world's passports.

Partly what we have been doing over the last few months is trying to build the database for the passports that we need, which is by far the most complicated part of it. You might recall that the Australian passport has a number of series. We are just about to issue the M series and quite a number of those series are currently in play. For every country there may be half a dozen valid passport series that are in play and there are 180-odd countries. Being able to tell all of the security features of all of those passports is what these machines help us with.

**Senator LUDWIG**—How many machines are in place?

**Ms Batman**—We have the eight we have been trialling.

**Senator LUDWIG**—Only on trial in Sydney international airport?

**Ms Batman**—Yes but we have ordered 400. They will be rolled out progressively through June, July and August, starting at Sydney.

**Senator LUDWIG**—So the trialling has really been completed?

**Ms Batman**—It has.

**Senator LUDWIG**—You have had an evaluation, you have had a final report and you have a green light.

**Ms Batman**—Yes.

**Senator LUDWIG**—Is there a document that sums that up that is available to the committee?

**Ms Batman**—There will be something, Senator, yes.

**Senator LUDWIG**—It just might save a whole raft of questions that have just raced through my mind, given the time.

**CHAIR**—You can find that something then, can you, Ms Batman?

**Ms Batman**—Yes, I certainly will and will provide it for you.

**Senator LUDWIG**—What was the cost? I am still a bit curious. I have not left this area yet.

**Ms Batman**—\$15.5 million.

**Senator LUDWIG**—I am pleased that you did not say seven.

**Mr Woodward**—We could take off the depreciation and make it \$7 million.

**CHAIR**—That would be unhelpful, Mr Woodward.

**Senator LUDWIG**—They will be rolled out to all the international ports?

**Ms Batman**—Yes.

**Senator LUDWIG**—Will they need to be rolled out to the Australian domestic terminals or simply the international ones?

**Ms Batman**—Just the international terminals.

**Senator LUDWIG**—Will any international terminal not have the readers? Townsville?

**Ms Batman**—It is just the major ones at this stage.

**Senator LUDWIG**—Perhaps you could take it on notice and come back to me.

**Ms Batman**—At the seven or eight—eight I think it is—major international airports.

**Senator LUDWIG**—Does that include or exclude Townsville?

**Ms Batman**—I think it excludes Townsville but I will take that on notice.

**Senator LUDWIG**—Has any work been done on the portable document readers that can be transported around?

**Ms Batman**—At this state there were not any of those that were available.

**Senator LUDWIG**—I just made that up! Do they exist?

**Ms Batman**—No. I do not think we uncovered any that are portable. They need to be connected to the PACE terminals.

**Senator LUDWIG**—Is that part of the development from the data matching at PACE?

**Ms Batman**—Not entirely.

**Senator LUDWIG**—Would you like to explain that a bit more?

**Ms Batman**—They are basically the input device for PACE. PACE does a number of things, but one of the main things it does is to process a travel movement. The document readers initiate that transaction, so it will identify you by your passport number. That retrieves from PACE—

**Senator LUDWIG**—Your passage of movements.

**Ms Batman**—either your visa or your passport record and it confirms that as a movement, a record across the border. PACE also matches any law enforcement or immigration alerts. These readers plug into the PACE terminals and initiate that transaction.

**Senator LUDWIG**—Does that have any staffing implications for what I suppose you call the front desk, or the place you move through? Do you expect to be able to process that? I think there is a time of 30 or 40 seconds per passenger which you quote now. Do you expect that will be quicker as a consequence of the introduction of the rollout of 400?

**Ms Batman**—That is exactly what we have been looking at over the last couple of months, the implications of the timing in terms of the whole process and what percentage of, if you like, suspect passports are being picked up at the primary line. Behind the primary line we have another document reader which has a few more features in it but it takes a little longer.

So you get an initial quick read at the primary line and, if there is anything not entirely right, the passenger has gone to the—

**Senator LUDWIG**—You send them to the red line.

**Ms Batman**—secondary point, where you take a little longer to have a look at it.

**Senator LUDWIG**—It is the same device, except with a bit more software, a little more sophistication.

**Ms Batman**—Yes. We also have magnifying glasses and infra-red readers and things to have another look at the passport. Often it will be just that the laminate has been slightly damaged by use.

**Senator LUDWIG**—Left it in the sun.

**Ms Batman**—Yes, left in the sun it curls up and those sorts of things. What we have been trying to do is work through how long it takes at the primary line, what percentage are being rejected on a first cut and how long it takes to resolve. We believe that we can do it within our current staffing resources.

**Senator LUDWIG**—So you do not envisage any reduction in staffing as a consequence of that?

**Ms Batman**—No. It is probably slightly longer, if anything, but we are hoping to get better results from it. It also has some implications for department of immigration staff as well. It is their responsibility to make the final judgment. The Customs officers refer any suspect or fraudulent documents to Immigration, so they have staffing resources required to do this as well.

**Senator LUDWIG**—You can also help me with passport biometrics, can't you?

**Ms Batman**—I certainly can.

**Senator LUDWIG**—The summary of measures for a safer Australia includes, under the Department of Foreign Affairs and Trade, \$1.9 million for research into passport biometrics. Do you know what they are doing over there?

**Ms Batman**—I know some of what they are doing, but it is probably better to ask them directly.

**Senator LUDWIG**—All right. This additional \$1.9 million is allocated to DFAT for capital measures for the same research. I was interested in that because if they are doing it, I assume the departments talk to one another.

**Ms Batman**—Yes.

**Senator LUDWIG**—Are you developing the same thing independently or are you developing different applications for different uses? How will they fit into the facial identification system currently being used at Sydney?

**Ms Batman**—They do work together. The two departments have been working very closely together. They are two halves of the same process, if you like. The passport office in DFAT is looking at the issues, including the facial biometric in the passport, issues about the chip technology and how large the file needs to be. They are looking at how the facial

biometric can help the enrolment process and what might need to change for people applying for a passport. They are doing that sort of testing. They are testing it with exactly the same sort of facial recognition software that we are also using.

We are looking at it from the other side, which is using that biometric at the border, the issues involved in the application, the verification of that biometric with each person, issues around the physical shape of the kiosk, processes that people need to go through. It is basically a single project, if you like in two parts, with the two agencies working together.

**Senator LUDWIG**—Thank you. I will just deal with the last part of the passport biometrics. Is that currently being trialled, or has it moved from the trial basis to implementation? Last time, I recall, you were utilising one particular carrier.

**Ms Batman**—Yes.

**Senator LUDWIG**—Has that expanded to other carriers at this point?

**Ms Batman**—No, it has not, Senator. It is not a very good time in the airline business at the moment. Some of the airlines we had been talking to are those most impacted by the SARS virus and the impact it has had on the airline industry. Passenger numbers have dropped significantly so we have put plans for any further rollout—this is also within the trial; none of this would be implementation that we have been talking about: it is all part of the piloting arrangements—on hold while the airline industry gets to another stage. The airlines are really taking quite extraordinary measures to keep going under the current circumstances and this is not something essential to their business so we have just left things alone for a little while.

**Senator LUDWIG**—In terms of border protection and the movement of illicit drugs, the government says, as far as I can determine from the newspaper clippings, that there has been certain success in both border protection in relation to drugs—in other words, detecting drugs before they enter Australia—and the incidence of drug-related harm in the community as a consequence has reduced. How much funding has been dedicated to the detection of drugs at Australian borders? Is there a figure you use as an indicia of how much money the government has spent on border protection?

**Ms Batman**—Under the Tough On Drugs strategy Customs has received over \$62 million, but that includes some of the things we have already been talking about; some of the x-ray facilities, surveillance in the Torres Strait and those sorts of things. The figure in specific funding for the Tough On Drugs campaign—or the National Illicit Drug Strategy, which is another term for it—is \$62 million.

**Senator LUDWIG**—In terms of drugs detected by Customs over the last 12 months, I suspect you keep a table or a file of what type of drug is detected and in what quantity and what port, or what area and how often. Is that material available, without giving the game away?

**Mr Woodward**—Yes, it is available. It is in our customs figures, which I think you may have. It has all the major—

**Senator LUDWIG**—Do you regularly email that out?

**Mr Woodward**—I thought you had it, but we can—



**CHAIR**—When you say you thought we had it, Mr Woodward, do you mean you have presented it to this committee before or it was provided to the committee?

**Mr Woodward**—I thought we had an arrangement whereby Senator Ludwig had it. If we have not we will ensure we do.

**Senator LUDWIG**—Do you normally email it out?

**Ms Batman**—No.

**Senator LUDWIG**—Is it a hard copy?

**Mr Woodward**—It would be a hard copy.

**Senator LUDWIG**—I would have read it, I am sure, if I got it.

**Mr Woodward**—We can make sure we get a copy to the committee.

**CHAIR**—Yes, Mr Woodward, that would be helpful if the information is relevant to the deliberations of the committee on an ongoing basis.

**Senator LUDWIG**—I am happy to be put on the mailing list separately.

**CHAIR**—I do not think it needs to be separate.

**Mr Woodward**—It is a quarterly publication and it covers drugs by number of seizures and by weight, but I stress that it does not have that very deep line between what Customs does and what the AFP does, for example. If Customs is involved, it appears in there. If the AFP alone is involved, it would not be in that particular document. It is a Customs related set of—

**Senator LUDWIG**—That was the information I was given. If AFP are involved, does it say who was the lead agency or the main detective?

**Mr Woodward**—If it is both Customs and AFP, it would appear in there. We do not say 60 per cent is ours and 40 per cent is the AFP or anything like that. It is just a figure. If we are not involved, we do not put it in.

**Senator LUDWIG**—That will show the major categories?

**Mr Woodward**—It picks up the major categories—heroin, cannabis, ecstasy and cocaine—and there is a separate table that picks up amphetamine related substances, because in some cases it is very difficult to measure. Some of it is in liquid form—in other words, it is not just on weight—so there is a separate table that picks up amphetamine type substances.

**Senator LUDWIG**—Using amphetamines as an example, is that increasing or decreasing? Is that now showing up more significantly?

**Mr Woodward**—With the recent seizures of ice, I think I can say that it has gone up dramatically.

**Senator LUDWIG**—Dramatically, as a consequence of that?

**Senator Ellison**—Across the board, amphetamine type stimulants are showing an increase. The ABCI puts out an illicit drug report annually and it shows that, across the board, all agencies and state and territory police are reporting that amphetamine type stimulants are definitely on the rise.

**Senator LUDWIG**—That will show a statistical table which is a comparison for the last 12 months or will it only show current statistics? If you have a copy of it, you can drop it in tomorrow.

**Mr Woodward**—I have not got it with me, but we are always a couple of months behind in the figures. For example, the latest set of customs figures does not include any of that latest ice that has been seized. There are catches in all of these sets of figures. You might get an initial weight and then over a period of weeks the weight clarifies as the various testing procedures are adopted and package weights are taken away et cetera. It gets you very close to the final figure, but I would not guarantee it 100 per cent. It is a pretty good indication.

**Senator LUDWIG**—There is also, I suspect, a question of content and the like which would vary.

**Mr Woodward**—The last publication was dated to the December quarter, and we should soon be putting out a set of figures that relate to the March quarter.

**Senator LUDWIG**—When the latest edition is available, the committee would be happy to receive it, and the last one you have as well. In relation to the international mail centre, there is no additional funding for that, is there, in this budget?

**Mr Woodward**—No, not for us in this budget. There was additional funding that flowed from the quarantine initiative where additional funding was allowed for principally the Melbourne and Sydney facilities. That money did not flow to us in any case, but it will have implications and we and AQIS are working very closely with the postal authorities in relation to a new facility in Melbourne and a major redevelopment of the Clyde facility in Sydney.

**Senator LUDWIG**—Is that going to happen? That is the mail centre that I visited.

**Mr Woodward**—The last I heard, it was going to happen, yes.

**Senator LUDWIG**—That is the international mail centre that I had an opportunity of looking at.

**Mr Woodward**—My understanding is that they were going to go ahead with a new facility in Melbourne and not a new facility in Sydney, but a major redevelopment.

**Mr Burns**—The facility in Melbourne has been delayed due to difficulties with bidders for the tendering process for the new building. The refurbishment, however, of Clyde—which is the Sydney international centre—is well and truly under way.

**Senator LUDWIG**—What stage is that at?

**Mr Burns**—I think we are still finalising plans and all of those sorts of things between ourselves, Australia Post and the quarantine service.

**Senator LUDWIG**—That is the one where they are all sort of packed in the one place?

**Mr Burns**—That is the one.

**Senator LUDWIG**—There is not a lot of room, I have to tell you.

**Mr Burns**—That is right.

**Mr Woodward**—There has to be a lot of work to try and improve the flow through there.

**Senator LUDWIG**—If you do not mind me saying so, it did not look like a pleasant place to work.

**Mr Woodward**—It is not.

**Senator LUDWIG**—When will that be completed?

**Mr Woodward**—Can we take that on notice?

**Senator LUDWIG**—Yes. In relation to the Melbourne facility, when will you be able to work out the differences?

**Mr Burns**—Melbourne has been delayed for a matter of 18 months or more.

**Senator LUDWIG**—Yes, I gathered that from the shaking of your head. Will those problems be able to be overcome?

**Mr Burns**—That is a matter for Australia Post rather than Customs. We are still working out, jointly with the quarantine service and Australia Post, the implications of the delay. We will have to work through that.

**Senator LUDWIG**—What is the nub of the problem?

**Mr Burns**—The nub of the problem, I think, is that none of the tenderers for the building were covered by the right industrial relations legislation, such that none of them could be accepted, and the whole thing has gone back into the melting pot. As I say, it is a matter for Australia Post, given that they are the builders, to work through in conjunction with ourselves and the quarantine service, given that we share the facility.

**Senator LUDWIG**—I do not quite understand that. Do you mean that the tenderers—the construction companies—did not meet the industrial relations—

**Mr Jeffery**—It is not in our bailiwick, but the material that I have read suggests that there is a problem between the Victorian state government workplace relations and industrial relations legislation and Commonwealth legislation. There has been some difficulty in getting tenderers to comply with one or the other, given that it has been funded to some extent by the Commonwealth. It is a matter for Australia Post to authorise. As Mr Burns said, the last we heard, the tender process was called off and was to be delayed for about another 18 months while they sort it out. It is not something that we are dealing with. We are only involved with Australia Post and Quarantine about the fit-out and the way that the building is to operate. We can get any more information that is publicly available for you, but it is probably Australia Post or the parent agency, whoever they are—

**Senator LUDWIG**—I am interested in what is in the contract that is different between the Commonwealth and the state that causes—

**Mr Jeffery**—We are not privy to that. What I saw—and I think what most of us read—was in the press, not anything else. There was a major announcement about it a couple of months back.

**Senator LUDWIG**—Not being in Melbourne, I probably missed it.

**Mr Jeffery**—That is something happening in the Melbourne building industry.

**Senator LUDWIG**—I must say it is interesting. You cannot help me any further?

**Mr Woodward**—No.

**Senator LUDWIG**—It is critical for you to have a new mail centre, I take it, Minister?

**Senator Ellison**—I think we have all seen the place, and it is important that conditions be improved. It is Australia Post. It is not a customs facility.

**Senator LUDWIG**—That was explained to me, yes. Sydney is a difficulty, because you work within an Australia Post facility and you sometimes have to meet their working arrangements and security requirements.

**Senator Ellison**—It stands to reason that, whilst you have to have security for the mail, the mail is not administered by Customs. It is an Australia Post responsibility.

**Senator LUDWIG**—What is Customs doing to try to work it through, Minister? It appears that, although it is not a Customs issue, it is certainly impacting upon employees of Customs and the ability of Customs to do its job, I suspect.

**Mr Woodward**—You can certainly say that we are encouraging Australia Post to finalise its plans. In terms of relative operational difficulties, the Sydney facility—which is to go ahead—causes us more problems, if my recollection is right, than Melbourne. I have seen both of them in the last 12 months.

**Senator LUDWIG**—I have seen the Sydney one in the last 12 months.

**Mr Woodward**—This is my own professional judgment: Melbourne is nowhere near as bad as Sydney. From our point of view, the fact that work is proceeding on Sydney makes me feel much happier.

**Senator LUDWIG**—What is the cost of Sydney?

**Mr Woodward**—I would need to check.

**Senator LUDWIG**—I am happy for you to take that on notice.

**Mr Woodward**—My recollection is about \$40 million for both.

**Senator LUDWIG**—That comes out of which budget?

**Mr Woodward**—It was out of the IQI—the quarantine initiative.

**Mr Jeffery**—It is not out of our budget. It is out of either Australia Post or department of communications.

**Senator LUDWIG**—You are encouraging them to spend their money in the way you want?

**Mr Jeffery**—Very much so.

**Senator Ellison**—And as quickly as possible, of course.

**Senator LUDWIG**—Maybe I can ask them some questions tomorrow. This next matter came up in a legislation committee but I will not go to the committee itself. In terms of antidumping initiatives, I understand that a delegation from the China Chamber of Commerce of Metals, Minerals and Chemical Importers and Exporters is currently visiting Australia at the invitation of the ACS. What is the purpose of this visit?

**Mr Woodward**—Sue Pitman has been spending a lot of time with the group, so she is probably better qualified to talk about it.

**Senator LUDWIG**—What is the area that you work in, Ms Pitman?

**Ms Pitman**—I am the National Manager of Trade Measures, Senator. We met with the delegation from the Chinese Chamber of Commerce this morning, along with the Department of Foreign Affairs and Trade. The chamber was here to consult with us about legislation that is currently before the Senate—that you are aware of—and to hear from us about some aspects of that legislation which were consistent with the issues that were raised by the Chinese government at the time of the Senate hearing.

**Senator LUDWIG**—Who invited them here? Did the Australian Customs Service invite them here—

**Ms Pitman**—No.

**Senator LUDWIG**—or did they invite themselves? I am not sure how these things happen.

**Ms Pitman**—We were not involved in inviting that particular group. It seemed to me that they may have invited themselves. I know they are consulting with a number of other groups and it may be that one of those was involved.

**Senator LUDWIG**—Can you tell us the outcome of your meeting today?

**Ms Pitman**—Yes. The meeting—like the one we had last week with the Chinese Ministry of Commerce—was very cordial. The Chinese group wanted to express some concerns to us, and they did. They allowed us to explain the intention, the purpose of the legislation that is before the Senate and they took careful note of some of the assurances that we were at pains to give them. They reiterated that the concerns that had been raised were important to them. On the Australian side, we were at pains to assure them that the relationship with China—the trading relationship, in particular—is extremely important, and that the concerns raised were being heard and being carefully considered.

**Senator LUDWIG**—Was there any outcome, any agreement, in relation to the issue?

**Ms Pitman**—No—beyond a recognition that these concerns are about matters that are quite sensitive to the Chinese government and to Chinese exporters, and our assurances that, although we believe that some aspects of those concerns may have arisen from misunderstandings, nonetheless, the issues raised are being carefully considered.

**Senator LUDWIG**—When you say ‘misunderstandings’ with some of the issues, what were those issues?

**Ms Pitman**—The Chinese have expressed a view that the legislation is a backward step from the existing legislation which has been in place since 1999. They have nominated a number of areas, broadly consistent with the areas that were raised at the Senate hearing. We went through each of those and explained the purpose of the changes. For example, the Chinese felt that the concept of price control was a very clear concept and the move to clarify that had given rise to some concerns. We were able to say that it was not the intention of this legislation to substantively change the approach that Australia has taken over the past two or three years, in spite of the change of language, and that in fact whereas price control has not

been tested in the Australian courts, the alternative form of words contained in the bill—‘a significant government price effect’—has been somewhat tested in the courts.

The other area where there seemed to be an impression of significant change related to the criteria on which we have relied to determine price control. We were able to assure them that there was no intention at this point to change those criteria—that they would continue to apply in the way that they have done for the past two or three years.

**Senator LUDWIG**—Are you aware of whether or not they accepted your explanation?

**Ms Pitman**—Their approach to the discussion was, at first, apologetic. They said that some comments they had made had been aired in the media in a way that they did not intend. There was a press release that appeared late last week, for example. They, nonetheless, made the point that these were sensitive issues and that exporters needed to understand Australia’s intentions. They were certainly looking for gestures of assurance from us.

**Senator LUDWIG**—Did you give them those?

**Ms Pitman**—Most of the discussion was an explanation of the intention of the legislation. We did point to our track record and, more than once, China acknowledged that Australia’s approach has been very fair and transparent. They did acknowledge that the points we made were of some comfort to them but, nonetheless, they said that exporters were feeling nervous.

**Senator LUDWIG**—Is it fair to say that they are not satisfied with your explanation? I am not trying to put words in your mouth. I am trying to gain a clarification of what you think the Chinese came away from the meeting with.

**Ms Pitman**—I think they accepted our intentions. I think they were still looking to us to carefully consider the terms of the legislation and there may be one or two areas where they would desirably see change.

**Senator LUDWIG**—Which areas are they? Did they express a view that they would prefer this piece or this piece not be proceeded with?

**Ms Pitman**—No. Their overriding objective was to obtain recognition, or reinforcement, of their view that China has moved to a market economy and they agreed that China is still moving towards full market economy status. But it is important to them in the international trading arena to have those words used to describe the general direction of China’s progress. It means that they are looking for a seal of approval, I think; something that does give them that recognition and that does not necessarily go to the heart of the legislation itself.

**Senator LUDWIG**—Can you give them that, or not?

**Ms Pitman**—We are still considering the precise terms of the legislation. There are ways of making statements, of course, in explanatory memoranda and in preambles to parts of bills that provide opportunities to clarify the government’s intention. But we have not gone any further than that in our thinking.

**Senator LUDWIG**—What about considering amendments to the legislation?

**Ms Pitman**—At the moment we have a number of options in front of us and these are things we still have to discuss more thoroughly with the minister before I would be able to comment on the direction we are likely to take.

**Senator LUDWIG**—Minister, can you help us with this?

**Senator Ellison**—Certainly. The Chinese have raised some issues and we have had a Senate committee inquiry, as you know.

**Senator LUDWIG**—Yes.

**Senator Ellison**—There has been a recommendation made by the committee. We do not believe that this infringes any of the WTO provisions, as some people have suggested. Certainly we will have a look at what the Chinese are saying but I make it very clear that we do not believe what we are doing is inconsistent with the WTO. We believe the legislation in that respect is sound. No doubt the Chinese delegation have been to see the Minister for Trade and other colleagues of mine. The government will consider what they have to say. That is not on a legal basis; that is purely the fact that the Chinese are an important trading partner of ours. When you have a delegation of that sort you listen to what they say.

The considerations are more to do with the relationship we have with China than to do with any legal problem which we do not think exists. I just put them in two different areas. One is the question of whether the legislation is WTO consistent, which I know this committee canvassed and which we believe it is, as opposed to other considerations which the Chinese have raised. You have to balance that, of course, against Australia's interests, which we are also very mindful of. Australian industry has a keen interest in this, as does the rural sector. We have had some interesting submissions from, in my state, the West Australian Farmers Federation, for instance.

**Senator LUDWIG**—Yes, I know them well. I guess we will wait and see then, Minister. Turning back to the Chinese delegation, did you invite any other group to come along? This particular one you did not, but did you invite any other Chinese group to come along and hear the explanation you wanted to give?

**Ms Pitman**—We were involved in discussions over two days last week with a group of government officials headed by a senior member of the ministry of commerce. We formally invited that group to come to Australia.

**Senator LUDWIG**—Who pays for that? Does Customs pay for that or do you just invite them and they turn up on your doorstep?

**Ms Pitman**—That is right.

**Senator LUDWIG**—What did you tell them?

**Ms Pitman**—We exchanged very similar information with that group, but over a longer period of time, so it gave us an opportunity to work through the detail of the bill and the exposure draft of regulations and to listen to China talk more broadly about its anti-dumping legislation, its practice and the state of its economy. It was a useful session.

**Senator LUDWIG**—Did they express any view that they were not consulted originally about the proposal?

**Ms Pitman**—They made the point that China had been disappointed. Australia noted that in the WTO arena the question of exposing legislation is something that is not normally treated in the way we are now treating China. Nonetheless, we understand China's sensitivity

about being informed and consulted. China, for example, tabled its anti-dumping legislation, as most countries do, without prior consultation. That was noted. On this occasion we said we were a little taken by surprise, given that the legislation was not intended to substantively change our approach, and China acknowledged that.

**Senator LUDWIG**—Why did you invite the Chinese? What prompted that move?

**Ms Pitman**—We were approached by the Chinese Embassy. We have had discussions with them on a number of occasions, as have our colleagues in the Department of Foreign Affairs and Trade, since earlier this year. Through the embassy, the Chinese government suggested a visit of officials to talk to us.

**Senator LUDWIG**—That would not be ordinary conduct, would it, for a piece of legislation dealing with anti-dumping measures?

**Ms Pitman**—No. I have limited experience of anti-dumping legislation but, as far as I am aware, it is extraordinary.

**Senator LUDWIG**—Inviting a delegation to discuss this bill would be a major event, wouldn't it?

**Ms Pitman**—It was a very important event. The officials, however, were like us. They were technical experts. It was not a diplomatic mission. It was a group of experts coming to meet our experts, to talk about technical issues.

**Senator LUDWIG**—That is not something you would do on every bill that would come out of Customs dealing with dumping, is it?

**Ms Pitman**—It does not happen frequently, no.

**Senator LUDWIG**—Has it ever happened before?

**Ms Pitman**—I cannot answer for—

**Senator LUDWIG**—Not in your time then?

**Ms Pitman**—No, not in my time. That is only in the last couple of years.

**Senator LUDWIG**—What about you, Mr Woodward? Have you heard of this before?

**Mr Woodward**—It is not unusual for there to be representations in relation to changes in legislation but I am not aware of a similar deputation coming to Australia.

**Senator LUDWIG**—Was Beijing furious with the Australians for doing this? I am just trying to get a feel for why you suddenly have a Chinese delegation being requested by their embassy to speak with you, Ms Pitman, about an anti-dumping measure that you have put in and an amended piece of legislation.

**Mr Woodward**—The point of the question is the degree of antagonism?

**Senator LUDWIG**—Yes. Did China express a degree of antagonism?

**Mr Woodward**—As Ms Pitman has been saying, the first group, I guess, was formally an invitation—

**Senator LUDWIG**—I mean the second group.



**Mr Woodward**—It was formally an invitation from us. It was suggested by the Chinese Embassy that it would not be a bad idea for the technical experts to talk to each other, because it was apparent, I think on both sides, that there may not have been a complete understanding on their part of what was intended. There was perhaps a view that the changes that were being proposed were in fact far greater and more dramatic than they are, so it was a case of ‘Let’s get the technical people talking.’ In relation to the second part of it, the people from commerce, there was an opportunity for that group to present their views—not as technical experts in dumping and countervailing—and to have the international trading component added to the discussions that took place last week.

**Senator LUDWIG**—What did that delegation come away with?

**Ms Pitman**—The first delegation?

**Senator LUDWIG**—The one that you invited. I have just lost track of whether we are calling that the first or the second.

**Ms Pitman**—The outcome in each case was probably very similar, although they were conducted at slightly different levels. The first delegation I believe came away with a broad appreciation of our approach to anti-dumping, because we were able to give them an explanation of that more broadly. Also, having had an opportunity to thoroughly air its views on the progress of China towards a market economy, we did not have the opportunity with the group today, for example, to spend much time on that. Last week we were able to dwell on the nature of state-owned enterprises—the treatment of former state-owned enterprises now under bankruptcy laws, for example. We gained a lot more information from the group last week than we did from the group this week.

From their point of view, we were able to spend a bit more time explaining how we have gone about the administration of the price control question and our general approach to dealing with exporters in the course of the investigation—that level of information.

**Senator LUDWIG**—Were there any commitments made to the Chinese delegation, either the first or second, in relation to the bill or the way you would deal with the bill?

**Ms Pitman**—No. We were in a position where, knowing that the decision about anything to do with the bill is in the hands of the minister, we could make no commitments about the bill per se, other than to note that it is still before the Senate, that obviously we were interested in hearing the views of the Chinese at this point and that we were taking those views very seriously.

**Senator LUDWIG**—What were their main complaints, if I could put it that way? Were they complaining that they were not consulted? Were they complaining that one of the results of them becoming a WTO member was that, as a consequence, it appears that our anti-dumping legislation was stiffened up in opposition to or in expectation of them entering the WTO?

**Ms Pitman**—Neither. They reiterated a lot of points concerning WTO consistency, for example. We reiterated Australia’s view that this bill is consistent with the WTO agreement. Their chief complaint, I believe, was based on their perception that this was a move away

from acknowledgment of market economy status. That really was the underlying theme of the discussion.

Their other concern involved a perception that we might be moving to legislation that permits us to use surrogate information, for example, more frequently than we have in the past. We have very rarely gone to a third country to establish normal values or domestic selling prices. Ultimately, the fear of exporters might be that something in this legislation would enable us to do that, and that would be similar to the sort of approach that is adopted in major administrations overseas—the US and the EU come to mind.

We very firmly explained to them that the use of surrogate information is certainly not the underlying intention of this bill, nor is it our preferred approach to establishing normal value. The use of surrogate information would yield them, they believe, a less favourable result in an anti-dumping investigation. To an extent, that would be true, but it just simply is not true that that is the purpose of the bill.

**Senator LUDWIG**—I think that is what I meant by saying they were concerned that as a consequence of the anti-dumping legislation they would have a tougher time. I do not expect you to agree with that, but—

**Ms Pitman**—Sorry, I have given you a technical answer to the general question.

**Senator LUDWIG**—If we sum up, the Chinese delegations, both 1 and 2, were, in my words, upset or not happy, and you undertook to calm them down—in other words, explain at both a technical level and an operational level how the legislation would work.

**Ms Pitman**—That is correct. That was couched within broader comments and assurances to China about the importance of the bilateral relationship.

**Senator LUDWIG**—The endpoint or the end result of all that is that you do not know whether that has happened, because you have not agreed to anything. The Chinese delegations, both 1 and 2, have gone away as is, but without accepting what you have put.

**Ms Pitman**—It has enabled us to clarify their real concerns.

**Senator LUDWIG**—So you are in a better position to understand what their real concerns are.

**Ms Pitman**—I believe so.

**Senator LUDWIG**—And the real concerns, as you understand it, were the ones you just mentioned.

**Ms Pitman**—Yes.

**Senator LUDWIG**—But you do not know whether or not you have assured them that their concerns have no substance.

**Ms Pitman**—I believe they are significantly assured. They made the point, though, in parting, that gestures of assurance from Australia are very important. That is something we have to consider. We have said that we are going to consider it in the context of the bill, but it is true to say that they did not put an absolute demand down on the table in front of us.

**Senator LUDWIG**—All right.

**CHAIR**—Mr Woodward, in relation to the additional resourcing for the surveillance enforcement program to provide for, as it says in the PBS, the protection of Australia's southern ocean waters and resources, I understand, from both the media and recent opportunities to discuss the issues, that the New Zealand government is looking at purchasing five new offshore patrol vessels for a similar process in its area. I wonder if there was any consultation, discussion or efforts to work together with the New Zealand government. It perhaps may be a question more appropriately directed to the minister.

**Senator Ellison**—You say they are building five.

**CHAIR**—Offshore patrol vessels—three inshore and one multipurpose vessel.

**Senator Ellison**—I was aware of one larger vessel they were looking at. No, there have not been any discussions with New Zealand. Are you talking about a joint effort perhaps?

**CHAIR**—Not necessarily a joint effort, Minister, but an effort to ensure that our activities are as coordinated and productive as possible, both for each other and together, given that many of our interests are similar in this regard.

**Rear Adm. Hancock**—One of the interdepartmental committees sitting at the moment concerns cooperative surveillance. Agriculture, Forestry and Fisheries are considering an approach not inconsistent with that which we are now using with the French—to talk to New Zealand and see if the same synergies of effort could be applied. That has not been completed yet, but it is in train.

**CHAIR**—What is the time frame?

**Rear Adm. Hancock**—I would have to seek advice from colleagues in AFFA. I do not know.

**CHAIR**—But Customs is involved in that process?

**Rear Adm. Hancock**—Yes, we are.

**CHAIR**—And you could seek advice for me? That would be helpful, in terms of the time frame.

**Rear Adm. Hancock**—Yes, that is possible.

**CHAIR**—All right, so you will take that on notice.

**Rear Adm. Hancock**—Yes.

**CHAIR**—Thank you.

**Senator SCULLION**—Mr Woodward, you might be able to help me. I have a range of questions and I am not sure who can specifically answer them. When you are talking about the surveillance and enforcement program I am assuming that it is going to be closely related with the Australian Fisheries Management Authority as well as other responsibilities in the area. Could you expand on the nature of the platform that you will be using? There are some suggestions. I am looking at the figures indicated here for the budget. Obviously we are not going to build a boat for it, so I am wondering what sort of vessels you intend to use. Are they going to be commercial vessels? Are they going to be existing naval vessels? Are they going to be some of the existing Custom vessels?

**Mr Woodward**—Can I be sure you are talking about the Southern Ocean or—

**Senator SCULLION**—I am asking about the Southern Ocean specifically.

**Mr Woodward**—Because of the peculiar characteristics of the Southern Ocean, I think we would be looking at either the *Aurora Australis*, which we have just used—we have just completed an armed exercise in the Southern Ocean—or something similar with stability and icebreaking characteristics. I would need to watch to make sure I am not prejudging any tender arrangements, but I think something like *Aurora Australis* would probably be what we are looking for.

**Senator SCULLION**—I obviously do not want to get too far into details, but I was interested. I see there have been a lot of discussions about the appropriateness of vessels and why we do not use some that are already down there. Clearly you are looking at those issues.

Perhaps of a more general nature, particularly in regard to our widening responsibilities in terms of looking after our sovereign resources which are further away than usual, particularly in the marine sphere, I notice in the Customs sense we have been supplied with a *Small Craft Boarding Guide*. Having a general interest in the marine sphere myself, I notice the only thing absent is the sorts of boardings you would necessarily get involved in when you are playing fisheries enforcement. I have no doubt that you are expanding on that. The whole range of safety issues and requirements that you have that are not touched upon in this are obviously unique to that operation. Since Customs are actually expanding more into that area, are you intending to develop an expanded boarding guide specifically to meet those new and expanding requirements? From a Customs perspective, one would accept, Admiral, that the people that you are responsible for have been doing this for a number of years.

**Mr Woodward**—There is a range of activities that we are undertaking. One builds on the Southern Ocean work, which is not using one of our platforms. We are leasing a vessel. We have almost the equivalent of three of our normal crews on that vessel, but there are also AFMA people, a doctor, a military person and, I think, one other as well. That is meeting one particular requirement. The second requirement is where we work very closely with the Defence Force, mainly patrol boats in relation to fisheries and environment related activities, largely around the north-west and in Torres Strait, and partly down the east coast. Matched with that, you have the particular operational requirements for drug activities.

Admiral Hancock is superintending a major reassessment of our aerial surveillance requirements. Linked into that will be the need for us to reassess our vessel surveillance and response capabilities as well, as the eight vessels that we currently have get older and more worn, but that has to fit in with the new Navy requirements. The Navy has gone for replacement patrol boats as well, so it is linking our capabilities with military capabilities for the overall benefit of Australia.

**Senator SCULLION**—Part of my question that you may not have completely touched on was in relation to the changing role of Customs. The very central and excellent role they played in the apprehension of a large fleet of fishing vessels in the last couple of weeks has been well publicised. I would have thought that, as that role becomes part of what I assume would be a central role for those people, specific training would necessarily be a major provision. I was identifying in the *Small Craft Boarding Guide*, for example, that there is no

particular provision for working in that very unique environment—not only in the actual physical boarding environment, but also in the legislative environment. There is a whole range of evidence collection and those sorts of issues. Are we going to prepare the personnel from Customs to meet those new requirements?

**Mr Drury**—The booklet that you have there is designed for our district office. It is our district managers in small ports who from time to time would be engaged in conducting a boarding operation, but that is not their normal business. The activities that you have described which are being conducted by our patrol boats have been under way for quite some years. Before we got the current crop of patrol boats, we had a series of patrol boats that went through an evolution. We have had Customs sailors, in other words, for quite some time. They receive considerable training. They receive training not just in their marine skills and so on, but also in terms of the use of weapons and other defensive equipment. It is not necessary to spell that out in that little booklet that you have there. That has a narrow application, and it is limited to a different cadre of Customs officials.

**Senator LUDWIG**—In relation to the surveillance and enforcement program in the Southern Ocean, you have Operation Rushcutter in place. That is right, isn't it?

**Mr Woodward**—Yes.

**Senator LUDWIG**—Is that being reviewed?

**Rear Adm. Hancock**—Yes, it is under active review at the moment, with input from all the agencies involved, the review to be completed in June.

**Senator LUDWIG**—What agencies are involved?

**Rear Adm. Hancock**—Defence, Customs, AFMA and AFFA.

**Senator LUDWIG**—There is a patrol team of, what, 22 persons? Is that the complement?

**Rear Adm. Hancock**—That was embarked in Operation Rushcutter?

**Senator LUDWIG**—Yes.

**Rear Adm. Hancock**—Roughly 22.

**Mr Woodward**—I think it was 21 exactly.

**Senator LUDWIG**—What is there now?

**Mr Woodward**—It was a one-off exercise. The vessel is back, and the 21 people have disembarked and are taking some leave before they resume their normal operational—

**Senator LUDWIG**—They are going back to where they came from?

**Mr Woodward**—They will be going back—

**Senator LUDWIG**—Is that within Customs?

**Mr Woodward**—That is the 21 from Customs. I also mentioned earlier to Senator Scullion that there were some AFMA people, a doctor, a Defence Force person and someone else.

**Senator LUDWIG**—Was *Aurora Australis* also patrolling that area?

**Mr Woodward**—All of those people were embarked on the *Aurora Australis*, which was contracted.

**Senator LUDWIG**—Yes, and that is Operation Rushcutter.

**Rear Adm. Hancock**—Correct.

**Senator LUDWIG**—There was no sign of illegal fishing vessels?

**Rear Adm. Hancock**—There were no illegal fishing vessels identified in our own zone.

**Senator LUDWIG**—That was, what, about Heard and McDonald islands?

**Rear Adm. Hancock**—Correct.

**Senator LUDWIG**—The program is under review. What is being reviewed? Whether you do it again? The fact that you should be finding illegal fishing vessels?

**Rear Adm. Hancock**—The totality of Operation Rushcutter—the capability that was trained and deployed and the execution of the operation—is under review. Separate to that, there is an interdepartmental committee that will be making a recommendation on the future of surveillance and enforcement patrols in the Southern Ocean economic zone.

**Senator LUDWIG**—When will that be made available? Is that going to be prepared internally by your division?

**Rear Adm. Hancock**—That interdepartmental committee is being chaired by AFFA. They will be preparing a submission to cabinet in June-July this year. They will push forward recommendations on the surveillance and enforcement capability that should be deployed in the future.

**Mr Woodward**—The government has provided funding of just over \$10 million for the Southern Ocean—

**Senator LUDWIG**—I was going to come to that.

**Mr Woodward**—Including the capital, I think it is about \$10.2 million, from memory.

**Senator LUDWIG**—It is \$10.2 million in total, but \$9.5 million from Customs and \$1.8 million from Fisheries and Forestry.

**Mr Woodward**—Yes.

**Senator LUDWIG**—So you don't get to chair the meeting!

**Mr Woodward**—They have an important role to play, for which they have been well rewarded with the money they have received.

**Senator LUDWIG**—Has that \$9.5 million been expended?

**Mr Woodward**—No.

**Senator LUDWIG**—How much of it is left?

**Mr Woodward**—All of it.

**Senator LUDWIG**—It is for a surveillance and enforcement program in the Southern Ocean?

**Mr Woodward**—The government's intention is that there be three further patrols; with that funding, we will cover three patrols.

**Senator LUDWIG**—Do you know what the nature of those patrols will be?

**Mr Woodward**—All three will have an intelligence collecting role, with a probability that at least one will have an armed capability, as we did on the last one.

**Senator LUDWIG**—What can you tell me about that? Will it be the *Aurora Australis* doing another three laps?

**Mr Woodward**—I think what the admiral is saying is that there are a number of vessels that might be capable of doing it. I do not want to prejudge the outcome of any tender process that might take place.

**Senator LUDWIG**—I understand. How much did Rushcutter cost? Do we have a figure yet?

**Ms Grant**—The cost to Customs was approximately \$1.2 million, which was recovered from the AFMA.

**Senator LUDWIG**—That is why they got to chair the meeting. That was \$1.2 million.

**Ms Grant**—The \$1.2 million was the Customs cost. On top of that were the costs of the other agencies. I do not have available what their individual costs were.

**Senator LUDWIG**—Do we know what the total cost of the operation was? That was Customs' contribution to the cost, I take it?

**Ms Grant**—That is right. I do not have the total cost because it is split between AFMA and Defence, predominantly.

**Senator LUDWIG**—Can you find out?

**Senator Ellison**—I seem to recall \$3.5 million, Senator Ludwig, as a ballpark figure, but we will give you the correct figure. I will take it on notice.

**Senator LUDWIG**—Thank you. That would be why you could fund \$3 million out of the roughly \$10.2 million. I was trying to get to that figure and I was not going to get there with \$1.8 million. What is the rationale behind such a large increase? In other words, if you had a program that did one and it did not find any illegal fishing vessels, is there intelligence to tell you that there is illegal fishing going on, and you need to find it? Is there intelligence that you need to do three trips, and therefore you get a budget outlay for that for a program that is currently under review? That is the issue I am trying to grapple with at the moment. You had an operation. It did not turn up with what you might have expected. You then decided to review it. The review has not been completed, but before the review is completed you get another \$10.2 million to do another three laps. That may not be a fair analogy. If it is not, I am happy if you set the record straight.

**Senator Ellison**—The government's view is this: there definitely is illegal fishing. There is no question of that. This illegal fishing could prove fatal to the stocks down there of Patagonian toothfish. The government's view is that you look at the option of doing nothing or of doing something. Doing nothing, in this case, was not an option. We have had successful seizures before of vessels which have been arrested, and prosecutions. There was the funding available from AFFA, as mentioned, and the government took the decision that we, within that constraint of funding, had to have a patrol in the Southern Ocean, an armed patrol, which took place. Of course, we also have to look to the next financial year and say, 'What are we going

to do for the next year?’ If we do not plan now and make provision for funding, if we want to continue, we just will not be able to do it. We have to have provision in this budget for future patrols.

It has been impressed upon us by industry especially that these patrols are worthwhile. I do not think that the fact that we did not find anybody illegally fishing on this patrol renders the mission a failure. In fact, I think the mere fact that we did not find anything could well be testimony to the fact that our presence would have scared off illegal fishing, which is the object of the exercise at the end of the day. I do not think we should call it a failure just because we have not arrested a vessel or people.

One thing the committee should remember is that we are also taking action in other areas—diplomatically, internationally with law enforcement, looking at any possibility of extraditing people concerned in this illegal act, securing the cooperation of overseas countries in relation to dealing with this issue and working with the industry, which has been very proactive. In fact, the industry has now formed a coalition of other companies—people from the private sector—and issued a \$100,000 reward for any information leading to the conviction for such illegal fishing.

We are approaching it in a broad way and we believe we have to deal with this issue. This patrol was handled, I believe, relatively well, from what I can see. We will certainly study it closely to see if there is anything better we can do, but if we are to do anything next year we have to start planning now. That is why there is a review of the operation. It would be foolish to simply rush out and do it again without analysing where we could improve.

**Senator LUDWIG**—Is the minister happy to table the review when it is finalised?

**Senator Ellison**—That is a matter for cabinet. It is cabinet-in-confidence.

**Senator LUDWIG**—Can I ask you to do your best.

**Senator Ellison**—Certainly, if the government is of the view that it can be released, then so be it, but I can tell you now that it is one that is going to cabinet with the usual constraints.

**Mr Woodward**—In a sense this was a trial. What has happened in the past is there have been patrols undertaken under the auspices of AFMA using *Aurora Australia*. There may have been other vessels that have been used which have been basically intelligence and warding off operations because there has been no armed capability on them. The second arm has been naval vessels which have been used and have resulted in some apprehensions. This is somewhere in between, where you are using a civilian vessel but with armed Customs officers on board with a boarding capability.

This is the first time that has been trialled. Since late 1997 there have been seven vessels prosecuted for operating illegally in our zone. Six were successfully apprehended and returned to Australia to face court action. The seventh was dealt with overseas under the Convention on the Conservation of Antarctic Marine Living Resources. There has been success in the past and I assume the government believes there will be success in the future.

**Senator SCULLION**—Mr Woodward has prefaced my question by talking about the number of very successful apprehensions in terms of the punitive end. I understand the fines ran to millions. It certainly has been a clear disincentive to reapproach the area. Clearly it is



important to send a signal that we are still down there. Referring to Operation Rushcutter, you said you did not apprehend anybody. Did you encounter any vessels whilst you were down there?

**Mr Woodward**—There were no vessels found illegally fishing that we encountered.

**Senator SCULLION**—What about vessels outside the zone? Did you run into any other fishing vessels when you were down there?

**Mr Woodward**—We were aware of vessels not fishing in our zone which may, in fact, have crossed into our zone, but where I am feeling a little uncomfortable is that you are asking me questions that are on the border of intelligence-related operations that involve other agencies, and I would rather not get into them.

**Senator SCULLION**—Obviously I do not want to cross into them. I was speaking generally about encountering any other vessels down there. I do not want any specifics about where the vessels were, but obviously the value of Rushcutter would be vastly improved if other vessels noticed your presence. The intention of sending a disincentive is to send a very wide signal in a very small industry. If you were noticed down there by other vessels, then clearly it would have had a wider benefit, but if you think that is going to impact on operations—

**Rear Adm. Hancock**—Senator, towards the end of the operation we did move outside our own zone and did declare an overt presence to a vessel which was outside the zone. It is possible to conclude that that in itself might produce an effect on the day and for the future.

**Senator SCULLION**—Obviously within the parameters I do not want anything that is operational, but could you tell me whether you could identify that vessel as a fishing vessel?

**Rear Adm. Hancock**—Yes, it was concluded that it was a fishing vessel.

**Senator SCULLION**—My understanding is that I do not think there are too many secrets with that. Pretty much if you are out of the Heard and McDonald island zone, you are not somewhere where you can readily catch, legally or otherwise, commercial quantities of Patagonian toothfish. Would that be reasonable?

**Rear Adm. Hancock**—No, I would not say that is correct at all. There are, to my understanding, commercial catch quantities available outside the Heard and McDonald islands zone. The figures we see presented in international fora indicate there are quite successful operations well outside the island zone.

**Senator SCULLION**—Sorry, I was talking about those areas that abutted and were adjacent to the Heard and McDonald islands. I understand there are, in the international sense, plenty of other places you can catch Patagonian toothfish, but I was referring to those areas adjacent to the zone. If a vessel is sitting adjacent to, or near the Australian zone, it is a reasonable assumption that if there was a vessel identified as a fishing vessel and they were in the area and there was a reasonable likelihood that noncompliance could be taking place, is that reasonable or not?

**Mr Woodward**—Assuming it was not a legal Australian fishing vessel fishing there.

**Senator SCULLION**—I am assuming, of course, that this vessel was not a licensed Australian vessel.

**Rear Adm. Hancock**—Yes, noncompliance with the convention the CEO mentioned, which is the Convention for Conservation of Antarctic Marine Living Resources.

**Senator SCULLION**—Do you think this vessel actually identified the fact that you were an Australian vessel in the business of fisheries enforcement? Would they be able to recognise that?

**Rear Adm. Hancock**—It was obvious by the markings on the charter vessel, *Aurora Australis*, that we were a vessel on Australian fisheries patrol.

**Senator SCULLION**—So that would have sent a pretty clear signal to that industry.

**Rear Adm. Hancock**—We have little doubt.

**Senator SCULLION**—Also I imagine there is some value in a lot of the information you generally gather on the charter about movements of vessels and other things. What other outcomes, within the capacity that you can tell me, do you want from that sort of charter like Rushcutter. Do they do any evaluation of fisheries? Do you have people looking at birds or counting whales or anything else? What other sort of activities do you do on something like Operation Rushcutter?

**Rear Adm. Hancock**—There is the possibility for a number of additional activities for other government agencies. On this occasion there was some work done for the Australian Antarctic Division. It was of no detriment to the prime tasking of the fisheries enforcement. It is quite possible that subsequent voyages could also assist other agencies in any number of ways without detriment to the core business.

**Senator SCULLION**—I will certainly look forward to hearing the results of further charters. Thank you.

**Senator LUDWIG**—I am happy for these questions to be taken on notice. They are really an update.

**CHAIR**—Mr Woodward, I understand you are seeking to table the documents that have been distributed from Customs today, all of them—that is the *Small Craft Boarding Guide*, the executive summary 2002 staff survey, the survey of international air travellers 2002 and the ACS final report client survey industry October 2002.

**Mr Woodward**—Yes, I table those documents.

**Senator LUDWIG**—Yes, that is what I was hoping to get on record. We have the *Small Craft Boarding Guide*. The AC Nielsen survey we now have.

**Mr Woodward**—I think that picks up all the things outstanding from the list of questions last time, Senator. I do not think there is anything left outstanding.

**Senator LUDWIG**—Item 6.6 notes further improvement opportunities, what ACS management has undertaken since 2000 addressing these matters.

**Mr Woodward**—What was the subject of that?

**Senator LUDWIG**—That was question No. 97.

**Mr Woodward**—I have 97. That is one of the documents you should have before you.

**Senator LUDWIG**—No, we are right. It was a question that arose out of that. It was 4.2.5, suggested improvements to Customs service. Have any of those been picked up on?

**Mr Woodward**—A lot of that work is under way at the moment. I am not sure whether any of it would have been finalised. It is a pretty massive report. I think we discussed last time the need for a lot to be done in conjunction with staff and obviously ensuring the relevant unions are across what we are doing as well.

**Senator LUDWIG**—It is not directly a budget issue. I will come back to it when we get a broader opportunity to discuss this. If I put you on notice that we will have a more intimate look at that later, I think it might be appropriate to deal with it then. Thank you, Chair.

**CHAIR**—Nothing else in Customs, Senator Ludwig?

**Senator LUDWIG**—No, thank you.

**CHAIR**—Mr Woodward, on behalf of the committee, thank you very much for your assistance this evening. It is good to have dealt with matters as speedily as we did. It may not have seemed speedy to you, but it did to us. Thank you and your officers.

[10.09 p.m.]

### **CrimTrac**

**CHAIR**—Now to the much-vaunted arrival of CrimTrac. Good evening and thank you very much for your patience. I know you were here earlier today and I appreciate you coming back with the committee's slightly amended schedule. Senator Ludwig has questions in this area.

**Senator LUDWIG**—What I was curious about is that you deal with records and records management effectively, although that might be an old term. Part of it is to ensure that police enforcement agencies have up to date information in relation to the history of offenders. I guess that is one way of putting it, you might have a more technical way of phrasing it. For argument's sake, if there is an offender or a person who has been caught in Queensland, how does the law enforcement agency in Queensland—that is, the Queensland police force, for example—do a history of offences for that person from New South Wales or Victoria? It would be more likely if they were from the Tweed, which is New South Wales, the offence is committed in Queensland and they can do a check of their own records in Queensland for the offender. Do you facilitate that, or is that another database outside this?

**Mr Mobbs**—Yes, that is one of our roles. It is one we inherited from the former NEPI or National Exchange of Police Information agency. There is a database contributed to by all police agencies called the NNI, the National Names Index. If Queensland police, for instance, had an interest in a person, they could run a check on the NNI, which would show if that person was named in relation to an offence in another jurisdiction. If they received what is called a hit on that name, they could then proceed independently to check the details of that offence history with the jurisdiction indicated by the hit.

**Senator LUDWIG**—Is there a cost recovery process involved to use the NNI? For argument's sake, does the Queensland police get charged an amount?

**Mr Mobbs**—There is a process of referral fees under the present systems which we are attempting to modernise; a referral fee which would go back to the Queensland police in some instances, depending upon the purpose for which they were conducting the check and whether it was for internal or what we call core purposes, in which case they would not be charged. But if it was, for instance, to conduct a probity check or a background check—then there could be a charge levied.

**Senator LUDWIG**—When they then want greater detail they then have to contact the specific area—like the New South Wales Police Force in this instance that I described—to then gain a greater detail.

**Mr Mobbs**—That is correct.

**Senator LUDWIG**—Is there a cost for that? I do not know whether you would know that.

**Mr Mobbs**—Could I refer to my deputy, Stewart Cross? He deals every day with that style of operation.

**Mr Cross**—It depends on the purpose for the check. If it is for operation or policing purposes, there is no charge. If the check is for a background check from one police service to another, again they do not charge between each police jurisdiction for that information.

**Senator LUDWIG**—This currently is under review, is it, Mr Mobbs?

**Mr Mobbs**—We have put forward proposals to create a better system under which CrimTrac itself will conduct most of the criminal history checking. At the moment each jurisdiction engages in that activity for its own and for probity checking purposes. Different charges apply to the users; different arrangements, both a mixture of electronic databasing and paper based procedures exist. We are seeking to streamline to make that more efficient and create a truly national system. That is one of the deliverables we were given under the CrimTrac intergovernmental agreement.

**Senator LUDWIG**—Whereabouts is that review at present? You have identified there are problems with the existing system. Is it fair to say that it does not meet the expectations of the users or the clients and that there are some shortcomings to the system?

**Mr Mobbs**—That is true. I think everybody recognises it could be done better. We have recently put proposals forward to the CrimTrac board of management which have been approved and which will subsequently go forward to the Australasian Police Ministers' Council for their ultimate endorsement, which could lead to a better system being in place by 2004.

**Senator LUDWIG**—Who would undertake the development of that?

**Mr Mobbs**—We are undertaking the development of that in consultation with each of the police jurisdictions.

**Senator LUDWIG**—Whereabouts is that at the moment? Have you got the tick or the go-ahead? Where is the money coming from?

**Mr Mobbs**—The funds for its development are included in the \$50 million that was originally used to set up the agency. The tick initially would come from the board of

management but the Australasian Police Ministers' Council also has a role in the approval process. That could be achieved in July, which is the next sitting of the APMC.

**Senator LUDWIG**—What is the expected outcome date? When it would be completed?

**Mr Mobbs**—We have done quite a bit of financial modelling. The next thing is to run a pilot, which was intended to run for two months followed by a one-month evaluation. We think that will be finished by October this year and implementation would start shortly after, assuming a favourable outcome from the pilot.

**Senator LUDWIG**—Where will the pilot be run from? Is it out of your organisation?

**Mr Mobbs**—Yes.

**Senator LUDWIG**—It is a computer model and a process where one agency you pick can access it and work it through?

**Mr Mobbs**—Yes. We will also run it in conjunction with some of our major accredited agencies, such as DIMIA.

**Senator LUDWIG**—How many accredited agencies are there in total?

**Mr Mobbs**—I think at present there are 21 or 22.

**Senator LUDWIG**—Is there a list of those available? These people could then have access to the CrimTrac and the new version, once it is up and running.

**Mr Mobbs**—They have access to the service, not necessarily directly to the database. They come through us for the information they require. There was a list published in our 2001-02 report, which has since been updated.

**Senator LUDWIG**—Is there an additional one since then or is that the definitive list?

**Mr Mobbs**—There have been some additional agencies. I will just refer to some notes I made on our report. Since the report was published, Senator, we have added to the list the Victorian Institute of Teachers, the WA Department of Consumer Affairs, New South Wales Department of Transport, Victorian Department of Education—who are just about to start to receive the service—and the Queensland Crime and Misconduct Commission.

**Senator LUDWIG**—Not all of those organisations would have direct access to CrimTrac as such, would they?

**Mr Mobbs**—They have access to the service. What we are planning is that their request for criminal history checking will come via an online batch process, rather than by fax or by any other means. So, yes, they have access to CrimTrac but they do not get into the database themselves and conduct a search of records.

**Senator LUDWIG**—You expect it to be up and running by October and then how will the cost be met? Will there be a new charge or is that part of the modelling that you are now undertaking?

**Mr Mobbs**—There is a new scale of fees proposed. Again could I deflect that to Mr Cross?

**Mr Cross**—The financial modelling undertaken to date, Senator, has looked at a range of fees, dependent upon the category of the person that is looking for a check to be undertaken, such as government agencies or individuals.

**Senator LUDWIG**—Using your words, if you have a hit on the database and then you want further information, will that record be available on CrimTrac? Or will you then still have to ring up or email or fax the local law enforcement office and go and find the additional information?

**Mr Mobbs**—The practice will be, when a hit comes up on an initial search of the NNI, that hit is referred to the jurisdiction in which the offence history is held. Depending on what they are able to disclose, according to their own legislation and spent convictions legislation, they will then forward that record through us. Then that will be returned to the inquiring agency for them to make a judgment on, depending on why they wish to employ a person and whether that offence history as disclosed would disqualify that person from employment with them.

**Senator LUDWIG**—Also if they were police trying to find a criminal history of some person as part of a prosecution, I guess.

**Mr Mobbs**—Yes.

**Senator LUDWIG**—Of course, if it was spent conviction, there would be a nil return, or does it come up as a flag that there is a spent conviction?

**Mr Mobbs**—I will ask Stewart for the details.

**Mr Cross**—There is a nil return.

**Senator LUDWIG**—That is the only thing I could think of, thanks. Can you provide an update of the development of the National Child Sex Offender System?

**Mr Mobbs**—Yes, I can. The National Child Sex Offender System was the third of the major deliverables that were set out in the intergovernmental agreement that established the CrimTrac initiative and the agency. Subsequent to that the Australasian Police Ministers' Council determined that the priority should be that it would follow the new National Automated Fingerprint Identification System and the establishment of the new National Criminal Identification DNA Database. It is currently wrapped up in a major program of modernisation of the existing databases that the police themselves operate; such as vehicles, firearms and the police reference system.

At present I can give you an update which stems from the police ministers' decision on 5 November 2002 to develop a nationally consistent approach to the registration of child sex offenders. The minister has established an interjurisdictional working party under the auspices of New South Wales to consider the issue. Indeed CrimTrac and the Australian Crime Commission are represented on that working party. It will prepare a report for the APMC, to be considered at its July meeting. That report will determine, I guess, the direction that CrimTrac takes in the system for police to develop a nationally consistent child sex offender system.

We do have a nominal amount, just a touch over \$1 million, allocated for the predominantly IT aspects of developing the system and for further liaison. This has been going on for quite some time. It does require a lot of consultation, it does require the ongoing cooperation of the states and territories, which happily appears to be forthcoming.

**Senator LUDWIG**—Has your agency received any instructions to speed up the process or are you happy with the rate of development?

**Mr Mobbs**—Personally, I have been pushing to speed everything up, but we can only achieve so much in a small agency. Given that those two priorities in front of the NCSOS were given to us by the APMC and we have satisfied those, this is the next priority.

**Senator LUDWIG**—Other than your expectation, has there been any other indication from the Attorney-General's that they want it sped up?

**Mr Mobbs**—No. I have understood the priority from the start, and we are proceeding according to that.

**Senator LUDWIG**—I am not familiar with the detail of the plan for the national register, but what offences will be recorded? How will it be structured? Will there be domestic violence orders or those issues put on it? What is the scope of it?

**Mr Mobbs**—The intention is to make it easier to determine whether a particular individual has a history of child sex offences. Of course, within the general holdings of offences that exist right now, you could sift those and find out if a particular person had a child sex offence history. The idea is that perhaps with a click of a single button you could check on an individual specifically for child sex offences. We will do the work to put those offences which are of a child sex nature into a database or link them in some way that they can be readily obtained across jurisdictional boundaries. That is what we are really on about. A police officer in Western Australia, for instance, can readily find out if there is any other child sex offence history around Australia on a particular individual.

**Senator LUDWIG**—The funding at the moment is \$1 million, as you said. Is that projected for the out years or is that just in the—

**Mr Mobbs**—The activity is projected to take place mostly in this year, with some spill over into 2003-04.

**Senator LUDWIG**—Is the \$1 million spread out over this year and next year?

**Mr Mobbs**—It is, yes.

**Senator LUDWIG**—Has there been a trial? Where are you in the process? Have you got to trialling yet?

**Mr Mobbs**—No, there has been no trial of a child sex offender system. We do not see it as a particularly difficult task.

**Senator LUDWIG**—The original announcement was in November 2002, as I understand it. When will you have it completed?

**Mr Mobbs**—The only need to correct that November 2002 announcement arises from the fact that this child sex offender system rides on the back of a major infrastructure capability, which is what we call our CPRS project—CrimTrac Police Reference System—which will put in place the IT infrastructure that the NCSOS will ride upon. That has been subject to a few delays. It looks like it will come on-stream in about January 2004. That would also affect the NCSOS, so it will be December 2003 or January 2004 that we will have the NCSOS ready to go. We do not see a need for a trial in that particular aspect. It is just another offence history type.

**Senator LUDWIG**—When will the broader one that you are talking about be operational?

**Mr Mobbs**—We are currently running a pilot for that one, to test the infrastructure that I spoke about, with New South Wales and Victoria. That will be starting up in the second half of this year. The pilot will be complete by January 2004 and then it is intended to roll that out—after we have looked at lessons learnt—to other jurisdictions progressively through 2004.

**Senator LUDWIG**—What will be available on that?

**Mr Mobbs**—Currently we have agreement with all of the jurisdictions for 26 basic data items to be delivered by the system. We call it the minimum nationwide person profile. As a result of the negotiations over the last two years, we have that core set. It will be name, address, all the usual demographics, details of vehicles driven or owned, details of firearms owned or licensed, an offence history, identifying marks and those sorts of things which a police officer would use in the normal course of their operational duties.

**Senator LUDWIG**—Who would end up on the database?

**Mr Mobbs**—On the MNPP would be predominantly offenders and persons of interest to police, for whatever reason.

**Senator LUDWIG**—A broad list. Do people know they are on the database?

**Mr Mobbs**—If they were an offender, they would certainly be aware, yes, that they were on the database. I should add that a complete profile would not exist for every person of interest. For instance, having had my wallet stolen, I exist on the NNI because I reported the theft. Other people who report crimes or are victims of home invasion would be on there as persons of interest, obviously, for further interviewing by police until the case is either solved or not proceeding.

**Senator LUDWIG**—Has the privacy commissioner been asked to consult on the project? What strikes me, as we inquire into this, is when does a person of interest, such as the instance you just outlined, get removed from the database? Do they remain there in a file that is built upon as they go through their working life and they report another issue or they might be part of an investigation because they you apprehended or helped in a bank robbery investigation and so on? In other words, all good works, if I can put it that way. A complete database gets built up on an individual who is a person of interest, but certainly not likely to offend. How long do they stay on the database before they are removed? Do they know they are on it? In other words, are they informed that they are being kept on a database for any length of time?

**Mr Mobbs**—I do not think I can give you a comprehensive answer on that, because I believe that it would be subject to the legislation of the state in which the person of interest first becomes a person of interest. If you would like the detail, I will take that on notice.

**Senator LUDWIG**—I really would, and I would like to know whether or not you intend to consult with the privacy commissioner about this issue.

**Mr Mobbs**—We do consult with the privacy commissioner, and we certainly have done on our major projects to date, in particular the DNA project. We value his input and advice and work cooperatively with him. We undertook a general review of the Privacy Act in 2001 as, if you like, a precursor to what was on our plate at that time and as we determine exactly how



and when and under what circumstances the information will be exchanged we will again consult with the privacy commissioner in a proactive manner.

**Senator LUDWIG**—I might ask him tomorrow. What is the name of the database?

**Mr Mobbs**—The CPRS is the one you are referring to—CrimTrac Police Reference System. It is a system rather than a single database.

**Senator LUDWIG**—Yes, I can appreciate that. How much do you expect to raise from the National Automated Fingerprint Identification System and the electronic *White Pages* service?

**Mr Mobbs**—I am not sure I understand the first part. How much would we raise from NAFIS?

**Senator LUDWIG**—Is there a fee for service? Is it a sales revenue item? Do you charge for it?

**Mr Mobbs**—In relation to NAFIS in particular, that is part of the general service we provide to police. The cost of those is recovered from police on a subscription basis. The basis of that is authorised police strength, so it is a cost recovery, rather than a revenue raising initiative for NAFIS. I did not catch the second part of the question.

**Senator LUDWIG**—The electronic *White Pages* service.

**Mr Mobbs**—Again, that is provided on a cost recovery basis. What it costs us to provide it is recouped by police subscriptions.

**Senator LUDWIG**—We have the National Criminal History Record Checking Service as a system; we have the CPRS as a system; we have the *White Pages* service; we have the National Automated Fingerprint Identification System. Are they all separate systems?

**Mr Mobbs**—Yes, they are.

**Senator LUDWIG**—I am just trying to get a functional idea of how it all works.

**Mr Mobbs**—There is a slight overlap in the first two you mentioned. The National Criminal History Record Checking Service uses computing infrastructure which will be enveloped by the new CPRS system, so those two are closely linked. NAFIS is certainly a separate system as is the NCIDD, the DNA system. They sit quite separately and they are not linked. Was there a third one there?

**Senator LUDWIG**—There will soon be the National Child Sex Offender System.

**Mr Mobbs**—Which will sit within CPRS again, yes.

**Senator LUDWIG**—Which ones will sit within CPRS?

**Mr Mobbs**—CPRS will envelop the NCSOS that you have mentioned.

**Senator LUDWIG**—That is the National Child Sex Offender System.

**Mr Mobbs**—Yes.

**Senator LUDWIG**—Is the National Criminal History Record Checking Service within CPRS?

**Mr Mobbs**—It will use the CPRS infrastructure, yes. Also within CPRS is the National Vehicles of Interest database which we inherited from NEPI; the National Firearms Legislation Registration System, which was created post 1996 and the current NNI, which is again part of our inheritance.

**Senator LUDWIG**—Apart from that, there is the electronic *White Pages* service. Have I missed any out?

**Mr Mobbs**—You might have missed online telephone directory. It is mentioned in the report.

**Senator LUDWIG**—What else is there?

**Mr Mobbs**—I think that just about covers it.

**Senator LUDWIG**—Which services are operated on cost recovery—all of them? Are they funded fully or do they still require supplementation?

**Mr Mobbs**—No, they do not require supplementation. Our recurrent budget, which is funded from a combination of subscriptions to police services and fee for service by accredited agencies, covers all of those systems in total. The Commonwealth injection is purely capital to create new systems or improve on the ones we inherited.

**Senator LUDWIG**—Your day-to-day operations are funded from your subscriptions.

**Mr Mobbs**—That is right.

**CHAIR**—Mr Mobbs, Ms McLay, Mr Cross, thank you very much, both for your patience and for assisting the committee this evening. We are very grateful for that. I can indicate that the program we had proposed for today has indeed been achieved, which did not look likely this morning. I want to thank Senator Ludwig very much for his cooperation and assistance in ensuring that was the case and also, of course, my other colleagues. I indicate that the committee will resume at 9 a.m. tomorrow morning, continuing as per the printed program with consideration of portfolio agencies in the Attorney-General's portfolio, starting with the Administrative Appeals Tribunal. I declare the committee adjourned. Thank you

**Committee adjourned at 10.34 p.m.**