



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION
COMMITTEE

ESTIMATES

(Consideration of Budget Estimates)

TUESDAY, 3 JUNE 2003

CANBERRA

BY AUTHORITY OF THE SENATE

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SENATE**FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE****Tuesday, 3 June 2003**

Members: Senator Sandy Macdonald (*Chair*), Senator Hogg (*Deputy Chair*), Senators Chris Evans, Ferguson, Payne and Ridgeway

Senators in attendance: Senators Cook, Faulkner, Ferris, Ferguson, Hogg, Lundy, Sandy Macdonald, Mason and Robert Ray

Committee met at 9.04 a.m.

FOREIGN AFFAIRS AND TRADE PORTFOLIO

Consideration resumed from 2 May 2003.

In Attendance

Senator Abetz, Special Minister of State

Senator Hill, Minister for Defence

Department of Foreign Affairs and Trade**Portfolio overview**

Mr Peter Varghese, Deputy Secretary

Mr Doug Chester, First Assistant Secretary, Corporate Management Division

Ms Anne Hazell, Chief Finance Officer, Assistant Secretary, Finance Management Branch

Output 1.1—Protection and advocacy of Australia's international interests through the provision of policy advice to ministers and overseas diplomatic activity.**1.1.1—North Asia (including Australia-Japan Foundation, Australia-China Council, Australia-Korea Foundation)**

Mr Murray McLean, AO, First Assistant Secretary, North Asia Division

1.1.2—South and South-East Asia (including Australia-India Council, Australia-Indonesia Institute)

Ms Jennifer Rawson, First Assistant Secretary, South and South-East Asia Division

1.1.3—Americas and Europe

Mr David Ritchie, First Assistant Secretary, Americas and Europe Division

1.1.4—South Pacific, the Middle East and Africa

Mr Ric Wells, First Assistant Secretary, South Pacific, Africa and Middle East Division

Mr Graham Fletcher, Assistant Secretary, Pacific Islands Branch

1.1.5—Bilateral, regional and multi-lateral trade negotiations

Mr Bruce Gosper, First Assistant Secretary, Office of Trade Negotiations

Mr Stephen Deady, Special Negotiator, Free Trade Agreements

Mr Allan McKinnon, Special Negotiator, Agriculture

1.1.6—Trade development/policy coordination and APEC

Mr Ralph Hillman, First Assistant Secretary, Trade Development Division

Mr David Holly, Director, International Economic and Finance Section.

Mr James Baxter, Director, Asia Trade Taskforce

1.1.7—International organisations, legal and environment

Ms Caroline Millar, First Assistant Secretary, International Organisations and Legal Division

Mr Chris Moraitis, Senior Legal Adviser

Mr Peter Heyward, Assistant Secretary, Environment Branch

Mr Peter Doyle, Director, People Smuggling, Refugees and Immigration Section

Mr Ian McConville, Director, Administrative and Domestic Law Group

1.1.8—Security, nuclear disarmament and non-proliferation

Mr Les Luck, First Assistant Secretary, International Security Division

Mr David Stuart, Assistant Secretary, Strategic Affairs Branch

Mr Bill Paterson, First Assistant Secretary, Iraq Task Force

Mr John Quinn, Assistant Secretary, Iraq Task Force

Mr Nick Warner, Ambassador for Counter-Terrorism

Mr John Carlson, Director-General, Australian Safeguards and Non-Proliferation Office

Output 1.2—Secure government communications and security of overseas missions

Mr Paul Tighe, First Assistant Secretary, Diplomatic Security, Information Management and Services Division

Output 1.3—International services to other agencies in Australia and overseas (including parliament, state representatives, business and other organisations)**1.3.1—Parliament in Australia****1.3.2—Services to attached agencies****1.3.3—Services to business****1.3.4—Services to state governments and other agencies overseas and in Australia**

Mr Ian Kemish, First Assistant Secretary, Public Diplomacy, Consular and Passports Division

Mr Doug Chester, First Assistant Secretary, Corporate Management Division

Mr Ralph Hillman, First Assistant Secretary, Trade Development Division

Output 1.4—Services to diplomatic and consular representatives in Australia**1.4.1—Services to the diplomatic and consular corps****1.4.2—Provision of protection advice through liaison with the Protective Security Coordination Centre**

Mr Matthew Peek, Chief of Protocol, Assistant Secretary, Protocol Branch

Output 2.1—Consular and passport services**2.1.1—Consular services**

Mr Ian Kemish, First Assistant Secretary, Public Diplomacy, Consular and Passports Division

2.1.2—Passport services

Mr Ian Kemish, First Assistant Secretary, Public Diplomacy, Consular and Passports Division

Mr Bob Nash, Assistant Secretary, Passports Branch

Output 3.1—Public information services and public diplomacy**3.1.1—Public information and media services on Australia's foreign and trade policy****3.1.2—Projecting a positive image of Australia internationally****3.1.3—Freedom of information and archival research and clearance**

Mr Ian Kemish, First Assistant Secretary, Public Diplomacy, Consular and Passports Division

Output 4.1—Property management

Mr Peter Davin, Executive Director, Overseas Property Office

Output 4.2—Contract management

Mr Doug Chester, First Assistant Secretary, Corporate Management Division

Ms Anne Hazell, Chief Finance Officer, Assistant Secretary, Finance Management Branch

Enabling services

Items—General corporate support; human resource management and overseas conditions of service; financial and budget management; national non-secure (communication system) information technology and information management; records management; property management; executive support; training and development; evaluation and audit; internal legal and statistical services; security services

Mr Doug Chester, First Assistant Secretary, Corporate Management Division

Ms Zorica McCarthy, Assistant Secretary, Executive, Planning and Evaluation Branch

Ms Anne Hazell, Chief Finance Officer, Assistant Secretary, Finance Management Branch

Australian Trade Commission (Austrade)**Portfolio overview****Outcome 1: Australians succeeding in international business with widespread community support****1.1—Awareness raising****1.2—Government advice and coordination****1.3—Services and opportunities****1.4—Inward investment and attraction services****1.5—Austrade administered grants****Outcome 2: Australians informed about and provided access to consular, passport and immigration services in specific locations overseas****2.1—Consular, passport and immigration services**

Ms Fiona Buffinton, Manager, Government and Policy

Mr Tim Harcourt, Senior Economist, Strategic Development

Mr Greg Joffe, Corporate Adviser, Strategic Development

Ms Marcia Kimball, Director, Human Resources

Ms Margaret Lyons, Executive General Manager, Corporate

Mr David Ritson, Group Manager, Accounting Operations and Systems

Ms Julia Selby, Executive General Manager, Australian Operations/South Pacific

Mr Michael Vickers, Group Manager, Client Development and Ally Liaison

Ms Margaret Ward, General Manager, Export Finance Assistance Programs

Australian Agency for International Development (AusAID)**Outcome 1: Australia's national interest advanced by assistance to developing countries to reduce poverty and achieve sustainable development****Output 1—Policy****Output 2—Program management****Administered items—Australia's aid program**

Ms Juliette Brassington, Budget Unit, Resources Branch

Mr Bruce Davis, Director-General

Mr Scott Dawson, Deputy Director-General, Asia and Corporate Resources Division

Mr Mark Fleeton, Assistant Director-General, Resources Branch

Dr Robert Glasser, Assistant Director-General, Papua New Guinea Branch

Mr Peter Jensen, Director, Finance and Budget Section

Mr Alan March, Assistant Director-General, Humanitarian, Multilateral and Community Branch

Mr Richard Moore, Assistant Director-General, Mekong, South Asia and Africa Branch

Ms Julia Newton-Howes, Acting Assistant Director-General, East Asia Branch

Mr Murray Proctor, Assistant Director-General, Office of Review and Evaluation

Mr Derek Rooker-Smith, Assistant Director-General, Contract Services Group

Mr James Sweeting, Manager, Budget Unit, Resources Branch

Mr Charles Tapp, Deputy Director-General, Papua New Guinea and Global Programs Division

Ms Margaret Thomas, Acting Deputy Director-General, Pacific, Contracts and Corporate Policy Division

Mr Peter Versegi, Acting Assistant Director-General, Corporate Policy Branch

Australian Centre for International Agricultural Research (ACIAR)**Outcome: Agriculture in developing countries and Australia is more productive and sustainable as a result of better technologies, practices, policies and systems****Output group 1—Collaborative research that addresses agricultural and natural resource management problems of developing countries and Australia****Output group 2—Trained researchers in developing countries and Australia**

Mr Peter Core, Director

Mr Michael Brown, Deputy Director, Corporate Programs

Mr Paul Tyrrell, Finance Manager

Department of Foreign Affairs and Trade

CHAIR—I declare open this meeting of the Senate Foreign Affairs, Defence and Trade Legislation Committee. I welcome Senator Abetz, Special of Minister of State, who is representing Minister Hill, and officers of the Department of Foreign Affairs and Trade. Last night the committee adjourned on output 1.2, which was completed, and today the committee will move to output 1.3 and continue in output order with the expectation that we will be finish with output 4.2 by lunchtime. After lunch, we will commence the trade outputs, which are outputs 1.1.5 and 1.1.6 and they will be followed by Austrade.

The committee will examine the estimates for Austrade until 3 p.m. At the conclusion of Austrade, we will resume Foreign Affairs and Trade with questions on trade related programs, outputs 1.1.5 and 1.1.6, until approximately 8.30 p.m. If we have not finished, the committee

will then continue the DFAT program in output order, but the expectation is that we will have finished the DFAT program by that time. At the conclusion of the program for Foreign Affairs and Trade, the committee will examine the estimates for AusAID and ACIAR, the Australian Centre for International Agricultural Research.

When written questions on notice are received, the chair will state for the record the name of the senator who submitted the questions and the questions will be forwarded to the department for an answer. The committee has resolved that the deadline for the provision of answers to questions taken on notice at these hearings is Tuesday, 22 July 2003. Minister Abetz, would you like to make any opening comments?

Senator Abetz—I have a very brief comment. There is a report in this morning's *Canberra Times* in relation to yesterday's hearings that is quite inaccurate. Departmental officials will take that up with Verona Burgess and the *Canberra Times*.

Senator ROBERT RAY—Is it in the Senate clips?

Senator Abetz—I do not know. It suggests that the investigation into the DFAT leak ends in settlement, and I am not quite sure that that was the evidence yesterday. Anyway, departmental officials will take that up with the *Canberra Times* and Verona Burgess.

Senator FAULKNER—It begs the question to the minister, I suppose, of what is the status of those consent orders. We did hear evidence yesterday on that. The minister is right to point out that it took some of the committee's time. I will ask Mr Chester a question to kick this off, following on from the minister's statements about the article in the *Canberra Times*. Let me also say for the record that I have not read the article at this stage, but I will certainly get around to doing so. What is the status of those consent orders?

Senator Abetz—All that was traversed at great length yesterday. As I said at the beginning, I just wanted to place on the record that what has been reported clearly will not match what the *Hansard* record will disclose. That is all that I want to do on that this morning. That area of the hearing is over.

Senator FAULKNER—No, it is not. We actually have not got to the relevant program yet.

Senator ROBERT RAY—We will wait then.

Senator FAULKNER—If you want to wait—

Senator ROBERT RAY—No, we will do it in detail again now that you have been a bit obstructive.

Senator Abetz—It is up to you how you want to waste the time.

Senator ROBERT RAY—We are not wasting time; we are scrutinising you and the government.

Senator FAULKNER—Minister, we dealt with it in the portfolio overview and we have an opportunity to deal with it later. I was going to make what I thought was a sensible intervention as a result, and only as a result, of the comment that you have made and point out that in relation to the evidence that this committee received—I was informed by witnesses at the table, either Mr Chester or Mr Moraitis; I am not sure which one it was, but it was very

clear and I have checked this—the information was effectively as of close of business on Friday of last week. I think that is fair, Mr Chester; that is what we were informed, isn't it?

Mr Chester—Yes, that is correct.

Senator FAULKNER—Now we are told by the minister in relation to an article that I have not seen in the *Canberra Times* newspaper that there is a suggestion that there was settlement in relation to this court matter. By the way, I do not think that is contrary to the evidence that the committee has received at all—I beg to differ with the minister on that. I thought we were told that the matter had concluded but that they were waiting for the consent orders to be finalised. Is that right, Mr Chester? The matter had been settled but the issue of the consent orders had not been concluded.

Mr Chester—I think there are two issues here. One is, as we said yesterday, that there is still an ongoing AFP investigation into the leak. I think that is a point that the minister at the table was making.

Senator FAULKNER—He made a different point.

Senator ROBERT RAY—You are making the valid point.

Mr Chester—In relation to the second issue, as we said yesterday, our understanding as of Friday of last week was that the consent orders were still not public and when they become public is a matter that is in the hands of the other party. They are considering the extent to which they want those consent orders made public.

Senator FAULKNER—Before we get to output 4, Mr Chester, could you ask your staff to give us an update in relation to that matter. I appreciate what you have said. I completely accept the evidence that you have given, but given the minister's comments, which is what I am now drawing on, it might be useful for us to have the situation updated as of this morning. That should be something that is easily checked departmentally—it won't take a moment. If there is any advance or any developments in relation to this, we can deal with it then.

Mr Chester—We will seek to do that.

Senator FAULKNER—I would very much appreciate that Mr Chester, and I thank the minister very much for his intervention.

Senator Abetz—It seems highly unlikely that a criminal investigation can be avoided by consent orders.

Senator FAULKNER—Your comments did not go to it.

Senator ROBERT RAY—There are two separate issues.

Senator Abetz—Exactly.

Senator FAULKNER—In your comments, you did not mention the criminal investigation.

Senator ROBERT RAY—You should have, but you didn't.

Senator FAULKNER—It is a minor error but given that you have made it—

Senator Abetz—No, not at all. I stand by my comments and, now that you are fully appraised of the article, you realise that your cheap shots at the beginning—and still going—are not properly founded.

Senator FAULKNER—I listened very carefully to what you said and I understand what the article says in relation to the AFP investigation.

Senator Abetz—And you would have to admit that those assertions will not be found in the Senate *Hansard* when it becomes available.

Senator ROBERT RAY—It may be that the first part won't be supported.

Senator Abetz—I know Verona Burgess writes gush pieces about you, Senator Ray.

Senator ROBERT RAY—I have never met her.

Senator Abetz—When she makes a mistake, it is about time you guys acknowledged it.

Senator ROBERT RAY—It is about time you acknowledged that you did not raise the first problem; you raised what you think is the second problem, and you are probably wrong on that. Apparently mistakes are catching.

Senator Abetz—I know it is important for you to support the people that write all these gush pieces about you, Senator Ray, but really it is a pretty blatant mistake.

Senator FAULKNER—Don't be so jealous! If you had been around as long as Senator Ray, someone might eventually write a gush piece about you—unlikely, but possible.

Senator Abetz—I doubt it, especially from this journalist.

CHAIR—Can we move along?

Senator ROBERT RAY—What are you going to do? Do what Alston does? Can you defund the *Canberra Times*? Is that what you would like to do? You can't take any criticism, can you? You are a pathetic government.

CHAIR—Order! Let's move on.

Senator Abetz—You just look after your deputy in the Senate who is about to be sacked.

CHAIR—Order! Let's move on.

Senator FAULKNER—Again, I thank the minister for raising that issue. Mr Chairman, do I understand that we are now on output 2.1.1?

CHAIR—No, it is output 1.3.

Senator FAULKNER—Really? There you are; I misled Senator Ray.

Senator Abetz—Yes, 1.3. Another mistake so early in the morning, Senator Faulkner.

Senator FAULKNER—Can I respectfully suggest that while you may be up to output 1.3, Mr Chairman, I am up to output 2.1.1.

Senator Abetz—That is even better.

Senator ROBERT RAY—Just be quiet and go back to your paperwork. You did a reasonable job—

Senator Abetz—You look out for Stephen Conroy; he's about to be sacked.

Senator ROBERT RAY—That's stupid interference—

Senator Abetz—Who are you supporting—Simon or Kim?

[9.16 a.m.]

CHAIR—Order! We have now moved to output 2.1—Consular and passport services.

Senator FAULKNER—Assuming no other senators have anything in outputs 1.3 or 1.4.

Senator Abetz—Can these witnesses go?

CHAIR—I think all of them are probably required. Mr Kemish is required for this output, Mr Hillman is required for trade and I don't think Mr Chester is allowed to leave under any circumstances.

Senator FAULKNER—Just before we move on to the next output, are senators who were not present when we dealt with some of the other outputs going to be given an opportunity to address those issues or have we passed those ones by?

CHAIR—No indication was given to me. My main concern is you, Senator Faulkner. If we have passed those two outputs—

Senator FAULKNER—It is quite moving that I am your main concern.

CHAIR—We will now have questions on output 2.1.

Senator FAULKNER—Could I ask Mr Varghese a question—and Mr Kemish may care to answer this; I am not sure who the responsible officer is who may be able to assist me. I noted that some detailed research was released in February of this year by Dr Zachary Abuza of Simmons College in the US. In the broad, this was a report on al-Qaeda and al-Qaeda activities. Is the department aware of that report and did it receive a copy of it?

Mr Varghese—I am not personally aware of the report. That would be handled not by Mr Kemish's division but by our international security division and our Ambassador for Counter-Terrorism. Regrettably I cannot get someone to the table who might be in a position to go beyond the answer I have given you.

Senator FAULKNER—I see. I may have said that the report was released in February of this year. If I did, I should not have. I actually believe it was released in February 2002. I don't know if that assists you at all, Mr Varghese, but let me correct the record there. I am sorry; this report was released in February 2002 from Dr Abuza. Does that help at all?

Mr Varghese—Thank you, Senator. Is there a particular aspect of the report that you are seeking a view on?

Senator FAULKNER—I am interested in that background, given some of the information that was contained within the report. My questioning will go to warning systems and information sharing systems in place prior to the Bali bombings. These are issues, as you would appreciate, Mr Varghese—I know that Mr Kemish certainly knows this—that we have canvassed at estimates before. I am just keen to know whether that report of February 2002 had been received and sighted by the department.

Mr Varghese—I will ask Mr Kemish to speak to that broader question about the process, including the inputs that go into travel advisories, if that is part of the interest behind your question. On that specific report, I will take it on notice and check that fact.

Senator FAULKNER—Last year or last round—anyway, a recent estimates round—the committee was advised that all security related travel advisories are cleared by the Minister for Foreign Affairs. Is that a fair summary of the situation, Mr Kemish? Can you outline the process?

Mr Kemish—Certainly I can outline the process. The first important point to make is that all threat information—all information about security threats—is based on assessments provided by the Australian Security Intelligence Organisation. They assess threats; we don't. They look at individual reports and intelligence. We rely on them to draw that together and make assessments of threat generally. In many ways your original question is better put to them as the assessor of threats. We work with them, in the sense that we rely on them for assessment of any information that is brought to our attention. We also obtain clearance by ASIO of the security related elements of our travel advisories.

As we have discussed in estimates before, the process involves consultation with the relevant embassy. From time to time we crosscheck with the advisories provided by other governments, in particular those of the United Kingdom, the US and Canada. Importantly, we also draw on our consular experience—in other words, our experience of the kind of difficulty Australians experience every day of the year. The clearance process involves clearance by the relevant geographic area; ASIO, in terms of material that relates to threat; and the post. Ultimately it is put forward by the head of consular branch, in most cases, to Mr Downer for clearance.

Senator FAULKNER—So to cut to the chase here, these travel advisories are cleared by the minister?

Mr Kemish—That is correct.

Senator FAULKNER—Is that all of them?

Mr Kemish—Yes, it is.

Senator FAULKNER—I want to ask, in relation to a number of events, whether recommendations were made by DFAT. I appreciate the point that you made about the process, and I think that is helpful background information, Mr Kemish, for the committee. I would like to know whether recommendations were made by DFAT and, if so, to whom those recommendations were made to change travel advisories in relation to some events. I do not know whether you will be able to assist me with all of them, Mr Kemish.

Mr Kemish—I will do my best.

Senator FAULKNER—I know you will do your best; you always do. If you can't, perhaps you could take those on notice and come back to me.

Mr Kemish—Sure.

Senator FAULKNER—The first was Osama bin Laden's East Timor warning of 6 November 2001. Did that result in changes to travel advisories?

Mr Kemish—Senator, if you could give me the developments, I will have to check the information.

Senator FAULKNER—I am happy to run through the half dozen or so events that I am interested in. Would that assist you?

Mr Kemish—It would.

Senator FAULKNER—You appreciate that what I am keen to understand in relation to these events is DFAT advice on recommendations to change travel advisories in these instances—perhaps where this advice was going and perhaps when. The events that I am focusing on are: bin Laden's East Timor warning of 6 November 2001; the Christmas 2000 bombings across Indonesia; the arrest of the 41 Jemaah Islamiah operatives in Singapore in July 2001; Australia's decision to participate in Afghanistan; the arrest in June 2002 of al-Faruq—my recollection here is that Omar al-Faruq is an al-Qaeda financier, just to nail it down a bit more; and the reporting of an Indonesian intelligence report entitled 'al-Qaeda's infrastructure in South-East Asia' that was issued by the Indonesian government in February 2002 and reported by CNN in July 2002. The only other event I was keen for you to comment on was this report from Dr Abuza, but we have not yet established its status. I will come back to that after you have dealt with those issues. I appreciate that you will be able to provide me with some information and you may want to reflect on your answers or give a more considered response—whatever suits, Mr Kemish.

Mr Kemish—Thanks, Senator. I can deal with some of that off the top of my head. Some of the rest of it I will have to check for you. I can confirm that proper considered responses were made through the travel advisory system to the Christmas 2000 bombings. I can confirm that, in the context of the beginning of the international coalition's actions in Afghanistan, travel advisories for South-East Asia generally, and particularly Indonesia, were amended appropriately.

You mentioned the arrest of al-Faruq. The way I would rather put it, if I may, is that I can confirm that, in response to clear threat information provided in early September 2002, Australian travel advisories for all of South-East Asia were upgraded. This was done at the same time as alerts were being put out by the United States government and a range of other officials. Our response on the issue is a matter of very considerable public record; it received very considerable media coverage at the time. As for the others, I will simply have to check.

Senator FAULKNER—Maybe the best thing to do, Mr Kemish, is to treat them in chronological order and ask you to respond appropriately. I think you understand what information I am keen to be provided with. I want to know what recommendations, following these events, were made by DFAT, if any, in terms of changes to travel advisories; who those recommendations would have been made to; what changes to travel advisories were made and when they were made. In relation to the report of Dr Abuza, I understand—I do not know whether you can confirm this or not—that Dr Abuza's report was received by our embassy in Washington—is that right? You may not know that.

Mr Varghese—I do not know the answer to that.

Senator FAULKNER—Will you also check that for me? I think that is the case because it has been reported in a newspaper, but that does not make it entirely accurate information, as you would appreciate. Perhaps when Mr Kemish responds on that report and any outcomes, you could confirm whether that report was received, if that is possible.

Mr Varghese—Certainly we will.

Senator FAULKNER—Then perhaps Mr Kemish, in his considered response to these matters, could indicate similarly, along with those other events, if this had prompted any changes to travel advisories. Would that be possible?

Mr Kemish—I would, of course, add that our response to these questions will have to observe proper procedure. As you know, we are not in a position to get into the detail of recommendations to ministers on any issues.

Senator FAULKNER—But, in relation to the actual revisions to the travel advisories themselves, have you internally prepared or created a record—I assume you would have, given the background here—or a document that goes to the precise nature of the revisions to travel advisories and when those revisions were made? I imagine that is something that you literally would have at your fingertips.

Mr Kemish—Absolutely.

Senator FAULKNER—Is there any reason, Mr Kemish, that a document like that could not be provided to the committee as well that might assist us in terms of understanding how and when these changes were made and how this issue has evolved over time.

Mr Kemish—If it is about documenting the actual changes, there would be no difficulty and we could provide that as part of our considered response.

Senator FAULKNER—That would be useful. These advisories, of course, are public anyway, so that would be helpful. The key thing that I am trying to focus on, Mr Kemish, in relation to these particular events that have been highlighted is what recommendations to travel warning advisories were made in the light of those events and in the light of this growing body of evidence. I appreciate your cooperation in responding to the matter. Has there been any external investigation of travel warnings commissioned by the department or the government that you are aware of, or has the only assessment of this been internal?

Mr Kemish—Of the travel advisories system?

Senator FAULKNER—Yes.

Mr Kemish—We have given it a very thorough review ourselves and we are looking forward to discussing these matters with you in an inquiry instituted by the Senate.

Senator FAULKNER—I look forward to it myself if I am on that inquiry. My question was—and I think you have answered it but I want to be clear about this—whether there has been any assessment outside the department, external to the department, in relation to the travel advisories. You make the point that it has been an exhaustive assessment but has it only been an internal assessment.

Mr Kemish—It has not been only internal to the Department of Foreign Affairs and Trade.

Senator FAULKNER—Can you explain for the benefit of the committee the breadth of that assessment and what agencies have been involved or what other advice and views you have sought on this issue.

Mr Kemish—The focus of our collaborative work in the last several months to strengthen the overall process has been consultation and discussion with ASIO in particular as the source

of threat assessments. We wanted to be doubly sure after Bali that the linkage between threat assessments and travel advisories was secure and a range of additional consultative processes have been established to provide us all with additional confidence in the system. They include a fortnightly meeting between the department and ASIO on these issues and very direct consultative arrangements with ASIO about the security elements of travel advisories.

In addition to that we have been working to make sure that we stay abreast of best practice in this area. At the time of the Bali bombings we were identified by other governments as having best practice in terms of travel advisories. Indeed the government of the United Kingdom said so on several occasions. We have served as a model for them since Bali in their own processes. However, we are not sanguine about that. We are mindful that these processes move on. To that end we observe that the government of the United Kingdom has made some significant reforms of process and we are staying abreast of that. An officer of my division has travelled to London recently to consult. I am going to be in London next week to provide advice to them at their request on our processes because they continue to see our system as a model. But it is a two-way street. We like to keep abreast of best international practice and make sure that we are there.

Senator FAULKNER—So you are saying there has been improved and better coordination and consultation with ASIO on the one hand and international intelligence agencies on the other—is that the picture?

Mr Kemish—Not quite—almost. We obviously do not ourselves, as a consular service, conduct liaison with intelligence agencies and organisations of other countries. As I mentioned earlier, the source of threat assessment is ASIO. They conduct their own liaison. For our part, we match ourselves against the practice of other consular services.

Senator FAULKNER—So your bilateral discussions with the UK will mainly be on a consular service to consular service basis—is that what you are saying to us?

Mr Kemish—For our part? Yes.

Senator FAULKNER—How would you say that the closer cooperation with ASIO differs from what the situation was pre Bali? Is it just a matter of fortnightly meetings with ASIO and the department? Can you put any more flesh on the bones for us?

Mr Kemish—We have an even more systematic process now with ASIO to ensure that threat assessments are reflected properly in travel advisories. I should add that as we look back prior to Bali, and we have done significant research on this, we see no point where there was any inconsistency between those threat assessments and our travel advisories—none at all. However, Bali certainly provides a new context for all of us, for all governments, and, properly, we are looking at these processes. The arrangements with ASIO—yes, you are right—do include a fortnightly meeting just to track how these processes are going. They also involve a process whereby ASIO now clears the safety and security section of every travel advisory.

Senator FAULKNER—Obviously I am aware of the Bali specific inquiry by the inspector-general. But, beyond that, I wondered if there had been any investigation or assessment of whether or not intelligence agencies have had adequate input into the advice and raw material that are contained in the travel advisories. Putting aside Mr Blick's specific

inquiry, I wondered if there had been any other broader assessment or investigation along those lines.

Mr Kemish—Not of that nature, Senator. We ourselves have reviewed all the documentation provided by the intelligence agencies in terms of analysis and assessment—this is quite apart from intelligence itself—and we are completely satisfied that at no point did we miss any such analysis or assessment.

Senator FAULKNER—Specifically in relation to the period between Australia's involvement in Afghanistan and then Bali, did DFAT advice indicate an enhanced terrorist threat to Australians overseas?

Mr Kemish—Yes, indeed it did. I can take you through this a bit if you like.

Senator FAULKNER—Yes, that would be helpful.

Mr Kemish—To put the whole thing in context, what I can do is paint the picture in broad terms. I can respond to specifics as you raise them, but I can paint the picture in broad terms between 11 September 2001 and 12 October 2002. You have mentioned one significant watershed, which is the commencement of coalition military action in Afghanistan on 7 October.

Senator FAULKNER—You have indicated that you may care to provide a broader response. I would be happy to hear that.

Mr Kemish—That is fine. To return to September 11, 2001: firstly, all Australian travel advisories for South-East Asia and other countries were revised following those attacks in the United States. By 20 September at the latest new language was added to all of the department's advisories, which was a general alert, which was:

In view of the heightened tension associated with the recent terrorist attacks in the United States of America, Australian travellers are advised to be especially alert to their own security at this time.

In countries where we held more specific concerns about the welfare of Australians, this advice was elaborated on further. The 20 September travel advice for Indonesia, for example, added that 'the possibility of a response by the US and its allies, including Australia, is heightening tensions in Indonesia and elsewhere'.

None of this was on the basis of intelligence; it was a broad assessment done at the time. The Indonesian travel advisory was reissued on 26 September 2001 to advise Australians to exercise great caution at this time and to note existing US advice to its citizens to defer non-essential travel, and there was a warning of a heightened threat to US interests in Indonesia. At this time—September 2001—the key concern was the threat of demonstrations and civil unrest directed at US and other Western interests. This was our concern; this was the concern of the US, the UK and all our major governments. That is an important point to make: the focus was on demonstrations and civil unrest.

On 28 September—two days after we amended our travel advisory—ASIO also responded to a similar set of concerns by upgrading its threat assessment of politically motivated violence against Australian interests in Indonesia. We took similar action in the case of the Philippines after September 11, the Philippines being our other country of key concern in South-East Asia at the time. It remained so in many respects. Again, in the case of the

Philippines, following a 20 September review we advised Australians to be especially alert to their security at this time. We revised it further on 4 October to reinforce the government's concerns about terrorist activity, and we emphasised the range of specific risks associated with the capital Manila and, most particularly, areas of Mindanao.

Particular attention was paid to Indonesia and the Philippines, but not at the expense of other countries in South-East Asia following those attacks. Senator, you asked about the commencement of coalition military action in Afghanistan. That took place on 7 October 2001. It did indeed lead to renewed concerns about the risks of civil unrest and other activity directed at Western countries. In that context, the travel advisory for Indonesia again received special and immediate attention. The overall warning level was upgraded on 8 October 2001 to defer all holiday and normal business travel to Indonesia with the exception of—we did exclude—Bali, Bintan and Batam. The advisory drew a clear link with the commencement of military action in Afghanistan and contained a range of advice about the need for caution in the heightened security environment. We continued to advise Australians to defer holiday and normal business travel until late October 2001.

Again, there was similar action in respect of the Philippines, and all this matched almost precisely what was done by other governments. The language might have varied here and there in minor ways, but not significantly. As an additional precaution in the period you asked about, Senator, we reviewed and reissued our travel advisories for other South-East Asian nations in that period in mid-October—Burma, Cambodia, East Timor, Laos, Thailand and Vietnam. In these cases our travel advice was simply refreshed to remind Australians to be especially alert to their own security. Malaysia had already been done on 4 October.

The next important watershed in the evolution of these advisories relates to one of your other original questions, Senator. As I said, I prefer to describe it as new threat information received in September 2002. In response to new sensitively sourced information indicating a terrorist threat to Australian interests in East Timor particularly, and to US interests in South-East Asia more generally, we amended our travel advisories for all South-East Asian countries on 10 September 2002. As I said earlier, these changes received very considerable media coverage at the time, as did a parallel change to US warnings, including an FBI alert which was issued on the same day as our travel advisories. A range of additional actions was taken, but I wanted to paint the broad period and some of those significant watersheds for you.

Senator FAULKNER—Thanks for that, Mr Kemish. I was going to similarly ask about the period in the lead-up to the war in Iraq and beyond. I do not know whether the document that you are reading from is something that could be tabled at the committee. I am not sure of its sensitivity.

Mr Kemish—It is a document prepared in the context of the Senate inquiry that we discussed. A form of it will be made available to the inquiry, following the appropriate clearances.

Senator FAULKNER—For the purposes of this committee, the choice is to ask you to take us forward from the point where you ended to the present day.

Mr Kemish—Sure.

Senator FAULKNER—The alternative is to ask you to table a document. I think it is important that this form part of the record of this committee, so perhaps it is best if I ask you to come forward to the present day in a similar way.

Mr Kemish—I can certainly do that. I will do that from my very clear memory and I will be confident in the information I provide to you. I do not have a detailed document in front of me, so it may not go into quite the same level of detail. Let us start with the morning of 13 October 2002. We issued a fresh travel advice for Bali at about 5 a.m. on 13 October 2002. I had been woken at 2 a.m. Our actions were necessarily focused on the evacuation of the injured from Bali. We conducted that evacuation—

Senator FAULKNER—I think Mr Crean and I saw you soon after.

Mr Kemish—That night. That is correct, Senator. We deployed a range of action focused most particularly on the evacuation of the injured. We nonetheless found time to issue a specific travel advisory at 5 a.m. for Bali, warning against all travel at that point. We also amended the travel advisory for Indonesia at about the same time of the morning. The advisory was moved to a point where we advised against all non-essential travel to the country. That warning has effectively remained in place since. What has happened subsequently is that the particular advisory for Bali has been rolled into the overall Indonesia travel advisory.

We have no particular information to suggest that we should treat Bali any differently from the rest of Indonesia in our travel advisory, so it is covered by that broad warning of ‘defer non-essential travel’. I think that really sums it up. It has been pretty static, albeit with fresh information from time to time since then. One significant development that I should mention, however, is that on 15 May just passed we put information into all travel advisories for South-East Asia making it clear that we continue to receive reports that terrorist elements in the region were planning attacks. We did that on 15 May for all of South-East Asia; in fact, we had done it already for Indonesia about three days previously.

Senator FAULKNER—You mentioned at the conclusion of the detail you gave regarding the pre-Bali period that there were a range of additional measures. Are you planning to report on those to the Senate committee?

Mr Kemish—Indeed, Senator.

Senator FAULKNER—When you used that terminology, I was not sure what you might have been referring to. You said that there is also a range of additional measures, which is fair enough.

Mr Kemish—There is a level of procedural detail beneath what I have described, which we are happy to go into with the inquiry. I am not equipped to go through every step of it here.

Senator FAULKNER—I am not requesting that you do so, but I appreciate the information that you have provided to us and I look forward to reading it closely in the *Hansard*.

Senator ROBERT RAY—Has the department ever checked its legal position in terms of issuing travel advisories or otherwise? If it fails to issue a travel advisory, can you be certain to be protected from any legal action by anyone thereby affected?

Mr Kemish—No, we have not.

Senator ROBERT RAY—Are you ever subject to representations from other governments as to the nature of your travel advisories such as from governments that think they are too harsh in their application and are thereby affecting their own tourist industries et cetera?

Mr Varghese—A number of governments have raised concerns with us about our travel advisories. Our clear response in all of those cases is that our first responsibility is to the safety of travelling Australians and that will continue to determine the content of our travel advisories, not other factors such as bilateral relationships or the state of the tourism sector in the other economies. But it is an issue that is raised with us from time to time.

Senator ROBERT RAY—So your response is, ‘Thank you for your interest, but we have to make these decisions independent of any representations’?

Mr Varghese—Essentially, that is correct.

Senator ROBERT RAY—There is mention made in the budget papers of additional money in this area. I notice you have additional money for touch screen travel advice kiosks in all passport offices. Has any thought been given to touch screen access in airports?

Mr Kemish—There is already one at Sydney airport as of last week.

Senator ROBERT RAY—That is because all international flights leave from Sydney.

Mr Kemish—We are in discussion with all airports across the country, and Sydney is the first to have agreed. It will be launched formally next week.

Senator Abetz—You will get an invitation.

Senator ROBERT RAY—We know that all international flights leave from Sydney. They are cancelled from everywhere else, aren't they Senator Abetz?

Senator FAULKNER—Mr Kemish, you would agree that you have to start somewhere, and Sydney sounds like—

Senator ROBERT RAY—It is the best place from which to flee overseas; I agree with that. Mention is made of a public information campaign. Sometimes these are very noble things and sometimes they are very grubby things. Would you like to explain what you are going to be up to there so that I can form an early prejudicial judgment.

Mr Kemish—The preparation of that campaign is well advanced. We expect to be launching the campaign early in the financial year. It remains subject to ministerial endorsement and clearance. I am not really in a position to go into too much detail about it, other than to make it clear that the campaign will be focused on promoting awareness of travel advisories and the means by which Australians can access those advisories. We will obviously be trying to do that in a tone and in a way which puts the information at the disposal of Australians but which does not seek to be alarmist in tone.

Senator ROBERT RAY—No fridge magnets? I do not want to anticipate the campaign or spoil its impact, but could we have an idea of how much money is going to be spent on this aspect of the campaign?

Mr Kemish—I can get that detail for you. I do not have it with me.

Senator ROBERT RAY—Are you seriously saying that you do not know?

Mr Kemish—What I am saying is that the costing is incorporated in the \$9.8 million. It is a significant proportion of that. I can get the precise information for you quite quickly this morning.

Senator ROBERT RAY—I am just trying to grasp what the scale of it is. Again, without anticipating what the nature of the campaign will be, has research been carried out?

Mr Kemish—Yes, research has indeed been undertaken into, first of all, general levels of public understanding and perception of our travel advisories.

Senator ROBERT RAY—Has that research been quantitative, qualitative or both?

Mr Kemish—Both, I believe.

Senator ROBERT RAY—Who was employed to do that?

Mr Kemish—It is just being completed now. I cannot remember the name of the organisation but I will get that for you.

Senator ROBERT RAY—Was it the same organisation that did both the qualitative and quantitative research? That is not often the case.

Mr Kemish—I believe so.

Senator ROBERT RAY—Do you know how much money was paid for the research?

Mr Kemish—I can get that for you, too.

Senator ROBERT RAY—Do you think we should leave this area and come back to it in a few minutes?

Mr Kemish—It is information that I do not have readily in my head.

Senator ROBERT RAY—The matter will go before the ministerial council for approval?

Mr Kemish—Indeed.

Senator ROBERT RAY—You might also consider whether it was the government communications unit that recommended the research firm.

Mr Kemish—Indeed, it has been worked very closely through the government communications unit, in preparation for consideration by the ministerial council. The whole preparation has been undertaken very much consistently with the guidelines by the government communications unit.

Senator ROBERT RAY—There is also mention of increased cooperation with the Australian travel industry. That is a pretty bland statement. What is the meat to those bones?

Mr Kemish—We have had a range of very senior level consultations with the travel industry so far this year. The coordinating point within the travel industry has been the

Australian Federation of Travel Agents, but it has involved all sectors of the travel industry—carriers, insurance organisations and so on. We will be in a position to announce publicly the results of that next week. To describe it very generally, it involves in the first instance a public commitment by the travel industry to promote our travel advisories with their clientele and, indeed, to highlight our travel advisories to their clientele in situations where our travel advisories are warning against travel or at a certain level. There is a range of additional activity being discussed to go beyond that to ensure that this commitment is implemented by the travel industry. It involves a series of seminars and individual commitments received by sectors of the travel industry, in return for which they will receive an endorsement from the Department of Foreign Affairs and Trade.

Senator ROBERT RAY—I know that the general answer to this would be ‘traveller beware’ but for those Australian citizens who have not been so advised by travel agents and are unaware of the touch screen advisories et cetera and are travelling to a country that you would have very serious reservations about—not just a general warning but very serious reservations—is there any way you can get it in process in airports? People often put their destination on the embarkation card. Is there a way for such a person to be given a leaflet containing a final warning saying, ‘You are going to X and we know that there is massive internal trouble there; it is not safe anywhere there’? Is there any way of doing that?

Mr Kemish—Indeed. We have done it in extreme situations for many years. Qantas, for example, has been very cooperative in passing the full text of our travel advisories to incoming passengers in particularly difficult situations. That was obviously done in the case of Bali and it was done in the case of the Solomon Islands about 2½ years ago. We certainly resort to whatever means we can find in those extreme situations. But even before you get to that, Senator, our dissemination of travel advice is in no way completely reliant on travel agents, although they are an important avenue for us. I should mention that since Bali we have an arrangement whereby each of our travel advisories is sent out in summary form to 4,000 travel agents across the country every time it is changed.

But there is an important additional point to make about this, Senator. Our dissemination focuses on direct communication with members of the public. To try to quantify that for you, the number of subscribers to our travel advisories—these are people who have elected to receive our travel advisories direct every time they are changed—has increased from 3,000 at the time of Bali to 26,000 today. In addition, I can tell you that the number of hits on our web site is getting close to 200,000 a week. I do not think there can be any doubt that public awareness and access to the advisories is very high.

Senator ROBERT RAY—In terms of feedback, let us say a travel advisory is changed for country X and it is made far more serious. Do you ever get any feedback from the travel industry, airlines or anywhere else as to the drop-off in travel to that particular area?

Mr Kemish—Yes, we do. Speaking here I can only give it to you in anecdotal form, but indeed we do get the very clear sense from our very regular consultations with the travel industry that our travel advice has an impact on the level of interest of their clients in travelling to a particular destination. It is not perfect. It certainly is not true that if, we advise against all travel, all Australians will decide to take that advice. However, we have noticed—

and here I am drawing on my experience over three years in running this part of the service—that a quantum of about 30 per cent reduction is to be expected in those circumstances.

Senator ROBERT RAY—And there are those cases of people who deliberately ignore your warnings, get into trouble and you then go and assist them.

Mr Kemish—Indeed. There are many such cases.

Senator ROBERT RAY—Just before we move on to passports, is there any further additional information on that public information campaign you can assist the committee with?

Mr Kemish—Yes, Senator. I have a breakdown of the \$9.8 million coming which I can provide when it arrives. As for the research that you were asking about, it was undertaken by the Open Mind Research Group, a Melbourne based company, and \$50,000 was paid for that research.

Senator ROBERT RAY—Sorry, I missed that; Senator Faulkner was making a sarcastic comment about Melbourne.

Senator FAULKNER—No, about open minds in Melbourne.

Senator ROBERT RAY—What was your last point?

Mr Kemish—I gave a figure of \$50,000.

Senator ROBERT RAY—So \$50,000 for research.

Mr Kemish—Yes, very significant research. Yes, Senator, that is right.

Senator ROBERT RAY—Did you say ‘very significant’ research?

Mr Kemish—That is right.

Senator ROBERT RAY—I would say that for the money, compared with a lot of other departments, you are very frugal. These usually run to \$300,000. You can get a gold star for frugality.

Mr Kemish—Thanks very much, Senator.

Senator ROBERT RAY—Chair, we might just reserve coming back to that when the breakdown of the \$9.2 million comes. It may well be that we won’t go back to it at all once we see the figures.

Senator FAULKNER—Mr Kemish, I assume there are internal procedures or written guidelines as far as the department is concerned for dealing with and making representations for Australians who are incarcerated overseas.

Mr Kemish—There is a significant document called *The consular handbook* which outlines procedures in the event of an arrest overseas.

Senator FAULKNER—Is that a public document?

Mr Kemish—It is a set of guidelines for officials.

Senator FAULKNER—But is it a public document?

Senator Abetz—I’m pretty sure it is on the web site.

Mr Varghese—I am not sure that it is a public document. We will have to clarify that. It may be an internal working document for consular offices within the portfolio.

Senator FAULKNER—Mr Kemish, I am interested in knowing if there is an internal guideline, if you like, on the provision of consular assistance for Australians incarcerated overseas. Can you indicate whether that is the case?

Mr Kemish—Yes, it is and I can tell you what those guidelines say in broad terms.

Senator FAULKNER—Thank you.

Mr Kemish—First of all, the guidelines make it clear that, in the event that the host government informs us of the arrest of an Australian overseas, we should seek to undertake a consular visit if that can be arranged. Of course, that is in the gift of the host government. Nonetheless we seek that access. Another important condition is that the Australian person agrees to the visit taking place. There are cases where the Australian in question does not want that.

An arrest letter is provided to the detained person. That will sometimes be delivered in person by the consular officer on his or her first visit. It can sometimes be sent in advance of that. It very much depends on what is possible and, again, the parameters are set by the host government. There are no legal rights in this area. It is a matter of convention and custom depending on the country.

The arrest letter does two things. It makes it clear what the consular service can and cannot do for the arrested person—and I will come back to that in a moment. It also provides a list of appropriate lawyers, usually English-speaking, whom the imprisoned person might wish to consult. As to the question of what we can and cannot do in these situations, as you probably know, Senator, basically it boils down to the fact that we can undertake visits if the prisoner wishes. The frequency of those visits is determined by the circumstances and the country and, importantly also, the frequency of their visits has to be agreed to by the prisoner. So there is no set universal frequency that I can give you. In the developed world it is normally about once a month, if the other government will allow that situation. We will visit and check on welfare. We will carry messages back and forth between the prisoner and the family. We will satisfy ourselves as we go along that the prisoner is being dealt with properly in the legal context in which they find themselves.

Senator FAULKNER—Does that legal context include any international obligations that are on the department or on Australia, effectively, in relation to our nationals who are incarcerated overseas?

Mr Kemish—There are no legal obligations in this area, Senator. It is a matter of custom and practice.

Senator FAULKNER—What about international obligations?

Mr Kemish—There is only the convention enshrined in the Vienna Convention.

Senator FAULKNER—Fair enough. It is limited in its entirety to the Vienna Convention?

Mr Kemish—That is right.

Senator FAULKNER—Specifically in relation to the two Australians who are held in Guantanamo Bay, how many times have consular access requests been made to the US to meet with those two individuals?

Mr Kemish—Because of the particular circumstances applying to Mr Hicks and Mr Habib, the channel for communication with the government of the United States is a legal channel. That is a function of one of the considerations I mentioned to you earlier—that is, that the parameters are set by the host government. For that reason Mr Moraitis will take questions on Hicks and Habib.

Senator FAULKNER—So that I am clear, Mr Moraitis: when Mr Kemish uses the terminology that it is a ‘legal channel’, what does that mean in terms of Australia and what does it mean in terms of the US?

Mr Moraitis—Mr Kemish was making the point that the detention of Mr Hicks and Mr Habib is by the US authorities. They have not consented to any detainees in Guantanamo Bay being treated as consular matters. On that basis access has been through law enforcement officials. That is what it means by a legal basis—it is more the process rather than the substance. That is my understanding.

Senator FAULKNER—Has Australia made consular access requests? Whether that is consented to, of course, is another issue. My question went to whether the requests have been made.

Mr Moraitis—May I make a preliminary point. Attorney-General’s has primary carriage of this issue, so my understanding is based on my knowledge from dealing with Attorney-General’s and embassy. My understanding is that the US have made it clear that no detainees in Guantanamo Bay have the right to consular access from nation states. There have been visits by Australian officials which have in effect provided an ability to check the welfare of the individuals concerned, but strictly consular access has not been granted by the US to Australia or any other country which has nationals detained in Guantanamo Bay.

Senator FAULKNER—My question is: have consular access requests been made by Australia? I do not think that is a matter for the Attorney-General’s Department; correct me if I am wrong. I think it is a matter for the Department of Foreign Affairs and Trade.

Mr Varghese—Senator, can we take that on notice and do some checking? I think the US position on this was made very clear from the start in terms of consular access, but with respect to the nature of discussions in terms of a request for consular access, I would need to check and get back to you.

Senator ROBERT RAY—Have the families of either of these two individuals approached the department requesting that consular access be made, irrespective of whether you can do it or not?

Mr Kemish—Not that I am aware of, Senator. The contact that we have had followed the one visit that took place in 2002, where we were able to provide what I believe was welcome information about welfare and so on to the families. They thanked us for that. Other than that, we have not been approached by the families.

Mr Moraitis—My understanding, as I said, is that Attorney-General's has primary carriage. All dealings with the family of Mr Hicks are through the Attorney-General's Department, so there might be some further dealings there. I think Mr Kemish is correct in his understanding of whether consular access has been sought.

Senator FAULKNER—Has Australia made representations to the United States about this issue of consular access or the issue of refusal of consular access?

Mr Moraitis—I think Mr Varghese made the point that we would need to check that.

Senator FAULKNER—No, Mr Varghese answered a question specifically about consular access in relation to the two individuals, Hicks and Habib. I am asking the broader question in relation to the information that is understood, and witnesses at the table have repeated—that is, that the US administration does not accept consular access for individuals incarcerated in Guantanamo Bay. That is the situation, isn't it, Mr Varghese?

Mr Varghese—That is my understanding of the situation.

Senator FAULKNER—And you have made that clear; it is my understanding, too. I am now asking whether Australia has made representations, not necessarily about the individuals concerned but more broadly, about this issue of consular access in relation to people interred in Guantanamo Bay.

Mr Varghese—I think the two issues are every closely related. I accept that conceptually they may be separate, but they are very closely linked together. I said I would have to check on the question of whether we had formally sought consular access. I will also have to check on the second point you made.

Senator ROBERT RAY—How much of this is related to where the people were detained? Are people detained in Afghanistan and then transferred to Guantanamo Bay treated exactly the same in terms of consular access as anyone who is detained anywhere else in the globe and transferred there? Is there a difference, or hasn't that occurred?

Mr Moraitis—As far as I understand, I do not think that has occurred. The treatment is the same, as far as I understand, irrespective of where they have been. But I think you would have to check with Attorney-General's on that point. They would have specifics.

Mr Kemish—On the general point, though, I would just go back to my earlier point: the parameters are set by the government of the country where the individuals are imprisoned. The background, the circumstances in which they were arrested and so on—those things are relevant and I would not speak about those issues because it is up to lawyers to talk about those issues. But at a practical level it boils down to the simple fact that the parameters are set by the government of the country concerned.

Senator ROBERT RAY—I understand that. It is the representations we may make about the parameters because of varying circumstances. I can see some consistency where people were detained in a conflict—and we might argue about the definition, but we know the broad definition—and they get transferred somewhere else. But if someone gets arrested in Lebanon or Morocco and goes to Guantanamo Bay I am not sure that fits the same category in terms of us then making representations for access. We may again, as you say, Mr Kemish, be refused, but I am wondering if that is a factor here.

Mr Varghese—We will need to check into that.

Senator FAULKNER—I am surprised, Mr Varghese, particularly in two such high-profile cases, that I cannot get a clear answer as to whether there have been requests made to the US for consular access to these two individuals, Hicks and Habib. Frankly, I would have thought that was something that officials at the table should be able to indicate to the committee.

Mr Varghese—Well, I regret that we cannot. All I can do is to offer to get the information for you and get back to you.

Senator ROBERT RAY—If consular representations were to be made, which post would be responsible in that region for making them? I know it is a touchy situation because you have got a base that would not be regarded as part of the territory of Cuba at the moment.

Mr Varghese—It would be our embassy in Washington which would have carriage for it, if there were representations to the US government.

Senator FAULKNER—Where would the representations go—to which part of the administration?

Mr Varghese—If it was a question of consular access, my expectation would be that representations would be made to the State Department.

Senator FAULKNER—I wonder if that is the case in relation to Guantanamo Bay.

Mr Varghese—I have already said that I do not know and I will check for you.

Senator FAULKNER—And I find it incredible in such high-profile cases that no-one can tell me whether a consular access request has been made in relation to these two particular individuals. The problem with you saying, ‘Oh, well, these are matters for the Attorney-General’s Department,’ is that the Attorney-General’s Department is more than willing, including at this estimates round, to handball this stuff back to your department. This is a real case of buck-passing. You are at the table now, and someone has to be held accountable on these issues.

Senator ROBERT RAY—Could I just ask first of all: have you read the evidence of the Attorney-General’s Department on this? Has someone in the department?

Mr Moraitis—Yes, I have read that.

Senator ROBERT RAY—Was Senator Faulkner’s characterisation unfair—that they have handballed it a bit back to Foreign Affairs?

Mr Moraitis—On some issues to do with some specific questions I understand there were some points referred to us.

Senator ROBERT RAY—I say that, Mr Varghese, so that you understand our dilemma.

Mr Varghese—I understand the points you are making, Senator. All I am saying is that I am not in a position to help you undertake—

Senator ROBERT RAY—I am asking you why you are not in a position. You have a very thin crowd behind you. Usually we approve of that because it saves resources, but is that starting to impact on the ability to answer questions?

Mr Varghese—I think our involvement with this, as has already been explained, has been through Mr Moraitis and his office dealing with Attorney-General's. You have asked me about the consular aspect of it. The head of our consular division is not aware of it. We will check to see whether there is any other information and we will get back to you. I am sorry, there is nothing more I can really usefully say to you on that.

Senator FAULKNER—Let's go to the ABC report of 6 May 2003, announcing the release of more prisoners from Guantanamo Bay. I will quote the report; it has already been quoted in a previous estimates round. It states:

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.

My question is, Mr Varghese: is Australia one of those eight countries that has demanded the release of their nationals?

Mr Varghese—Senator, I have already responded that I will need to check on the nature of any representations that were made. You are asking me the same question in a different way.

Senator FAULKNER—This matter was raised at the estimates just days ago.

Mr Varghese—I really have nothing to add, Senator.

Senator FAULKNER—Senator Ellison, who was the minister at the table, said this, Senator Abetz:

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.

Well, I am putting it. Given that the matter has been given an airing at a previous estimates round, I am surprised that I cannot get an answer. And I am very disappointed I could not get an answer to the broad issue of requests for consular access to the two individuals incarcerated in Guantanamo Bay, a matter which has been very much in the public gaze for some time. This questioning should not be a surprise but I think it will come as a surprise to a lot of people that the department of foreign affairs in Australia cannot answer a straight question about whether a request has been made about consular access, either specifically or generally, in relation to Habib and Hicks, who are incarcerated in Guantanamo Bay. That is not good enough.

CHAIR—Before you answer, perhaps—

Senator Abetz—There wasn't a question.

Senator ROBERT RAY—I know it is a hard ask. I don't know if any information can be gleaned, Minister, while we stir our cup of tea. Maybe by the telephone method something can be found.

Proceedings suspended from 10.33 a.m. to 10.54 a.m.

CHAIR—We will continue with output 1.3.

Senator FAULKNER—Have we been able to establish what the situation is in relation to consular access for Hicks and Habib, Mr Varghese?

Mr Varghese—The only additional information that I can give you is that the issue of consular access was discussed, but very early on in this process the Americans made it very clear that consular access would not be permitted, and we accepted that as a strong US position and a fact of life, I guess. Subsequently, as we have already heard, we did, through other channels—through the law enforcement channels—secure access to Mr Hicks and, in the process of that, we were able to confirm some consular type issues, including his health and wellbeing. But it was not a consular visit.

Senator FAULKNER—When was this original discussion held with US officials?

Mr Varghese—I do not have details on it. In the short time I had available that was the additional information I was able to secure.

Senator ROBERT RAY—Could you take those on notice.

Mr Varghese—I am happy to take those on notice.

Senator ROBERT RAY—Who visited and when.

Mr Varghese—Sorry?

Senator ROBERT RAY—I am just making sure you understand what you are taking on notice.

Senator FAULKNER—We might come back to Senator Ray's point. I am going to the preliminary discussions that were held with US authorities, which is what you were speaking about at the beginning of those comments, was it not?

Mr Varghese—Yes.

Senator FAULKNER—I am wondering when and where those discussions were held, who they were held with, who represented Australia at those discussions, what matters were discussed and what the outcomes were? From what you are saying, it sounds like Australia just folded its tent on this issue pretty quickly. You used the words 'accepted the US position in relation to consular access'.

Mr Varghese—I think I said that it was accepted as a reality. I did not say it was accepted in any other sense.

Senator FAULKNER—That is different from accepting it.

Mr Varghese—That is what I said.

Senator FAULKNER—In relation to other contact with Hicks and Habib, we know on the public record that these two individuals have been visited by ASIO and AFP officers. You would be aware of that, or I assume someone would be aware of that—is that correct?

Mr Varghese—I am aware that they were visited by Australian officials. I personally do not know the identity of those officials.

Mr Moraitis—They have been visited of course by law enforcement officials—that is, ASIO and the AFP. I understand they have been visited by ASIO in recent weeks.

Senator FAULKNER—It is true also that your department had an officer present on at least one occasion—is that correct?

Mr Moraitis—That is correct. My understanding is that a DFAT officer from our embassy in Washington accompanied Australian law enforcement and intelligence officials during their first visit to Mr Hicks and Mr Habib in May 2002.

Senator FAULKNER—That was in May 2002?

Mr Moraitis—That is correct.

Senator FAULKNER—That was an officer from which post?

Mr Moraitis—Our embassy in Washington.

Senator FAULKNER—In relation to subsequent visits by Australian law enforcement officers, is it correct that no DFAT representatives were present?

Mr Moraitis—That is correct.

Senator FAULKNER—Why was that decision made? To put it a different way: what is the basis for an officer going to the first visit and not to subsequent visits

Mr Moraitis—My understanding is that these have been essentially law enforcement type visits—investigations by Australian law enforcement officials. In those circumstances, I think that is the primary focus of that process and there was really no apparent reason why embassy officials should accompany them any further—that was my understanding.

Senator FAULKNER—What was the role of the embassy officer on that first visit?

Mr Moraitis—I think it would have been as an initial visit to ensure processes of access were arranged—that is my understanding.

Mr Kemish—In addition to that, the officer concerned had a clear brief to check on consular like issues. The officer concerned had a clear brief to check on welfare.

Senator ROBERT RAY—Was that officer from the consular section of the embassy?

Mr Kemish—As it happened, she was not, but as I am sure you know, Senator, a visit of this type is often taken by an officer of the foreign service. Our officers across the network have many different responsibilities. There is nothing which says that consular officers have to do consular visits.

Senator ROBERT RAY—No.

Mr Kemish—In this case the individual officer had a brief to check on welfare, had a brief to ask whether Mr Hicks and Mr Habib would like messages passed back to their families. As I mentioned earlier in response to Senator Faulkner, these are important parts of our normal operation when Australians are imprisoned overseas. The information, as I mentioned earlier, about welfare, messages between the prisoners and families, were passed by the Australian consular service, members of my division, back to the families, and the families greatly appreciated that.

Senator FAULKNER—Can you explain the basis on which that embassy official was able to go on the first occasion on that visit.

Mr Kemish—It was in response to expressions of interest by us, through our embassy in Washington, in being able to look at these issues and communicate back with the families.

Senator FAULKNER—Who agreed to the embassy official being present? Obviously the US authorities agreed to that, didn't they?

Mr Kemish—The actual discussions with the American authorities about how that would be done and so on were conducted through legal and law enforcement channels.

Senator ROBERT RAY—It was not with the Department of State; it was the Attorney-General's Department in the US?

Mr Kemish—I believe it was indeed discussed with the Department of State. For our part the consular division of the Department of Foreign Affairs and Trade was not involved in pursuing the matter because it was being handled through that other channel.

Senator FAULKNER—Are you aware of any formal requests made to the US about the return of Hicks and Habib to Australia?

Mr Varghese—I was not able to get any more information on that during the break.

Senator FAULKNER—This is a new issue that is being raised. I wondered whether you were aware of any such requests. I am not suggesting they have been made; I am asking whether the department is aware of any such requests having been made.

Mr Varghese—I am not aware of it, Senator. As we have already indicated, the primary channel of communication with the United States on this case is through law enforcement channels, so we do not have primary carriage of that. I am not aware of any such formal request, which is not to say that they may not be one.

Senator FAULKNER—Is it true that there have been ongoing discussions between Australian officials and American officials about the situation with Habib and Hicks?

Mr Varghese—There certainly have been discussions through law enforcement channels, which are ongoing. That is my understanding.

Senator FAULKNER—Of course, evidence was presented to a different estimates committee that that involved the Department of Foreign Affairs and Trade. I was wondering whether you could assist me with that.

Mr Varghese—I have no further information to offer.

Senator FAULKNER—You don't, Mr Varghese. Are any of the other officials able to assist us with this?

Mr Moraitis—The US government has made clear in recent times that it is looking at the issue of military commissions for non-US nationals detained in Guantanamo Bay. There have been discussions, primarily through the Attorney-General's process but also with DFAT awareness and involvement, exploring that issue of military commissions with the US authorities, given that they are looking at that issue applying to non-US nationals. Therefore, we have an interest in that.

Senator FAULKNER—Which officials from your department have been involved in those discussions?

Mr Moraitis—As I said, they have been discussions primarily with the Attorney-General's Department.

Senator FAULKNER—I know they are discussions primarily with the Attorney-General's Department, but not exclusively.

Mr Moraitis—No. In the course of those discussions, an embassy official in Washington has been involved.

Senator FAULKNER—Who are the discussions being conducted with?

Mr Moraitis—They are being conducted with a range of agencies which have an interest in this issue in Washington. Obviously, that includes the Department of State and the Department of Defense—because, as you know, the camps are under the control of the US military; therefore there is a Defense interest—and, I expect, other agencies which have an interest in the US interagency process. That is my recollection. I would expect it is primarily through State and Defense.

Senator FAULKNER—Are these discussions ongoing?

Mr Moraitis—Absolutely.

Senator FAULKNER—Is DFAT still represented in the discussions?

Mr Moraitis—Yes, in Washington.

Senator FAULKNER—Is there a reporting mechanism for your officer in Washington to report back to the department, Mr Varghese?

Mr Varghese—I have not seen any reports on this issue from Washington.

Senator FAULKNER—Thank you for that. That is not an answer to the question. I did not ask whether you had seen it; I asked whether there is a reporting mechanism.

Mr Varghese—I think the two are quite linked.

Senator FAULKNER—They may be, but you are not making that point to me, so I am not aware of whether they are linked or not.

Mr Varghese—I am not aware if there is—

Senator FAULKNER—Every question I ask of late you seem to be personalising. My questions are directed to the department. One expects a response from a departmental perspective, as opposed to an individual perspective.

Mr Moraitis—May I add, to clarify that point, that there is normal reporting of such discussions.

Senator FAULKNER—Why does that not cross Mr Varghese's desk? Has he been excluded from that?

Mr Moraitis—I am not aware of why that is.

Senator FAULKNER—I would like to know why he has been kept in the dark. You cannot help me, but you are in the loop, are you?

Mr Varghese—I do not have responsibility for consular affairs and I do not have responsibility for the United States.

Senator FAULKNER—Why would it come across your desk, then?

Mr Varghese—It has not; that is the point.

Senator FAULKNER—Right.

Mr Moraitis—It is simply a case of the distribution of cables.

Senator FAULKNER—Therefore, could we request an appropriate departmental response to the questions that are being asked? I am not expecting you, Mr Varghese, to have at your fingertips all this information.

Senator Abetz—Mr Chairman, could we get on with the questions rather than these gratuitous sermons? There was apparently a misunderstanding. I think that has been resolved. The document did not go across Mr Varghese's desk. Let us just get on with the questions.

Senator ROBERT RAY—Minister, we are trying to save some time later by saying that Mr Varghese, in answering questions, does not have to see it himself to answer on behalf of the department. That is the point being made.

Senator FAULKNER—So it is reported through and you see this material, Mr Moraitis?

Mr Moraitis—Yes.

Senator FAULKNER—Thank you. Can you tell us what the status of those discussions is, please?

Mr Moraitis—They are ongoing discussions.

Senator FAULKNER—Has anything been achieved yet?

Mr Moraitis—As I said, they are ongoing. We have made our views clear on some points.

Senator FAULKNER—Has any progress been made?

Mr Moraitis—At this stage I would characterise them as ongoing and promising.

Senator FAULKNER—What is the departmental input into these discussions? How is that determined? Is it made at the ministerial level or the departmental level?

Mr Moraitis—We have discussions with our colleagues in the Attorney-General's Department and other relevant officials.

Senator FAULKNER—What is the mechanism for those discussions? Is there an IDC?

Mr Moraitis—Yes.

Senator FAULKNER—Does it deal with this matter?

Mr Moraitis—There is a discussion between the relevant agencies. You could call it an IDC as such.

Senator FAULKNER—Either there is an IDC or there isn't an IDC.

Mr Moraitis—Yes, the Attorney-General's Department convenes meetings as appropriate on these issues.

Senator FAULKNER—So is there an IDC?

Mr Moraitis—Yes.

Senator FAULKNER—And what is it called?

Mr Moraitis—It is just an IDC; I don't think it has a title or anything.

Senator FAULKNER—Who represents the Department of Foreign Affairs and Trade on that IDC without a title?

Mr Moraitis—Representatives of the legal division.

Senator FAULKNER—Who?

Mr Moraitis—On occasions myself; on occasions my colleagues from the legal area.

Senator FAULKNER—Are you aware of who in the Attorney-General's Department chairs the IDC without a name?

Mr Moraitis—It would be the head of the Criminal Justice Division, Mr Ford.

Senator FAULKNER—And how often does it meet?

Mr Moraitis—As required.

Senator FAULKNER—How often has it met in the last couple of months?

Mr Moraitis—I couldn't recall. It would be at least four or five.

Senator FAULKNER—Four or five times?

Mr Moraitis—That includes ongoing discussions of course without formal convening of IDCs.

Senator FAULKNER—And are you reporting through to the minister outcomes of the IDC process?

Mr Moraitis—Yes, of course.

Senator FAULKNER—How often does a brief go to the minister on these matters?

Mr Moraitis—Regularly as required.

Senator FAULKNER—How often is that?

Mr Moraitis—Whenever there is anything of relevance to report.

Senator FAULKNER—When did the last report go?

Mr Moraitis—In recent days. I couldn't tell you an exact date, but it would certainly have been in the last four or five days.

Senator FAULKNER—And how often are discussions taking place in the US with elements of the US administration between Australian officials and US officials?

Mr Moraitis—As I say, they are ongoing and regular.

Senator FAULKNER—How regular is 'regular'? Are we talking about an intensive discussion and process or is it not particularly intensive?

Mr Moraitis—As I said, there have been discussions with a range of agencies and as such they are obviously quite regular and require a lot of discussion with relevant interlocutors.

Senator FAULKNER—And the Australian position has been determined by the IDC in the broad but final decisions are being made by ministers?

Mr Moraitis—Yes.

Senator FAULKNER—What other agencies are on the IDC?

Mr Moraitis—My recollection is law enforcement agencies which obviously have a direct interest in this, and I would have to recall who else there is.

Senator FAULKNER—That is what I am asking you to do.

Mr Moraitis—Defence would be present there as well.

Senator FAULKNER—So what do we think they are? It is chaired by the Attorney-General's Department?

Mr Moraitis—Yes.

Senator FAULKNER—It hasn't got a name and it is chaired by the Attorney-General's Department. Do you think Defence is represented on it?

Mr Moraitis—Yes.

Senator FAULKNER—The AFP?

Mr Moraitis—Yes.

Senator FAULKNER—ASIO?

Mr Moraitis—Yes.

Senator FAULKNER—And certainly your department?

Mr Moraitis—Yes.

Senator FAULKNER—Are records of meetings and outcomes being filed in the Department of Foreign Affairs and Trade?

Mr Moraitis—Yes, I imagine so.

Senator FAULKNER—Let's not imagine—

Mr Moraitis—Yes, records are kept.

Senator FAULKNER—Thank you. Who by?

Mr Moraitis—Officials who attend.

Senator FAULKNER—What sort of records? Are there formal outcomes and records of proceedings of this particular IDC without a name?

Mr Moraitis—The records of the discussions and appropriate—

Senator FAULKNER—Yes, but are records or minutes of the last meeting circulated in advance? I am just trying to understand the process.

Mr Moraitis—I have not seen any such records myself.

Senator FAULKNER—You haven't seen them but you know they are kept?

Mr Moraitis—I assume so from—

Senator FAULKNER—It is not good enough, Mr Moraitis. I am trying to be precise here. You are now assuming records are kept and you haven't seen them having told us that they were kept.

Mr Moraitis—Did you ask me if there were records kept by our department of the discussions?

Senator FAULKNER—What is the situation in relation to record keeping? I know you can't speak for the IDC as a whole, but you can speak in terms of the DFAT representation on the IDC.

Mr Moraitis—That is what I was referring to when I was answering—

Senator FAULKNER—Could you outline to the committee what the processes are in terms of decision making, records of decisions and records and notes kept by DFAT attendees at the IDC?

Mr Moraitis—Officers who attend the meetings take records. These are kept by the officers and appropriate action is taken on the basis of those records.

Senator FAULKNER—And who do the officers who attend report to?

Mr Moraitis—They would report to ministers.

Senator FAULKNER—Directly?

Mr Moraitis—Through formal processes.

Senator FAULKNER—What formal processes?

Mr Moraitis—Ministerial submissions.

Senator FAULKNER—Yes, but do you report to superiors in the department? Does a report go to the secretary? Does the secretary sign off to a brief that goes to the minister?

Mr Moraitis—Not necessarily. The secretary would not necessarily do that.

Senator FAULKNER—How does it work?

Mr Moraitis—Relevant senior officials at the FAS level or AS level would sign submissions, which is common practice.

Senator FAULKNER—But surely there is a standard coordinating procedure on this matter within the department. Wouldn't that be right, Mr Varghese? Surely in relation to an important IDC like this there would be some senior official in the department who would have responsibility for keeping the minister informed and ensuring ministerial decisions are made if and when required.

Mr Varghese—Departmental practice is that submissions to the minister are signed off at various levels depending on the nature of the submission and where the primary action is. Branch heads can sign off on ministerial submissions, as can division heads, deputy secretaries and the secretary from time to time.

Senator FAULKNER—So what is the situation with this particular IDC?

Mr Moraitis—I can answer that. Reporting in terms of submissions to ministers is signed off either by me or by my colleague Ms Millar, who is the FAS of International Organisations and Legal Division, or my colleague the legal adviser, who is the branch head. That is the formal process of reporting.

Senator FAULKNER—I was going to move on to another associated issue. I wondered whether there were any consular representations to Jack Thomas in Pakistan. Can you be clear on that, please?

Mr Kemish—Absolutely. We have taken up the situation of Mr Thomas very regularly and, particularly in recent days, very frequently with the authorities of Pakistan.

Senator FAULKNER—Consular representations have been made. What in the broad can you say has been the response of the Pakistani government to those?

Mr Kemish—Representations are only made as required. In the case of Mr Thomas, there has been no difficulty with consular access. Indeed, we have visited Mr Thomas on three occasions. It is all entirely consistent with normal practice in Pakistan. We visited Mr Thomas on 22 January, 27 March and 19 May. Our discussions with the Pakistani authorities about the matter have been perfectly straightforward.

Senator FAULKNER—I read reports suggesting that there was a likelihood that Mr Thomas would be released shortly. Are you able to provide the committee with any information in that respect?

Mr Kemish—I can confirm that that is indeed the case. We are just in the final stages of discussing some practical details about the terms of the deportation—in particular the travel arrangements for Mr Thomas. We expect that to be forthcoming very shortly.

Senator FAULKNER—Is there any information you are able to provide the committee on the travel arrangements? These are issues that go to passports et cetera, are they?

Mr Kemish—This goes to Mr Thomas's flight arrangements, his travel documentation and a range of private concerns of his and his family's which are not appropriate to talk about here.

Senator FAULKNER—And I do not want to. What information is publicly available in terms of Australians who are being held overseas by national governments on the grounds that they may have had some association or link to al-Qaeda or some other similar terrorist organisation? We know of the two in Guantanamo Bay, and we obviously know about the situation in relation to Mr Thomas. Are there any other examples you are able to say to the committee? I do not want to deal with these in detail, but are you able to say any others so that we get the full picture?

Mr Kemish—To round the picture out, I can confirm that, as the Attorney-General and Mr Downer made public late last week, the Egyptian authorities have detained an Australian citizen in Cairo. It is alleged that the man trained with al-Qaeda in Afghanistan in mid-2001. He has been and remains the subject of investigation by Australian authorities. Our action in respect of that case is that we registered our interest in having consular access the day that he was detained. I called in the Egyptian ambassador the following day and registered our strong interest in consular access in this case. I do not expect anything in relation to that for a couple of weeks because that is our consistent experience in normal cases in Egypt. We will, however, continue to press.

Senator ROBERT RAY—Mention was made earlier, when we were looking at the reconciliation of the budget, of the distress loans scheme. What is involved here? How much money per year has to be supplied to help travellers in distressful circumstances overseas?

Mr Kemish—Ms Hazell gave evidence on that yesterday. Anne, did you want to repeat that.

Ms Hazell—There is currently an administered appropriation for \$200,000 in operating expenses for those loans each year. If the circumstances of Australians are such that we do not need all of that money, the appropriation lapses and there is \$200,000 the following year, so it is one of those appropriations where, if it is not spent, it lapses and returns to the CRF.

Senator ROBERT RAY—What is the maximum amount that can be lent?

Mr Kemish—The delegations vary depending on the officials concerned. The way we have it structured is that our consuls overseas are able to issue a certain amount. I will check my notes and provide you with those particular amounts in a moment but, to explain the broad process, our consuls overseas are provided with an overall limit. They can then refer back to the 24-hour consular centre, who have a higher limit and we work up the hierarchy. At the level of director of consular operations and the head of consular branch, the amount is unlimited within the budget allocation.

Senator ROBERT RAY—This is a loan, isn't it?

Mr Kemish—That is correct.

Senator ROBERT RAY—What is the default rate? Do many people default on the loan?

Mr Kemish—Our rates are good compared with marker governments. You will be pleased to know that Australians tend to repay these loans more than the nationals of our marker governments. I believe the success rate in respect of small loans is in the 90 per cent range—it is very high. Our travellers emergency loans are used in that way: for small loans for Australians in distress. They are also drawn on in very extreme circumstances, which can only be approved by the head of consular branch or me in the event that it is a matter of life and death and direct intervention by the government is required because a commercial medical evacuation cannot be organised in time to save life. We will intervene and do it on the basis of an undertaking to repay. In some cases, and it is a very small number of cases, we are not able to reclaim those funds.

Senator ROBERT RAY—Is there a standard interest rate charge?

Mr Kemish—No.

Senator ROBERT RAY—What is the time span in which you expect to receive repayment?

Mr Kemish—We seek it at the very least within a 12-month period, but we follow up much more promptly than that. We are open to discussion with the individual concerned about the particular circumstances. We will allow repayments by instalment, depending on the circumstance. It is a flexible system, and I cannot give you rigid answers to those questions of time frame.

Senator ROBERT RAY—Do you in any way make a notation in a passport that this service has been availed to prevent someone going from post to post?

Mr Kemish—Yes, we do. The system is that we place an alert—I think we call it—on the passport information system alerting all offices to the fact that outstanding moneys are owed to the Commonwealth. To answer more specifically your question about limits, our consuls overseas are given a small amount to be provided under their own authority, and that is \$A150. They can, however, very quickly refer the matter to a member of staff in the 24-hour consular centre who is able to authorise up to \$A500. There is a position of manager of consular operations—who is the on-call senior level officer who supervises the 24-hour consular centre—who is able to authorise up to \$2,000. As I mentioned earlier, the director of consular operations and the head of consular branch are able to authorise any amount up to the total budgetary allocation.

Senator ROBERT RAY—That is you?

Mr Kemish—I supervise both those people.

Senator ROBERT RAY—What a wonderful job you are currently doing—just in case I get into strife some time. Thank you for that. I have a couple of questions on passports and then Senator Faulkner may have a couple. Mention was made that the Melbourne passport office is involved in outsourcing mail-opening and document preparation functions. Can you tell me why that decision was made and how it is going?

Mr Nash—Essentially, the reason for that project was to test the market, if you like, in determining whether or not it would be more efficient to outsource that particular activity than to do it in-house. In Melbourne so far, the results of the pilot scheme have been very successful, and it continues. We are also looking at doing it at other passport offices, but not necessarily yet with a view to full implementation.

Senator ROBERT RAY—So it is mostly an efficiency measure to save funds—is that right?

Mr Nash—Yes, it is.

Senator ROBERT RAY—How well is the devolution of the passport interview process to Australia Post working?

Mr Nash—Extremely well in our view. We monitor it very closely. There are issues from time to time, but I suppose we should remember that we do issue a million passports a year. The number of concerns expressed about the service that is provided by Australia Post is minimal.

Senator ROBERT RAY—Is there a problem of weekend access? Some people actually work a five-day week and do not get an opportunity to get to a post office. Representations were made to me some months ago about the difficulty of doing that on a Saturday morning.

Mr Nash—That has been raised with us as an issue. It is possible to contact Australia Post on Saturday mornings.

Senator ROBERT RAY—Before you say that, they attempted to phone about this issue—and that was another form of frustration—but that was to the post office rather than Foreign Affairs.

Mr Nash—Had they been attempting to contact anybody—I cannot be sure whom they were trying to contact—our advice would be that they should contact the weekend service of the Australian passport information service, which is run by Centrelink on our behalf and operates seven days a week from Hobart.

Senator ROBERT RAY—So, you would ring up, press nine different numbers and go into a telephone tree?

Mr Kemish—I had the opportunity to visit the Centrelink operation only last week, and I can tell you that that depiction is far from the truth. It is a very efficient service.

Senator ROBERT RAY—It was just a guess based on what normally happens. I am glad that it does not happen in this case.

Mr Kemish—I can tell you that it does not in this case.

Senator ROBERT RAY—That is excellent news.

Mr Nash—Perhaps I could add in that regard that we are benchmarked against the private sector in that activity, and our results have been extremely favourable in terms of the turnaround times for when people ring the service and the amount of time they actually spend on the telephone—it is usually less than 90 seconds.

Senator ROBERT RAY—That is a good record. My next question is about something we touched on earlier. There a reference in the PBS and elsewhere in the budget papers regarding research into passport biometrics. We touched on it but I would not mind a fuller explanation. You mentioned facial recognition, and I recall from other committees I serve on that I read some fairly critical literature on facial recognition and problems—probably in the UK and US—with this as opposed to other forms. You always get those sorts of articles; it does not mean they are valid. What can you tell us about this as a valid method?

Mr Kemish—I mentioned in evidence yesterday that facial recognition has been accepted as the basic international standard in recent weeks. Mr Nash can provide you with more information on that, but it is important to note that the governments of the United States and United Kingdom are signing up to that as well.

Senator ROBERT RAY—Well, they signed up to other intelligence reports too.

Mr Nash—Going back to 2001 when we decided to look at this technology, we considered the other forms of biometric identifiers. They go beyond the obvious fingerprint and iris recognition; they go to voice and gait and a couple of others. We obviously focused on the big three—face, fingerprint and iris. We concluded very quickly that we would test face recognition simply because we could. It is extremely difficult to embark on any research and testing programs in relation to the other two. We have three million high-quality images on our database, which makes our job much easier when we look at face recognition. In other words, we already have the data, so we can make those comparisons.

Senator ROBERT RAY—I follow that.

Mr Nash—As far as iris technology is concerned, we have no copies of anybody's iris, so we would have to go and capture those. There are a large number of issues with iris and fingerprint in terms of privacy and the capture of the data. Enrolment in a database has its difficulties and a lot of people are concerned about it. With facial recognition we are taking a process that we essentially already do—that is, compare a person to an image. We are applying a technical approach to that very simple function.

Senator ROBERT RAY—Let me stop you there. At the moment, you have a photo on a passport that you devolve to, I think, Customs officers at the barrier, who are also acting as immigration officers. Machine-readable visas and passports should allow them 15 seconds, as I understand it, to look at the photo and look at the person—something we did not have quite a number of years ago. Am I right so far?

Mr Nash—That is correct.

Senator ROBERT RAY—You might say that at the moment they are doing a subjective facial recognition. Tell me technically how the new system may work.

Mr Nash—Essentially in the same way—the difference is that machines would do it. A camera would take a photograph of the person standing at the barrier. That image would be converted to an algorithm. A machine would read the image that would be contained on the chip, convert it to an algorithm and make a comparison between those two algorithms. If a match occurs, a green light would be displayed and the person would enter the country—perhaps it would not work like that, but it is one way.

Senator ROBERT RAY—To ask the question a little differently, when you say 'at the barrier', have they actually reached the Customs officer?

Mr Nash—That is correct.

Senator ROBERT RAY—So they have actually handed over their passport?

Mr Nash—Yes. In the case of this technology, we believe it would be more likely that they would have placed their passport on a machine.

Senator ROBERT RAY—That is the first registration and then the photo is taken, it is transmitted to a computer through a variety of algorithms, and it comes back within two or three seconds, the same as iris recognition, I assume.

Mr Nash—That is correct.

Senator ROBERT RAY—That validates the person?

Mr Nash—That is correct.

Senator ROBERT RAY—Is the face recognition system operating anywhere in Australia at the moment?

Mr Nash—It is in operation at Sydney airport. It is run by Customs. Therefore, they are the more appropriate people to talk about it in detail, but I can say—

Senator ROBERT RAY—I was not going to ask that; I was going to check—

Mr Nash—But I can say that they have Qantas crew enrolled. My understanding is that they have between 3,500 and 4,000 Qantas crew members enrolled and they have conducted tests of upwards of 20,000 transactions.

Senator ROBERT RAY—Is there a problem with 10-year passports in terms of change of facial—

Mr Nash—There is an issue with the length of validity of passports and it is one that we are currently considering. I have just returned from a five-nations passport conference in the United Kingdom. The general impression of others was that this is something that we need to look at, and we will do so. Obviously, technology is quickly outdated. It gives us some concern to have a microchip in a passport which is valid for 10 years. It will be very old technology at the end of the life of that passport.

Senator ROBERT RAY—It wasn't so much that; I was thinking of people's faces changing over 10 years rather than the microchip getting out of date.

Mr Nash—We have done quite a deal of testing and research and development in that area. It is true that as people age the accuracy rates deteriorate but 10 years seems to be okay.

Senator ROBERT RAY—What do we think is the accuracy rate?

Mr Nash—In our preliminary testing we had matching rates of around 75 per cent. We are now well over 80 per cent, and that is before we have taken to adding any electronic enhancement. Electronic enhancement, we believe, will take us well into the nineties. All of this is taking us, we believe, a gigantic step beyond where we are at present. Physical intervention at airports is nowhere near as accurate as the machinery will be. That is not to say that it is perfect, but it will take us a long way forward.

Senator ROBERT RAY—Let us assume that we have implemented it and that it has at least an 80 per cent strike rate at this stage. As to the other 20 per cent, will it be able to assert that it is not the person or will it just say, 'The jury's out'?

Mr Nash—This is the issue of what we call false reject rates as opposed to false accept rates. Obviously, one of the things that we are endeavouring to do is to ensure that there are no false accepts.

Senator ROBERT RAY—Exactly.

Mr Nash—In doing that, we will end up with a false reject rate which is higher than it might otherwise be but we would be prepared to wear that because people who are rejected by the system will then be referred to a secondary line at Immigration and, therefore, be subject to more scrutiny than they probably are at present.

Senator ROBERT RAY—When you say that you do not want any false accept rates, what has been the overseas experience and/or the experience with Customs and Qantas staff so far in terms of false accept rates?

Mr Nash—As I understand it, two Japanese gentlemen fooled the SmartGate system in Sydney. I am not totally aware of the details of that incident but it has been reported widely in the press. They are the only two false accepts that I am aware of in over 20,000 transactions with the pilot scheme in Sydney. Overseas there has been quite a deal of success with this

technology but very few countries are as developed as Australia in actually running pilot schemes.

Senator ROBERT RAY—You mentioned algorithms before, so one presumes there is such a complex computer security system that it would be highly protected from access either to alter the data or to access the data. Could you tell us about that?

Mr Nash—There are a couple of issues there. The first is that our databases are protected because they are carried on a national secure system. Our data lines are also protected because they are carried on a national secure system. In addition, there is a major issue in terms of security of chips and how you put the information on there and how you protect it. And there is an issue that, without being too technical, is referred to as PKI—that is, public key infrastructure—which is something that we and other countries are talking to ICAO about. This is the ability to leave an electronic signature on the chip so that only the person who placed the data on the chip can remove it or change it or add to it, or only other countries that have a similar PKI or approved PKI can play around with the data. We believe that is necessary, obviously because of security reasons but also because some countries at some point may very well ask us if they can add to the data on our chip, such as put a visa on the chip.

In addition to that we are currently looking at ways in which we will be able to encrypt the data and have it placed on the chip in such a way that it cannot be sucked off by somebody carrying a simple electronic device in their bag at an airport and rubbing up against somebody else's passport. So I suppose the short answer is, yes, we are very concerned about it, we are looking at the options and it is very much part of our current research and development.

Senator ROBERT RAY—You mentioned that it might be possible but you did not say whether it would be desirable or allowable for visa details from another country to be placed on it. Let's assume I have got a passport with all these details in it, and I am not coming back to Australia but going into another country. Is it proposed that they can read all those details?

Mr Nash—Yes, it is.

Senator ROBERT RAY—So they could record all those details?

Mr Nash—Yes, they could.

Senator ROBERT RAY—Could another country have my date of birth?

Mr Nash—Yes, they could. Perhaps it is worth adding that they can do that now. At the bottom of the data page of the passport there is a machine readable zone. Countries that are so inclined can capture that data and they can do with it as they wish.

Senator ROBERT RAY—Say I was inclined to travel to the US for longer than 90 days, so I required a visa. Is it possible to develop one of these passports and that the American embassy here could have limited access to put the visa on that readable part of the passport?

Mr Nash—It is possible. We are talking to the Americans about this precise issue at the moment. There are a number of issues involved in that. One is the visa waiver program, since you have mentioned a visa for more than 90 days. What we are talking to the United States about is whether or not Australian citizens will need to be fingerprinted in order to apply for visas to go to the United States. Once we have that resolved, the next part of the equation will

be for the United States to decide whether they are going to develop an electronic visa arrangement or whether they are going to insist on something being put into the book, such as we have now, or whether that will be put into the book in electronic fashion. They are still working on that.

Senator ROBERT RAY—The final question on all this is: on the presumption that the study goes well and the presumption that it may well be introduced into Australian passports, will it not require legislation to protect privacy? Irrespective of the technical defences you put in—you have talked about the technical defences, about not being able to take it off or alter it and all the rest of it—surely it would require very stringent legislation to prevent access by unauthorised people.

Mr Nash—That would certainly be something for the government to consider. We have spoken to the Privacy Commissioner about this issue and I guess the jury is still out to some extent. The issue that I mentioned before—the fact that we believe that we are not doing anything different; we are just doing it differently in terms of comparing people to their images—is very important in the consideration of this. The other issue that we are considering at the moment is the Passports Act. It has been around for a long time. We are currently looking at that, and part of that review involves consideration of whether or not we need to change some of the provisions of the act to take account of the requirements of this technology.

Senator FAULKNER—Who is actually conducting this research, Mr Nash?

Mr Nash—It is being done by the department with the assistance of Unisys, using a German company's software technology. That company is Cognitec.

Senator FAULKNER—So in a sense some of it is being done in-house?

Mr Nash—It is all being done in-house, with the assistance of Unisys. Unisys is essentially doing all of the large-scale testing, using Cognitec software.

Senator FAULKNER—Are there likely to be some broader commercial applications for it beyond passports?

Mr Nash—There are certainly commercial applications for all forms of biometric technology. Iris, for example, is already used quite extensively for access control and the use of fingerprint is well known for a number of applications. Facial recognition is being considered by airport authorities around the world. I am talking about it specifically for airport workers rather than passengers. So the very short answer to your question is very much yes.

Senator FAULKNER—Did the Unisys contract go out to tender?

Mr Nash—Yes, it did.

Senator FAULKNER—I assume you have issues with this concerning the possible commercial applications of the research. I suppose you have had to put a lot of thought into things like intellectual property rights and the like with this research.

Mr Nash—Absolutely.

Senator FAULKNER—So what sort of issues arise in that area—intellectual property rights, patents, copyright and the like?

Mr Nash—Perhaps the best way that I can answer that question is to simply refer again to the fact that this is now an international standard which has been adopted by ICAO, so quite a bit of the intellectual property that has been invested in this exercise is actually now owned by ICAO. ICAO will never exploit that in a commercial sense but we are certainly painfully aware of our intellectual property input and are keen to protect that wherever possible. One of the difficulties when you are involved in research and development is determining what the balance is likely to be or should be in sharing information. We do a lot of information sharing and I think our research and development is producing much stronger results as a result of that. The downside of that is perhaps the fact that, in sharing this information, you run the risk of somebody stealing your intellectual property, but we do what we can to protect ourselves against that.

Senator FAULKNER—Do you think there might be a capacity for the government to sell this research in the future?

Mr Nash—I seriously doubt it now because a number of other countries have also well and truly embarked on very similar research and development programs, although very few, if any, are as well advanced as ours. But they are catching up rapidly, especially now that ours has been adopted as an international standard.

Senator FAULKNER—I wonder if there might be some positive revenue implications for the government in this. Obviously, we know the costs of undertaking the research but it is possible there may even be some revenue implications in the future.

Mr Nash—Certainly it is possible. One of the things that we do with this sort of program is take this into account in our negotiations with contractors. We have a history in the passports business of having developed partnerships with organisations—for example, 3M in the United States, which has developed the laminate for our passport—whereby our intellectual property is taken into account in the price that we actually pay for the product. We have endeavoured in this exercise to do something similar.

Senator FAULKNER—For example, something as simple as someone growing a beard, are those sorts of problems now all overtaken?

Mr Nash—Yes, they are. That is a very common question. Facial hair, glasses and hats, for example, do not seem to affect the outcome whatsoever. The reason for that essentially is that we are looking at an area on the face—a square from the top of the eyebrows to the bottom of the chin—and this technology can also see through glasses.

Senator ROBERT RAY—Is there any capacity to have this system operating at the other end? If I get on a plane in San Francisco to come to Melbourne, can I have my photo taken against my passport and have it checked and transmitted back to Australia in advance? That is not to declare me in advance but to ensure there is total knowledge that everyone on the flight is correct—at least when they went through that part of the barrier—and that you are forewarned of any names on your alert lists.

Mr Nash—I think that is where this technology is going to take us—most definitely. We have not done a great deal of work in that area because this is really something that Immigration are more concerned with than we are. Australia is very advanced in terms of advance passenger processing. I guess that is essentially what we are talking about and that is one of the great applications that can be drawn from this sort of technology.

Senator ROBERT RAY—Of course there is no incentive to clear the barrier quickly when you get to Australia because your bags are not ready. It is all part of our iterative process.

Senator FAULKNER—How are we going in the important area of mail security, because this of course was subject to a report by the Auditor-General, was it not?

Mr Nash—Yes, it was. It has also been the subject of a number of newspaper reports relating to what has been happening in other countries. Last year, we became concerned about it to the point where we sought funding to move back to registered mail. We have done that and our loss rates in the mail now are approximately 90 per cent less than they were about a year ago.

Senator FAULKNER—Let's be clear on this: did the move away from registered mail occur in 1998? Correct me if I am wrong.

Mr Nash—It was before my time. I could not tell you the exact date, but it was some years ago.

Senator FAULKNER—I think the Auditor-General reported that in 1998—from memory.

Mr Nash—I think so, Senator.

Senator FAULKNER—Specifically, the Auditor-General looked at financial year 2001-02, didn't he, in terms of loss rates?

Mr Nash—That is right.

Senator FAULKNER—In that year, there were 32,497 passports reported lost or stolen, 11,502 of them overseas—that is an issue in itself—but over 2,000 passports went missing in the mail. In the year 2001-02, 1,903 passports were lost in the ordinary mail and 176 passports were lost in the priority post. Are they accurate figures?

Mr Nash—They would be.

Senator FAULKNER—That makes a grand total of 2,079—if my addition is correct. It was a cost-cutting measure according to the Auditor-General's report on 1 January 1998. When was the change made back to registered mail?

Mr Nash—This financial year.

Senator FAULKNER—What was the start date?

Mr Nash—It was 1 July.

Senator FAULKNER—So it was 1 July 2002.

Mr Nash—That is correct.

Senator FAULKNER—I appreciate we are not at the point of having a full financial year, but we are close to that. Are you able to give some figures to the committee in terms of lost

passports? First of all, for the overall figure for the financial year 2001-02 of 32,497 passports reported lost or stolen, are you able to give a comparative figure for that for the year to date?

Mr Nash—I do not have those precise figures in front of me. What I do have, however, are the figures for the first quarter of this year, January to March, compared to the first quarter of last year. In the first quarter of this year we have lost 59 passports in the mail as opposed to 437 in the first quarter of last year.

Senator FAULKNER—I assume all these 59 would have been registered post, would they?

Mr Nash—Yes, they would have. Obviously, our objective is to get that figure to zero or as close to zero as possible. We are still not happy with it and we are in discussion with Australia Post about that. We are looking at ways of improving the system in terms of the way these things might be tracked.

Senator ROBERT RAY—Has Australia Post given you any explanation as to why the figure of 59, which you regard as too high, has occurred? Is there any systemic thing about it or is their explanation all over the place?

Mr Nash—There was nothing I could really point to that I would consider to be an acceptable reason for those passports to have gone astray. As I said, our objective is to get that figure to zero, and we have told them that.

Senator FAULKNER—I think that is the appropriate objective to have, but can you say to us, using these 59 cases of passports missing in the mail as a case in point, what you do when you have such a report? What would have happened in these 59 cases? What procedures are followed by the department when a passport goes missing from registered mail?

Mr Nash—Australia Post would be contacted and asked to put a trace on those. I should have mentioned that, of the 59 passports that are recorded as lost in the mail, some are subsequently recovered. What we are doing currently is a complete analysis, an additional analysis—it is not yet complete, and I do not yet have the details with me—of the percentage of those that are lost in the mail that are subsequently recovered, in order to get a feel for those that are still out there in the community somewhere.

Senator FAULKNER—There is obviously a cost implication in sending something by registered post, I assume.

Mr Nash—It is about a dollar per passport.

Senator FAULKNER—A dollar extra?

Mr Nash—A dollar extra, yes.

Senator FAULKNER—I think you are saying that some of these you are able to chase down and some you are not.

Mr Nash—That is correct.

Senator FAULKNER—What happens in the cases when you are unable to chase them down? The reason this is important is obvious to all. What occurs in those circumstances when the things go astray in the registered post and best efforts by you and Australia Post do not manage to locate them? What occurs then?

Mr Nash—The documents are cancelled on the system, so they would be invalid for travel. Nobody would be able to leave Australia on one of those documents once it has been cancelled in the system. It would throw it up at the point of departure.

Senator FAULKNER—There are other risks in terms of fears of fraud on these sorts of passports.

Mr Nash—Absolutely. We believe the risk is not as great with these passports as it would be with blanks—and it has been several years since we lost blanks. The problem we have with passport losses is controlling passports once they leave our care. Of the 30,000 you mention, we believe the vast majority are down the back of the couch. Once they have left us, it is very difficult for us to keep track of those but we are at the moment developing a publicity campaign to try to address that problem as well.

Senator FAULKNER—You are suggesting, I suppose, that they are pretty safe if they are down the back of the couch, are you?

Mr Nash—Not at all. I would prefer that they were not.

Senator FAULKNER—Are you able to draw a comparison between that figure of 32½ thousand in 2001-02 and what the situation is likely to be this year? I assume that issue of lost and stolen passports is the major contributor to that large figure. I assume that pattern would not have changed much, would it?

Mr Nash—Not significantly. As I said, it does concern us. We currently have a consultant working on a publicity campaign which will essentially be based around the suggestion that, if you lose your passport, you lose your identity, and that identity fraud is becoming an increasing problem in the community.

Senator FAULKNER—You are putting a lot more effort, aren't you, in terms of fraud officers in passport offices and the like?

Mr Nash—That is correct.

Senator FAULKNER—What is the pattern now in relation to fraud officers? Do you have them in most of the passport offices?

Mr Nash—We have, if not full time, somebody designated as the fraud officer in each and every passport office in Australia.

Senator FAULKNER—Are you able to say something about the pattern of passport fraud investigations? Has there been an increase in the number of passport fraud investigations?

Mr Nash—A considerable increase in the number of investigations. Whether that is as a result of increased fraud or the fact that we have now dedicated more resources to it is a question that I cannot answer, but I can draw an assumption—that is, now that we have more people involved in the exercise, more things are coming to light.

Senator FAULKNER—Your expectation would be to see, as you say, a reduction from around 2,000 passports lost in the mail down to around 200. Is that what we are really talking about? That appears to be the pattern of the figures.

Mr Nash—That is correct, but we will continue to work on the 200 and try to get that down further.

Senator FAULKNER—I suppose it would be accepted that the cost saving measure of 1998 to do away with registered mail for passports was an unmitigated disaster, wasn't it?

Mr Nash—It certainly did not produce a result that we were comfortable with.

Senator FAULKNER—The only result it was supposed to produce was a saving of some thousands of dollars in terms of mailing costs, wasn't it?

Mr Nash—Yes, without any appreciable increase in the number of passports lost. In that respect it did not work.

Senator ROBERT RAY—So it would have cost you a lot more to chase up all the lost passports, wouldn't it? What is the saying? Penny wise, pound foolish?

Mr Nash—Probably.

Senator FAULKNER—It is true, isn't it, that the department considers that passports that are lost in the mail could be a potential security risk from people engaged in illegal activity, including terrorists and the like?

Mr Nash—Absolutely, and that is why we take it so seriously and we want to get that figure down.

Mr Varghese—Senator, before we move on, if it is convenient, can I answer a couple of things that we took under consideration last night, and I would also like Mr Moraitis to respond to the question that Senator Faulkner raised about the status of the court orders in relation to the case that we have been discussing.

CHAIR—Certainly, Mr Varghese.

Mr Varghese—Senator Ray had asked about the travel costs of our Ambassador for People-Smuggling Issues. I can confirm that the costs between 29 June 2002 and 30 April 2003 were \$82,037. Senator Ray also asked about arrears in relation to UN payments to cover peacekeeping troop contributor costs. I can advise that as at May 2003 those arrears stood at \$US1.434 billion. We have not yet been able to confirm up-to-date figures on US arrears to the United Nations but we are working on that and will therefore have to take that question on notice, Senator Ray.

Senator ROBERT RAY—Thank you for that.

Mr Moraitis—I have been briefed this morning on the issue of the status of consent orders that we discussed yesterday. As I said yesterday, the applicant had not given consent. I understand that there has been some activity on the occasion between the applicant and the Federal Court late yesterday afternoon or some time this morning and the Federal Court and the applicant are working on finalising these orders. I have also been told that our legal advisers have contacted the Registrar of the Federal Court to ascertain as of this morning what the process is. I understand that the Federal Court is in the process of settling these orders.

Mr Varghese—There is some further information that Mr Kemish has on the costs of the travel advisories public information program.

Mr Kemish—Your question, Senator Ray, was about the proportion of costs devoted to the public information campaign. The allocation is \$9.7 million over four years. We have allocated \$1.8 million per year to the public information campaign. As I mentioned before,

that is a significant proportion of the overall cost. That takes us to \$7.2 million over four years. About \$625,000 per year is allocated to the use of technology to disseminate travel advice. Consular kiosks, as we mentioned earlier, are the primary means of that. We are looking at a few other technologies, but that is the first primary means. That takes us to \$2.5 million, which all adds up to \$9.7 million. The fine detail of that will be worked through and adjusted depending on, for example, the public information campaign and what media are used. As you will appreciate, things will be adjusted as we go along but those are the allocations.

Senator ROBERT RAY—I give you notice that I would just like to explore that when we next meet in November—which types of media you used and what type of campaign you are concentrating on over this coming year and the following three years. You might have a much clearer idea by then.

Mr Kemish—It will have evolved a bit by then, so by all means.

Senator FAULKNER—Just before Mr Nash leaves the table, I was going to ask something so that we get the full picture in relation to this issue of passport fraud. There was an article in a comparatively recent *Sunday Age*, 24 April this year, headed, ‘Alarm on Stolen Passports’. I do not know whether you have seen the article or not. The question goes to a quoted DFAT spokeswoman who told the *Sunday Age* that ‘passport fraud was increasing’ and it went on to quote the spokeswoman—I am happy to read it to you if you like—

Mr Nash—I am aware of the article.

Senator FAULKNER—That is the issue I want to be clear on. We have looked at the pattern of lost and stolen passports. We have looked at the pattern of what has been happening in terms of passports through the mail. And we have looked at the pattern in terms of fraud investigations. Just to round out the picture for us, what is the pattern in terms of passport fraud?

Mr Nash—There is more passport fraud that we are aware of now than there has been previously. Whether or not that is a clear indication that this sort of activity is on the rise or it is an indication that we are better equipped to detect it and to deal with it than we have ever been before is something on which I am not totally sure. All of the information I see seems to suggest that identity fraud is on the increase and there is certainly evidence to suggest that it is increasing in relation to passports.

Senator FAULKNER—Apart from the changes that have been made in relation to the mail, and the biometric research that has been outlined, are there any other initiatives or actions the department can take to try to address this increase in fraud?

Mr Nash—Yes, there are. I suppose the immediate one is the development of a new passport, which we are planning to release in December this year. That passport has a number of security features that we have not seen before and a number of others which are significantly enhanced. Just as a brief example, we now have a data page that has been moved off the cover to make the document more tamper resistant than its predecessor.

Senator FAULKNER—Will the new passport look the same?

Mr Nash—Only from the outside. Most of the inside is new.

Senator FAULKNER—Are you able to say, just in broad brush, what the inside of one of these new passports will be like?

Mr Nash—From a design point of view it is a Dorothea Mackellar theme: from the desert to the sea. So we will have seashells in this one, as opposed to opera house or sails—whichever—in the current one. But by having this passport designed by Note Printing Australia—we have moved to Note Printing Australia; they are designing and producing it for us—a lot of the security printing techniques they used in the production of banknotes will be incorporated into this design. So it is not an accident that we have this very detailed design. It includes things like microprint and a number of other security features that we have not seen before in the Australian passport.

Senator FAULKNER—I appreciate the point you make about the security elements of the design. I am now going into an area which, I admit, is not my long suit, and that is the aesthetics of the design. When are you planning to make it public? It may have been public before this, for all I know. Has it been announced publicly what the internal design of the passport will look like?

Mr Nash—No, it has not, because we do not yet have a complete prototype to show people.

Senator FAULKNER—When do you think the prototype will be available?

Mr Nash—By the end of July or perhaps, at the latest, the middle of August.

Senator FAULKNER—What is your plan then? Is the Minister for Foreign Affairs or someone going to make an announcement about the look and content and shape of the new passport?

Mr Nash—That is right. We are currently developing a publicity strategy around the new passport. Although the details are not yet finalised we would envisage a situation, as has happened before when a new document has been released, where the minister would present it to the press and to others and highlight some of the features that we are able to talk about. We would then pass copies of it to foreign governments so that they would become aware of the overt features of the document and are able to recognise it and so that technology would be able to recognise it at airports internationally.

Senator FAULKNER—When would you see the new passports with the new design being first issued?

Mr Nash—We are moving to a centralised production arrangement. The reason for that is that, because of the technology used in this document, it is simply too expensive to produce large numbers of these things in each and every location around Australia. So, with the introduction of this document, most passports in future will be produced here in Canberra.

Senator FAULKNER—But for a person applying for a passport for the first time or renewing their passport when would you expect these things to come on stream? That is what I meant.

Mr Nash—I am sorry if I misunderstood the question—December of this year.

Senator Abetz—But you heard it first at estimates.

Senator ROBERT RAY—As always. I have a serious question on that. I do not say this flippantly. Let us say that in the next few weeks I go and take out a passport that goes for 10 years. Therefore I have a passport without any of these enhanced security things and it is supposed to take me through to the year 2013. Is there any thought of a scheme whereby people can get their existing passport updated? Let us say I have had a passport for two years. Can I go in and pay for two years, because I have already paid for the other eight years, and get a much more secure and updated passport?

Mr Nash—We have actually considered this as a possibility. I suppose our concern is exactly the one that you have expressed: we want to get all of those passports which have the old technology out of the arena as soon as we possibly can, so we are looking at ways of encouraging people to move to the new document as quickly as possible.

Senator ROBERT RAY—That will be part of the folding stuff. If you make it very expensive for them to do it, they will not.

Mr Nash—As you suggest, one of the things that we are looking at is an incentive as to how you might pick up the remaining validity on your current document and have that transferred to a new one. So we are looking at the issue but no decisions have been made yet.

[12.16 p.m.]

CHAIR—We have moved to output 4.1—Property management.

Senator ROBERT RAY—On the property management side, I want to go to the issue of the Geneva chancery. What I cannot quite grasp is that we have agreed to spend \$1.7 million—that is fine—and then \$3 million—so \$4.7 million in all—to rectify architectural and mechanical defects since the project was completed in 1998. Why do we have to pay for architectural and mechanical defects? Why don't the architects, the engineers and whoever else are responsible for the mechanical errors pay for them?

Mr Davin—The chancery project in Geneva ended up in disputation with the actual main contractor. As a result, some of the flaws that were apparent in that building were not addressed by the contractor. In fact in legal action in Geneva courts some compensation was achieved by the Commonwealth.

Senator ROBERT RAY—How much?

Mr Davin—It was of the order of \$800,000. This occurred before the department actually had responsibility for the project.

Senator ROBERT RAY—Who had responsibility at that stage?

Mr Davin—The Department of Finance and Administration had responsibility for overseas property up until November 2001.

Senator ROBERT RAY—So they were in charge of this property that had architectural and mechanical defects?

Mr Davin—That is correct. They managed that project, and we have taken ongoing responsibility since November 2001.

Senator ROBERT RAY—I will ask the obvious question and I will probably get a very simple answer. Why don't the department of finance directly pay out of their budget for these errors?

Mr Davin—Responsibility for managing the overseas estate has passed to this department.

Senator ROBERT RAY—I understand that, but the errors occurred before you took it over.

Mr Davin—We are responsible for seeing those errors corrected, and we accept that responsibility as part of the transfer of responsibility.

Senator ROBERT RAY—You are responsible for supervising it. I find it hard to understand that you actually have to pay the readies for it when it was not your fault.

Mr Davin—I guess the Department of Finance and Administration would argue that we now have the revenue stream to fund those repairs, so we are accepting that responsibility.

Senator ROBERT RAY—So they are asking you to absorb the costs, in effect?

Mr Davin—We will fund the repairs from the revenue stream we have for the overseas estate. We have taken action in Geneva through the court system there to have a survey done of the building to identify these various faults. We have the option of taking further action in the courts to seek compensation from that contractor.

Senator ROBERT RAY—Let me get it clear: the \$800,000 that has been obtained through court action so far does not relate to the expenditure of the \$4.7 million?

Mr Davin—No, Senator. From recollection—it was not under our authority at the time—the \$800,000 was a retaining amount of money that the Commonwealth had from that contractor, which would have normally been released upon satisfactory completion of the project. So that amount was, if you like, forfeited by the contractor because the project was not satisfactorily completed. We now face the issue of some quite serious defects in the building and we need to put those right. That is what the funds that have been provided—

Senator ROBERT RAY—If I get it right, the forfeiting of the \$800,000 by the contractor in no way inhibits you from taking the contractor to court for other defects.

Mr Davin—That is right. Under the legal system in Geneva we have had lodged with the court a survey of that building. We have the opportunity now, since lodging that report, over the next 10 years to take action for compensation. We will take advice on that and act accordingly.

Senator ROBERT RAY—I assume the contractor is responsible for the mechanical defects. What about the architectural defects?

Mr Davin—I think the issue here goes to the design in respect of external glazing and the external panels to the building.

Senator ROBERT RAY—Are they falling off? I have seen this happen in Melbourne.

Mr Davin—It is more an issue of the extreme weather conditions. Our position is a little uncertain. Part of the funds that are going to be put into this project will be to make a survey

of those panels to see whether they are safe and what sort of remedial works would need to be undertaken.

Senator ROBERT RAY—You might be able to assist me here: were the architects from an Australian firm, a Swiss firm or somewhere else?

Mr Davin—It would be a mixture. I can take that on notice.

Senator ROBERT RAY—It is just that I would have expected a Swiss firm would have taken into account the extreme weather conditions while maybe an Australian firm would not.

Mr Davin—Certainly there would have been local architects engaged to supervise those works.

Senator ROBERT RAY—You expect that it will not be until the end of 2005 that all the remediation is completed?

Mr Davin—That is right. There is a program to undertake that work.

Senator FAULKNER—Can I ask about the Washington head of mission residence refurbishment. It is also mentioned on page 63 of the PBS. What will be included in that \$5.9 million refurbishment?

Mr Davin—The main cost of that project is to replace the heating and cooling systems and also to update services throughout the building—replacing all the electrical wiring. We are also installing some additional toilets in the basement area and upgrading kitchen facilities in the building.

Senator FAULKNER—In this particular area, outcome 4, I do have some questions on enabling. But if it would assist, I am happy to put them on notice.

CHAIR—I think that would assist.

Senator FAULKNER—I will have to write them first, which is always a pain.

CHAIR—You will be receiving some questions on enabling services.

Senator FAULKNER—In relation to the Washington head of mission residence, I am interested in what the workplace health and safety issues are. Thanks for outlining the detail of the work, but what are the workplace health and safety issues?

Mr Davin—The main issue there is the electrical wiring throughout the residence. It is a very old building that has been refurbished in parts over the years. Currently, there is quite outdated electrical wiring through the residence which would not meet local regulations or current occupational health and safety concerns. So that will be replaced.

Senator FAULKNER—To save time again, would you be able to take on notice a disaggregation of that figure of \$5.9 million so that we can understand how that is broken up?

Mr Davin—I can probably provide substantial detail on that now, if you like.

Senator Abetz—No, I think the suggestion is that we take it on notice.

Senator FAULKNER—It is just a timing issue.

Senator Abetz—Yes, to advance what we are doing now.

Mr Davin—Okay.

Senator FAULKNER—I am happy to oblige either way, but the spirit of the thing is to try to keep it moving along. Thanks for that. In relation to the Paris chancery, what is included in the \$9.5 million refurbishment of the 29 apartments?

Senator Abetz—That is one where we ought to sue the architect for the visual presentation.

CHAIR—The original architect.

Senator Abetz—But that is another issue.

Senator FAULKNER—I think the architect is well known, isn't he? He is a very prominent person. You are very lucky that there is parliamentary privilege.

Senator Abetz—It is still ugly.

Senator FAULKNER—I am saying you are very lucky that you have parliamentary privilege.

Mr Davin—The work in Paris involves the refurbishment of each of those apartments. Once again, it goes to updating the electrical and data connection facilities in the apartments, the replacement of carpets and updating kitchens and bathrooms. Really, it is a fairly standard refurbishment of each apartment.

Senator FAULKNER—I am obviously interested in a comparison of the \$9.5 million refurbishment of 29 apartments in Paris and the \$5.9 million being spent on one head of mission residence in Washington. I am not suggesting that that is necessarily a valid comparison to draw. Again, if you could disaggregate for us the \$9.5 million, we can have a look at that and perhaps follow it through with some questions in the next round, if that is required.

Mr Davin—Certainly, Senator.

Senator FAULKNER—We do not need to address the ones we have in this brief dialogue, but are there any other embassies or consulates that have outstanding occupational health and safety issues?

Mr Davin—A number of our embassies and consulates around the world are overdue for refurbishment or need work done on them. I am not sure how many of those would actually fall into the occupational health and safety requirements. But there is a rolling program of upgrades and refurbishments, and we will be moving progressively through those.

Senator FAULKNER—Are you keeping a log of complaints from officers about occupational health and safety issues at overseas missions?

Mr Davin—We will respond immediately to those concerns and seek to address them piecemeal or with an issue based approach. But we are also aware that we have embassies and high commissions that were constructed some years ago and are in need of midlife upgrade refurbishment. We will be moving progressively through them over the coming years.

Senator FAULKNER—Are you able to say what the priority areas are for your branch in respect of OH&S issues? Apart from those that we have canvassed already, are there any other key priorities that need to be addressed?

Mr Davin—Yes, there are. Do you want me to name posts that we have particular concerns about?

Senator FAULKNER—I am interested in understanding how DFAT categorises and prioritises those posts that need upgrading.

Mr Davin—Perhaps the best way to approach it is to outline the way the office works. We have a contract with an outsourced provider that undertakes inspections and provides reports on all of the overseas estates. That group would advise us where works are required and seek to have it included in our annual program of minor works or ongoing property programs. At the same time, these issues may emerge as a major project that we would need to undertake in a thorough and organised way, such as the Paris complex refurbishment. So we do have advice about where our priorities should be and we respond to that through our normal, annual property program.

Senator FAULKNER—With regard to the program of refurbishment—and it is fair enough to have such program—can you provide on notice to the committee a little more detail about what the parameters of that program might be and where you are going to focus your attention?

Mr Davin—Certainly.

Senator FAULKNER—That would be good. One thing that came to my attention—and I have to be frank with you that this is scuttlebutt and I am not putting it at any higher level; there may be nothing in it—was a concern about one of our posts in the Middle East not being earthquake proof. It is not a security issue, by the way. I am not putting it at a higher level than scuttlebutt, but it was mentioned to me by a person concerned about the issue. Can you allay that concern or indicate whether there are, in fact, concerns about it?

Mr Davin—We have concerns about the ability of a number of our posts—not only in the Middle East—to withstand seismic events. In all of those instances, we are actively engaged in seeking alternative accommodation that does meet the highest standards of seismic planning.

Senator FAULKNER—What are the main posts where there are concerns about their capacity to withstand an earthquake?

Mr Davin—Two posts that we are particularly concerned about at the moment are our posts in Teheran and Port Vila in the Pacific.

Senator FAULKNER—Have you engaged seismologists or building construction experts to assist in making those sorts of assessments?

Mr Davin—Yes, we have.

Senator FAULKNER—Both seismologists and other experts?

Mr Davin—Engineering companies have provided advice to us on the ability of those buildings to withstand significant seismic events in accordance with Australian and international standards.

Senator FAULKNER—In Teheran and Port Vila?

Mr Davin—That is correct.

Senator FAULKNER—I assume this means that those places become bullet performers—they shoot up the list in terms of priorities. This is not a refurbishment issue, obviously.

Mr Davin—No.

Senator FAULKNER—This is a structural issue, I assume.

Mr Davin—That is correct, Senator.

Senator FAULKNER—I am not an engineer but I assume it is an engineering and structural problem, which means you have to look for an alternative location or building to house the post.

Mr Davin—That is exactly right. Unfortunately, in both those locations, there are no buildings available that would meet or could be certified as meeting the seismic standards that we can readily relocate to. So in both those locations we are fairly well advanced in planning for construction projects.

Senator FAULKNER—So in this case they are construction projects.

Mr Davin—Yes. In both locations we are looking to construct buildings that will meet the seismic standards because we cannot go into the market and lease appropriate accommodation.

Senator FAULKNER—I did not see that in the PBS. Mind you, I am notorious for not reading every single line in the PBS. Did I miss it?

Mr Davin—Until we are in the position that we can actually put a proposal forward through the budget process, they will not appear there.

Senator FAULKNER—That is a bit different then. You have identified the need but you have not been funded.

Mr Davin—It is not a matter of not being funded; it is a matter of identifying a program or project delivery strategy that we could take to the government for approval. I should say, in Port Vila we are well advanced with a project that will deliver the results we want. In Teheran, we are still looking at an appropriate land purchase that we could construct on.

Senator FAULKNER—When would you think this committee would be able to receive an update on what happens with those two posts in particular?

Mr Davin—I could provide you, on notice, with a report on what we are doing in Port Vila—

Senator FAULKNER—I would appreciate that; that would be helpful. Thank you.

Mr Davin—That is quite well advanced. With regard to Teheran, we are still investigating options for land purchase and construction.

Senator FAULKNER—I imagine this is a major concern because you have staff working inside both these buildings. I imagine that is uppermost in your mind.

Mr Davin—It is, Senator. That is one of many considerations we have to deal with in providing—

Senator FAULKNER—I am sure there are other considerations but I would have thought the safety of those who work for you would be of primary consideration.

Mr Davin—It is paramount, yes.

Senator FAULKNER—I would appreciate the information on Port Vila. If you could provide any more on Teheran that would be helpful. I might flag with you that, given the significance of this, we may well revisit this in the supplementary round. Once I conclude this line of questioning, Mr Chairman, we can have a break and I will place other questions on notice.

CHAIR—Thank you very much, Senator Faulkner.

Senator FAULKNER—There are issues I would like to canvass, if I can, in relation to the R.G. Casey Building. What is the situation with Austrade? Austrade has vacated the R.G. Casey Building, as I understand it. Is that right?

Mr Varghese—They have moved out.

Senator FAULKNER—That is what I mean by ‘vacated’.

Mr Varghese—I am sorry; I heard you say ‘located’.

Senator FERGUSON—They have not gone to Centenary House.

Senator Abetz—I misunderstood you. I thought you said, ‘located’ as well.

Senator FAULKNER—I am sorry, no.

Senator Abetz—It does not matter; we know what we are saying now. There is spare room there—cheap rental.

Senator FAULKNER—Was there an issue in relation to the rent Austrade was paying there?

Mr Tighe—As I understand it, Austrade had a lease directly with the owners of the R.G. Casey Building, just as we have a separate lease with the owners. Austrade’s lease came to an end towards the end of last year and they chose to move to a different building rather than pay the rent that they would have had to pay to stay in the R.G. Casey Building.

Senator FAULKNER—Is that space empty at the moment?

Mr Tighe—My understand is that there are negotiations going on between the MTAA and another prospective tenant. I am not quite sure whether those negotiations have been completed, but I understand they are very close to completion.

Senator FAULKNER—Do I take that as a yes, the space is empty?

Mr Tighe—There is nobody working out of that space at the moment.

Senator FAULKNER—There is no tenant?

Mr Tighe—It may be that the space has been let.

Senator FAULKNER—Currently it is empty?

Mr Tighe—There is nobody working in there.

Senator FAULKNER—The department does not own the building, does it?

Mr Tighe—That is correct.

Senator FAULKNER—Is this a matter of particular interest to the department? The nature of the tenant, I imagine, is a concern. There are security issues and the like, aren't there?

Mr Tighe—There would be. In fact, the terms of our lease with the MTAA state that they need to consult with us on the choice of what would become a co-tenant for us, which they have done, and we are satisfied with the prospective tenant.

Senator FAULKNER—We can talk to Austrade about some of these details. Were there discussions between the department and Austrade about an appropriate location—discussions at the portfolio level about the appropriateness of Austrade moving?

Mr Tighe—We were informed of their decision. The building they have moved to is immediately adjacent to the building we are in. It is virtually directly across the road. We are quite comfortable with that arrangement.

Senator FAULKNER—Is it the case that the department requested Austrade to stay in the R.G. Casey Building?

Mr Tighe—We let Austrade make its own decision on that.

Senator FAULKNER—There was no view expressed from the department's point of view that Austrade should stay?

Mr Tighe—The view was that Austrade had to make a commercial decision, and that was its ultimate imperative. Again, Austrade would have to confirm the terms of that decision, but we understood that, at the end of the day, it was a matter for Austrade to determine.

Senator FAULKNER—The rent being paid by Austrade increased after the building's sale, did it?

Mr Tighe—There has been one increase in our rent over that period. I imagine Austrade's rent increased as well.

Senator FAULKNER—Wasn't that the straw that broke the camel's back for Austrade?

Mr Tighe—I am not certain of that, Senator. I suspect it was the rent they might have had to pay had they stayed. Again, I cannot speak on Austrade's behalf.

Senator FAULKNER—So there is no revisionism about the sale of the R.G. Casey Building in this circumstance? What we are really being told is that, because the building was flogged off and the pressures that have gone and will go on to Austrade in the future, they have basically been forced to move out. That is the story?

Senator Abetz—No, it is not.

Senator FAULKNER—What is the story?

Senator Abetz—As I understand it, market rentals have been applied.

Senator FAULKNER—You don't know what the story is. I do know what the story is and I have just outlined it for your benefit.

Senator Abetz—It is in fact market rent.

Senator FAULKNER—Can the department advise whether the Brisbane Avenue car park opposite the R.G. Casey Building is for the exclusive use of employees in the R.G. Casey Building?

Mr Tighe—Yes, that car park has been leased by DFAT to put into effect the original planning concept which we had confirmed with the National Capital Authority, which was that the car park was for the use of tenants of the R.G. Casey Building.

Senator FAULKNER—So that car park is leased, is it?

Mr Tighe—That is correct.

Senator FAULKNER—Leased from whom?

Mr Tighe—From the Department of Finance and Administration, which owns the land.

Senator FAULKNER—When was it leased from the department of finance?

Mr Tighe—From memory, the lease took effect in either December 2002 or January 2003.

Senator FAULKNER—In the last few months.

Mr Tighe—Yes.

Senator FAULKNER—What were the arrangements in relation to the use of the car park before DFAT leased the car park?

Mr Tighe—There were no controls on who used the car park.

Senator FAULKNER—First come, best dressed, basically?

Mr Tighe—Essentially, yes.

Senator FAULKNER—What is this lease costing the department?

Mr Tighe—The cost is approximately \$160,000 per annum.

Senator FAULKNER—How many car parking spaces are there?

Mr Tighe—There are, I think, 443 spaces, which we lease at \$1.50 a day.

Senator FAULKNER—Are they subleased to departmental officers?

Mr Tighe—No, Senator; the department is paying the cost of the lease.

Senator FAULKNER—It is 443 car spaces at \$1.50 a day—you mean paid to the department of finance?

Mr Tighe—Correct.

Senator FAULKNER—I thought you were suggesting you were subleasing it to departmental officers. So there are 443 spaces at \$1.50 a day, which is \$160,000 per annum. How many people work in the R.G. Casey Building for the Department of Foreign Affairs and Trade?

Mr Tighe—There are about a thousand.

Senator FAULKNER—How many have cars?

Mr Tighe—Enough to fill the car park, Senator.

Senator FAULKNER—How do you work out which of the thousand get the 443 spaces?

Mr Tighe—First come, first served.

Senator FAULKNER—Are there any designated spaces in the car park?

Mr Tighe—Not in the York Park car park; there are in the basement car park in the building.

Senator FAULKNER—Most of the executive are parking under the building, aren't they?

Mr Tighe—Yes.

Senator FAULKNER—So who is eligible to go into that car park—just anyone else?

Mr Tighe—The car park under the building?

Senator FAULKNER—No, the Brisbane Avenue car park—is that the correct terminology for it?

Mr Tighe—Sure. Anybody with an access card for the R.G. Casey Building.

Senator FAULKNER—And the access card is required to enter the car park, is it?

Mr Tighe—Yes.

Senator FAULKNER—Is there a boom gate or something?

Mr Tighe—Yes, that is right.

Senator FAULKNER—What community reaction has there been since the leasing of this car park for the exclusive use of DFAT officers?

Mr Tighe—Very muted. There was one letter of complaint, I recall, at the time that the lease was put into effect. But, as I mentioned to you before, what this arrangement actually does is implement the planning concept that was agreed when the R.G. Casey Building was constructed, which was that that car park was intended for occupants of the R.G. Casey Building. We consulted with people who were occupants of surrounding buildings, and they agreed to the arrangement that has been put in place.

Proceedings suspended from 12.49 p.m. to 1.35 p.m.

Australian Trade Commission (Austrade)

CHAIR—I welcome Senator Hill who is representing the Minister for Foreign Affairs and the Minister for Trade, and the officers from the Department of Foreign Affairs and Trade, in particular from Austrade, and Ms Lyons and Ms Selby. We will now examine the estimates of Austrade until approximately 3 p.m. and at the conclusion of Austrade we will resume Foreign Affairs and Trade with questions on trade related programs 1.1.5 and 1.1.6 until approximately 8.30 p.m. The committee will then continue with the DFAT program in output order if it is required. At the conclusion of the program for Foreign Affairs and Trade the committee will examine the estimates of AusAID and ACIAR.

When officers are first called upon to answer a question they should state clearly their names and positions. When written questions on notice are received the chair will state for the record the name of the senator who submitted the questions. The questions will be forwarded to the department for an answer. The committee has resolved that the deadline for the provision of answers to questions taken on notice at these hearings is Tuesday, 22 July 2003.

Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege and I also remind witnesses that the giving of false or misleading evidence to the committee may constitute a contempt of the parliament. The Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. I remind you that refreshments are available in the waiting room and that all mobile phones are to be switched off in the hearing room. Minister, do you or any of your officers wish to make an opening statement?

Senator Hill—No.

Senator LUNDY—I would like to start off with a very general question about the effect of capping on the EMDG scheme. What has been the reduction in real terms in the value of the EMDG scheme compared to the size of the scheme when the present government came to office in March 1996 from cutting the nominal amount of the scheme to \$150 million and then capping it? I know that is a big question and, if you are not able to provide this information now, could you take it on notice? If you would like to make some comment that would be helpful.

Ms Ward—The current appropriation for the scheme is \$150.4 million. No, I haven't got that calculation in front of me. We can take it on notice. You have set out quite clearly the way you want it done and we could do a calculation for you.

Senator LUNDY—Thank you. When is the balance distribution date for grant year 2001-02 going to be?

Ms Ward—On 13 June. The minister has already determined that and it has been tabled.

Senator LUNDY—Given that we are pretty close to that date—it is 10 days away now—is it correct to say that Austrade has a very good idea of the funding outcome for the 2001-02 grant year?

Ms Ward—I am sorry, I missed that—has a good idea of the—

Senator LUNDY—Of the funding outcome.

Ms Ward—Could you explain what you mean by 'funding outcome'?

Senator LUNDY—It is in terms of the number of applicants who have reached the threshold, the proportion of the fund over that \$60,000 threshold, the number of applicants that will be divided amongst and so forth. I guess you probably know where I am heading with this.

Ms Ward—Yes, we are getting towards the end of the year. That said, the last two weeks of processing grants is in some ways the most difficult because we try to sort out the most difficult claims in the last two weeks. The reason for this is not that we are just starting them; we have already been working on many of them throughout earlier months. We will give clients as much opportunity as possible to substantiate their claims and sometimes that requires going back to them and asking them to submit more information. At this time of the year, although we are near the end of the year, it does mean that the claims we process in these last couple of weeks often have the most adjustment done to them because, if we do not

get sufficient evidence that the claim is correct, we will adjust the claim. So there can be a lot of changes being made between now and the end of the year. At the end of May we had determined 3,665 claims of the total that we had received for the year of 4,164.

Senator LUNDY—How does that total figure of 4,164 applicants compare with previous years?

Ms Ward—It is a significantly higher figure. The previous year we received 3,391. There was a 23 per cent increase in claims this year.

Senator LUNDY—Out of the 3,665 claims that you have resolved and that will receive payments, can you give an idea of that residual lot you were discussing? About how many outstanding claims are there?

Ms Ward—Outstanding is the difference between the total received and total that I told you had been determined to date. That said, it is never possible to process all claims received within the financial year for the reasons I have alluded to. Sometimes we are still seeking information and, because people have appeal rights on claims, we will never in any year process the full 100 per cent.

Senator LUNDY—Are a percentage of the remainder likely to be rejected or are you likely to pay close to that number at some point?

Ms Ward—At best estimate we will pay around 3,700 grants this year. That is just an indicative figure.

Senator LUNDY—How does that, albeit only indicative at this stage, compare with the number of companies that received payments in the previous grant year 2000-01?

Ms Ward—It is significantly higher. Approximately 680 grants more will be paid this year. Again, this is indicative. Last year we paid 3,018.

Senator LUNDY—What percentage increase does that represent approximately?

Mr Ritson—22½ per cent.

Senator LUNDY—Can you confirm that the minister determined last year that the initial payments ceiling amount for grant year 2001-02 was \$60,000?

Ms Ward—Yes, that is correct.

Senator LUNDY—In February the *Australian* indicated that this year companies eligible for more than \$60,000 in grants are likely to receive less than 50 per cent of their entitlement above the initial \$60,000. Are you now in a position to provide more information about what proportion of their entitlement above the \$60,000 exporters can expect to receive this financial year for grant year 2001-02?

Ms Ward—For the reasons I have already alluded to there are claims still to be processed. We hope they will take it to over 3,700. The adjustments are likely to be much larger for many of those claims so I cannot give you a precise figure. I can tell you that, yes, you are right, we are much closer to that date and it will be between 30 and 40 cents.

Senator LUNDY—From memory, in our discussions last time there was some speculation—you might be able to correct me—of around 36 or 37 per cent.

Ms Ward—That would be affected? Is that your question?

Senator LUNDY—No, not that would be affected but that the proportion of their entitlement above \$60,000 would be as low as 36 or 37 per cent. Is that what you are effectively confirming?

Ms Ward—I said less than 50c. That was before we had processed—

Senator LUNDY—Perhaps it was speculation.

Ms Ward—We had processed less than 50 per cent when I was here in February so it was not possible to give you a precise answer.

Senator LUNDY—But you were pretty accurate.

Ms Ward—There was a huge increase in demand this year. As I said at the time, the scheme was very popular. It was pretty clear that it would be less than 50.

Senator LUNDY—It is down to between 30 and 40c in the dollar. That is pretty devastating for many of them. Are you in a position to say how many companies go above that threshold of \$60,000 and therefore are affected by that proportional allocation of the remainder down to 30 to 40 per cent?

Ms Ward—I have accurate figures for the year to date—end of May. We had 891 recipients who have gone above the \$60,000. Our estimate for the year is perhaps of the order of 950 to 1,000—probably lower: 950. That is perhaps in the order of 25 per cent. It is important to put it in the context of the huge number of grants that have been paid because in fact there will be approximately 2,700 who will get their full grant, which is more than 500 more than did last year. This is because of the increase and because we have had a lot of relatively small claims this year, all of whom will get their full grant.

Senator LUNDY—Is it fair to say that almost all of the 22.5 per cent increase in grant recipients have been applying for grants below the \$60,000 threshold—or some 500 of them at least out of 680? I think you mentioned a figure of 680 additional applications or recipients.

Ms Ward—Yes, there were an additional 680. That is just a number. The number of grants that we expect to be paid additionally this year will not go to the same people who would necessarily be above or below the \$60,000. I am saying that because of the influence of, particularly, the \$5,000 minimum grant, we have had a big influx of first-time and smaller claims. We have had over 1,500 first time claims this year, which was a huge jump in first-time claims—a 50 per cent jump. We think that in the order of 294 applicants were attracted by the \$5,000 minimum grant.

Senator LUNDY—294?

Ms Ward—Yes. We expect something of the order of 270 to get paid that minimum grant. This is an indication that the scheme changes from 2001 have attracted smaller claimants and they are of course getting their full entitlement.

Senator LUNDY—Thanks for that. Previously you provided the committee with a breakdown by Commonwealth electoral division of the number of applicants for the year 2000-01. I am not sure whether you previously provided the breakdown of companies that are

eligible as a subset of that for more than \$60,000. Can you provide both of those datasets for the grant year 2001-02?

Ms Ward—I believe we have already supplied the—

Senator LUNDY—That was for grant year 2000-01.

Ms Ward—You want recipients, not applicants?

Senator LUNDY—I am just looking at the attachment from the previous questions on notice, which says, ‘EMDG recipients in grant year 2000-01 by Commonwealth electoral division.’

Ms Ward—Yes.

Senator LUNDY—I would like that same information but for 2001-02. I appreciate that I said ‘applicants’.

Ms Ward—We will not be able to provide recipients until we have finished processing for the year but we could take that—

Senator LUNDY—That is why I am asking for applicants. I know you have not finalised it and you may not do so for quite some time.

Ms Ward—Yes, that is right. Certainly that can be provided.

Senator LUNDY—Thank you. In addition to that, based on that dataset of applicants, are you able to ascertain those eligible for more than \$60,000 or do you have to wait until you analyse the full set of recipients?

Ms Ward—We would have to wait until we had recipient figures to do that for you.

Senator LUNDY—Could I place on notice that you provide the equivalent data as well for recipients but break that down further into which recipients were eligible for more than \$60,000 in grants, again with the electoral division breakdown?

Ms Ward—Yes; we can take that on notice.

Senator LUNDY—Are you able to provide an estimate of the average grant payment for grant year 2001-02 at this stage?

Ms Ward—I do not have the information with me; I would have to come back to you on that. We certainly could work out what it was. In fact, it is a little difficult because, until we have done the balanced distribution, we cannot work out an average grant paid. I cannot do that for you until we have finalised the year.

Senator LUNDY—Could you do it on the data available up to 30 May? My understanding is that it is not even a question of waiting until the end of this financial year, because you still may well be processing subsequently recipients—

Ms Ward—But for the 871 firms to the end of May—we know that they have a second tranche payment because they went above \$60,000—to work out an average grant paid to date we could only take into account the \$60,000 that they have been paid. The figure, in a sense, does not have a lot of meaning at the moment.

Senator LUNDY—I understand what you mean. I am looking for some comparable figures. Do you have an average payment for previous grant years?

Ms Ward—I think we provided those to you.

Senator LUNDY—That is my recollection; I will just check. Yes, you did—in answer to question 4 last time. According to this answer you actually gave me an average grant figure for grant year 2001-02, so I do not know if that was your best estimate.

Ms Ward—If you look at the footnote to that table, it says it was calculated by averaging the payments made in the financial year following the grant year. I think that heading ‘Grant year’ should in fact be ‘Financial year’. I apologise for that. I will confirm that for you.

Senator LUNDY—Yes, I just saw that and thought, ‘Oh, I’ve already got that information, and you have just told me you haven’t got it!’ So ‘Grant year’ should say ‘Financial year’ and then the grant year would effectively be the financial year previous?

Ms Ward—Yes, if the heading on the first column was ‘Financial year’ and the grant figure is for the grant year, which is the previous year to the financial year.

Senator LUNDY—So the amended answer there for financial year 2001-02 would be \$45,205 for grant year 2000-01?

Ms Ward—That is correct.

Senator LUNDY—I am glad we spotted that; it could have been quite misleading. The average grant decreased marginally just over the last two grant years. I am referring now to the answers to the questions on notice, now that we have that clarified. Given the changes in the way you have received grants, the much greater number of recipients but still a cap, I can make some assumptions, surely, that the average grant will be at least noticeably reduced from that average of about \$44,000 to \$45,000 that it has been for the last four or five years. Is that a fair observation? It makes logical sense to me.

Ms Ward—To do what you are trying to do, in some ways it is more helpful to look at the median grant, the point at which 50 per cent get paid more and 50 per cent get less, because that gives you more of a feel for the influence of smaller claimants.

Senator LUNDY—Run it by me, by all means.

Ms Ward—I do not have that either for this year yet because of the fact we are still processing. In the previous grant year it was \$29,600 and the year before that it was \$28,400. So that figure for the 2001-02 grant year will be an interesting figure to do what I think you are looking to do, which is to see the influence of the smaller—

Senator LUNDY—It would be another measurement, if you could take on notice to provide that comparison as well, but also take on notice to provide the figure for previous years. What was the figure you mentioned?

Ms Ward—The median—the point at which 50 per cent get more and 50 per cent are below.

Senator LUNDY—Thanks. Do you want to give those figures to me now, if you have them?

Ms Ward—Not for this year.

Senator LUNDY—No, I know you do not have them for this year, but do you have that median grant figure for previous years?

Ms Ward—Yes. For the grant year 2000-01, it was \$29,600. For the grant year 1999-2000 it was \$28,400. I do not have previous ones.

Senator LUNDY—Could you take that on notice, because it would be interesting to compare, say, the previous three years. They would be financial years—1999-2000, 1998-99 and 1997-98. At what point will you have those figures available? You said that it might blow out. Do you have to have them all wrapped up by a certain date?

Ms Ward—Yes, by the date that we have already referred to—13 June—we will have to close off processing for the year in order to balance the funds to work out distribution.

Senator LUNDY—There will not be any other outstanding claims—not relating to the \$60,000 threshold? That is when it stops, full stop?

Ms Ward—Not full stop. That is when it stops for this financial year. Of course, any claims for that grant year of 2001-02 that have not been processed or have not been completed in their processing still get processed, but they will not get paid this financial year because we have to close off.

Senator LUNDY—So, that is claims received between 13 June and 30 June?

Ms Ward—No—

Senator LUNDY—I do not understand why there is that residue. Sorry; try again. I will try to listen.

Ms Ward—All claims are received between 1 July and five months after that—30 November depending on the weekend date et cetera. So all claims have been received. We then attempt to process the maximum possible number in the course of the financial year for which we have received the claims. For reasons that I just touched on earlier, it is simply never possible to process 100 per cent. One reason, which is in the act, is that if a company wishes to firstly ask for a review of their determination and then are still unhappy they have a right to go to the AAT. So we sometimes have claims that will not end up with a final result for several months. So there will always be some carryover, but we have to close off processing to balance the funds to pay them out.

Senator LUNDY—Just to get this straight, for the purposes of all those figures that you produce and how you report on the scheme, you use what you have closed off on at 13 June?

Ms Ward—That is correct.

Senator LUNDY—Then that date relates to all the information I have been asking for. Once you go past that date, you are in a position to compile those averages—the total number of recipients—for the purposes of reporting for that year, despite the technicality you described.

Ms Ward—Yes, that is correct.

Senator LUNDY—So I have those questions on notice relating to that cut-off point. In February, Austrade said that it would have required an additional \$11.2 million to ensure that companies received their full entitlements last year for the grant year 2000-01. Do you have an estimate as to how much additional funding would be required to ensure that exporters receive their full entitlement this year for the grant year 2001-02? Obviously for the same qualification—that is, the cut-off of 13 June—you cannot do that as yet, so could you take that on notice and give me an estimate?

Ms Ward—Yes. We can do that. Once we have closed off we can give you a figure.

Senator LUNDY—Given that we know that exporters who are entitled to over \$60,000 are only going to get between 30 and 40 per cent of that, are you in a position to give me a best estimate at this point about what that additional funding pool would look like?

Ms Ward—In line with it being a range and an estimate, it would be of the order of \$31 million to \$38 million.

Senator LUNDY—Has Austrade done any assessment of the impact on exporters of having this significant percentage reduction in their grant?

Ms Ward—In answer to that specific question, no. But to keep it in the context that the amount of money being paid out in grants remains the same—and, as I referred to earlier, there will be a lot more recipients getting grants this year; a significantly higher percentage getting grants this year—while the effect on individual companies may differ, we will see a lot more companies who are getting grants and are therefore able to take advantage of the scheme, particularly in this case small and emerging exporters, to get into export. So it is perhaps the distributional effect rather than what you are looking for which is—

Senator LUNDY—I appreciate that you are arguing the government's policy but my specific question was whether you had done any formal assessment of the impact on exporters who are affected. So the answer is no.

Ms Ward—The answer is no.

Senator LUNDY—Do you receive any feedback from exporters on the impact of this upon them?

Ms Ward—There are two feedback mechanisms, and we gave you some information on those before. We have a feedback form which we send out to clients with their notice of determination when we determine their grant. It really gives them an opportunity to give us information of any kind if they wish to do so. I think we supplied you with a percentage breakdown of the numbers by type and topics that they talked about in their answers.

Senator LUNDY—Yes, I am looking at it now.

Ms Ward—The second form of feedback we get is through a formal client satisfaction survey that we do. It is done by an external market research company around the end of July each year. On the whole that is targeted at getting information about client service: issues of service improvement that Austrade can engage in to do with our staff service, our application process, our communications and so on. However, it also gives clients an opportunity, because there is a very general question very early on in the questionnaire, to comment. It is a phone interview done on a random sample basis. It is anonymous as well. We have a very general

question which effectively asks, ‘How would you describe your satisfaction or dissatisfaction with the scheme?’ There is a rating of one to five. Then there is: ‘What is the reason for your answer?’ and that answer is taken down verbatim. So there is an opportunity there for a client to make any comment whatsoever.

Senator LUNDY—I am looking at the survey that you provided on notice. Out of some 193 recipients, this shows you got positive feedback from 166 recipients, or 86 per cent, and negative feedback from 27 recipients, or 14 per cent. There was another client survey result, showing the client satisfaction rating for the scheme for the 2000-01 year was 88 per cent. So I presume the answers to the questions on notice were for the grant year 2001-02, showing overall 86 per cent positive feedback.

Ms Ward—That is correct. The rating of 88 per cent was from the survey conducted at the end of July and the beginning of August last year. The result before that—86 per cent—was for the same period in 2001. That is the survey that we will be repeating near the end of July this year.

Senator LUNDY—In terms of the negative feedback you get, what strategies do you have in place to improve the service and the program?

Ms Ward—It gives us an opportunity to identify any service issues—particularly improvements to our communications if clients make comments about the information on our web site or in our brochures—and also the way that staff deal with clients when they are processing their claims. We take all of those things into account in our training of staff and in reviewing all our communication processes.

Senator LUNDY—Have you had any feedback separate from those surveys? My concern, if that is the only feedback methodology, is how you would assess how companies are coping with the uncertainty associated with not knowing what that additional funding is until the 13 June cut-off and you do the sums to work out what they are entitled to. Have you had any feedback about that or do you plan to investigate what sort of impact the methodology for allocating EMDG now creates is having on companies?

Ms Ward—We do not have any plans other than the client satisfaction survey, which is quite soon—in July. That gives us a pretty good idea, because of the satisfaction figures that we get out of it, whether there are significant issues. I cannot comment beyond waiting to see what we get out of that survey, which will be in two month’s time. That is when it will be run. Of course, we will not have the information then.

Senator LUNDY—When will you have the results? I need to work out whether I should put a question on notice now for you to provide it when you get it or should I wait until November?

Ms Ward—I cannot remember how long it takes to get, but I expect it would probably be September.

Senator LUNDY—Could you provide to the committee the survey results when they become available—just in case I forget to ask for it in November?

Ms Ward—Certainly.

Senator LUNDY—What is the impact on the effectiveness of the scheme for these companies who have seen their entitlement reduced because of the funding cap and the other changes that have been put in place? Are you able to make any comment on the impact on those companies in particular? Obviously, it is a reduction in the support via the scheme. We know that it has been the government's specific policy to try and spread the same amount of money more thinly to more recipients. Do you think the overall effectiveness and focus of the scheme have been weakened, particularly for larger exporters?

Ms Ward—How much money is appropriated for the scheme is a policy decision by the government. Within that the government has made it its objective to particularly focus the scheme on small and emerging exporters. For reasons I gave earlier in my answers, I think the scheme this year has demonstrated that it is particularly attractive to small, emerging exporters. There has been a huge increase in first-time applicants, for example.

Senator LUNDY—The question is probably better directed to the minister. Minister, would you like to respond about the obvious negative impact on some of the larger exporters that has occurred as a result of the cap and of them being able to get a far smaller percentage of the amounts over and above \$60,000? I am giving you an opportunity to respond to companies who have been negatively affected.

Senator Hill—There have been a greater number of claimants. Therefore, for them to have received the same proportion would have required extra money. We have given priority to health and education.

Senator LUNDY—By keeping the cap on the fund overall?

Senator Hill—One of the problems with the previous government was that it just kept spending and ran up a \$10 billion deficit. We do not think that that is sound economic management, so we have to constrain our funding.

Senator LUNDY—I take that your response to the companies that have received less money is: 'Tough bickies, it's government policy.'

Senator Hill—Yes, this government does not believe it can extend funding beyond that point at this time bearing in mind all the other responsibilities that government has.

Senator LUNDY—Is it an area of policy that government would consider doing more of in the future? How do you rate it in terms of priority?

Senator Hill—You mean lifting the cap? That is an issue to be considered in the appropriate budget considerations and weighed against all the other requirements for government funding.

Senator LUNDY—Thank you, Minister. Does Austrade have any feel for what the demand for grants will be next year, 2002-03? Are you expecting a continuing trend on the increase of smaller grant applicants, for example?

Ms Ward—That is a difficult question to answer. The reason it is particularly difficult at the moment is because of some developments in the latter part of the financial year. On the one hand we have factors which I would expect to have a positive influence on demand for the scheme. For example, there was strong business confidence through the year and raising awareness of Austrade's activities and the benefits of export and of the scheme through lots of

work being done at the present time. On the other hand towards the latter part of the year SARS in particular presented a difficulty. It could be that some companies that had intended to go into export promotion have pulled back particularly into South-East Asia. So I cannot give you an answer to that.

Senator LUNDY—But you are obviously identifying some pretty big issues that might constitute enough interference with the trend or at least with the pattern of applications in the previous grant year.

Ms Ward—There are factors but they are working in both directions, both in terms of those we expect to increase in demand and those we expect to cut back in demand.

Senator LUNDY—I will wait and see. That period for applications opens on 1 July and goes to the 30 November, doesn't it?

Ms Ward—That is correct. I think it is 1 December this year simply because 30 November falls on a weekend.

Senator LUNDY—Given the initial payment ceiling amount for this year, grant year 2001-02, is \$60,000, what is it likely to be for the 2002-03 grant year?

Ms Ward—I cannot comment on that. That is done by ministerial determination so it is something that the minister will decide.

Senator LUNDY—At what point does that the decision have to be made?

Ms Ward—It will have to be made before the beginning of the next financial year so that we know before we start processing for the next financial year.

Senator LUNDY—So we will know before the end of this month?

Ms Ward—That is correct.

Senator LUNDY—Will that need to be tabled in parliament?

Ms Ward—Yes. It is a determination.

Senator LUNDY—That pretty well defines the timing. We will see it in a couple of weeks. Has the minister placed on the public record any indication that he is contemplating a change in that payment ceiling amount? I am not asking for any policy insight here, just whether or not there is anything on the record that has caused speculation.

Ms Ward—I am not aware of anything.

Senator LUNDY—I know that it was something we did discuss at the last estimates. I cannot remember the context. I think I raised the possibility of it occurring and from memory it was met with vehement denials. I cannot remember the details. Can you detail the recently announced changes by the minister on the 16 April?

Ms Ward—Are you referring to the legislation which is currently before the House?

Senator LUNDY—Yes.

Ms Lyons—Chair, given that this legislation is before the parliament, could we seek some guidance from you about what we should be answering?

Senator Hill—What is the question?

Ms Lyons—This is in relation to some amendments to the EMDG legislation that are before the parliament at the moment.

Senator Hill—What is the question?

Senator LUNDY—I asked what are the changes to the EMDG scheme announced by the Minister for Trade. I understand they are embodied in the form of legislation before the House. I presume you could answer in accordance with what the tabled documents stipulate. It is on the public record.

Senator Hill—If it is on the public record, you do not need to ask it publicly again.

Senator LUNDY—I have not read it.

Senator Hill—We will get you a copy of it.

Senator Lundy—No, I want the officers to tell me.

Senator Hill—That is a waste of time. If it has been made public you do not come in here and ask for it all to be restated.

Senator LUNDY—I can ask anything I like, Minister. You know that.

Senator Hill—You will not get an answer. The answer is: go and have a look at the public record.

Senator LUNDY—Can I formally ask the officers or you, Minister, what the main proposed changes are within that legislation? I have some questions about the impact on the budget as a result of those changes.

Senator Hill—My answer is that I understand that they are now public property, so you know as well as anybody else. Now you can ask your subsequent questions, if you so wish.

Senator LUNDY—What is the rationale for the changes?

Senator Hill—That is a government policy issue.

Senator LUNDY—No, it is not. You answer it. You would not have a clue, so stop trying to obstruct my questioning.

CHAIR—Order! I do not think we have to be rude to the minister, Senator Lundy.

Senator LUNDY—I think you would agree, Chair, that these are very straightforward questions; they are not complicated.

Senator Hill—This is not a debate on government policy. That is not what this committee is all about.

Senator LUNDY—I actually did not ask for policy; I asked for matters of fact—

Senator Hill—This is an investigation into the appropriations.

Senator LUNDY—because I wanted to ask some questions in relation to the budget.

Senator Hill—I am waiting for the questions in relation to the budget. That is what we are here for.

Senator LUNDY—I want to know what the proposed changes are, then I can construct my questions about the budget around them.

Senator Hill—It is like a make work session.

Senator LUNDY—Are you going to instruct the officers not to respond?

Senator Hill—Do we have a copy of the amendments here?

Ms Lyons—We do not have a copy of the amendments.

Senator Hill—We will get the amendments, we will get the explanatory memorandum and we will provide them to Senator Lundy.

Senator LUNDY—I would ask that you provide a summary of the changes so that I can proceed with my questioning.

Senator Hill—I do not think we have to do that. I think this is just a waste of time.

Senator LUNDY—Perhaps you do not have to do it, but you could, just to be helpful, so that I can get through this session of estimates.

Senator Hill—I am assuming you know what they are about; otherwise, you would not intend to ask questions. You would just be fishing and I am sure you would not be doing that.

Senator LUNDY—Why are you being so obstructive? What have you got to hide?

Senator Hill—I am not being obstructive; I am inviting you to ask a question that is relevant to the estimates.

Senator LUNDY—Are you bored? It is your job to be here, I suspect, to facilitate accountability on behalf of the government, not to be a pedantic obstructionist.

Senator Hill—I am here to be helpful.

Senator LUNDY—You are not being very helpful.

CHAIR—It is also your job to understand the questions that you are reading out, Senator Lundy. Let us not be gratuitous in our compliments.

Senator LUNDY—There is no need for you to engage in this either, Chair. I am trying to work through my brief. If you are going to be silly about it, suit yourself.

CHAIR—Can I give you some more gratuitous advice?

Senator LUNDY—No, thanks.

CHAIR—The session finishes at 3 p.m. Get on with your questions.

Senator LUNDY—Will the changes to the EMDG scheme impact on the shortfall for the funding in the grant year 2002-03?

Ms Ward—The legislation currently before the House relates to changes which, if they become law, will take place from 1 July 2004. That is the financial year in which it will affect payments. It does not affect the grant year 2002-03. It will affect the grant year 2003-04, if legislated.

Senator LUNDY—And what will the budget implications be for the grant year 2003-04?

Ms Ward—The total appropriation for that financial year, the one in which they will be paid—

Senator LUNDY—Is the same?

Ms Ward—It is a future decision. I cannot give you an answer to that.

Senator LUNDY—So there are no forward estimates for that year for the EMDG?

Mr Ritson—There are forward estimates but forward estimates are estimates. The government can make decisions concerning those forward estimates between now and the budget for that year.

Senator LUNDY—So can you tell me whether the forward estimates currently reflect the changes contained in the legislation before the House?

Ms Ward—The changes in the legislation are about changes to eligibility or, in one instance, a change in the maximum size of the grant. In themselves, they do not change the budget. If they are legislated, they would change the distributional effect of the scheme. By that I mean that they would further target the scheme towards small and emerging exporters.

Senator LUNDY—Thank you. So in other words they won't do anything to alleviate the shortfall in the funding obviously for this year and for the next year. In fact, it could potentially make that shortfall for grant recipients of over \$60,000 an ever smaller percentage to be shared among those eligible. Is that the case?

Ms Ward—The current proposals would have no effect at all this year. They will have no effect on payments being made next year. If they come into law, they will have an impact on the next grant year which is 2003-04. Therefore, expenditure being undertaken by companies starting from 1 July would come under these rules if they are passed.

Senator LUNDY—I will ask that question again: if a company is applying from 1 July this year, which will be grant year 2003-04, it will be apply in the following financial year—

Ms Ward—No. Applicants from 1 July this year will be applicants for the grant year 2002-03.

Senator LUNDY—And they won't be affected?

Ms Ward—No, they will not be affected.

Senator LUNDY—So it is applicants who will be applying from July next year?

Ms Ward—That is correct—from July 2004.

Senator LUNDY—From July 2004 for grant year grant year 2003-04; they will be affected.

Ms Ward—Yes, that is correct.

Senator LUNDY—As a result of those changes, is it likely that the recipients who would be eligible for \$60,000 or more are likely to get an even more greatly reduced percentage of their entitlement from what has been flagged for this current grant year of 2002-03 of somewhere between 30 and 40 per cent? Is it likely to be less?

Ms Ward—There are too many hypotheticals in that question. I am sorry, I cannot give you an answer. I can only repeat that the intent of the legislation is to further target the scheme towards small and emerging exporters, that is, those in their earlier years of grants. As I discussed earlier on, small exporters are able to be accommodated within the flexible design of the scheme, as has happened this year.

Senator LUNDY—No, I understand all of that. But the logic flows that that was also the intent of government policy to improve the number of small companies eligible and that has resulted in a significant reduction for companies with an entitlement of over \$60,000. Logically, if there is a further policy encouragement via this legislation to get even more smaller companies, effectively the pieces of pie become smaller again, particularly for those companies that are entitled to funding above the \$60,000 threshold. I guess I am looking for your confirmation that that is reasonable logic.

Ms Ward—I cannot give you confirmation of that because there are a few assumptions in your question that are not yet set—for example, the \$60,000 to which you are referring. It will be the year 2004-05 before we will be processing those applications. I simply cannot give you an answer to your question.

Senator LUNDY—Have you done any analysis or modelling of the likely impact of these changes on the grant program and the size of grants to exporters?

Ms Ward—As I said, it is hypothetical in the sense that it depends on the changes to the eligibility criteria. For example, one of them proposes a reduction in the annual turnover ceiling for applicants from \$50 million to \$30 million in itself further targeting the scheme towards smaller companies. It is hypothetical in a sense to say who that will have an impact on because it would depend who would have otherwise applied when the time came.

Senator LUNDY—For example, do you know how many companies currently eligible that have that \$50 million threshold that will no longer be eligible?

Ms Ward—I can tell you that had the changes been in place in the grant year 2001-02, on the basis of the eligibility changes that are proposed, around 500 would have been excluded, and because of the changes to entitlements there may have been in the order of 300 additional companies that would have had a reduced claim provisional entitlement. The policy intent, as stated by the government, is to make room in the scheme for increased demand by the smaller companies and the companies that are at the early stage of claiming grants.

Ms Lyons—That number of 500 is in relation to the 2001-02 year and in any year the profile of the claimants can vary enormously.

Senator LUNDY—I think Ms Ward made it clear that that was not the answer to the question for the forthcoming grant year, if you applied those criteria to the existing grant year. I think she made that clear, thank you. Again, you could make some reasonable comparative assumptions about the potential impact of the legislation, presuming it is passed, on how the company eligibility to the scheme is going to be modified. Are you able to provide the analysis of the impact of the changes to the committee?

Ms Lyons—That is premised on the legislation proceeding. I think we would have to wait and see what happens with the legislation before we could provide you with any analysis.

Senator LUNDY—You would have done the analysis but I think the point is whether it has any relevance. We are still interested in the analysis. You are quite right though: it may have no relevance if the legislation does not pass.

Senator Hill—The internal analysis that contributes to the development of policy is a matter for government, not for this committee.

Senator LUNDY—Are you claiming cabinet-in-confidence for that research, Minister?

Senator Hill—I am claiming that it is a matter internal to government and not within the exploratory role of this committee.

Senator LUNDY—I would suggest, unless you are claiming cabinet-in-confidence, that taxpayers' money was expended upon its production and therefore it is an issue for this committee.

Senator Hill—If we had to come forth with all internal deliberations of government then the whole practice of government would grind to a halt.

Senator LUNDY—Can I suggest that you take the question on notice and perhaps ruminate over whether or not you are prepared to provide it to the committee?

Senator Hill—I think advice given by officials to government on the expected outcomes of certain policy decisions is not within the proper province of an estimates committee.

Senator LUNDY—Can I put to you that, because this legislation is likely to have quite a significant impact on the scheme, such information is entirely relevant not just to estimates but to the issues that will become the subject of debate.

Senator Hill—If you want to have that debate, the proper debate is on the legislation.

Senator LUNDY—Do you want an informed debate or do you want a debate where you have secret squirrel information and we, as opposition, have to speculate about the impact?

Senator Hill—It can be as informed as the parliament requires. It is not uncommon for the parliament to actually inquire into proposed legislation. But it is not the role of the committee at this time at this hearing.

Senator LUNDY—I look forward to your reasoning.

Senator Hill—If other parties want to inquire into prospective legislation, there are well-established practices for doing so, but this is not the time or place.

Senator LUNDY—Typically, what are the types of companies, exporters, that will be affected?

Senator Hill—What do you mean by 'will be affected'?

Senator LUNDY—I mean in relation to the 500 that you nominated, were it to apply to the current grant year. Are they, typically, larger exporters?

Ms Ward—If the legislation is passed, because one of the changes would be reducing that turnover ceiling, we would know that it would impact larger companies because it would reduce the turnover ceiling from \$50 million to \$30 million. Another of the proposed changes is to reduce the maximum number of grants received from eight to seven, combined with removing the provision for additional grants beyond the current maximum of eight—that is, additional grants going to new markets. We know therefore that the changes would impact companies which are already more experienced in exporting. Those are two of the key intents as set out by the minister in his press release: to target the scheme more towards those that the government believes are most in need of the assistance—that is, smaller companies and companies which are still early in the years of export experience.

Senator LUNDY—Has Austrade done any more recent projections, particularly since the 2000 review, of the likely demand for EMDG in future years? I guess this relates in part to the policy of seeking to double the number of exporters in a five-year period.

Ms Ward—No, at the present time. You would be aware that Austrade is running a program as part of that doubling objective, called the New Exporter Development Program. In trying to get some information on EMDG we have looked at the database of participants in that scheme. There is nothing from that that in any way can even give you an indication of whether it is going to lead to increased demand, although it has confirmed what we expected: the companies are predominantly small—in fact, micro type companies—who may not spend enough to claim on the EMDG scheme or may take two years to aggregate their claims and are more likely to be small claimants.

The client satisfaction survey that Austrade will be running—just as EMDG does a survey—will be part of a suite of surveys of client satisfaction in July and August. There will be a survey of participants in the New Exporter Development Program. I cannot tell you more details about that because it is not my realm of responsibility. However, we have requested that a question be asked in that survey to give us some feedback: have people heard of the EMDG scheme and, if they have heard of it, do they intend to apply to use it? I do not have any further information at this time.

Senator LUNDY—Has Austrade carried out any analysis of the likely impact of doubling the number of exporters under the EMDG scheme, again in line, obviously, with the stated government policy of doubling the number of exporters? Indeed, to ask that question in the negative, what will be the effect of the limitations on the EDMG cap of Austrade's efforts to double the number of exporters, and what is the analysis of those limitations?

Ms Ward—In terms of an analysis, no, we do not have any clear answer to that, for some reasons that I have already referred to—the uncertainty of demand on the scheme both because of natural growth and the growth coming through quite proactive attempts as part of the doubling activities. We are putting some steps in place to try to get a measure of the latter. I talked about the former—that is, natural growth—in terms of the uncertainties in the outlook for the year ahead. But in terms of the impact on the scheme, one of the stated objectives by the minister in his press release on the proposed changes is to allow more room in the scheme for small companies as part of the doubling objective.

Senator LUNDY—In terms of demonstrating success for the government's policy of doubling the number of exporters, is it your understanding that the results of the distribution of grants through the EMDG scheme will be either a significant or primary indicator of the success or otherwise of that policy?

Ms Ward—I do not think I am the one to necessarily answer that question.

Ms Lyons—You were asking whether the EMDG scheme and the number of claimants will be an indicator of the government's policy to double the number of exporters?

Senator LUNDY—Will it be either a significant or primary source of evidence of the government's efforts to double the number of exporters within the five-year period?

Senator Hill—That would be drawing a long bow.

Senator LUNDY—I am just asking the question, Minister.

Senator Hill—The answer is no.

Senator LUNDY—Does Austrade have any estimate of the loss in tax revenue resulting from the cap?

Ms Lyons—Can you repeat the question, please?

Senator LUNDY—Does Austrade have any estimate of the losses in taxation revenue resulting from the imposition of the cap on the EMDG? There are a lot of assumptions in that question. Have you done any analysis in that area?

Ms Ward—The answer is certainly no. There would be so many hypotheticals in that.

Senator LUNDY—There are a lot of assumptions within that question. Has Austrade seen the recently released study by the Australian Chamber of Commerce and Industry claiming, 'By 2005-06 more than a full year's program funding will have been lost due to the ... cumulative run-down in funding resulting from the failure to index for inflation the EMDG scheme.' I am quoting from the May 2003 ACCI review. What is Austrade's response to that? Do you have any observations of ACCI's opinion?

Ms Ward—I have not seen the study you are referring to, so I really cannot comment on it at all.

Senator LUNDY—It is not exactly a ringing endorsement from the business community of the changes.

Senator Hill—I think you are making a political point, Senator.

Senator LUNDY—Political commentary indeed, Minister.

Senator Hill—You are entitled to go out there and make your political argument, but it is not what this meeting is about.

Senator LUNDY—No, indeed. What investment promotion functions remain with Austrade?

Ms Selby—Are you talking about investment attraction—inwards investment?

Senator LUNDY—Yes.

Ms Selby—That is now the responsibility of a new organisation called Invest Australia. Austrade only does investment attraction work to the extent that our overseas offices might come across somebody who is potentially interested in investing in Australia. We would refer them to Invest Australia. We are talking to Invest Australia about arrangements under which we could do some proactive work overseas, if they wanted it. Just a couple of administrative things: because the investment commissioners are in our offices overseas, we provide their computer support and common services in Frankfurt and San Francisco, where we are the consulate.

Senator LUNDY—How does that complement or fit in with Austrade's other functions? How do you manage that complementarity, particularly in the overseas offices?

Ms Selby—The main thrust of our overseas offices is to help Australian companies do business overseas—mainly exporting. Sometimes the customers, as we call them—the people

overseas—are interested in investing in Australia. If they come across those sorts of companies in the course of their ordinary business, they refer them to the government agency responsible for that to Invest Australia.

Senator LUNDY—How much does it cost Austrade per annum to provide these services? I ask that in the context of the fact that obviously Invest Australia were allocated additional money to try to achieve some outcomes in promoting investment but in fact this referral and support role is still retained by Austrade officers.

Ms Selby—The computer servicing role is paid for by Invest Australia. They pay us, if I recall. There was a financial arrangement for the period 1 July to 31 December last year, where \$1.06 million was paid to Austrade for those services. That was partly a transition period into the new arrangements.

Senator LUNDY—For that ongoing role, is it likely to be maintained around that \$1 million figure or to reduce if it was in transition? Can you give me an indication from, say, 1 January to 30 June of this current financial year?

Ms Selby—I just need to ask my financial colleague.

Mr Ritson—I understand that that is still being negotiated with Invest Australia.

Senator LUNDY—We will come back to that. I am interested to know whether Austrade's ability to recoup those expenses will continue.

Ms Selby—It will, particularly in terms of proactive work. The reactive work is where, in the course of our business, you happen to be talking to somebody and they mention that they are interested in investing in Australia.

Senator LUNDY—So you just make the call and note it down in the statistics column. Do you keep statistics of referrals like that?

Ms Selby—I don't know.

Senator LUNDY—Could you take that on notice?

Ms Selby—Yes.

Senator LUNDY—Thank you. Does Austrade conduct investment promotion functions on behalf of Invest Australia?

Ms Selby—We have done at least one, as I understand it, in Seoul in Korea, under a fee-for-service arrangement with Invest Australia. We are talking to them at the moment about a broad framework for how we might do that going forward.

Senator LUNDY—Could you tell me how much you received for the South Korea function?

Ms Selby—I don't know.

Senator LUNDY—Could you take it on notice?

Ms Selby—Sure.

Senator LUNDY—Could you also on notice provide the committee with information about how that arrangement shapes up, when it does?

Ms Selby—Sure. We are talking to them about a memorandum of understanding to have a formal agreement about those sorts of things.

Senator LUNDY—In relation to TradeStart, I think last time we spoke there were 49 TradeStart offices according to answers to questions on notice.

Ms Selby—At that time, yes.

Senator LUNDY—Are there more now?

Ms Selby—There are 51.

Senator LUNDY—Can you please provide a list of all those TradeStart offices by electoral division?

Ms Selby—Yes.

Senator LUNDY—Thank you. Can you tell me how much the average TradeStart office costs to run and could you take on notice an apportioning to each of those offices within those electorates the cost of each office? Could you tell me on average how much it costs to run an Austrade office?

Ms Selby—Do you mean a TradeStart office?

Senator LUNDY—Yes, I am sorry; I am talking about TradeStart.

Mr Vickers—The simple answer to the question is that it costs on average \$120,000 to operate a TradeStart office where that TradeStart office is full time. We have quite a number of offices in smaller centres in regional Australia which are part time and therefore cost proportionately less.

Senator LUNDY—If you could on notice provide me with the detail for each of the TradeStart offices by electorate and the costs—

Mr Vickers—Certainly.

Senator LUNDY—Just turning to my electorate—or to the ACT; I think Barton is in Fraser—the TradeStart office is run out of the office of Australian Business Ltd?

Mr Vickers—That is correct.

Senator LUNDY—Does Austrade run many programs through ABL?

Mr Vickers—Other than TradeStart?

Senator LUNDY—Yes.

Mr Vickers—We have quite a wide-ranging arrangement with ABL because of their status as an important business association and from time to time we run different types of promotions with them.

Senator LUNDY—Could you take on notice providing me with a full list and the associated costs?

Mr Vickers—Certainly.

Senator LUNDY—What is the arrangement between ABL and Austrade to run the TradeStart office in their premises here in the ACT?

Mr Vickers—We have a contract with ABL which specifies the amount of money that is paid against specified outcomes.

Senator LUNDY—How much?

Mr Vickers—How much does that office cost? I would have to calculate that for you but it is in the order of \$120,000. It is slightly more because they do a slightly larger number of clients than other offices do.

Senator LUNDY—I have a series of questions relating to TradeStart but I will put them on notice given the time. Is it true that compensation claims have been made by several current and former female Austrade officials based overseas against another Austrade officer in a sexual and racial harassment case?

Ms Lyons—There certainly have been some claims made. I cannot tell you whether they include females or not.

Senator LUNDY—Are you able to tell me whether claims have been lodged against Austrade for damages?

Ms Lyons—When you say claims for damages against Austrade, in the strict legal sense no. It is merely some correspondence that has been received from a number of former employees.

Senator LUNDY—Is it correct that Austrade is claiming in their defence that because the alleged offences did not occur in Australia Austrade is not liable for the claims for compensation?

Ms Lyons—No, that is not correct.

Senator LUNDY—Does diplomatic immunity apply in the cases under consideration?

Ms Lyons—That is a matter that we do not have an answer to yet.

Senator LUNDY—Given that you do not have an answer to that, could I also ask you a supplementary question to take on notice? If it is the case, how could it be if the women or people were employees of Austrade at the time? I also have a general question about how Austrade is proposing to resolve this matter.

Ms Lyons—We are in the throes of receiving some legal advice about whether what is claimed in the correspondence leaves us with any liability. Until that advice is received and we have considered it, we would not be in a position to be able to make any comment.

Senator HOGG—Who are you receiving the legal advice from?

Ms Lyons—In the first instance there was some advice received from—and I would have to correct myself if I am wrong here—Mallesons here in Canberra. They have provided to us some names of legal firms in India from which we would get advice on what the local law is.

Senator HOGG—The advice in the first instance is advice as to whom you might seek advice from overseas. How long will it take you to get that advice? When do you expect it to be given by?

Ms Lyons—I cannot answer that because I do not know.

Senator HOGG—Will you take that on notice and also the expected cost of that advice?

Ms Lyons—Certainly.

Proceedings suspended from 2.59 p.m. to 3.30 p.m.

Department of Foreign Affairs and Trade

CHAIR—I welcome back officers of the Department of Foreign Affairs and Trade. The lie of the land for the remainder of today is that between 3.30 p.m. and 6.30 p.m. we have the trade related programs, including outputs 1.1.5 and 1.1.6. At 6.30 p.m. we will have a dinner break until 8 p.m. From 8 p.m. to 8.30 p.m. we will continue with the trade related program. At 8.30 p.m., we will revisit matters raised by Senator Faulkner concerning the consent orders, which he may or may not wish to ask questions about. After that, the intention would be to have AusAID to finish off the evening. With luck, we will not be going to 11 p.m. Hopefully we will be finishing earlier than that.

Senator COOK—Perhaps now is an appropriate time: I have some questions from Senator Sue Mackay relating to the General Agreement on Trade in Services and the Australia-US free trade agreement. There are four questions. With the leave of the committee, perhaps I can put them on notice.

CHAIR—Okay.

Senator COOK—Thank you. I seek a bit of guidance to begin with. Is this where I might ask some questions on the Iraq wheat deal or should I wait for the country area?

Mr Varghese—We are happy to take questions on that at this time if it is convenient to the chair.

Senator COOK—Basically, I would like to know the amount of wheat debt owed by Iraq to Australia remaining from before the first Gulf War. That is the first question.

Mr Varghese—Iraq's debt to Australia in US dollars is \$496 million. That is principal plus interest, and the breakdown of that between debt to the Commonwealth and debt to the AWB is \$US397 million debt to the Commonwealth—that is just principal—and \$US99 million to the AWB.

Senator COOK—That is debt held over from the first Gulf War, is it?

Mr Varghese—Yes, it is essentially the debt leading up to it.

Senator COOK—What is the situation now with the new administration? Does that mean we can expect repayment of that debt?

Mr Varghese—I will ask Mr Hillman to elaborate on this, but I think the handling of the debt will be as a result of a process in the Paris Club, and it is yet to be determined just how that is going to be handled. At the moment I think the Paris Club is still in the information-gathering stage of trying to get an inventory of total debt and at some point it will need to address what to do with that debt. I think the most likely initial response will be some form of moratorium for a short period and then an agreed program.

Mr Hillman—The question of how to handle the debt will need to be based on, first, a full accounting of just how much debt is outstanding and to whom and, second, an assessment by the IMF of Iraq's likely economic performance and its ability to service that debt. On the

basis of those sets of data, the general expectation is—and this has been referred to in various G8 and IMF communiqués—that there would be a Paris Club rescheduling.

Senator COOK—Can you put this in a time frame for us: when do you expect that there might be a decision on whether or not there will be a Paris Club rescheduling?

Mr Hillman—The IMF, I understand, is only just going into Iraq in the coming weeks. In general, officials are talking in terms of about an 18-month moratorium on payments of Iraqi debt. It is a bit of a guess—nobody has actually said when this will happen, but it is probably not going to be in the next 12 months that you will actually get into the Paris Club.

Senator COOK—And then those wheels will grind immediately? How soon after you get the issue before you do expect to be able to determine it?

Mr Hillman—To the extent that there is a moratorium of 18 months, the debt is not imposing any burden on Iraq in that period, but I guess you would need to have some rescheduling agreed by the end of that moratorium.

Senator COOK—Yes. Again I am just looking for a timetable, so it does not have to be rigid—just some idea of when we can look forward to the repayment. What would you say is the likely timetable?

Mr Hillman—I could not say, because it will be up to the Paris Club, on the basis of the quantum of debt and of the IMF's assessment of Iraq's ability to pay, precisely when Iraq could start to service the debt again. There may be a very extended grace period—we just do not know. That is all up for negotiation in the Paris Club.

Senator COOK—But presumably we are all eager to get our money back.

Mr Hillman—Australia is very eager to get its money back, yes.

Senator COOK—These figures you have given me in total are figures of both principal and interest. Given that there is some further delay, can you let me know what interest rate is being charged on these debts?

Mr Hillman—The figure we just quoted you, that Iraq owes Australia \$US496 million, is the principal—plus interest. By a rule of thumb calculation, our expectation is—and there are a lot of variables in this—that interest up to the present would just about be equal to the principal. So you could virtually double the amount.

Senator COOK—Do you know what the interest rate is?

Mr Hillman—I could take that on notice. I think it is around three per cent, but there are all sorts of tricks in calculating these things, depending on the nature of the contracts. I would have to go back to EFIC to get the basic data. If you wish, I can take that on notice.

Senator COOK—If you would, thank you very much. I just want to check the figures I took down: to Australia, the figure I had was \$370 million; and to the AWB, \$99 million. Are they the right figures, because they do not add up to \$496 million.

Mr Hillman—To the Commonwealth, it is \$US397 million; to the AWB, \$US99 million.

Senator COOK—They now add up. Thanks very much. Are you in a position to provide us with any information on the UN oil for food program and what that means for Australian wheat sales, including current contracts?

Mr Varghese—The Security Council recently passed a resolution which extends by a period of six months the shelf life of the oil for food program. That will mean that by the end of that period quite a substantial proportion of the existing arrangements between the AWB and the oil for food program will have been transacted.

My understanding is that the AWB has, in effect, three sets of contracts under the oil for food program, each of around 500,000 tonnes of wheat. If we take the six-month extension into account and run it through to the end of that six-month extension, the first of those two contracts are likely to be fully covered. In other words, they will be delivered and paid for. The third contract will probably go well beyond that six-month deadline. That would need to be the subject of separate negotiations between the Australian Wheat Board and either the Coalition Provisional Authority in Iraq or whatever other interim arrangement is in Iraq between now and the end of that period.

Senator COOK—My other free-roaming question is about the snapback tariff on Australian beef exports to Japan. Is someone able to tell us a bit about when the imposition of that will occur and what DFAT thinks will be the impact of it?

Mr McLean—Since the last Senate estimates hearing—

Senator COOK—I think I last saw you on TV in Pyongyang, Mr McLean.

Mr McLean—I think we might have met here, subsequent to that. Since the last Senate estimates hearing, the Japanese have passed the legislation enabling snapback. That legislation was passed on 28 March. Regrettably, Japan did not listen to Australia's arguments against that measure and, in our view, lost an ideal opportunity to move away from protectionism of that sector towards market liberalisation. A tariff rise would certainly cause some injury to the Australian industry but, more particularly, to Japanese food processors and industry groups.

Senator COOK—Can you tell us what the assessed economic damage might be to the Australian market?

Mr McLean—I do not have the figures here. It is possible that AFFA will have done that research, but it is not available to me. I am sorry.

Senator COOK—Okay. But if we check with them we can find it?

Mr McLean—Yes, we will check with them.

Senator COOK—It is timely that you are here, Mr McLean, because I have a couple of questions on China and Japan. The last time we met, we continued the running conversation about where we are up to in our trade relations with China. Has there been any development since the last estimates?

Mr McLean—We have had some further exchanges in relation to the proposed trade and economic agreement with China, at least to the effect that we have submitted to the Chinese a very substantial contribution to the joint study that it was agreed should be produced during

official talks in September last year. This is pursuant to the agreement between Prime Minister Howard and former Premier Zhu Rongji of May of last year to begin work on a framework agreement to enhance the bilateral trade and economic relationship. The contribution that we provided to this study provides an objective and factual view of the bilateral trade and investment relationship and its potential as a means of informing negotiations subsequently of a government level trade and economic agreement. The key focus sectors which we have contributed to, and which the Chinese are also contributing to, include quarantine issues; meat protocol; trade in horticulture, electrical and electronic goods; mining and energy; textiles and natural fibres; services; sports cooperation; customs and investment. The study also considers horizontal issues, such as intellectual property, national treatment, competition policy, government procurement, transparency and movement of business persons.

This contribution to the study, which was a significant amount of work prepared by our people in the department, was given to the Chinese at the end of March. We are awaiting China's contribution, which will then enable us to provide comments on whatever they are saying on the issue with a view to completing the joint study. It will then be considered by ministers as to what we would then potentially negotiate by way of an agreement.

Senator COOK—Is it intended at some point to make the contents of this study public?

Mr McLean—I think quite a bit of it will be made public in due course. It does reflect quite closely opinions and feedback that we have had from industry sectors and the chambers of commerce. We definitely want to ensure that they are aware of what we are doing, but at this stage it is only to inform the two governments as a prelude to deciding what to proceed to next.

Senator COOK—Given that answer, is there some concern about the commercial-in-confidence content of this report?

Mr McLean—There certainly will be because a number of businesses and companies have provided some information on the understanding that it is held to be commercial-in-confidence.

Senator COOK—Is there any way of getting hold of a sanitised version of it so that commercial-in-confidence interests are not invaded but the public's right to know about how we are developing our relationship with this economy can be addressed?

Mr McLean—We will certainly discuss that with the Chinese. I do not think we would have a significant objection to the bare bones—at least the structure and the main issues that are raised in the report—being made public in due course.

Senator COOK—Have the Chinese made any overtures to us about the anti-dumping legislation that is currently before the parliament?

Mr McLean—Yes, they have. This issue was actually discussed at some length, I understand, by my colleague in the Customs department in a similar hearing 10 days or so ago. She covered that in great detail. That matter is of course under that portfolio primarily, although it obviously does have a direct impact on the broader trade relationships; hence our own interest in it as well. The Chinese have raised the matter with us. Most recently, we had a

Chinese delegation here from the newly formed ministry of commerce, which has taken over from the former ministry of foreign economic relations and trade. They were purely specialists—technical experts—in this particular area who met with our Customs officials and with people from the department. I would have to say that, to the degree to which there had been issues raised by the Chinese, we were able to have very constructive discussions on those with a view to clarifying any misunderstandings that may have arisen, with the Customs department, together with us, looking closely at how we can address the concerns that the Chinese have put forward on this matter so that legislation can proceed but at the same time ensure that there is a positive impact on the trade relationship with China.

Senator COOK—So you have had constructive discussions in order to explain misunderstandings. Has that resulted in the Chinese withdrawing any of their objections?

Mr McLean—The Chinese have also clarified to us what their concerns were. Some of their concerns were issues such as recognition of China as a market economy, and that particular issue was one that we talked through. While the Chinese would ideally like Australia to declare theirs a market economy, they understand quite well that not only is Australia not going to do that yet, nor are any other significant trading countries, but we can perhaps look at some wording changes in the legislation or possibly in the preamble to it that may be able to satisfy the Chinese to a certain degree on that particular issue. That is one example.

Senator COOK—Are you foreshadowing the possibility of the government amending its own legislation?

Mr McLean—I cannot foreshadow that, because ministers are looking at that sort of issue at the moment.

Senator COOK—So can I return to the question: as encouraging and constructive as these talks apparently were, have they resulted in the Chinese removing any of their objections to the legislation?

Mr McLean—I think it is true to say that they went away reasonably satisfied that they understood some of the reasons for some of the points that they had previously objected to. By the same token, without prejudging anything because no decisions have been taken, the customs department, together with us, are looking closely at how we can ameliorate some of their concerns—that is probably the best way to put it.

Senator COOK—Let me put the question to you in this form: they have not withdrawn their objections?

Mr McLean—That is probably correct but, on the other hand, I do not think—to the extent that they might have sharpened—that is going to happen. Indeed, I think they have reduced their level of concern because of what we were able to tell them.

Senator COOK—I saw in the *Australian Financial Review* yesterday that the Director of the Institute for International Economics, Andy Stoekel, wrote a somewhat scathing criticism of this antidumping legislation. I will not put you in the hot seat, Mr McLean, by asking you whether you agree with his criticism or not. Moving onto Japan, is it possible to give us an

update on where we are up to in following through the initiatives to develop a closer relationship with our biggest trading partner?

Mr McLean—A process was begun, also in May last year, when Prime Minister Koizumi visited Australia and met Mr Howard. Essentially there have been three sessions of working groups between Australian and Japanese officials with a view to finalising a report to the two prime ministers next month. There will be another meeting at vice minister/deputy secretary level in Australia later this month with a view to finalising an appropriate report.

Senator COOK—So it is still a work in progress, moving inexorably but very slowly?

Mr McLean—I think it is true to say it has not been a terribly fast process of negotiation.

Senator COOK—Onto the fabled Australia-Korea free trade agreement that the Prime Minister announced three years ago, which has quickly moved from being a free trade agreement to a joint working study, how is that moving? Is that moving about the same speed or slower than the Japanese one?

Mr McLean—There has been no formal process of negotiation. We raised it with the Koreans during the annual MJTEC—the joint ministerial economic dialogue. The answer that we got was pretty blunt—that because of their agricultural lobby or their agricultural sector's lack of enthusiasm about the liberalisation of that sector they really cannot contemplate an FTA. The added element that was made to us, I think in April last year, was that there was a forthcoming presidential election. That has now been held. So we will certainly be raising the matter again with them, probably in advance of the joint ministerial talks when they are held—we hope later this year—with a view to having another go.

Senator COOK—For the time being, this prime ministerial promise of a free trade agreement remains unkept.

Mr Deady—It is not for lack of will or interest from the Australian point of view.

Senator COOK—I understand. Chair, perhaps I should indicate to the officers how I would like to complete my examination of this part of the estimates. If there are officers who are not encompassed by my interests, then they can go and do a constructive job back in the department and those that are encompassed can do a constructive job here in the parliament. I want to ask a few questions about the Australia-Singapore free trade agreement, then I want to focus on the round and then I will conclude with some questions—Mr Deady will be pleased to know—on the Australia-US free trade agreement. I do not have questions on any other subject. Starting with the Australia-Singapore free trade agreement, can someone tell me exactly what the legal position is with this agreement as of now?

Mr Deady—I finalised the negotiations with Singapore at the end of last year. I believe there is legislation up on the hill this week in relation to the changes to the Customs Act required under the FTA to introduce the tariff concessions that would apply to Singapore following the entry into force of the free trade agreement. That is the only legislative change required.

Senator COOK—What is the exact legal status of this agreement at the moment? Is it formally concluded between the two countries?

Mr Deady—The negotiations are concluded and the agreement was signed by Mr Vaile and George Yeo back in February.

Senator COOK—When does it actually come into force?

Mr Deady—It comes into force once both countries have concluded the implementation process as required under the two systems. Once those treaty processes have concluded and any legislative changes required are made, then the governments of Australia and Singapore will notify each other of a specific date to bring it into force.

Senator COOK—Was it intended to bring it into force from 1 July?

Mr Deady—No, there was never a specific date. The language of the agreement says that once the legislative procedures have concluded in both countries, the agreement would then enter into force—that is the situation.

Senator COOK—If the parliament enacts the legislation and then you communicate it to the Singaporean government, and they have done similarly in the interim period, then the agreement comes into force on a date to be fixed?

Mr Deady—That is correct.

Senator COOK—What if the parliament does not enact the legislation? What happens then?

Mr Deady—Until the processes are concluded, that second step of the government notifying the Singaporean government of a date of entry into force would not be possible. The legislative requirements to bring the agreement into place would not be concluded. So until that is done, you cannot fulfil that second part of the obligation.

Senator COOK—It does not come into force?

Mr Deady—No.

Senator COOK—What if the parliament declined to ever enact the changes to the Customs Act that you have proposed? Would you go back and renegotiate those provisions?

Mr Deady—That is a hypothetical question and I do not think it is for me to answer. We have negotiated the agreement, it has been signed and the legislation has been put up to the hill bringing in those tariff changes—that is the only legislative change required. I do not think I can add any more to that.

Senator COOK—So they have been enacted on the presumption that the parliament will do the will of the executive and make the legislative changes?

Mr Varghese—That is normal treaty practice in Australia, as I am sure you would be aware.

Senator COOK—Yes, I am aware.

Mr Varghese—Before we ratify a treaty, in many cases it requires the implementing legislation.

Senator COOK—Yes, I am aware of that. But we have a treaties committee in the parliament. In the presentation that you have made, no account was made of what the treaties

committee of the parliament might say about the treaty. What standing would the recommendations of the treaties committee then have?

Mr Deady—The full treaty making processes will be gone through by the government before notification to the Singapore government to bring it into action. The legislative changes could be made, and the JSCOT process, as I understand it, could certainly be continuing after legislation was passed. That has happened in the past, as I also understand it, in relation to other treaties.

Senator COOK—Which is an elegant way of saying that the treaties committee can offer commentary but it cannot vary or change any element of the treaty.

Mr Deady—That is correct, yes.

Senator COOK—In negotiating the Singapore-Australia free trade agreement, did we have any regard for provisions in the Singapore-US free trade agreement?

Mr Deady—We negotiated the agreement obviously on our own, as a bilateral agreement between Australia and Singapore. The United States were negotiating with Singapore at the same time. We actually concluded our negotiations prior to the United States-Singapore negotiations concluding. There were a couple of elements of our agreement with Singapore where we did conclude, on the basis that, if Singapore extended further concessions to the United States in concluding that agreement, they would flow automatically through to Australia. There were two or three issues where that was the case.

Senator COOK—That is what you would characterise as an MFN clause.

Mr Deady—Essentially, yes.

Senator COOK—But, if they gave an advantage to the United States that they had not given to us, then they would give it to us.

Mr Deady—That is right.

Senator COOK—Does the US have a similar MFN clause in theirs?

Mr Deady—As a general principle, the US has MFN clauses in its bilateral agreements but, as I said, we concluded prior to the negotiations with the United States. I am not sure that they negotiated the outcome that they negotiated.

Senator COOK—Okay. So under this MFN clause, if there was an advantage in the American one that is not in ours, then it comes to ours.

Mr Deady—That is correct.

Senator COOK—Does that mean that the provisions in the Singapore-US free trade agreement relating to labour standards will now come to the Australia-Singapore free trade agreement?

Mr Deady—No. There was no broad MFN clause in our agreement with Singapore. Certainly, those additional concessions and commitments that the United States negotiated, on things like the labour environment, are not part of and are not carried forward into our agreement.

Senator COOK—But you have just said that, if there is anything advantageous in theirs that is not in ours, it flows to ours.

Mr Deady—There are a number of specific elements or specific commitments that we made with Singapore that we said that we would sign off on that basis. We would conclude our negotiations with Singapore in some specific areas on the understanding that if Singapore went further than that in concluding its negotiations with the United States those benefits would flow to Australia. That was not an MFN clause across the board, across the whole of the agreement. There were several specific instances where we included those provisions.

Senator COOK—So we tightly prescribed the areas in which MFN would apply, and for anything outside those areas it does not apply—

Mr Deady—That is correct.

Senator COOK—and as a consequence it does not apply to labour standards.

Mr Deady—That is correct.

Senator COOK—That is a matter for argument among the politicians and I will not press you any further on that at this point, Mr Deady. What about the investor state dispute provisions in the Singapore-Australia free trade agreement? Did they have a point of origin in some of the American bilateral FTAs?

Mr Deady—There is certainly an investor state dispute chapter or mechanism article in the NAFTA agreements—

Senator COOK—Yes. It is chapter 11; I think it is quite famous, or infamous might be a better word.

Mr Deady—but the investor state dispute is also an article that is included in 19 of the investment protection agreements that Australia has negotiated over the last several years. So it is not something that is unique to FTAs and certainly not something that is unique to United States' FTAs. Also, the investor state dispute article in the Singapore-Australia agreement is not a duplicate of chapter 11 of NAFTA.

Senator COOK—Just so we are talking plain language and not trade jargon, and for the sake of clarity, can you tell us what investor state dispute provisions mean?

Mr Deady—In the Singapore-Australia agreement, it means that a Singapore investor operating in Australia could take action against the government of Australia if Australia breached the elements of that investment chapter in the Singapore-Australia agreement. The commitments that Australia has made in the Singapore-Australia investment chapter are in relation to national treatment. We agree that we will afford a Singapore investor in Australia no less favourable treatment than an Australian investor, and in relation to expropriation, if that asset was expropriated, the Singapore investor would have recourse to action against the expropriation.

Senator COOK—And vice versa?

Mr Deady—Yes.

Senator COOK—An Australian company could take action against the Singaporean government?

Mr Deady—Exactly, yes. It is a reciprocal commitment.

Senator COOK—You say we have 19 of these in what forms of agreement?

Mr Deady—In investment promotion and protection agreements—IPPAs.

Senator COOK—My understanding is that we have them essentially with developing countries, where we or a third party might be concerned that the rule of law, or the ability to enforce the law, in those countries is less than satisfactory from our point of view, and we put them in to protect basically Australian investment for that reason. That has been the policy of the department?

Mr Deady—Broadly, I think that is correct. Since it is part of the investment promotion element, it is useful for the developing country as part of the investment protection that they are committing to in those agreements.

Senator COOK—But we have not put them into agreements between developed countries.

Mr Deady—No, we do not have any IPPAs with a developed country.

Senator COOK—How do we regard Singapore?

Mr Deady—We thought there was value in having an investor state dispute article with Singapore. They are, as you said, a feature of most of these FTAs. We thought there was an element of improved, enhanced transparency for both countries to have that sort of provision in the Singapore-Australia Free Trade Agreement. Singapore is not an OECD member, but of course it has a very highly sophisticated economy; that is correct.

Senator COOK—We would regard it as a developed country, wouldn't we?

Mr Deady—I think we would, yes.

Senator COOK—Even though the Australian dollar is appreciating, I think the Singaporean dollar is still slightly above us in value. Where did the impetus come from to include this provision in the Australian-Singapore agreement? Did it come from our side or the Singapore side?

Mr Deady—It was not an area of great contention between us. I think we both saw this as an element of a useful article to have. Basically it reflects the very strong legal systems in both countries. That is the normal recourse. If an investor did have a dispute over these two commitments, as I said, the normal recourse would be to the domestic courts. It also explicitly identifies some third party arbitration, and that is what the commitment is here—that we are prepared to automatically agree to resolve these disputes through a specific time frame through these international bodies, if that is what it comes to. So it is a binding commitment on both sides to move to those arbitration and international investment dispute settlement mechanisms if a dispute arises. It is a commitment that I think is valuable in that sense.

Senator COOK—Thank you for your opinion. I was asking whether we proposed it or the Singaporeans proposed it—or did it spring organically out of the conversation?

Mr Deady—As I mentioned, it is certainly part of our IPPAs, and in that context it was seen as a useful additional element in the Singapore-Australia FTA. It was in our agreements, so we brought that to the table. But it was not a contentious issue. It was not an article that was argued over at great length.

Senator COOK—So we were the proposer?

Mr Deady—Yes.

Senator COOK—As I said earlier, chapter 11 in NAFTA is somewhat infamous. If you accept the case that Singapore is a developed economy, this would be the first occasion that Australia has concluded such a provision between two developed economies. That is a fair call, isn't it?

Mr Deady—Yes.

Senator COOK—What did industry say about this when you consulted them?

Mr Deady—There wasn't a great deal of reaction from industry on this. I think again they are used to these provisions, as I mentioned, as part of the IPPAs. There was no strong reaction either way to this article. I think it was understood that, as part of a free trade agreement between Australia and Singapore, this was a useful additional commitment to include. No-one has significant problems. No-one has identified particular issues that we needed to specifically have this with Singapore but, again as an additional commitment and as a binding commitment, it was thought useful. I think that is reflected in a fairly benign reaction from Australian industry.

Senator COOK—So you did consult with industry about it?

Mr Deady—We consulted with industry across all aspects of the negotiations. We certainly informed them in our discussions and our consultations that this was an element of the agreement. As I said, there was no strong reaction, or certainly no negative reaction, from industry about having it there. Again, there is some value in the sense that this is a commitment and an automaticity that flows if there is such a dispute for an Australian investor operating in Singapore.

Senator COOK—As I heard your words, you informed them that this was an element of the agreement—words to that effect. Did you invite them to agree or disagree with whether it should be in or out, or was it a matter of, 'Look, folks, this is a fait accompli; let's move on to the next subject'?

Mr Deady—It was an element of the overall chapter on investment that we were negotiating with Singapore. It was in that context that we had discussions with the industry: these are the key elements of the chapter and these are the commitments that we are taking; we are agreeing to provide national treatment to Singapore investors. As I say, that is what the investor state dispute mechanism refers to in this agreement—the specific commitments of that chapter. There are two things: national treatment in how we would treat a Singapore investor and vice versa; and expropriations. Certainly, with regard to expropriation there were some issues in relation to Singapore that we did have some positive or some offensive interests in pursuing as part of these negotiations. There are aspects of Singapore law in relation to expropriation, particularly of land, that were of concern to Australian industry, and these are the things we tried to address through that chapter, including this investor state dispute article.

Senator COOK—I think this is quite significant, Mr Deady. It is true, isn't it, that in the WTO disputes are between the governments of countries? I think you nodded in the affirmative.

Mr Deady—Yes; that is true.

Senator COOK—But in fact Singapore is not a developing country. We have insisted on this provision in the past to protect our obvious interest where the legal systems of a developing country may not be as effective as in a developed country. We have now crossed the border and had one with a developed country enabling businesses in another economy to sue our government.

Mr Deady—That is correct, in relation to the two commitments that are part of that chapter which, as I said, are national treatment and expropriation—not nearly as wide as the NAFTA chapter 11 that you mentioned before.

Senator COOK—And they can sue state governments?

Mr Deady—The obligations would apply to state governments; yes, that is right.

Senator COOK—And did state governments agree to that?

Mr Deady—The state governments understand the investor state dispute. They understand the investment chapter and the obligations under that for national treatment and expropriation. They understand the investor state dispute mechanism. We have written to the states. They had some questions, including on this, which we answered very fully, I believe. The other thing I should say is that, as we have talked about before, the negative list also cuts in here.

Senator COOK—Yes.

Mr Deady—If we have reserved against these commitments then of course there is no recourse of the Singapore investor against something that we have reserved against this chapter.

Senator COOK—What I am asking is this question: explicitly, did state governments say, 'We agree,' or was the consultation that you have described similar to the consultation with industry, saying, 'This is what the deal is'?

Mr Deady—We have had these discussions with the states and we outlined what was there. The state governments, as we negotiated as part of this, are still completing their reservations list in relation to the services and investment chapters. They understand these obligations that we have negotiated.

Senator COOK—They understand them, but do they agree to them?

Mr Deady—We have negotiated them, as we negotiate all these trade agreements, as the federal government on behalf of all the state governments. In this particular area with a negative list, the state governments have the capacity to reserve if they have any sensitivities in particular areas and they can reserve against this national treatment commitment. We are still discussing with the states any reservations they might have. Again, in the discussions that I have had with the states, and in the discussions through the various other consultative mechanisms on the SAFTA, they have not registered a concern to me. They have asked

questions about the investor state aspects of it, as they have about other aspects of the agreement, but they have not said that this is an area that they have a problem with.

Senator COOK—But they have not specifically agreed, have they?

Mr Deady—I can only say again that the federal government has negotiated on behalf of the Commonwealth of Australia in this and these are the commitments that the federal government has entered into.

Senator COOK—Yes. I am not challenging your constitutional right to do that, I am simply asking: since this exposes the state governments to the potential of litigation when previously they were not so exposed, did they specifically agree to do that or not? The answer seems to be that they were consulted and they understand fully, but the answer also seems to be no, they did not specifically say yes. That is right, isn't it? They did not explicitly say yes.

Mr Deady—No, they didn't explicitly say yes, but they have the right to reserve particular aspects of policies or programs that they wish to and there is already a rule of law in Australia that a Singapore investor operating in Australia has rights before the courts now, so I am not sure that this extends things terribly far, which was the point of your earlier question: why do you need it for developed countries? That is perhaps semi-valid but there are some other aspects of this that we thought were very useful for Australian investors operating in Singapore.

Senator COOK—There has been set bipartisan policy in this area for a long time. We have now deviated from that by going developed country to developed country, but that is a debate we are having. Let me go to my next question: in the objectives of the Australia-Singapore Free Trade Agreement, as announced by the department or as it may have been as announced by the minister, where did it say that we would seek an investor state dispute settlement provision like this?

Mr Deady—I am not sure. I would have to take on notice whether there was ever a statement of objectives in that regard.

Senator COOK—Would you please do that.

Mr Deady—I think what was stated was the desire to commence negotiations with Singapore on a free trade agreement, a comprehensive agreement certainly, including services and investment, but I cannot recall any specific set of objectives that were announced by the government at that time. We can look at that.

Senator COOK—This goes to transparency and that may be a matter that causes some interest. You are the negotiator for the Australia-US Free Trade Agreement as well?

Mr Deady—Yes, Senator.

Senator COOK—Is this a provision that the US wants in the Australia-US Free Trade Agreement?

Mr Deady—We are still at the early stages of the negotiations with the United States on the broad architecture and framework of that agreement. We have had two face-to-face sessions with the United States on the services and investment chapters. This is an area where we are still in detailed discussions with the United States. No decision has been taken by

ourselves or by the United States on whether we do need an investor state provision in the US-Australia Free Trade Agreement. It genuinely is an open question as to whether we believe we need such an article or provision in an agreement between Australia and the United States.

Senator COOK—But it is a feature of all the US FTAs.

Mr Deady—It is.

Senator COOK—And most notably of NAFTA?

Mr Deady—That is correct. I think it was actually the US-Mexico aspect of NAFTA. I do not think it was an aspect of the original CUSTA. It was a NAFTA addition, again probably driven primarily by US-Mexico, Canada-Mexico aspects of those negotiations.

Senator COOK—It is a mechanism that has been exercised. We know how litigious the United States is but this is a mechanism that has been exercised in the case of NAFTA.

Mr Deady—There have been cases taken, yes, not just by the United States though but certainly by Canada.

Senator COOK—If I understand your answer correctly, in the case of the Australia-US free trade agreement we are in preliminary stages and it is too soon to call whether or not the Americans will seek such a provision from us.

Mr Deady—That is correct. We are still discussing with the Americans whether we need that provision in the US-Australia FTA.

Senator COOK—Are we going to seek it from them?

Mr Deady—At this stage we are still talking to industry about trying to get a sense of whether industry think that is a useful and necessary part of the agreement and we have got a very open mind. It really is one of those aspects where on both sides there is genuine research and work going into whether we do need it as part of the Australia-US FTA.

Senator COOK—So we have not made up our mind?

Mr Deady—No.

Senator COOK—We are looking at the question?

Mr Deady—Yes, Senator. Both countries are looking at this question.

Senator COOK—What is the timeline for decision?

Mr Deady—On that particular issue I do not think there is a specific time line. I think it is something we will continue to talk to the Americans and to Australian industry about to get a sense of whether we do feel there is a need for such a provision in the investment chapter. It is one of those things, as you said, which has become a feature of FTAs but it is one of those things where we believe the question at least is worth asking. All we have really done at this stage for both ourselves and the United States is to ask whether we need it in the Australia-United States FTA. We are working through those issues. We are certainly doing that here and I know that the Americans have taken that question on board to reflect on themselves.

Senator COOK—As a matter of practical reality, it crops up in all the US FTAs. They usually approach FTA negotiations with a stock of standard requests. We would be a bit surprised if that were not included in what they put to us at the end of the day, wouldn't we?

Mr Deady—I honestly think it is an open question at this point because all of the FTAs, with the exception of the Canada-United States FTA, are between the United States and developing countries. They have that article, that provision, in their Singapore agreement, yes.

Senator COOK—But we have all agreed that Singapore is a developed country.

Mr Deady—They are. They are not a member of the OECD so they are not covered by some of the commitments that we have in the OECD on investment. There were elements of Australia's investments in relation to Singapore where we did think there was some value in us getting some commitment from Singapore. That is what we pursued as part of that negotiation and that is what we achieved. They do relate significantly to that area of expropriation that I mentioned.

Senator COOK—But we are not arguing are we, Mr Deady, that Singapore is a developed country? It is not in the OECD but—

Mr Deady—The OECD is an area where there are some commitments on investment, which Australia has undertaken and which the United States has undertaken, but which Singapore has not.

Senator COOK—You may be aware that the opposition has said that it will wait for the treaties committee to report on this matter before it decides what it will do with the legislation before the parliament. Haven't we conceded it to the Americans by proxy by conceding it to a developed country like Singapore, thus flagging our willingness to do this sort of deal?

Mr Deady—I do not believe we have. We have had some particular discussions on this. We have particularly raised this question about whether, in the context of the structure of the architecture of the Australia-US FTA, we need this provision. Australia has a very open mind on that. We are not opposed to such a provision in the Australia-US FTA but we are just asking the question. We are asking it of industry and we have asked it of the United States. That really is where it is at.

With regard to the point that you make about the precedents, with one exception these agreements that the United States has are with developing countries. This is an agreement between two sophisticated developed countries with a significant rule of law in these areas. So the question we pose—do we need such a provision in this agreement?—is at this stage a genuine question, I emphasise again. No decision has been made and no position has been taken by us. My understanding is that the United States are reflecting on these ideas that we have put to them.

Senator COOK—In our objectives for the Australia-US Free Trade Agreement, we are not saying 'This is one of our objectives.'

Mr Deady—We have not explicitly said no, that we will have an investor state dispute settlement article as part of the free trade agreement with the United States.

Senator COOK—But, given your answers, it may just creep up on us.

Mr Deady—It could be an element of the outcome; I do not know. As I said, at this stage we are exploring that as we are exploring a whole raft of issues in relation to the structure and architecture of the agreement at this point.

Senator COOK—For the Australian-Thai free trade agreement, are we seeking one?

Mr Deady—I could not answer that question.

Senator COOK—I see an officer at the back of the room nodding his head in the negative.

Senator Hill—If he is going to answer a question he had better come to the table.

Mr McKinnon—When you earlier indicated what your program of questions did include, they then left. I am sorry.

Senator COOK—That is fair enough. You have corrected me; that is okay. I have nothing further on the Singapore FTA. I now want to go to the round. Does the minister intend to go to the Commonwealth Business Council meeting in London on 7 and 8 July this year?

Mr Gosper—That is not in the minister's travel program.

Senator COOK—This is the Commonwealth Business Council. I think Hugh Morgan is the chairman of it. It is in the nature of a ministerial forum for ACP countries, is it not?

Mr Gosper—I have not looked at the specific list of participants, but I understand that there are a number of ministers who will be participating. We ourselves are considering what high-level representation we might have, including at senior officials level.

Senator COOK—So we have not yet decided how we will be represented?

Mr Gosper—My understanding is that we have not yet decided, although we will check on that for you.

Senator COOK—But this conference has a session on agricultural trade, hasn't it?

Mr Gosper—I anticipate that it does.

Senator COOK—I am pretty sure it does. Is Fiji invited to attend Cairns Group meetings these days?

Mr Gosper—No, Fiji has not been invited to attend the Cairns Group ministers meeting over the last few years.

Senator COOK—When did Fiji leave the Cairns Group?

Mr Gosper—It is my recollection that Fiji has not been invited to attend Cairns Group ministers meetings since 2000.

Senator COOK—Did it leave or did we simply cease inviting it?

Mr Gosper—It was a decision that was the subject of discussions between us and the Fijians. The reality is that Fiji has found it very difficult over recent years to accept and articulate Cairns Group positions on particular agricultural trade issues. That of course reflects its particular interests in sugar and access to the European market.

Senator COOK—So this was a mutually agreed separation?

Mr Gosper—There were certainly discussions with Fijian ministers about this issue, and I believe that it was accepted that this was the best way to deal with the particular problem that we both faced.

Senator COOK—It was the access to the European market that was the sticking point as far they were concerned, was it?

Mr Gosper—It was their capacity to publicly accept and articulate Cairns Group positions, which they saw as somewhat counter to their interests in maintaining preferential access to the European market for sugar. As you will understand, the Cairns Group position on preferential access arrangements is that they are not a particularly efficient or effective way to grant market access.

Senator COOK—Certainly. The ACP are the African, Caribbean and Pacific countries—commonly referred to as the ACP group in the context of the WTO—is that right?

Mr Gosper—That is correct.

Senator COOK—I just want to establish what we are talking about, otherwise we are guilty of talking in jargon. Do we invite any ACP countries to attend the Cairns Group?

Mr Gosper—I do not believe any of the Cairns Group members are ACP members at the moment. We have of course invited guests to Cairns Group ministerial meetings, some of whom have been ACP members, such as Kenya.

Senator COOK—I did not think any were members but I wondered whether they had been invited as guests.

Mr Gosper—I have given you one example. Kenya is one country.

Senator COOK—Do you know whether there are any others?

Mr Gosper—We would have to check. We have also invited Uganda to meetings in the past. They may have some ACP connection.

Senator COOK—What I am coming to is this: do we have some sort of outreach program to try to encourage ACP countries to better understand the Cairns Group's role and objectives?

Mr Gosper—Absolutely. Over the last two years we have had a big program of outreach to the African countries in particular. We have taken a number of issues to talk about to members of the African block, including ACP members: agricultural trade liberalisation and the ineffective and inefficient preferential access arrangements proposed by the EU.

Senator COOK—The ACP group is African, Caribbean and Pacific countries. Many of those countries are Commonwealth countries. Many of them are also what we would call LDCs—least developed countries.

Mr Gosper—Yes, Senator.

Senator COOK—I am not sure in which guise—the guise of LDCs or ACPs—they are party to what used to be referred to as the Lome convention. Is that right?

Mr Gosper—Yes.

Senator COOK—That convention does what?

Mr Gosper—We will have to get the precise details for you, but it includes, as I understand it, preferential access arrangements.

Senator COOK—That is my understanding too. That has been replaced, hasn't it, by the Cotonou agreement?

Mr Gosper—The Cotonou agreement, yes.

Senator COOK—I keep mispronouncing it. I think you have to speak Spanish to get it right. The Cotonou agreement extends preferential access for least developed economies to Europe.

Mr McKinnon—It extends preferential access on certain commodities, notably sugar, but also some beef and some other less important commodities.

Senator COOK—These might be areas where the least developed economies have some ability to have an export crop of some sort.

Mr McKinnon—That is the rationale behind the extension of preferences, although in almost every case the recipients of those preferences in the most important commodity that is covered, which is sugar, cannot produce it anywhere near the current world price.

Senator COOK—The chairman and I were, as part of the Senate Foreign Affairs Defence and Trade References Committee, just in Fiji and by our calculation they sell sugar to the EU under this agreement at two to three times more than the world price.

Mr McKinnon—Senator, your calculation is exactly right. I think the current world price is about US8c a pound and the price that they are getting in Europe is about US24c, so three times is about correct.

Senator COOK—My understanding is that this agreement is going to expire in 2007 and the projected approach of the EU would be not to renew the agreement but to try and negotiate free trade agreements with each country separately to take account of their separate circumstances. Is that your understanding as well of the direction of this access arrangement?

Mr McKinnon—That is what we think is likely to happen. They need a special waiver.

Senator COOK—Shortly I want to invite you to give us an overview of where the round is up to and what the obstacles are to hitting all of our marks by September for the Cancun ministerial. But for the sake of this line of questioning, I think it is commonly agreed, isn't it, that the agricultural negotiations are behind time?

Mr McKinnon—Insofar as we missed a very important deadline at the end of March to establish negotiating modalities, we could be said to be behind time. But the chair of the negotiating group has a procedural solution whereby we are continuing to work on technical work that has to be done in order to reach a solution.

Senator COOK—Of course, I think the chair is quite a distinguished trade negotiator and is always looking for constructive ways of speeding it up, but effectively at this stage—this is not a criticism; this is an observation—we are not in a position to report at Cancun as the Doha ministerial expected we would be.

Mr McKinnon—At this stage we are not in a position to do that.

Senator COOK—Which brings me to this group of countries, the ACP countries, and our ability to unite the developing country argument with the Cairns group argument. My understanding is that the ACP group of countries resist the idea of Europe reducing its agricultural protection for the reason that if it did, it would decrease their advantage under this Cotonou agreement of access to the European market and open them to stronger competition from efficient agricultural producers like Australia. Is that your understanding?

Mr McKinnon—The position is slightly more mixed than that. The African countries, including the African group, which represents about 40 or 50 African countries, actually have negotiating proposals which would have high tariffs and tariff escalation as a prime focus to cut high tariffs, yet somewhat inconsistently, many of those same countries have endorsed an EU position that they should adhere to Uruguay round modalities and levels of cuts. One of the driving factors, as you say, is that they are worried that cutting high tariffs in Europe would lead to a lessening value in those preferences that they have.

Senator COOK—The chair and I sat down last Monday week with the Prime Minister of Fiji, who, as our ambassador pointed out to us, is the chairman of the ACP group of countries. He described himself to us as a protectionist. I described myself to him as a free trader. His abiding concern was to hang on to his preferential access rather than to negotiate a more open market. We had echoes of that when we talked with ministers in Papua New Guinea. This is a development round. What is Australia's strategy for persuading these LDCs, the ACPs, to buy into supporting our proposals on agricultural reform?

Mr McKinnon—There are several strands to that. Many of the volumes of preferences are quite small and we think it is not too difficult to show that the overall damage that these countries suffer by virtue of the whole structure of European support and protection—that is, depressed global prices—more than offsets the gain that they get from a premium on a quota volume which might be 5,000 or 10,000 tonnes of sugar. For an example such as Fiji, it might be a lot harder to show that, or for Mauritius, where the sugar volume in the quota is quite large.

What we have done is to commission work through the Australian Bureau of Agricultural and Resource Economics which runs through the arguments about what preferences might be worth, the constraints that they put on the development of a country's trade in terms of locking them into a static trade or locking them into a market which is mature, and the diversion of resources—all of the economic arguments—but tries to relate those very much to the country positions. We have been very active in our trade advocacy throughout those Cotonou countries. We have had training courses and visits throughout Africa several times over the last year to give them the other side of the story, because they are being cajoled by the Europeans into accepting that cutting tariffs would damage their trade performance. We do not think in every case or even in most cases that that argument can be sustained, and we are trying to demonstrate that.

Senator COOK—So our strategy is to do the necessary research work to demonstrate in the case of each of their economies what the advantage of more open trade would be and then to go and see them and explain it to them. That is our strategy?

Mr McKinnon—We are addressing ourselves to countries which we see as a key in, say, the Africa group or leading Cotonou countries. Many of those, such as Mauritius, where it is a very large preference, we do not think are ever going to be convinced of our arguments. But, yes, essentially you are right—we have done the analysis and we are trying then to make the broader trade arguments. That work is proceeding. We meet with these countries regularly in Geneva. We visit them in capitals. We certainly do not have the capacity to try and get every country within the Cotonou group, but we are getting a fair cross-section of them.

Senator COOK—These are the least developed economies in the world. They have immature bureaucracies. I make that as an observation, not as a criticism of them—they are very poor countries. Do they have the bureaucratic capability of absorbing this work?

Mr McKinnon—There is a mixture of countries. Some, such as Mauritius—just as an example of one that benefits most from these preferences—would have, on UN purchasing power estimates, incomes higher than all of the developing country members of the Cairns Group, for example. That is about \$US10,000 per year. Then at the other end, of course, there are countries with a whole lot less in terms of capacity. But there is a mixture. Some, such as Kenya, have quite significant capacity. Some have less, but they still have individuals within their systems who can certainly understand all of these arguments and consider those against their own national interests.

Senator COOK—You say that the EU—I think this was your word—cajoles these countries about the need to protect their access. I can understand why the EU would do that in its own self-interest. Do we have any examples of the EU cajoling them, or it is just that we understand from what is said that that is the case?

Mr McKinnon—The WTO is largely a developing country organisation now and we are all busy trying to gain as many adherents to our position as we can. We, just like the Europeans, and just like others on a whole range of issues, are busy trying to explain to the developing countries what our position is and why it might have some attractions to them too. So what they are doing is no different from what we are doing on the other side of the fence. But, certainly, a significant argument recently within the agriculture negotiations, as you are aware, is what sort of a formula we use to cut tariffs. There was a list of developing countries, mostly Cotonou countries, that signed on to Europe's preferred version, and it was basically to demonstrate that there were 70 or more countries that preferred that version. That, in our view, is a case of where they have gone to many of their friends and said, 'This is our preferred version and you are a beneficiary of that, so you could sign on to this list.' So, yes, I would regard that as an example. And there are examples in our own outreach of us doing the same thing on the other side.

Senator COOK—Yes, but to make progress in agricultural trade we will need this group of countries—it is sizeable in number, I think—to come on board at some point, won't we?

Mr McKinnon—Or at least to not actively oppose us.

Senator COOK—And we have the Europeans protecting their position by telling these countries, 'You have preferential access to our market but, if the Cairns Group succeeds, the level of protection into our market will be less and as a consequence the value of your protection will be less.'

Mr McKinnon—That's the argument that I believe they are making, Senator.

Senator COOK—Yes. And agriculture is behind the timetable as far as the Doha Round is concerned.

Mr McKinnon—It is regrettable but that is the case.

Senator COOK—And it is a development round, so Europe is able to point to a number of the least developed countries of the world as supporting them and maintaining their high levels of agricultural protection.

Mr McKinnon—As I said, the situation is slightly more mixed than that. Many bodies such as the IMF, the World Bank and the UN have made it quite clear that levels of support protection are very damaging to developing country economies. So although preferences are one thing that can be pointed to by someone in Brussels, for example, to say, 'Here is evidence of the value you get from our system of support and protection and the way we extend these preferences to you,' there are just as many or more voices on the other side saying that support systems do not help developing countries; they damage them. Even voices within Europe such as the aid agencies of the Netherlands have pointed out the inconsistency between European trade and a policy, so it is not a simple case; there are many voices out there.

Senator COOK—The United Kingdom, I think, are the least protectionist of all European economies. Do they support the EU position of cajoling the ACP group or the LDCs in this manner?

Mr McKinnon—The European trade policies run through Brussels, so I think that all members of the community would be behind the Brussels position.

Senator COOK—They would be behind it. But the United Kingdom is obviously the leading economy in the Commonwealth and it can address many of these countries through the Commonwealth structure—through that organisation. Do you know if it has addressed its mind to doing so on agricultural trade?

Mr McKinnon—The perception that we have, and it is gleaned from public statements as well, is that within the spectrum of positions that are represented within the European communities, the UK, Sweden and, perhaps, the Netherlands are at the more liberal end, and they argue for a more liberal agricultural policy, versus, as you well know, the French and the Irish at the other end. I think that they are more in favour rather than less in favour of reform, if you are drawing a line through the European community's members.

Senator COOK—I think it was at the Durban CHOGM, which is two CHOGMs back, that the Commonwealth took on a major developmental focus. It was the first CHOGM in the new Republic of South Africa. Have we addressed the development focus in any way for agricultural trade reform to at least the Commonwealth members of the ACP through that forum?

Mr McKinnon—We have in the past. I am unaware of the detail and would take the question on notice.

Senator COOK—It just seems to me that that is another avenue. Australia is a major aid donor to the Pacific island countries and the senior economy—I think that is a fair description

of it—within the South Pacific forum. Good governance and development are major components of our policy structure in the South Pacific. Do you know whether we have raised through that forum the damaging impact of allowing the Europeans to cajole those countries to a more protectionist position on agriculture?

Mr Gosper—Yes, Senator, we do talk to AusAID which, as you know, has a large trade related capacity building program, including in this region, about how best we can use that program to help guide some of the Pacific countries onto better trade policies.

Senator COOK—What chances do we give ourselves? While we have all these strategies at play, we still get this reaction from these countries. For them, with their blighted state of economic development, there is the implied or actual threat from Europe that come 2007 they will lose their preference if they do not play ball. In the light of that, what chance have we got of persuading them to come on board?

Mr McKinnon—I think we have a good chance.

Senator COOK—I would be interested to know why you think that. Give me some hope, Mr McKinnon.

Mr McKinnon—They came on board in a Doha declaration in relation to agriculture which was an ambitious declaration. All these arguments on both sides were well and truly under way before Doha and they had made their choice at that time to adhere to the Doha declaration. But, in more practical terms, the European sugar regime is under reform and the value of the preferences is expected to erode over time, which is one of the points that our analysis makes. Apart from Europe's own domestic reform initiatives, which are heading in a more liberalising direction over time, there are initiatives such as Everything But Arms and an eastern Mediterranean version of the same thing which give free access to things like sugar to some countries and that again is likely to bring down the price of sugar over time. Many of the recipients of the preferences produce high price sugar. The only markets they could sell it into would be the high priced EU or the high priced US markets and the EU market price is expected to come down over time. Many of them can see the writing on the wall and they say as much to us. I guess the question is whether the one bird in the hand is weighed up against the two in the bush.

Senator COOK—Or in the cane field in this case as we are talking about sugar. Do you think there is a case for Mr Vaile to go to the Commonwealth Business Council, as some of the ministers from these countries will be there, and put these arguments directly eliciting business as well as ministerial support?

Mr Gosper—We are of course looking to engage with the Commonwealth wherever we can. Our ambassador to Geneva visited London for discussions with the Commonwealth secretariat recently, and we are otherwise looking for opportunities. Over the next month, Mr Vaile has a number of opportunities to engage directly with developing countries, including many of the countries we are talking about. For instance, he will be going to Geneva in three weeks time for a large meeting which has a particular focus on developing countries and their interests in the round. He has there a particularly strong opportunity to talk directly, together with farm leaders, with a number of developing countries including African countries. He will then be attending a mini ministerial meeting in Egypt, which again will involve a number of

the African countries directly on the Doha agenda. So we are engaging with the Commonwealth where we can, but we are seeking of course to maximise our engagement through involvement in the key meetings.

Senator COOK—But you would agree that a Commonwealth meeting chaired by a well-known Australian, let me put it that way, Mr Hugh Morgan, whose views on trade are well known and are consistent with the Australian government trade approach, and a meeting which offers the opportunity of mobilising business sentiment to remove agricultural protection, would offer a good forum for us to present our views?

Mr Gosper—It offers an opportunity and that is why we are considering what high level of representation we could afford that meeting.

Senator COOK—It seems to me that, on agricultural trade, the other developing country issue concerns countries led by India who argue in the agricultural trade debate that they will remove their protection when Europe and the rest of the world remove theirs. That is a recipe for no pressure to remove protection at all, is it not?

Mr McKinnon—Their position perhaps could be even characterised as slightly more conservative than that. They want the developed countries to remove their protection, but they do not want to remove theirs at all. That may be tactical and we hope that it is only that.

Senator COOK—The Indian negotiating position then is simply to maintain its protection. It is not an argument to the developed world; it is really an argument to developing economies that they are not going to open their economy for south-south trade, irrespective of the development nature of the round.

Mr McKinnon—That is a good point. The proportion of developing country exports in agriculture going to other developing countries, I think, is in the order of 40 per cent already and growing fast.

Senator COOK—What is the Cairns Group strategy for dealing with India and this attitude: ‘You remove yours, but when you do we will think about whether we remove ours’?

Mr McKinnon—We did a comparison of the positions of developing countries and found that India’s position is actually quite common. In the comparison that we did only a few months ago—and not much has changed—only Turkey and Mexico indicated something which was more, if you like, proactive than that by saying: ‘We are prepared to remove our barriers along with you.’ The rest of them could be characterised as developing countries saying, ‘Developed countries should get rid of their export subsidies, domestic support and market access barriers. Developing countries will accept that we should get rid of our export subsidies and domestic support’—which you appreciate that, by and large, they do not use—‘but on market access we have particular sensitivities and these should be respected.’ We are trying to make the very point that you made: that stance, if it is held to, is a recipe for the status quo to be retained. They need to consider, perhaps taking into account their sensitivities, something which would require developed countries to do more—sure—and perhaps to do it quicker, but the round will require us all to move.

Senator COOK—It is a recipe for a standstill, but it is also a recipe for damaging the economic growth prospects of many developing countries given the volume of south-south trade that you referred to, Mr McKinnon.

Mr McKinnon—Yes, that is exactly right. Again, we have targeted this issue. Again, we have had ABARE do a report on the benefits of agricultural liberalisation for developing countries. We actually had a joint DFAT-ABARE team take that report throughout key developing countries, including to India, Pakistan and to others, and make those arguments. I think that, at an intellectual level, there is certainly an appreciation of the content of those arguments.

Senator COOK—Are we confident that our strategy is such that we will persuade India off this position?

Mr McKinnon—We will keep on trying and doing everything that we can. We certainly believe that the arguments are resonating. I could not prejudge which way our Indian colleagues will go in the end.

Senator COOK—India is also a Commonwealth country for the purposes of CHOGM and for the purposes of the Commonwealth Business Council. Would you agree that the meeting in July is a forum in which these arguments can be put?

Mr McKinnon—It is another forum but, with India especially, it is worth making the point that we meet with them every time we have an agricultural meeting in Geneva. We have had senior officials go through there; we have had a great richness of contact at ministerial and senior official level as would be appropriate for a country of that size and importance in the round. So they are not in any way neglected.

Senator COOK—How many trade minister's visits have we had to India to talk to them directly at the political level?

Mr McKinnon—I would have to take that question on notice, unless Mr Gosper would like to answer it.

Mr Gosper—We will take that question on notice, Senator. I add that Mr Vaile has had the opportunity to have lengthy discussions with the Indian minister responsible for WTO issues at the Sydney mini ministerial meeting and subsequently at the Tokyo mini ministerial meeting. Also, at the forthcoming Sharm El Sheik meeting in Egypt and at the Montreal meeting at the end of July, he will have opportunities to talk in depth with the Indian minister about these issues.

Mr Varghese—Mr Vaile also made a bilateral visit to India in the first quarter of this year.

Senator COOK—Did he take up these matters with his counterpart?

Mr Varghese—He had a very extensive conversation across all of these issues. I would have to go back and check the records to see to what extent these specific matters were discussed.

Senator COOK—These two items, the preferential access to Europe and the attitude of India—the 'we'll reduce if you reduce and then we'll think about it' attitude—are two

reasons. They are not the only two; I have not come to the big one, which is the EU. They are two reasons why the round is bogged down in terms of agriculture, aren't they?

Mr McKinnon—They are just another two reasons. As you say, you are to come to the EU, but there are sensitivities on the part of Japan, and there are many other reasons. Seven rounds of the GATT failed to deliver on agriculture because there are many issues there.

Senator COOK—We will have to have a position as to how we coax them across the line if we are going to break through, won't we?

Mr McKinnon—We do have a position, as I have explained, in that if we think they are wrong in these arguments, we are doing the analysis and making the links at both the analytical and the trade advocacy level to show them that the position that they are taking will not move the agriculture negotiations forward. To use India as an example, it will also not achieve their very real objectives of having the export subsidies and domestic support being used by the majors cut or eliminated. We are explaining that our view is they will not get their objectives unless they are prepared to consider something more flexible on market access.

Senator COOK—The three major issues, it seems to me, for the developing countries in the development round are agriculture, special and differential treatment, and drugs to Third World countries. I will pick up progress on special and differential treatment later, but I turn briefly to drugs to Third World countries. From my understanding that debate is deadlocked because, while the developing countries have put forward a list of drugs on which they want to be able to engage in generic manufacture to treat the AIDS pandemic and the other diseases that flow from poverty and so forth—tuberculosis and all the rest of it—that list is not agreed, principally by the United States, who argue that there are some drugs included on the list which are not necessary to be there and, as a consequence, there is a stand-off in the negotiations. Is that a fair summary?

Mr Gosper—I will clarify a couple of points. As you say, this is one of the key issues for quite a number of developing countries, particularly in Africa but also India and Brazil, in these negotiations. There is a small technical but large political problem that remains unresolved, and that includes the coverage of diseases that will be the subject of the flexibility arrangements that relate to compulsory licensing—in other words, circumstances where individual countries do not have a particular capacity to produce medicines or to be able to access through compulsory licensing drugs produced by others at cheaper prices. That is still unresolved at this point.

The chair of the negotiating group put forward a proposal in mid-December. The US could not accept that. Essentially it comes down to the list of diseases that are covered. The Doha declaration itself referred to AIDS, HIV, tuberculosis, malaria and other diseases, and the US has concerns about the breadth of this decision. So at this point it remains unresolved. Mr Vaile has taken this issue up with a number of colleagues, including US TR Zoellick, because it is one of the critical issues that has to be resolved in the lead-up to or at Cancun. So he has been talking to a number of colleagues, including US TR Zoellick, about how best this issue can be moved forward.

Senator COOK—I note that you have said what the minister has done in trying to negotiate our way through the deadlock, but what is Australia's position? Do we favour the argument put forward by the developing countries or do we favour the US position?

Mr Gosper—I think we have not sought to block the chairman's text. We can accept the chairman's text, as can most other members, as I understand it.

Senator COOK—It is just the United States that is blocking the chairman's text?

Mr Gosper—It is only the United States which has raised a difficulty with the text at this point.

Senator COOK—Do you think if we could make progress on this or if we could lead in trying to make progress on this it would encourage our arguments on agriculture to be better received by the least developed economies?

Mr Gosper—I think that many of the countries concerned about this issue acknowledge the efforts that Australia made in the lead-up to Doha in finding the broader solution to this problem, including the focus that was given to the access to medicines issue at the Sydney informal mini ministerial meeting and, subsequent to that, Mr Vaile's continuing attention to the issue. At this point the ball is very much in the US court. We will continue to encourage the US to find a solution to this problem.

Senator COOK—I hope we can succeed, because, quite apart from the trade arguments associated with it, it is quite a vital interest. Can you give us an overview of where we are up to in the round?

Mr Gosper—I think you know that after 15 months or so a number of deadlines have not been met. Since the last estimates meeting, three deadlines have failed. They were the end of March deadline for agreement on modalities for agriculture, and the deadlines at the end of May for agreement on modalities for the industrial negotiations and the review of the dispute settlement understanding. I should add that the last one is not part of the single undertaking. Nevertheless, progress has been made on many of the eight separate negotiating groups to some level or other. On services, for instance, we have had a reasonable start to the negotiations, with 25 or so countries making their initial offers. There has been a lot of productive discussion in committees, such as that on the environment. But there are some key problems in the negotiations, as we know.

The issue that is overhanging the negotiations is agriculture and whether or not the EU can engage in those negotiations in a more positive way. We are at the moment awaiting some of the internal deliberations within the European Union on its own CAP reform process, which should be available later this month. I think many members are waiting closely to see what that process will yield. That will be very important in setting the context of the Cancun ministerial and what we might hope to agree on in that ministerial. So there has been progress across the eight groups to varying levels, but there are continuing problems with deadlines being met and there is failure, given the failure in agriculture, to see members take strong positions across most elements of the negotiations.

Senator COOK—There has been some speculation about this, but is there any chance that the Cancun ministerial will be deferred because of the poor progress that has been made?

Mr Gosper—No. I have heard no suggestion that Cancun will be deferred and I would not expect it to be.

Senator COOK—I have an article here which appeared in the *Financial Times* on 31 March, written by their trade writer, Guy de Jonquieres. This is a feature article which was a summary of where the round was up to on that date. De Jonquieres says:

The biggest stumbling block is agriculture, the priority for many developing countries as well as for the US. The key to removing it lies in Brussels.

Apart from the obvious fact that he did not mention the Cairns Group, do you agree with that statement as being a fair representation of what is the biggest stumbling block holding up the round?

Mr Gosper—I think his key point is quite valid.

Senator COOK—You agree? Okay. He also says in his article that perhaps some of the momentum went out of the round when the world took their eye off it for the Iraq war. Do you agree with that?

Mr Gosper—No, Senator, I do not know that I do agree with that.

Senator Hill—Who took their eye off it?

Senator COOK—The world. It focused on the war rather than on the round. That is a fairly straightforward point. He also says that, in any case, the round was in trouble ahead of the war because of the US Farm Bill and because of France sapping momentum on agricultural reform. That is a fair comment, I think.

Mr Gosper—Can I just make the point that none of these things you have mentioned—Iraq and so on—really go to the issue that you have just suggested is the key issue: that is, the EU's ability to engage on agriculture, which is of course linked to the CAP reform process. The timetable for that is—

Senator COOK—June.

Mr Gosper—basically one that has been set and established for some time.

Senator COOK—Yes, and that is this month.

Mr Gosper—I do not think that that has really in any way affected the process that we are now looking at.

Senator COOK—To be fair to the correspondent, he is not saying that that is the central issue, but it is one of the issues, because the round lacks—these are my words, not his—the political will to complete it. As a consequence, negotiators continue to negotiate in a climate in which there is no real pressure on them to conclude.

Mr Gosper—G8 leaders are meeting in Evian this week and will make a statement about—

Senator COOK—That was my next question.

Mr Gosper—the importance of the Doha Round. Kofi Annan has just written to G8 leaders emphasising the importance of the round. We have seen ambitious proposals put forward—including, for instance, on the US—on a number of aspects of the round, including

tariff reduction. So I do not think it is necessarily true to say that the political imperative or recognition of the importance of the global trade round has slipped. There has been no suggestion that I am aware of that the Cancun ministerial should be rescheduled or that the deadline for completion of the round—January 2005—should be shifted.

Senator COOK—He also says in this article that there is a worry that next year the US presidential election season kicks off and that will make it more difficult for the US to play a leadership role in the round. That is a fair comment, isn't it?

Mr Gosper—It is speculative, Senator.

Senator COOK—The year leading into a US presidential election means that that superpower's economic attention is focused inwards, not at global progress, and negotiations are harder to conclude, aren't they?

Mr Gosper—If it is not the US election, it is the German, the French or the Japanese.

Senator COOK—So it is all of them.

Mr Gosper—They all have some bearing.

Senator COOK—Would you agree with this:

Some observers fear prolonged stalemate in the WTO will feed on itself, and that growing disenchantment may lead members increasingly to ignore it in favour of bilateral and regional trade deals. Such initiatives have proliferated worldwide since the WTO's Seattle meeting, and the US, which once frowned on them, has recently become an enthusiastic convert.

In other words, bilateral and regional deals are sucking the oxygen out of the round. I think that is a phrase used by the Director-General at one point.

Mr Gosper—Is that what that quote actually says, Senator? I thought it actually said that, because the round is making no progress, other countries are turning to other trade initiatives.

Senator COOK—Yes.

Mr Gosper—So it was not really a question of the bilateral FTAs sucking the oxygen out; it was the other way round. I thought that is what the quote—

Senator COOK—I can show you the quote. I never engage in misquoting. Anyone who does is a fool because people can check sources. It is saying that the round is slow or stalled, that 'prolonged stalemate' feeds on itself and that leads people into regional deals, in which case, their effort goes into the region, not in resolving the stalemate. That is my point.

Mr Gosper—That might be the case, Senator, although I would not extrapolate from that to our position.

Senator COOK—I do think you may agree with this quote:

No member of the World Trade Organisation disputes that reform of farm trade is the most important benefit the Doha "development agenda" could deliver to the world's poor nations.

The Dollars 300bn-plus in annual subsidies rich countries pay their farmers dwarfs the Dollars 50bn they give in development assistance.

Mr Gosper—No disagreement, Senator.

Senator COOK—I did not think so. I think we are all in heated agreement about that. What is the road map for breaking the logjam or the slow work on agriculture?

Mr Gosper—The most important thing is to bring along the EU and its very important reform process. We are all waiting to see what success Commissioner Fischler has with his partial or full decoupling options. But if they deliver a positive outcome then that will be a very good signal for the negotiations. What it means of course for the Europeans' position on market access and export subsidies is the next question and it is the next question that will have to be dealt with at the Cancun ministerial itself. That is really the key.

I think most members, as you say, recognise that agriculture is the linchpin or the critical element of this round of negotiations. The EU's position is the one that is most important in knowing where these negotiations are going to move now. Over the next month the EU will come forward with its proposals that will address some of the elements of its position for the Cancun ministerial, and we will do all that we can to encourage the EU to come forward with the most ambitious proposal possible. At the same time, of course, we have to work with Cairns Group colleagues, developing countries and the United States to ensure that we are being very clear about what we want out of these agriculture negotiations and how important they are for the round as a whole.

Senator COOK—My understanding is that, even if the EU adopted all Fischler's proposals, it would not be acceptable to the Cairns Group—they are not adequate.

Mr Gosper—What Commissioner Fischler is now addressing is the issue of decoupling, which of course you might recall is something that Australia has advocated strongly for reform of the common agricultural policy over a decade or more. It is really one of the critical developments for the future direction of European agricultural policy. Of course, even if Fischler were to come forward with positive outcomes on that, it leaves open the question: 'What then for market access and for export subsidies?' We will hope that the European Commission articulates to some degree what it intends in those two areas. But, of itself, you are quite correct. What Commissioner Fischler is now proposing does not address the sum of what other members are looking for from the European Commission or indeed what we think the EU agreed in the Doha declaration.

Senator COOK—The EU are to make a decision on this later this month, aren't they?

Mr Gosper—That is right.

Senator COOK—Do you know what the date is?

Mr McKinnon—There is no set date. They have to do it before the end of the Greek presidency, which I think means they have to do it before the end of June, but there is a possibility that it could spill over after that.

Senator COOK—Let me move to services negotiations, the GATS negotiations. Have the state governments seen the source documents in the actual terms of the offer we have made under GATS?

Mr Gosper—As you know, we have made public our initial offer—and I take it you are referring to our initial offer in the GATS negotiations—including the marked-up schedule.

That is it; there is no other document. That document was for purposes of consultation shared with state governments before we lodged it in Geneva and made it public.

Senator COOK—We still have not seen the source documents of the bids other countries made against us?

Mr Gosper—No, we have given them details and descriptions of the requests that have been made concerning Australia but I do not believe we have shared the actual documents with them.

Senator COOK—Am I right in believing that you have not shared those documents because you are bound by a commitment of confidentiality to your other negotiating nations?

Mr Gosper—That is correct.

Senator COOK—That bond of confidentiality is not extended to the states?

Mr Gosper—No, not at this stage. We have not seen a particular need to. We have discussed the requests with them and with state officials on a number of occasions but we have not shared the precise documents, no.

Senator COOK—Can you explain to me what it is that Australia wants to achieve out of services negotiations?

Mr Gosper—We have a set of the export interests in these services industry. There are some key sectors of interest in the access we have in other markets particularly in telecommunications, financial services and professional services. Those are our key objectives and they are reflected in the initial requests we made of other members. The key objectives for Australia in these negotiations are reflected in those requests we have made of others.

Senator COOK—I think you will agree that modelling on services trade shows that there is more to be gained for Australia from services trade liberalisation than from any other sector.

Mr Gosper—Indeed there is more to be gained for all members of the WTO through services trade liberalisation than any other sectoral liberalisation.

Senator COOK—And that includes agriculture?

Mr Gosper—And that includes agriculture.

Senator COOK—In economic terms it is a priority for us?

Mr Gosper—Absolutely. It is of course more than 20 per cent of our exports now and one in five export jobs.

Senator COOK—So why have we put down a standstill offer?

Mr Gosper—That simply reflects our view on the particular status of the negotiations at this point. It is an initial offer. It is able to be amended, withdrawn or supplemented at any time. Depending on how the negotiations proceed then we will review it. I should add that we already have a very liberal services regime by international standards and by the standards of anyone. We are of the view that we have the benefit of the fact that we have undertaken a program of reform and we do have such a liberal regime at this point.

Senator COOK—I understand how liberal our regime is but you are saying that the reason for the standstill offer is that it is a judgment call at this phase of the negotiations.

Mr Gosper—You call it a standstill offer, Senator, but what that means of course is that we have offered to bind certain current regulatory settings. It does not change those regulatory settings, that is true enough, but there is value in binding current settings because it increases predictability.

Senator COOK—I understand the value of binding but we are not proposing anything new.

Mr Gosper—We are not proposing to change regulatory settings, no.

Senator COOK—The US has done the same thing, hasn't it? It has put down a standstill offer.

Mr Gosper—I think that most members have, Senator. A couple have said that they have front-end loaded their offers—

Senator COOK—What does that mean?

Mr Gosper—It is clever negotiating techniques and perhaps nothing more. Canada and New Zealand have said, 'Here is our offer and that is just about what you will get over the course of negotiations. Don't expect too much more.' Certainly, a number of those countries have made offers that go beyond the ones we have made, at least in terms of sectoral or mode coverage, but by and large most members have made commitments that are not terribly ambitious.

Mr Gosper—I think his key point is quite valid.

Senator COOK—You agree? Okay. He also says in his article that perhaps some of the momentum went out of the round when the world took their eye off it for the Iraq war. Do you agree with that?

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that ‘prolonged stalemate’ feeds on itself and that leads people into regional deals, in which case, their effort goes into the region, not in resolving the stalemate. That is my point.

Senator COOK—Does this mean we are actually reserving our position a bit on services for future negotiations in the round or to play our service negotiations into the Australia-US free trade agreement talks?

Mr Gosper—No, it has nothing whatsoever to do with the USFTA.

Senator COOK—You are quite emphatic on that.

Mr Gosper—Thank you.

Senator COOK—I want to ask about the progress of special and differential treatment as one of the development objectives. What is our strategy for helping to break the deadlock on moving forward on that?

Mr Gosper—This is a vexed issue. Only 11 of 88 issues have really been identified.

Senator COOK—I know.

Mr Gosper—Only 11 of 88 in this process have actually been resolved. We have been supporting the chair of the general council who has started a more intensive process to try and address some of these issues in the lead-up to Cancun. Frankly, the problem is that many of the proposals that developing countries are making under this item, of course, go to the renegotiation of Uruguay Round commitments, which make them very difficult issues.

Senator COOK—I have a question on agriculture. I understand that a number of African countries—Benin, Burkina Faso, Chad and Mali—tabled a proposal to eliminate completely the subsidies on cotton growers and that they were supported by number of other African countries. The Cairns Group, by and large, endorsed the initiative to remove all subsidies on cotton. Is it the case that we are backing up the Africans on desubsidising cotton?

Mr McKinnon—That issue has been discussed from time to time. I do not recall whether we explicitly, as it were, put up our flags and filed in behind that proposal, but we have used the example of cotton and the depressing effect of the US Farm Bill subsidies on cotton prices—a commodity which is grown almost everywhere in Africa. That is a very good example of the problems caused by subsidies to developing countries and the reason we need to address the subsidies and the protection of rich countries. That has been an issue. It has been discussed. It is a very good example.

Senator COOK—I understand that the initiative by those African countries is being opposed by the EU, the US and China?

Mr McKinnon—I am not aware that it is being opposed. The US has kept quiet when this has been discussed, seeing no profit in taking a particular position in the WTO discussions. I do not know that China and the EU have opposed the initiative. I think they really have not taken a profile on it.

Senator COOK—Would this be one of the prospective development country deliverables, if you like, for Cancun? Is it of the order that there might be some breakthrough and something achieved here that will give the developing countries some hope that they can get some progress in the round?

Mr McKinnon—No, I would not say so. The way that the agriculture negotiations are being conducted is by formulas, basically. So specific commodities are not mentioned, except insofar as there are references to developing countries being able to use certain subsidies as narcotic replacement crops. In general, we do not say, ‘Here is an issue for cotton. Here is an issue for sugar. Here is a result that might be suitable at this time.’ Instead, we talk about across the board tariff cutting formulas and across the board subsidy cutting formulas.

Senator COOK—Before I leave this round, as far as geographical indicators are concerned, can you give us a summary of where those negotiations are up to?

Mr Gosper—There are no negotiations. That would be our first point. There is, of course, an agreed negotiation on a multilateral register for wines and spirits, but the EU and a number of other countries insist that there is also an agreement to negotiate the extension of that heightened intellectual property protection to food and other goods. Australia and many other countries disagree with that proposition. So there are no negotiations. Nevertheless, the EU, with a lot of support, including from some developing countries, is continuing to insist that there must be negotiations in this area, and we think it will be one of those key issues that will need to be addressed at Cancun.

Senator COOK—We are loading a lot into Cancun, aren’t we? Some have said that this might be another Seattle.

Mr Gosper—I am not sure that we are loading a lot into Cancun. We remain committed to meeting the deadlines and to moving the negotiations ahead. But largely because of the EU’s position on agriculture, many others are holding back on one issue or another. So, yes, it will be a very heavy negotiation session at Cancun. Of course, that is one reason why these informal mini ministerial meetings are being held and why Mr Vaile is participating in these meetings. They are an opportunity to progress some issues before Cancun.

Senator COOK—Thank you, Mr Gosper and Mr McKinnon. I want to move now to the Australia-US free trade agreement.

[5.36 p.m.]

ACTING CHAIR (Senator Ferguson)—We move to output 1.1.6, Trade development/policy coordination and APEC.

Senator COOK—We have had two meetings of the negotiators, Mr Deady. Where are we up to?

Mr Deady—Yes, we have had two full rounds of negotiations with the US team. Back in March, there was the first one here in Canberra and then during the week before last there was a meeting in Hawaii. Both of those meetings were, I believe, very good meetings. At this stage of the negotiations we are very much at the stage of discussing the framework, the coverage of the agreement, the broad architecture. We have not begun the serious business of market access negotiations, and there are reasons for that. Basically, the United States Trade Promotion Authority legislation limits the ability of the administration to negotiate on market access until the International Trade Commission completes its modelling work on the impact of an Australian FTA on the United States economy.

In Hawaii, there were 17 separate negotiating groups which met over the course of the week, and a similar number met in Canberra over the course of that week, covering the very broad range of issues that are on the table in the negotiations. There were discussions on agriculture, rules of origin, services and investment, competition policy—a whole raft of issues that run across these sorts of negotiations. Both sides have agreed that we have made a very constructive and productive start, and that a lot of work was done last year in at least teasing out some of the things that might be part of the agreement. I have mentioned before during estimates that Ralph Ives, the lead US negotiator, and I were both coincidentally the lead negotiators with Singapore, so that helped in some of this process in regard to these framework sorts of issues that we have been dealing with to date. It is a very good start.

The other thing that we talked about in Hawaii last week, following the meeting of the President and the Prime Minister in Crawford, Texas, was what we needed to do as negotiators to accelerate the process in order to try to achieve the goal set by the President to conclude the negotiations by the end of this year.

Senator COOK—So the President has directed his side that the negotiations have to be wrapped up by 31 December 2003?

Mr Deady—From the reports I saw, I think what the President said in Crawford was that we were certainly committed to doing all that we could to conclude the negotiations by the end of this year, setting a goal rather than a deadline. I think the comments of the Prime Minister following that meeting reflect very much that view. The government welcomes very much the commitment of the President to the negotiations. Both sides recognise the amount of work that needs to be done as part of these negotiations in that there are a number of sensitive issues on both sides, and the overriding objective of both sides is still a very big substantial deal. That was certainly made clear by the Prime Minister, and that is what the American negotiators have also said, being very much conscious of the commitment of the President and working to achieve that objective but conscious of the amount of work involved.

Senator COOK—Has our Prime Minister said the same form of words to you as the goal for the negotiations?

Mr Deady—The press reports and the comments of the Prime Minister were very much along the lines I said: welcoming the commitment of the President to the FTA, recognising the sensitive issues involved, the importance from Australia's perspective of achieving a very substantial and good outcome. That is the basis on which we are continuing to advance the negotiations. That is certainly very much the mandate that I am operating with and that I was operating with in Hawaii.

Senator COOK—At Crawford, on the President's ranch, he also said, didn't he, that it was his intention to try to present this agreement to Congress by March next year?

Mr Deady—That is right. Under the Trade Promotion Authority, the requirement on the US side is for the administration to signal its intention to sign a free trade agreement and that triggers a 90-day period. Consultations take place with Congress through that 90-day period and that is where those end of December and end of March dates come from.

Senator COOK—Commentators have said that after that it is just too late because it gets into the US presidential primaries and all the attention to local political issues, making

Congress less amenable to dealing with a trade agreement. That is a reason for this deadline, isn't it?

Mr Deady—I think there is a recognition that there is an opportunity to work to conclude the negotiations by this year, in order to have Congress consider this in what will be a tight time frame between March and when Congress rises before the presidential elections. That is certainly a factor in identifying the end of this year as a goal to work towards.

Senator COOK—You have had two meetings and there has been discussion about the architecture, but we are really waiting for the ITC, the International Trade Commission, which is a domestic US agency called the International Trade Commission but it is not an international body—

Mr Deady—It is the US International Trade Commission.

Senator COOK—Yes, it is an American body. So we are waiting for it to report under the trade promotion act on what are the implications of this negotiation?

Mr Deady—Yes, they undertake an economic assessment of the movement to a free trade agreement with Australia and of the impact on the US economy of an FTA. That report is then passed to the administration.

Senator COOK—That report goes to Congress as well?

Mr Deady—No, it goes to the administration. It does not go to Congress as such. It is confidential to the administration.

Senator COOK—We do not see it?

Mr Deady—We will not see it.

Senator COOK—We have not got the Productivity Commission doing a report similar to what the ITC is doing?

Mr Deady—No.

Senator COOK—Why not?

Mr Deady—We have done our report. The department commissioned a report two years ago, as you know, by the CIE into the economic impact of an FTA. That report was done. At this stage there is no requirement on us or any need for us to be doing that sort of further analysis in advance of beginning the market access negotiations, which is a requirement under US law.

Senator COOK—That is because their Congress has said to the President, 'We will give you power to negotiate, but as a precondition you have to conduct an economic stocktake of what the impact is.'

Mr Deady—That is correct. That is part of the TPA.

Senator COOK—And what we did was a bit of economic modelling.

Mr Deady—That is correct.

Senator COOK—Which is not the same as what the ITC is doing.

Mr Deady—My understanding—and again these things are confidential—is that what the ITC does is essentially a modelling exercise. They plug in what would be the impact on the US economy of a movement to zero tariffs on Australian products. That is the work. That is the limit of this piece of work by the ITC. It is very much a modelling econometric exercise; it is not a wider impact assessment of the FTA.

Senator COOK—Do they model employment impacts in their model?

Mr Deady—I don't know the parameters or the detail of that outcome. It would certainly be a modelling exercise designed to identify the impact, as I said, of a movement to zero tariffs on the US economy. I do not know the precise outcomes.

Senator COOK—The Centre for International Economics study that you commissioned did not study the employment impacts.

Mr Deady—It didn't, Senator. It was a modelling exercise. Essentially the drivers of that model are assumptions about full employment. As you know, it generates the economic welfare gains of liberalisation based on assumptions like full employment with the economy adjusted to full employment.

Senator COOK—Round three of these negotiations will occur from 22 to 24 July in Hawaii. That is the program.

Mr Deady—The week beginning 21 July, yes.

Senator COOK—You will be able to get down to the detail at that about what market access arrangements can be entered into?

Mr Deady—Yes. I believe that the objective there certainly is to commence the negotiations on the specific market access aspects of the FTA, particularly on the goods side. On services there may still be some further discussions on framework issues before we get into specifics on services market access. That is not to say that we will not be able to begin some further detailed discussion about some aspects of services access as well. I think the focus will be more on the goods side of the negotiations.

Senator COOK—Now that you have had two meetings, are you in a position to do a pencilled in sketch of what the final package might look like?

Mr Deady—No. All I could say is that we have a broad agreement on the working structure of the agreement and essentially on the working chapter headings of the agreement and they are reflected in the various working groups that have been established to carry out the negotiations. In virtually all those negotiating groups there is some text that both sides have put on the table but, at this stage, you could not say that we have a broad scope of the likely outcome of the agreement—not even in a framework or legal sense and certainly not in the annexes.

Senator COOK—So we are not yet in a position to do a pencilled in sketch of what the final package might look like?

Mr Deady—No, Senator.

Senator COOK—Mr Oxley was not similarly constrained when he appeared before my Senate committee the other day—he gave us a bit of an overview. But then he is not the official negotiator like you are, Mr Deady.

Mr Deady—No, Senator.

Senator COOK—If you cannot give us a pencilled in sketch, what can you say to define what an outcome ought to be? What is your negotiating target?

Mr Deady—Australia's objectives for the negotiations have certainly been articulated by the government. Mr Vaile put out a statement of Australia's objectives earlier this year before we commenced negotiations in March and that certainly outlines the broad objectives that the government has for the negotiations. They include a fully comprehensive free trade agreement; a truly liberalising agreement in relation to all goods; a strong agreement in relation to services and investment; a very modern, forward looking agreement in relation to those other broader issues like competition policy, intellectual property, financial services, telecommunications, e-commerce and that very broad nature of negotiations that are possible under a free trade agreement. Certainly in that regard we have a very clear indication or set of objectives for the outcome of the negotiations with the United States. If that is what your question was about, then certainly we have that. I thought your question was more about some of the specific elements of that and that is obviously something that we are a long way from yet.

Senator COOK—No, that is the answer to the question at this point. Given the Vaile statement you referred to, do we have to succeed under all of those headings?

Mr Deady—What we need at the end of the outcome is a substantial, comprehensive package. That is what we are negotiating. We have set those broad objectives for the negotiations, and they certainly are that. Certain things I think are absolutely essential. The comprehensive nature of the outcome on goods is essential. That it be a forward looking agreement, one that leads to important objectives in relation to some of the things we want to advance further in the WTO negotiations and also for some of the signals it would send for the region—all those things would be essential parts of the package. I would not say at this point in time any one element that is absolutely essential as part of an overall package. It is the package that is important. It is a package that both Australia and the United States believe at the end of the day is a substantial and satisfactory outcome for both countries.

Senator COOK—You make that call. But my question was: do we have to succeed under all of the headings that you have laid out? The answer seems to be: well, not necessarily, but ideally.

Mr Deady—What we have set out there are the broad objectives for the outcome. I think at this point in time all of those objectives are very important for us. What is essential for a comprehensive agreement is that full product coverage, substantial reductions in tariffs, market access and then improvements in those services and investment and other areas. All of those things are very important as we go into the negotiations.

Senator COOK—If it is unreasonable to ask you to pencil in what the package contents will look like, can you give us an idea of the structure? It has been put to me that the structure

might be something like: an agreement, annex 1, annex 2. Is that the sort of thing that we are talking about here?

Mr Deady—The structure will be, I would say, similar to the agreement that we have with Singapore. There will be something like 20 or 22 different chapters, and those chapters will contain the legal commitments and obligations of both, right across the board. There then will be specific annexes to a number of those chapters. For example, there will be a chapter on agriculture that will establish certain commitments on both sides. We are pressing the United States, for example, for some language in that chapter in terms of domestic support and export subsidies, so some specific language in there that both of us agree to in relation to both of those areas of agriculture. As I have said before, the key element of these FTAs is the market access side of agriculture, but nonetheless we have some ambition in relation to commitments to both domestic support and export subsidies. There will be then an annex attached to that chapter which will reflect the specific market access commitments that both countries are prepared to undertake in relation to agriculture.

That is the structure that really applies across the board. So it will be same in the goods area: there will be specific legal commitments under the chapter and then the annexes attached to that will provide the coverage to which those commitments apply. At this point in time it is the detail of those annexes which is the substance of the market access commitments, which, as I said, we have not even started to talk about yet. That is not dissimilar to the schedules that are attached to countries' commitments in the Geneva processes. That is where a tariff annex would be established which would establish the tariff rates to apply to particular tariff lines as a result of the FTA. That is the broad structure.

In services and investment, the architecture issue there is again very similar to what we did with Singapore. There will be specific legal obligations taken in relation to services and investment, then there will be a list of annexes—and this will be annex 1 and 2. Annex 1 will be a standstill commitment—reservations on standstill—and annex 2 will be a reservation on sectors which will allow ongoing flexibility in relation to the legal commitments in the chapters in services and investment. That is the same model, as I said, as our approach to Singapore.

Senator COOK—So, in this presentation, annex 1 is standstill items—

Mr Deady—On services.

Senator COOK—Yes. And that is items that we are not changing?

Mr Deady—The language of the particular chapter will establish commitments that Australia and the United States agree to apply to each other's service providers. Under the negative list approach, those commitments apply to all service providers—Australian and from the United States. For example, it would say we would have a national treatment article which would say that all US service providers operating in the Australian market will be treated in no worse terms than Australian service providers. Annex 1 allows us to say that, except for these specific nonconforming measures, there are existing measures in Australia whereby US service providers are not given the same treatment as Australian service providers, and we are agreeing as part of these negotiations that we will not make those any more trade discriminatory than they already are. So that is a standstill commitment on those.

Senator COOK—That is the bit I am coming to. We freeze them; we do not make them any more trade discriminatory. We do not aggravate the problem, but we do not liberalise them either.

Mr Deady—No.

Senator COOK—Do we bind items in that annex?

Mr Deady—Yes.

Senator COOK—If they are bound as they are now, what is the intention here? Is it that they can come back and be negotiated during the life of the agreement?

Mr Deady—As part of the agreement, I am sure, there would be a review mechanism—there will probably be annual reviews. There will be scope—and it is certainly there as part of our Singapore agreement—for rolling negotiations over time. There are no specific commitments to address any particular item in that annex list but, over time, there are certainly things that you could revisit as part of that ongoing process.

Senator COOK—They could be called out and talked about?

Mr Deady—Yes.

Senator COOK—Can you explain annex 2 to me?

Mr Deady—Annex 2 is a reservation whereby essentially you would identify a particular sector rather than a particular measure. Annex 1 tends to be measures; annex 2 would be a sector regarding which the government of Australia would be saying, ‘We reserve full flexibility here to introduce even more restrictive measures than currently exist.’ It is a capacity to introduce even more restrictive measures into the future.

Senator COOK—These are sectors—is that right?

Mr Deady—Yes, it tends to be a sector.

Senator COOK—If we want to have upward flexibility on protection, then we are in this annex 2?

Mr Deady—Yes, annex 2.

Senator COOK—And we are reserving the right to have that flexibility by virtue of the sectors mentioned in this annex. Is that correct?

Mr Deady—That is correct.

Senator COOK—Thank you. The last time we discussed this in the estimates format, I think we had a discussion about subsidies on agriculture and I put the proposition that in a bilateral free trade agreement you cannot negotiate the removal of subsidies for agricultural production which are given across the board for a host of reasons other than trade. I think you just nodded to indicate you recall the discussion we had.

Mr Deady—I recall the discussion.

Senator COOK—I am not wanting to take it any further at the moment. I have read somewhere that there is a proposal to discuss subsidies. Is that so?

Mr Deady—Australia certainly has ambitions in the area of domestic support for agricultural products. What you said before is correct. It is not about reducing US agricultural subsidies as part of the FTA; although, it is looking for some commitments from the United States in relation to those domestic support arrangements. Without getting into the details, it could involve further consultation mechanisms or a commitment to work together in the WTO. Any of these things are possible as part of a free trade agreement. That is the aspect of domestic support on which we are thinking of working up ideas to put to the Americans. We do have some ambitions there, and we think there is some value in a bilateral agreement between Australia and the United States on agriculture to have something like that as part of the outcome.

Senator COOK—To neutralise the impact of American farm subsidies in a bilateral trade relationship you could ask the subsidising nation to equally subsidise our farmers so that our farmers compete with their farmers on the same footing. That is not what you are proposing, though?

Mr Deady—We are not proposing that, no. And whether you could do that, I would have to think through, but we are not proposing it.

Senator COOK—It would neutralise the playing field between our farmers and US farmers but it would distort it to everyone else. But we are not looking at any combination of that type of initiative.

Mr Deady—No.

Senator COOK—And we are not looking at it for what reason?

Mr Deady—I don't think that sort of proposal is practical in an FTA or in any other negotiation, frankly.

Senator COOK—No. And you don't think the Americans would agree to it in any case?

Mr Deady—I don't believe so, no.

Senator COOK—So when we talk about negotiating on subsidies, we are talking about signing them up to joint action in the WTO to remove subsidies?

Mr Deady—It could be that. As I said, we are working on ideas in that area. We are also working on ideas on export subsidies, again as part of the legal commitments under the FTA.

Senator COOK—In the WTO the US has put down its agricultural offer and, as I recall it, in doing so has indicated that it is not going to disturb the domestic subsidies provided for in the US farm bill that run for another 10 years. So are we saying that what we are trying to do bilaterally is talk them into changing that position as declared in the WTO?

Mr Deady—No, we are not, and I bow to Mr McKinnon in relation to what the Americans have actually said in relation to their agricultural offer or commitments in the Geneva process. No, that is not the nature of the commitments that we will be looking for from the United States as part of the FTA. It is a commitment in terms of, as I said, some sort of consultations or other processes that we might want to explore with the United States. We have made it clear that the one leg of agricultural protection that is impacted by free trade agreement negotiations is market access. That is the real vehicle for approaching FTA negotiations.

Senator COOK—I want to stick with the subsidies. Market access is, of course, as you have described it. So we want some consultations. Pardon me but the US have enacted their farm bill—it is law; these grotesque subsidies are going to be paid to US farmers—and, as I understand it, in the WTO they have said, ‘Here is our farming offer but our subsidies stay until the farm act expires.’ That is essentially what they have said. So what are we going to consult them about?

Mr Deady—As I say, I do not know precisely these days what they have said in Geneva about their domestic support commitments.

Senator COOK—We might just be ready to find out from Mr McKinnon.

Mr Deady—The point is that we have made it clear—it goes back to your comments right at the start—that, if we are talking about reducing the effect of agricultural support and domestic subsidy arrangements, that is a process that can be done only in Geneva, and we have never said anything different from that. That is the process of reducing the impact and the level of agricultural support provided in the United States, and we are not trying to negotiate that as part of the FTA.

Senator COOK—Are you going to throw some further light on this, Mr McKinnon?

Mr McKinnon—If you want me to describe what the United States has proposed in the WTO context, I am happy to do so.

Senator COOK—It might be useful.

Mr McKinnon—They have proposed that trade-distorting domestic support be cut to a value of five per cent of the agricultural output of WTO members and that what we call de minimis, which for developed countries is another five per cent of the value, as you would be aware, is retained. Effectively that would enable the United States, with some juggling between different coloured boxes—I will not go into the detail—to keep pretty much intact their farm bill levels of spending.

Senator COOK—Yes, but my understanding of their offer or their proposal—you are the expert; I am the amateur—is that they want to cut subsidies to five per cent but not before the farm bill subsidies, as enacted, expire.

Mr McKinnon—They have never, to my knowledge, made that direct connection.

Senator COOK—Haven’t they?

Mr McKinnon—They have not, no.

Senator COOK—So the implication then—to put it the other way round—of what they have said in Geneva is that they may be prepared to go back to Congress to amend their Farm Bill to curtail the subsidies that are in it.

Mr McKinnon—To backtrack, the nature of their proposal in Geneva is where they maintain what is called the ‘de minimis entitlement’—that is their proposal—whereby they allow an additional five per cent. The de minimis is broken into two boxes: product specific and non product specific. It means in total that they can keep about 15 per cent of the value of their agricultural output in trade distorting subsidies. Roughly, on \$200 billion that enables them to keep on spending \$30 billion worth of trade distorting subsidies. Then in addition

there is what is known as the 'green box'. Effectively they may not be too worried about any proposed cuts cutting into the Farm Bill because just by shuffling around between different categories they may be able to pretty much avoid cutting commitments based on their own proposal.

Senator COOK—It is one of these thimble and pea tricks, is it? They can just shift it around and a cut here pops up somewhere else but there is no real change. Is that what they are saying?

Mr McKinnon—If they were to move their subsidies across into less trade distorting categories, that is so. So there is some movement there and that is what the Farm Bill was about several years ago. Essentially, in terms of the absolute amount, I do not think your characterisation is not too cruel.

Senator COOK—I was hoping to be descriptive, not cruel. But if I am cruel to heavily subsidising agricultural nations, well, I am just going to have to learn to live with that. On export subsidies, as far as the Australia-US proposal is concerned, what are you raising with the United States on that?

Mr Deady—I do not want to get into too much detail but there are some ideas in there that we do have that we have put to the United States in Hawaii.

Senator COOK—You should feel free to give us as much detail as you like.

Mr Deady—We are in the negotiations on this and there is a limit, I think, in fairness to the United States. But we have some ideas there in relation to export subsidies. Again, at one level there is cooperation and commitments in relation to the broad approach to export subsidisation as part of the multilateral processes, and I think we would be looking for some further commitments there. If you do look at some of the things that they have done in some of their other FTAs about the question of providing export subsidies to product between the parties to the FTA, then again we have some ideas. In relation to perhaps specific products or specific markets we would also like some sort of commitment. But that is as much as I could say.

Senator COOK—I hear your disinclination to go into detail but let me put this question to you concerning Iraq. Is the sort of thing you are talking about saying to the Americans: let us have a competitive market for wheat in Iraq and therefore you are not going to subsidise your exports to this market?

Mr Deady—Senator, the idea of some sort of commitments on commodities in particular markets is the sort of idea we are putting forward, but I am not prepared to talk about what markets or what products we are talking about at this point in time.

Senator COOK—It is not just confined to one commodity; it is across the board?

Mr Deady—Yes. It is in relation to commodities of export interest to Australia.

Senator COOK—I know that you would have thought that this was inevitable—and if you did you were right—but yesterday, propitiously, the *Australian Financial Review* had on page 3 a story headlined 'US free trade proposal rings alarm bells'. In the small box headed 'Key Points' it says:

- The US is applying pressure for a lengthy rules of origin agreement.

- Manufacturers want to analyse the proposal before agreeing.

Are you aware of this article?

Mr Deady—I saw that article, yes.

Senator COOK—I am sure it would have been extremely difficult for it to escape your attention. If you have seen the article, you will know that the introductory paragraph says:

Local manufacturers are concerned about American proposals for a complex set of rules for determining which Australian goods would qualify for tariff-free access to the United States under the proposed free trade agreement ...

And so it goes on. This is an argument about rules of origin, isn't it?

Mr Deady—It is about rules of origin, yes.

Senator COOK—We have a standard approach to rules of origin issues.

Mr Deady—We have an approach that we applied in the CER with New Zealand and we applied the same approach in our negotiations with Singapore, which is effectively a 50 per cent value-added—

Senator COOK—It is a formula.

Mr Deady—It is a formula.

Senator COOK—It is an easily expressed formula which applies across the board.

Mr Deady—It applies across the board, certainly with New Zealand. There were some additional elements, which we spoke about before, with Singapore. But it is a value-added concept. It is designed to ensure that the preferential arrangements benefit a product of Australia, a product of Singapore or a product of the United States. It is about establishing a rule that will ensure that the product goes through some sort of substantial transformation in the country that it is meant to.

Senator COOK—The Americans have a different approach in their bilateral agreements.

Mr Deady—They have a different approach to rules of origin, yes.

Senator COOK—Theirs is a thick book of particular measures, listing each item, isn't it?

Mr Deady—They have, essentially, a bit of a hybrid system. Their broad approach, as you said, is that origin is established effectively by a change of tariff classification. For example, if an engine is imported but that engine is then turned into a motor vehicle then that is a change of tariff classification. The motor vehicle would qualify as a product of Australia or a product of the United States. They have that system. As I say, that is the broad principle. They also do have some value-added concepts as well. So some aspects of their rules on particular tariff lines are similar to our 50 per cent rule.

Senator COOK—I have to say that there are some journalists that I do not admire, but Mark Davis, who wrote this article, is one that I do admire. He says in his article:

A similar set of rules of origin included in America's recent FTA with Singapore took up 284 pages, compared with the 15 pages taken up by rules of origin provisions in the Singapore-Australia FTA.

Is he right about that?

Mr Deady—I would have to check the exact numbers, but roughly that is correct. There is a system that looks tariff line by tariff line, essentially, so it does run to that number of pages and that detail.

Senator COOK—This article goes on:

Trade expert Alan Oxley of International Trade Strategies said the product-specific approach “provides an opportunity to impose a little protection at every point, which is what the US did in the North American Free Trade Agreement, with quite difficult rules of origin for textiles and automobiles.”

Is Oxley right?

Mr Deady—I think it is more complicated than that. It certainly does not necessarily involve a higher level of protection.

Senator COOK—To be fair to him, he says, ‘impose a little protection at every point’. He did not say ‘a high level’. It is a way of sneaking some protection in.

Mr Deady—My comment there would be that it is more complicated than that. It certainly does not necessarily add even a little increase in protection or something along those lines. One thing that it has to its advantage is that it is very transparent. There is no need to keep records; there is no need to go through and physically make this value-added calculation. It is very clear for the exporter, once he or she has looked at the product line, to say, ‘Yes, with my product I import this component and I import that component, but I turn it into something in a different tariff heading.’ Then they are through the hoop; they do not need to keep any records. That in itself is certainly not in any way, sense or form necessarily protectionist at all. What they are trying to get at, as we are, is substantial transformation. There has to be some significant transformation done in the country, some manufacturing process undertaken that transforms that product, so it is not simply a screwdriver type operation. That is how it has to be looked at.

That is the sort of conversation that we are having with Australian industry. It is a very intensive exercise—going through with Australian industry to explain the American system and understanding what the implications are for Australian exporter interests into the United States and for Australian areas where we are looking at product coming in from the United States. Going through with industry explaining that is a resource intensive exercise.

That article also refers to some comments by Leigh Purnell who, I think, has indicated that, while he had some initial reservations about the American system because of the very elaborate 280 pages you mentioned, having sat down and looked at it a bit more closely, it is not quite as daunting as it was. I am not putting words in his mouth saying that he has accepted the US rules of origin—neither have we, but we are working through it with a view to seeing what are the implications for us and what does it mean for Australian industry in relation to both exports to the United States and imports from the United States.

It is not straightforward. I think it is a very detailed exercise. It is a resource intensive exercise that we need to go through. Certainly the argument can be made that, having done it once, it is actually simpler. And I think that is the case. When you get down to textiles and other areas where you have this hybrid—where you get both systems operating, if you like—again, there are some complications that we need to particularly work through with the textile, clothing and footwear industry. The auto industry is another area where there is some detailed

work we need to do. But we are doing that with industry groups as I speak, right across the whole tariff. That is a process we need to go through in order to make an assessment about whether, in fact, this would work for us if we went down that approach.

Senator COOK—So Oxley has not got it quite right in this quote?

Mr Deady—I do not believe Alan is quite right in that particular quote. It is complicated. It is resource intensive. As you said, in his quote he goes on to talk about TCF and auto. Again, there are elements of the rules of origin in relation to the United States—certainly in textiles—that we do have some concerns with, and there I think Alan is correct. There is a protectionist element in the way the rules of origin have been established with NAFTA on textiles, but that gets to an added complication of what they call ‘yarn forward’ and ‘fibre forward’ rules, which are also part of the rules of origin. Again, that is something that we are looking at and working through with industry to see whether that arrangement would work in relation to Australian industry.

Senator COOK—With regard to textiles and auto, if there were some sort of in-built element of protection in their rules, we would want to knock that out, wouldn’t we? We would want to clean them up?

Mr Deady—We want a system of rules that delivers market access for Australian exporters in those industries so we are reflecting where there is genuine value added and substantial transformation happening in Australia so that that product should qualify for the rules.

Senator COOK—But we do not want to cop a set of rules which has built into it—no matter how slight—some extra cushion of protection.

Mr Deady—No, we do not want to undermine the market.

Senator COOK—We want them cleaned up?

Mr Deady—With the market access commitments we get from the United States in relation to tariffs and other border measures, we want to ensure that Australian industry takes full advantage of that market access.

Senator COOK—We are working through their proposal to test it. Are they working through ours?

Mr Deady—They are asking us questions. We are explaining our system to them. We had a session in Hawaii on the rules of origin, as we did here in Canberra. Again, almost by definition, ours requires less detailed work than theirs. At this point in time, we have not made any concession at all to agree to the US approach to rules.

Senator COOK—Is it a fair description to say we are looking at theirs, they are looking at ours, and you are going to come back and talk about it?

Mr Deady—That is correct.

Senator COOK—I think Mr Purnell, as you have pointed out, has indicated that he is looking at it. But they are not agreeing at this stage?

Mr Deady—No, they understand, I think, very clearly the implications of it and the need to work through it to see whether it would, in fact, work for Australia if we did go down that approach.

Senator COOK—If you have such a big annex, with so many additional pages listing all of these items, isn't it fair to say that that imposes a transactional cost because of additional red tape for exporters or importers?

Mr Deady—That is where there is a genuine question that we have to talk to industry about, because there is a very strong case that there is actually less red tape involved in the US rule, if that rule is simply a change of tariff headings. If you are using a value-added approach—if you are using our approach—you have to keep the records. You have to establish and be able to produce for auditors, or for the monitoring and enforcement mechanisms that we have, that these are the costs of the input and this is the value adding. So you need to keep an accounting record of that in order to establish that this is a genuine product of Australia or of the United States. However, if, for example, you have an agricultural product that is made solely from dairy products—if it is Australian milk that goes into cheese—which changes tariff classification, you do not have to worry about how much value you added to that milk. You do not have to keep the records that that is an Australian product for the purposes of the rules of origin. So it is just not as straightforward. Line by line it can be different. For a large part of the tariff, I think it is a non-issue, frankly. It is that part of the tariff where it is an issue that we have to make sure we get right, if we take that approach. But it certainly does not necessarily follow that there are more resources or more red tape involved in the process.

Senator COOK—But isn't that explanation correct as far as things are now? So when you write the schedule and you stick them all together at that point it may fine, if I accept your argument, but things change—new products are introduced and new variations of old products appear—and every time something happens like that you have to go back and rewrite additional rules.

Mr Deady—No, I do not think so, because you are talking about a change of tariff classification at the four-digit level, which is a fairly aggregated level of the tariff. So essentially, if products change from one classification to another classification now, then it is likely that that would continue. If there was a new product, that is the process. In my view—and, again, this is what we need to work through and clarify—it certainly does not follow that new products would complicate the matter to any significant extent, because the HS System is the system we both operate under. Changing tariff lines is pretty clear. That would continue whether it is a new product or a modified product. The other complication is that exchange rates and other things that are outside the control of the manufacturer could actually throw the value-added concept out. So you could be exporting today and meeting a 50 per cent value-added rule, have a change of exchange rate and not meet that rule because the value of the imported product, for example, suddenly became more expensive. So the value you add to that product is suddenly less than 50 per cent. As I say, it is complicated. It is just not clear which, in abstract, is the right way to go. It does need work and working through.

Senator COOK—So we are not sure whether this is more efficient. We are just looking at it.

Mr Deady—We are working with industry to see what the implications of it are—whether it does achieve and whether it would deliver for Australian exporters. Again, across the bulk of the tariff, I do not believe it is an issue. It is a non-issue really. It is in particular tariff lines

where it does become or certainly is important. We need to do the work, but in order to verify that claim we have to go through everything. I accept that and that is what we are trying to do with industry.

Senator COOK—Do you know how many pages there will be if this is picked up for a prospective Australia-US free trade agreement?

Mr Deady—My expectation is it would look a lot like the 280-odd pages in the Singapore agreement. It would still be that level of detail.

Senator COOK—It blows out that number of pages.

Mr Deady—Yes.

Senator COOK—In this article, is Mr Davis right that the Americans are putting us under a fair amount of pressure?

Mr Deady—At this stage it has been very much an information exchange—a discussion about our respective systems—so I do not think that is entirely accurate. It has not been that sort of discussion as yet. It has been very much exploratory, getting an understanding of what the US system is—particularly in those areas of textiles where again, as I said, there are these additional wrinkles—and seeking from the Americans an explanation of all of that so that we, in turn, can go back and talk to Australian industry about those issues.

Senator COOK—So we are under no pressure? You do not expect this to be one of the demands of the Americans?

Mr Deady—This is the Americans' approach to rules. It is the approach that they have used in NAFTA and most of their agreements. It is not a secret that that is their preferred model. We have our approach, as you said before. We have explained why we think that approach works well for us. As part of the negotiations at this point in time we are looking at the American approach and working through it to see whether it would work for Australian exporters and importers.

Senator COOK—We have declined over the years to sign the Agreement on Government Procurement, haven't we?

Mr Deady—That is correct—at the WTO, yes.

Senator COOK—Why have we done that?

Mr Deady—There are several reasons why we are not a signatory to the GPA. In our view, elements of the GPA are discriminatory. The tendering process elements of it are very prescriptive. Decisions have been taken by a number of governments not to sign on to that agreement.

Senator COOK—From our point of view it is too prescriptive, we believe in industry development—and our IT sector in particular is important—and the policy of this government on procurement is to require a certain percentage of small business to be suppliers to the government. What did we do on procurement in the Singapore FTA?

Mr Deady—We have a reciprocal chapter on procurement with Singapore whereby we have agreed to non-discriminatory treatment of Singaporean exporters into this market in terms of government procurement. In the context of that non-discriminatory treatment, we

have allowed for the industry development type arrangements which you mentioned to be exceptions to that broad principle of nondiscrimination. So we have maintained the aspects of industry development which are part of the Australian system whilst making commitments to Singapore in relation to federal agencies only. No state government agencies are included at this point in time in the Singapore-Australia FTA.

Senator COOK—So we have what we might call a fairly transparent agreement with Singapore?

Mr Deady—It certainly gets to transparency. It describes the system and it makes commitments in terms of the tendering process. They are the commitments that are in there.

Senator COOK—I have heard it said that the Americans are red hot on procurement. Certainly, they have put us under pressure over the years. What are they asking us to do in the FTA?

Mr Deady—The first face-to-face session on procurement was in Hawaii, the week before last. We had a phone hook-up; they did not come to Canberra. That discussion was very much an information exchange. They have not put on the table any specific proposals to us yet. They wanted an explanation of the Australian system. We had a number of questions to ask them about the operation of different aspects of US procurement. There is an offensive interest from the Australian point of view in procurement with the United States. Because we are not part of the GPA we are excluded from government purchasing in the United States. US industry certainly has no such constraint on it in operating and supplying to government in Australia. US companies are major suppliers to the state and federal governments in Australia. So there is a substantial offensive interest in this chapter which we are exploring with the United States. The government sees this chapter as an important one and one that we are prepared to explore to get a significant outcome in this area.

Senator COOK—Would a significant outcome be to get the Singapore deal into our US FTA?

Mr Deady—Without going into details, at this stage it is a genuine exploration. As I said, we have some very substantial offensive interests in the US in terms of government procurement. A number of companies that we have spoken to have problems in accessing government procurement in the United States. Equally, a number of companies that do supply the US government find additional costs in doing that, through establishment in the United States rather than supplying directly from Australia or other means. So there is an offensive interest there.

There are aspects of our procurement arrangements which the United States are asking us about. Industry development is a part of it but, frankly, there was not a lot of discussion about the industry development of aspects of our arrangements. There was some discussion about the tendering processes. It is clear, I think, that their template for this would be somewhat more prescriptive in terms of tendering than our principles based approach. But that is the level of discussion that we have had at this point in time.

CHAIR—Are you happy to stop there, Senator Cook?

Senator COOK—Yes.

CHAIR—When we reconvene after the break, you have half an hour of questions, Senator Cook, until 8.30?

Senator COOK—Yes. I should indicate I am going on to e-commerce after this, in the context of the FTA.

CHAIR—Then we will have some other questions and then we will move on to AusAID.

Mr Varghese—Chair, are there any other issues coming up after the break that we should have people available for?

Senator COOK—I will go on to the industrial relations issues. Intellectual property is another one.

Mr Varghese—They are all USFTA related?

Senator COOK—Yes.

Mr Varghese—Thank you.

Proceedings suspended from 6.31 p.m. to 7.59 p.m.

Senator COOK—I foreshadowed before the dinner break that I would have some questions on e-commerce in the context of the Australia-US Free Trade Agreement. There is a debate in the WTO on whether or not e-commerce is a good or a service. I think I see you nodding in the affirmative, Mr Deady. What is Australia's position in the debate?

Mr Deady—I will bow to my colleagues on the WTO but, basically, we have not got a firm position on it one way or the other. E-commerce is, from our perspective, a technology that allows trade to flow. We do embrace aspects of it; for example, the moratorium on tariffs on transmission of digital products is one we would certainly see as a product, but other aspects of it fall more into being a service. In a sense, it is an enabling technology, and that is a debate that, as you rightly say, is one the WTO is engaged in. But I have not been involved in those particular aspects of the discussion.

Senator COOK—But it is more than a conceptual or theoretical debate; this is a pretty fundamental debate about a new technology and its influence in the marketplace. It does raise the question of where the best place is to debate e-commerce. At least the WTO is about a multilateral trading system which, in that context, protects the smaller players. An FTA is about market power, and in the context of e-commerce we have got the major market force negotiating with us over it. In our strategic self-interest, is that a wise decision to allow? Why do we not just punt the e-commerce argument back into the WTO and have it settled there?

Mr Deady—We believe there are aspects of e-commerce that we can very usefully talk about with the United States and, in fact, look at taking some commitments. We do have a chapter on e-commerce in our Singapore agreement. There are a number of things there that we thought were quite useful in that context. One was a commitment to the extension to Singapore of the moratorium on tariffs on transmission of digital products. There are also things like consumer protection, online data protection and those sorts of elements, where we think there is some useful work and discussion that can go on. If the United States and Australia can come to some sort of forward-looking agreement on this chapter, it could be quite useful in terms of taking forward ideas to the multilateral process and into the APEC

context. There is also discussion about these things there. I think it does fall into that category of at least being an issue up for discussion.

Senator COOK—That worries me very much for this reason: in the multilateral system—at the WTO—we are one of a bunch of other players, and the market power of a dominant player, like the US in that context, is balanced by the structure of the system. When we go one-on-one with the US, it may well be that we will set precedents that might be played back into the multilateral level, but whether they are the precedents that we would have argued for and been able to pull off at that level is a good question. As you know, in the WTO debate, the US says e-commerce is a good, whereas the EU says e-commerce is a service and it should be wrapped up in the services arrangements. I would have thought it would be in Australia's interests for us to argue that e-commerce is a service.

Mr Deady—That debate is one that you do not necessarily have to get into. We do not have to resolve that debate between Australia and the United States, just as we did not effectively resolve that debate between ourselves and Singapore, in order to come up with some commitments in this area which can be instructive or helpful in those broader processes.

One aspect of the bilateral discussions that is certainly relevant here is that there are just two of us in the room. Australia can take or not take commitments in this area, can craft language that reflects our particular interests in these areas. So I think a chapter like this one allows us quite some scope to put forward our own ideas, to basically demonstrate some leadership in this area of trade and trade policy. But it is one that at this point in time is very much in the early stage of discussions with the United States. It certainly is one of these areas for teasing out ideas, as I said before. We certainly have some ideas—they are reflected in our Singapore agreement—that we want to take forward. The Americans have a chapter on e-commerce as part of their deal. That is where we are at. At this stage of the negotiations I do not believe you can make assumptions about what might or might not be agreed at the end of them. As I say, we can take reservations, we can deal with the particular issues that reflect our positions very clearly in any bilateral with the United States.

Senator COOK—I just wanted to make the point about my concerns on this, quietly but very strongly, because I think this is a very vexed area. We are not just negotiating with the United States, two in a room. The US has a hub and spokes policy and ours is one of several FTAs they are negotiating. They, as the dominant player in the market, are negotiating with minnows in each of those FTAs and setting up a pattern of precedents to play back into the multilateral level, which is not in our best interests if we accept the product view and not the service view. That is what is qualitatively different here. It is true, isn't it, that the minister—or it may have been you, Mr Deady—has said, in order to give reassurance to the Australian cultural community, to the movies makers, actors, singers and so forth, that the cultural exception we seek in order to protect Australian culture is not threatened by this FTA. Is it you or the minister who has said that?

Mr Deady—I am not sure either I or the minister have put it in quite those terms. Certainly what the government have said very clearly is that we will not be putting at risk our cultural objectives, ensuring the government can deliver those cultural objectives through the FTA.

Senator COOK—I do not want to put words in your mouth. If that is the government's position, the words you have just uttered, that is the reassurance given.

Mr Deady—Yes, that is the reassurance given.

Senator COOK—But in the US-Chile FTA there is a definition of what a digital product is and it is not just movies or television or music that you can download; it is architectural designs, paintings and prints of all sorts, which goes right across the cultural exception reassurances that are given. The new technology is where the entertainment or cultural dimension meets the technology dimension. It is just another way—you said enabling technology—of delivering culture and, if you believe the pundits, one more likely to be accessed in the future than currently.

Mr Deady—That is a very good point. The point I would make in response is that, with any reservation Australia takes in relation to, say, architectural services, what is imperative as part of the FTA negotiations, whether or not we have a chapter on e-commerce, is that that reservation stands right across all the chapters of the agreement. I agree 100 per cent with that, and that is what we are working towards. Architecture is a very good example.

Senator COOK—Architectural designs. It could be fashion designs or whatever.

Mr Deady—Yes, it could be. The point is that, if our negative list, which we talked about earlier, insisted that in order for an architect to deliver architectural services in Australia they had to be physically located in Australia, that would be a breach of national treatment: if an American architect actually had to be located in Australia to provide architectural services. If they go away and do their architectural designs and put them in an envelope but are located in Australia, that is fine—that architectural design meets the requirements of Australia. If that architectural design is sent over the Internet, that is irrelevant to that commitment on services. The medium it is sent by is irrelevant. If we had a situation where we did not require that US architect to be located in Australia, where they could design a building and send that design from the United States and did not have to have a local presence, we would argue that we were indifferent as between whether that comes through the Internet or gets put in an envelope. That is the condition.

The United States-Chile agreement makes it very clear that whatever reservations you take out on services are not overridden by the chapter on digital products. It makes it very clear; it is explicit that the commitments on services, the reservations you may or may not take on services, are not overridden by the chapter on e-commerce, on digital products.

If we had a chapter along the lines of the Chile one—and, as I say, that is something we are nowhere near yet—we would have to ensure that whatever reservations we did or did not take would be fully reflected right across all the chapters of the agreement, whether that be competition policy, e-commerce or any other aspect of the agreement.

Senator COOK—I was at Geneva for the wrap-up of the Uruguay Round. I think you were there, Mr Deady—we were both there. We had a different relationship then than we do now. You may recall the negotiations on the cultural exception for the Uruguay Round. I recall them vividly—they went to about three, four or maybe five in the morning. At one point Mickey Cantor, the USTR, stepped out of the negotiating chair for the US and Jack Valenti of the Motion Picture Association of America took the chair of the US trade representative. He

negotiated directly with the French until he gave up in exasperation as well because the French were never going to yield on the cultural exception, and nor were we. We were in the slipstream of France in those negotiations. But the justification the US had for folding their position was that they can overcome the objections through e-commerce and through satellite TV. The means of delivering cultural products was changing and they could reach the market by the new technology. If I read the US-Chile FTA properly—though you have said some things about it which will cause me to go back and look at it again, in all honesty—it opens the door to the cultural guarantees that you have offered, in the form that you have offered them, being eroded.

Mr Deady—It depends on the reservation that Chile takes on the services area. If it takes a reservation on audiovisual, broadcasting and cultural services, then it is up to Chile to ensure that that is not overridden by any particular commitments that it may take in the e-commerce chapter. That would be the requirement; that would be our position. Whatever commitment we may or may not be prepared to take on audiovisual, then we would ensure that whatever we negotiate on the services chapter, whatever we negotiate in our reservations and whatever we negotiate on e-commerce will be mutually supporting and one will not override the other. That is certainly something that can be delivered as part of an FTA negotiation, including a chapter on electronic commerce. That would depend on the level of the commitment that the country, in this case Chile, was prepared to undertake. If Chile had that commitment written into annex 2—a complete carve-out of broadcasting—there is nothing in e-commerce that would override that.

Senator COOK—I do not want to unnecessarily extend this but I want to go to the point that I put to you that, in the national interest, the best place to negotiate this is in Geneva as part of the round rather than individually when we are, as a minnow, dealing with a major market player and that market player is setting up a hubs and spokes arrangement with a lot of FTAs reflecting their position and rolling it back into Geneva. Are you able to give us an assurance that, whatever the outcome of these negotiations, we will not put ourselves in a position where we conclude an FTA which contains provisions that enables an unsatisfactory precedent to be set and levered back into the multilateral round?

Mr Deady—Yes, we will negotiate an agreement with the United States that we believe represents a package of commitments that is in Australia's national interests, and there is nothing in that agreement that we would have signed on to that we would see as undermining our objectives in the broader multilateral sphere.

Senator COOK—This is a work in progress and I just wanted to mark the spot about this concern because I think it is not well understood, but as soon as it is there will be a sense of, 'Why didn't we know about it,' and it is better to deal with these things upfront, so I am just marking the spot about that. Has the US asked us to join the WIPO treaty?

Mr Deady—Not in the context of the IP chapter—the discussions that we have had with the United States. We are a signatory to some of the WIPO treaties.

Senator COOK—We are a member of WIPO but, as far as I understand it, we are not a signatory to the main intellectual property—

Mr Deady—I would have to take that on notice but, in the context of the FTA discussions, that question has not been put to us.

Senator COOK—Is there a reason why we wouldn't be a member of the WIPO treaty that you are aware of?

Mr Deady—Again, I have to take that on notice.

Senator COOK—It is reported in the media that the US and Australia have reached some sort of in-principle agreement about the industrial relations or labour provisions for an FTA. Have we?

Mr Deady—No.

Senator COOK—What is the formal government position on that?

Mr Deady—The government's position on both labour and environment is that we do not believe that there is any necessity to include provisions on labour or environment in trade agreements. That is the position of the government and that is the position that we have taken to the United States. At the same time we understand very clearly that they are provisions and chapters that the United States have included in a number of their recent trade agreements—Chile and Singapore—and certainly it is a provision of trade promotion authority. We are very conscious of the requirement of the United States to have something on those areas in trade agreements as part of TPA, so we are sitting down and certainly exploring with the United States what exactly TPA means in these areas and what exactly they have done with Chile and Singapore. That is the extent of the discussions at the moment. We have certainly agreed or are sitting down and talking on those issues but the government has taken no position in relation to the inclusion of labour or environment chapters in the agreement as yet.

Senator COOK—I think the media report I saw said something along the lines that Australia has a straightforward position here that honours the basic standards and so has the United States, so including something in an agreement, while maybe not desirable, is of no difficulty because it changes nothing. The emphasis I have is on 'changes nothing'. That is not a direct quote but a paraphrase of what I recall. Are you saying that is not our position?

Mr Deady—Our position is that the government does not believe that you need trade and labour provisions in trade agreements.

Senator COOK—Are you aware that the AFLCIO—the American equivalent of the ACTU—has criticised the effectiveness of the provisions in the US-Chile and US-Singapore agreements and are promising to mobilise congressional opposition to any trade agreements that do not include these types of provisions more effectively than the two foregoing agreements. They have made that threat.

Mr Deady—I have not seen the specific comments from the AFLCIO in that regard but I understand that both those agreements are now part of this consultative process with Congress—both the Singaporean and Chilean agreements.

Senator COOK—Are we looking at a MFN clause in the Australia-US FTA?

Mr Deady—We are talking here primarily about, again, the services of investment chapters. The United States does have MFN clauses in most of its FTAs. We do not have a

specific MFN clause in our agreement with Singapore; it is actually what I would call a conditional MFN clause. That is an area certainly that the United States has a request in. It is one of those areas that we are certainly open to looking at as part of the FTA with the United States, but no decision has been taken.

Senator COOK—Can you tell me what the difference between an MFN clause and a conditional MFN clause is?

Mr Deady—Yes. We have a clause in our agreement with Singapore that, if Australia or Singapore offers a more generous concession to an FTA partner in future, Australia and/or Singapore could approach that partner with a view to negotiating the inclusion of that concession in the Singapore-Australia FTA. That would be subject to negotiation and further concessions on the part of the other party if you were to do that rather than it being automatic. If we had a straight MFN clause in Singapore and if we were prepared to make further concessions to the United States, Singapore would benefit automatically. In this situation, Singapore would have to approach us and say, ‘We would also like that concession and in return we are prepared to offer Australia something.’

Senator COOK—I have asked this question before. As I read it, the NARA treaty with Japan provides MFN treatment for Japan: is that how the government reads it as well?

Mr Deady—I think the NARA treaty is narrower in its scope than a broad MFN clause. The situation in relation to investment is probably the most pertinent and relevant area. That would depend on what concessions, if any, Australia made to the United States that went beyond the status quo and whether that would trigger any further commitment to Japan. It would depend on the actual concession, if any, made to the United States. Again, I do not think that there is an absolute automaticity in that flowthrough.

Senator COOK—The point you are making is that you pay some regard to the NARA treaty—

Mr Deady—Yes, Senator.

Senator COOK—in terms of obligations under that to Japan in negotiations with a third party where we do a more beneficial deal.

Mr Deady—Yes, Senator.

Senator COOK—I do not have a lot of time so I would just like to run through a couple of issues as quickly as I can. What is the situation in the negotiations so far with single-desk marketing?

Mr Deady—There has been a very detailed question and answer session and exchange of information in the meeting held here in Canberra. There was no further discussion of single desks in Hawaii and that is where it has been left. The Americans asked us a number of questions in relation to AWB Ltd and a number of the other state trading enterprises. In fact, they had questions about the operation of all the state trading enterprises that we have notified to the WTO. We had a number of questions for the United States in relation to the state trading enterprises that they have notified, in particular the Commodity Credit Corporation. There was an information exchange and there has been nothing further on that at this point.

Senator COOK—What about auto tariffs?

Mr Deady—There has been no discussion whatsoever yet on auto tariffs and market access.

Senator COOK—And what about the Pharmaceutical Benefits Scheme?

Mr Deady—Again, the Pharmaceutical Benefits Scheme is very much along the lines of the state trading I have mentioned. There was a very detailed question and answer session in the meeting here in Canberra where officers from the Department of Health and Ageing answered a number of questions asked by the United States in relation to the operation of the PBS and some written material was provided to the United States following that session. There was no discussion of any substance on PBS in Hawaii. Before we left we flagged with the United States whether there were any particular issues on the PBS that the United States wished to follow up following the information discussion in Canberra and they said no and that they were still reflecting on that and talking to US industry. That is basically all that happened in Hawaii. The one thing that did happen there was that the US negotiator in the media conference following it made some comments in relation to some of the perhaps very exaggerated claims in the Australian media that week about what the Americans may have been seeking in relation to the PBS.

Senator COOK—What about cultural protection?

Mr Deady—Cultural protection is a market access issue. There has been no discussion in the negotiating sessions on audio visual market access concessions there. Some public comments were made by Ralph Ives on audio visual.

Senator COOK—And the Foreign Investment Review Board?

Mr Deady—Nothing on the Foreign Investment Review Board. The discussions in the investment chapter and services have been on the framework.

Senator COOK—On our side, have we raised the issue of the Jones act?

Mr Deady—On market access, we have not specifically raised the Jones act, but again, in terms of the objectives set out by Mr Vaile, the government's intention in relation to fast ferries is articulated there.

Senator COOK—And the same is true for all the agricultural issues: they are all market access issues?

Mr Deady—Yes.

Senator COOK—On the financial services front the argument is put that it is not so much the US federal government that one needs to worry about, it is the state governments in the United States that have all sorts of protective barriers for investment and conditionality on investment for financial transactions in their states. Is that true, in your view? If so, what are we doing about it?

Mr Deady—One of these chapters that we have not yet had a face-to-face engagement with the United States on is financial services. Given the discussions on the broader services issues and investment, as yet there has not been a specific sit-down and discussion on financial services. I think that is an area where we are still talking to Australian industry. Across the board on access issues on services I think we are looking for additional

information from Australian industry about some of the particular issues, whether they be regulations, licensing or commercial presence type issues that we would want to take up, and financial services fit into that category. Again, it is really a market access discussion but we have not yet even had a direct sit-down and talk to the relevant US officials on financial services.

Senator COOK—So it gets serious from the July meetings—I think 22 July.

Mr Deady—Certainly these areas are of critical importance to the FTA—the very substantial, detailed market access discussions, whether they be dairy, fast ferries or specific issues in relation to services. Yes, it is in July that those discussions will begin.

Senator COOK—Realistically, that July meeting will be the first engagement between the two sides on the issues relating to market access—the real guts of this agreement—but it is unlikely to be the last occasion on which you negotiate this. What is the program from July onwards?

Mr Deady—We have agreed that there will be another formal round back in Canberra towards the end of October, and then another full round in December. In the meantime, one of the things that we talked about with the US side in Hawaii was how we can give effect to this more urgent intensification of the negotiations. Essentially, we have agreed that there will be several face-to-face meetings or video conferences between now and July. The ITC report that we mentioned is still due to be passed to the administration at the end of this week, 6 June. We have agreed that towards the end of this month we will have some contact with the United States about how we approach those market access discussions in July. I think that will help us when we physically get to Hawaii again.

There will be some intersessional arrangement standards and we have already agreed that there will be a delegation from Australia travelling to Washington to discuss those issues. More particularly, between July and October we envisage an ongoing series of smaller contact between the various negotiating groups and the United States to give effect to that target date of the end of the year. For example, the agriculture group, I believe, will travel to Washington and sit there and talk to US colleagues on aspects of that chapter specifically during that period.

Senator COOK—Are there any arrangements at this stage for a ministerial meeting?

Mr Deady—There are a number of opportunities whereby Mr Vaile and Bob Zoellick will be getting together. In fact, the APEC trade ministers meeting is on in Thailand this week. Mr Gosper mentioned the various mini ministerials in the context of Egypt, which is coming up, and Montreal. There is also the APEC ministers and leaders meeting in October. We did talk broadly about the need for ministers to get together. I suspect that that meeting in October, prior to the session back here in Canberra, is where there will be a significant stocktake meeting between the two ministers. Obviously, that will depend on their travel and other programs during that period but that is what is envisaged.

Senator COOK—Thank you, Mr Deady; we have finished with a minute to spare.

CHAIR—Thank you, Senator Cook.

CHAIR—Mr Moraitis, do you have something to report?

Mr Moraitis—Yes.

CHAIR—Would you like to report now?

Mr Moraitis—I understand that you wanted an update on the finalisation of consent orders in the Federal Court today. I can confirm that I have been advised that the Federal Court did settle in the course of today consent orders relating to Federal Court action undertaken last month. These orders reflect what the two parties had agreed amongst themselves before the court proceedings, as mentioned yesterday, relating to the agreement by the applicant to discontinue proceedings and for Mr Chester to revoke his determination and agreement on costs between parties.

Senator FAULKNER—Let us just start on the costs issue. As I understand what you are saying, the Department of Foreign Affairs and Trade will pay the costs—

Mr Moraitis—Yes, that is correct. I can confirm that. The parties agreed that the department would pay the costs of the applicant pertaining to the Federal Court proceedings only.

Senator FAULKNER—As well as its own costs?

Mr Moraitis—Correct.

Senator FAULKNER—Do we have an indication at this stage of what those costs might be?

Mr Moraitis—At this stage we have no indication of those costs. We are awaiting that applicant's information as to costs and then obviously we will need to assess that information with a view to reaching agreement as to agreed costs as per the consent process.

Senator FAULKNER—You do not know what the applicant's costs are, but what about the defendant's costs—in this case, the department's costs?

Mr Moraitis—The respondent's costs? I have no figures for those costs at this stage. We have not been invoiced.

Senator FAULKNER—Sorry?

Mr Moraitis—It is my understanding that we have not been invoiced for those costs yet.

Senator ROBERT RAY—We are looking at a good \$60,000 or \$70,000 all up though, aren't we?

Mr Moraitis—I can't speculate, Senator. As I said—

Senator ROBERT RAY—I thought \$40,000 would be a nice round figure because I know where you can make a saving in the department.

Mr Moraitis—Really, I can't speculate on exact figures of that magnitude.

Senator ROBERT RAY—So there has been no claim put on you at this stage?

Mr Moraitis—By the applicant?

Senator ROBERT RAY—Yes.

Mr Moraitis—No.

Senator ROBERT RAY—But you have to pay the applicant's costs up until 7 May 2003 as agreed, all taxed, is that right?

Mr Moraitis—Correct. That is the term of the consent order as pertaining to the Federal Court proceedings.

Senator FAULKNER—But surely you would have a reasonable idea of your own costs, Mr Moraitis, in relation to this action?

Mr Moraitis—You mean in relation to the Federal Court action? We have not received invoices from the AGS to that effect.

Senator FAULKNER—Do you know what the billing rate is?

Mr Moraitis—I can check for you if you wish.

Senator FAULKNER—I do wish. Thank you.

Mr Moraitis—My understanding is that we have no invoices relating to the Federal Court proceedings. I really cannot tell you what the costs would be.

Senator ROBERT RAY—You agreed to pay that cost, did you?

Mr Moraitis—The parties agreed that the cost would be borne by the department.

Senator ROBERT RAY—The five respondents agreed to pay the applicant's costs, clearly?

Mr Moraitis—Yes, that is right. That is what the court consent order specifies.

Senator FAULKNER—Who is the applicant in this case?

Senator ROBERT RAY—We do not put the name on the record.

Mr Moraitis—We do not mention names.

Senator FAULKNER—That is an interesting issue. Is the applicant's name not public at this stage? Without providing the name, let me ask whether it is public?

Mr Moraitis—It is public.

Senator FAULKNER—Do you know what the Federal Court's scale of cost happens to be? I thought this would be something that would be coming across your desk all the time.

Mr Moraitis—Not necessarily. I have sought confirmation of the scale of cost pertaining to this action, and we have not had details of that yet. We have not received any information of the applicant's costs yet either.

Senator FAULKNER—So even in relation to your own costs, you do not know what the billing rate is on an hourly or daily basis?

Mr Moraitis—For AGS?

Senator FAULKNER—Yes.

Mr Moraitis—In general terms?

Senator FAULKNER—In general terms—if you do not know it specifically.

Mr Moraitis—My understanding is that, in general terms, we have dealings with AGS for legal advice at an hourly rate of about \$280. But, obviously, the court proceedings were for about 5 or 10 minutes.

Senator FAULKNER—I assumed you would have some idea of those billing rates and costs, given your responsibilities in the department.

Mr Moraitis—Yes.

Senator FAULKNER—I am relieved to hear that there is at least that general knowledge floating around in the department.

Senator ROBERT RAY—If the department and the applicant cannot agree on costs, does the matter go back to the judge for arbitration, does it? Is that the normal process?

Mr Moraitis—Not to the judge. My understanding is that there would be—

Senator ROBERT RAY—A registrar?

Mr Moraitis—a process called taxing where a master would look at the parties' agreement or otherwise and he or she would decide the appropriate costs.

Senator ROBERT RAY—And you have to check that the other side is not padding the bill a bit—to put it impolitely?

Mr Moraitis—Exactly. You would wish to have itemised what the claims of cost were.

Senator FAULKNER—I am not a legal expert like you, but I thought there were cases of settlement agreements in which these sorts of things were often discussed between parties. Is that right or wrong?

Mr Moraitis—My understanding is that it depends.

Senator FAULKNER—So it is sometimes the case?

Mr Moraitis—In many cases it is not—it is the agreement on principle as to paid costs.

Senator FAULKNER—In many cases it is not and in many cases it is—is that right?

Mr Moraitis—My understanding is that it could be.

Senator ROBERT RAY—Obviously, the applicant has had a range of legal costs with this whole associated matter. Is the awarding of costs only going to that amount of preparation that has gone to the court cost?

Mr Moraitis—Yes.

Senator ROBERT RAY—How do you distinguish? There must be a lot of overlap in issues.

Mr Moraitis—That would be the issue. That is why I said I cannot give you a quantum of the applicant's costs, because we are waiting for the itemisation of those.

Senator FAULKNER—I want to be clear on this. I appreciate there is no invoice. You have made that clear and I accept that.

Mr Moraitis—I have just sought confirmation of that, yes.

Senator FAULKNER—I accept that absolutely. But while there is no invoice there is no indication in the settlement process, as far as the applicant's costs were concerned, that provides some estimated costings of the applicant's costs.

Mr Moraitis—Not that I am aware of. I could seek confirmation.

Senator FAULKNER—Thank you.

Mr Moraitis—I can confirm that our instructing solicitors did not engage in any discussions of that sort.

Senator ROBERT RAY—At some later point, could the applicant, with regard to other legal costs incurred in preparation for dealing with especially the voided decision that Mr Chester made—seeing that that is a voided process—

Mr Moraitis—It was revoked by Mr Chester.

Senator ROBERT RAY—Revoked is a better word.

Mr Moraitis—Yes, Senator.

Senator ROBERT RAY—That process is revoked and another process is started. Would the applicant be entitled in the normal course of events to claim the legal expense that he went to in terms of getting his position, before it was revoked, before that particular determining officer, as opposed to the subsequent inquiry?

Mr Moraitis—Sorry, I misunderstand. Are you talking about pre-Federal Court processes?

Senator ROBERT RAY—No. We have the applicant, as we are calling him. What do you want to call him—the suspect?

Mr Moraitis—No, the applicant.

Senator ROBERT RAY—The applicant has an expense to do with a court case. We have just resolved that that will be negotiated. The applicant probably had expenses to do with preparing an instructing solicitors' letters to do with the process that Mr Chester went through to the point of revocation. That whole process having been voided or revoked, is the applicant entitled to be refunded the legal costs up to that point?

Mr Moraitis—No. As I said, only those pertaining to the Federal Court proceedings.

Senator ROBERT RAY—What is to stop you from going through three or four processes? You could have hearings; you could revoke it. You could have more hearings; you could revoke it. You would destroy someone with legal costs. Surely the applicant is entitled to pay his legal costs for one process, not one that you have revoked?

Mr Moraitis—As I said, we have agreed to pay the costs associated with the Federal Court proceedings.

Senator ROBERT RAY—No. Beyond that.

Senator Hill—If it is a settlement by agreement, you pay the costs as agreed.

Senator ROBERT RAY—You have not been listening.

Senator Hill—Yes, I actually have been listening.

Senator FAULKNER—We were told there was no agreement. There may be an agreement, but there is no dollar figure.

Mr Moraitis—I am not suggesting there is no agreement; I am just saying that we have not received—

Senator ROBERT RAY—Senator Hill, let me put it this way. An officer of the department has been suspended. A variety of processes have been initiated. There is a Federal Police inquiry on one side. We will put that to one side. There was a process within the department. That process was revoked and now that process is null and void. That is presumably because, on legal advice, the department thinks it may be of dubious legal standing into the future. That may be what the court case is about. The applicant has paid money for lawyers to give him advice, I assume, on all those other procedures that the department has revoked. Has the applicant got a right at least to be refunded that part of his legal expense, seeing a new process is now under way that he will also have to seek legal advice for? Can you understand where I am coming from?

Senator Hill—Under the agreement he only has a right to the costs that have been agreed.

Senator ROBERT RAY—No, I am not talking about the court agreement. I am talking about the obligation of the department to its employees.

Senator Hill—I was just getting to that. Under the agreement that has been reached, he only has a right to those costs in the terms of that agreement, which, I understand, are as agreed or taxed. If he has a right of action against the department relating to another matter or another part of this matter, that is a separate and distinct issue. But under the court settlement today, as I see it, he does not have a right.

Senator ROBERT RAY—I have moved on from the court settlement and that issue to the more general issue of a public servant's right, having been investigated, having gone through a process that for some reason may be slightly flawed or in doubt—I am being kind here—and the whole process having been revoked and a new process started. I think that is what has happened, isn't it?

Senator Hill—The answer is that he may or may not. He may be able to argue some breach of statutory duty or whatever; I don't know. It will depend on all the circumstances and application of the law to those circumstances.

Senator ROBERT RAY—You could well have a public servant being forced to go to massive legal expense to get advice and a whole range of letters and representations being made, only to find, through the department's fault—and I don't say that in a really strong way—and through problems in the process, that that is revoked, and that person is up for all those legal expenses. It is not that person's fault that the process has been revoked and a new process has been entered into.

Senator Hill—That requires a determination of liability that has not been tested. Has the department admitted fault in this matter?

Mr Moraitis—No, we have not, Senator.

Senator ROBERT RAY—I just think this is poor process. You have some duty of care—

Senator Hill—All sorts of people make complaints and take legal advice on their complaints, but that does not necessarily—

Senator ROBERT RAY—I don't think you understand what has happened here.

Senator Hill—I'm doing my best. That does not necessarily mean that they have a right to be recompensed for their legal costs.

Senator ROBERT RAY—It does if the process that the department has started in some way is flawed and has to be revoked. Clearly, if the process had gone from start to finish, even if the person had been found innocent or guilty, they may have been expected to pick up their legal expenses to that point. But when it is the department that revokes all of that process and sets up an entirely new one, brings someone in from outside on a per diem or a per hour rate to do what the department previously had not done, you cannot expect them to pay both sets of legal expenses, surely.

Senator Hill—I think you have to know all the circumstances. It may well be the same legal advice that applies to both actions. If it relates to the same set of circumstances, there is advice simply on one set of circumstances. Beyond whether or not they have a right—I assume you mean a legal right—there is the issue of whether it is fair or unfair, I guess. Until an assessment is made of all the circumstances, it is difficult to address that.

Senator ROBERT RAY—You can put it a bit more harshly. I don't see why a public servant has to be penalised through the incompetence of the processes that have been set up.

Senator Hill—On the face of it, without making a judgment on whether there is incompetence, I understand what you are saying, But you are making findings on the run and, out of those findings, which have not been tested, drawing conclusions. I think that is a bit unfair on the department.

Senator ROBERT RAY—What findings am I making on the run? I am not making any findings on the run. We have taken evidence—

Senator Hill—Yes, you are. You have already said the department was incompetent.

Senator ROBERT RAY—No, I said possible incompetence.

Senator Hill—I don't think you did say 'possible'.

Senator ROBERT RAY—Well, let me qualify it: possible incompetence. You tell me—I won't ask the witness—why the whole process was revoked, Senator Hill, seeing that you know so much about it.

Senator Hill—I don't know the answer.

Senator ROBERT RAY—No.

Senator Hill—But I do know a bit about taxing costs.

Senator ROBERT RAY—Can't you understand we have moved on from the court issue. Can you actually compartmentalise this. We have moved on to the more general issue.

Senator Hill—Yes, and your question then is: does the person in these circumstances have a right to recompense for his legal expenses?

Senator ROBERT RAY—But the specific circumstances are these: there is a process set up under all the guidelines; I understand that. The first determining officer—I have that term right, haven't I, Mr Chester?

Mr Chester—That is correct, Senator.

Senator ROBERT RAY—The first determining officer is removed because of some technicalities and conflicts. Mr Chester is made determining officer. He goes through a whole process. In the end, I think on 28 April, he revokes all those processes and then they go to a different determining officer, brought in from outside the Public Service, although he was once in the Public Service. He is a very admirable person, by the way—someone I admire immensely. I just wonder where that leaves the public servant when they have to jump two hurdles instead of one, legally. It was not his fault that the first process did not work. He has probably gone to a lot of legal expense to get through that process. I am not asking whether you are going to recompense him; I am asking whether you have an obligation in that regard.

Senator Hill—Again, it depends what you mean by obligation. If you are asking, 'Do you have a legal obligation?' that is obviously something that would have to be tested or at least formal advice would have to be taken on it. Whether it is reasonable that the person be recompensed would depend on all the circumstances and I don't know all the circumstances. I do not know whether one could have a go at making a judgment on that in here. If you say in principle if somebody is put to expense through negligent or worse action by a department then I could see that you could make out a case that they shouldn't have to bear such a cost, but that requires a determination of the facts.

Senator ROBERT RAY—I am not alleging negligence and it is a lesser test—flawed process, call it what you like. But it had to be revoked for some reason. As we understand, it was revoked because of legal advice as to the uncertainty as to how it would progress. These things never have absolute certainty. Just check with me again, Mr Chester: this process went from 20 February through to 28 April—is that right?

Mr Chester—That is correct; 28 April and probably 19 February—the 19th or the 20th.

Senator ROBERT RAY—You received a number of solicitors' letters from the applicant during that time?

Mr Chester—That is correct.

Senator ROBERT RAY—Or the suspended officer—the applicant; everyone knows who I mean. He did engage a legal firm and presumably they were fairly active in this process.

Mr Chester—There was quite a deal of correspondence.

Senator ROBERT RAY—I don't know and I have only done very quick maths here, but the applicant has been suspended on full pay for 103 days—is that right? I am just wondering how much that came to. I am trying to get a grasp of the costs here for this whole exercise.

Mr Chester—The applicant was suspended on 20 February.

Senator ROBERT RAY—Yes, I think that is 103 days.

Mr Chester—I am sure you have worked it out, Senator.

Senator ROBERT RAY—It's not a leap year, is it? So approximately how much would that be—just approximately? At what level is the applicant and what is the normal pay for the applicant? I am not asking you for this person's pay, just for what the normal position is.

Mr Chester—My calculator has left—

Senator ROBERT RAY—Senator Faulkner has one on his computer and he has got it ready.

Senator FERGUSON—Perhaps we could call it 100 days as that is easier to work out.

Senator ROBERT RAY—Backdating this to Sunday. What is the approximate salary range here?

Mr Chester—My colleagues tell me that the total amount for the 103 days is around \$20,000.

Senator ROBERT RAY—\$20,000?

Mr Chester—Approximately.

Mr Moraitis—It is just off the top of our head.

Senator ROBERT RAY—I am not going to hold you to that. I am trying to get a ballpark costing on this whole exercise.

Senator FAULKNER—And is there someone acting in this officer's position and performing his duties?

Mr Chester—I am not sure of that. Somebody will be picking up some of the work responsibilities that the officer had.

Senator FAULKNER—Yes, but is the new person—

Mr Chester—There is not a new person in that position.

Senator ROBERT RAY—They are getting paid higher duties?

Mr Chester—No, I don't believe there is anyone on higher duties.

Senator ROBERT RAY—So I can't keep the bill ticking at this stage on that.

Mr Chester—Sorry.

Senator ROBERT RAY—So about \$20,000 so far.

Mr Chester—That is what I am advised.

Senator ROBERT RAY—Would they still be eligible for a holiday loading on that?

Mr Chester—They still accrue recreation leave; that is correct—and long service leave.

Senator ROBERT RAY—This is well short of the record for suspended on pay, though, for this department. What is the record—five years?

Mr Chester—I have no idea.

Senator FAULKNER—Who was the instructing solicitor for the department?

Mr Moraitis—The Australian Government Solicitor.

Senator FAULKNER—And who did AGS brief?

Mr Moraitis—For the Federal Court proceedings?

Senator FAULKNER—Yes.

Mr Moraitis—General counsel from AGS.

Senator ROBERT RAY—Did you take any outside legal advice in any part of these proceedings in addition to AGS?

Mr Moraitis—Mr McConville mentioned yesterday that there was one piece of advice sought from one —

Senator ROBERT RAY—But that was related to the court case. I didn't know that that was—

Mr Moraitis—No, it was related to the general process, not to the court case.

Senator ROBERT RAY—I am asking about the court case.

Mr Moraitis—No.

Senator FAULKNER—Have those costs been invoiced to the—

Mr Moraitis—As I said, Senator, the costs from AGS have not been invoiced relating to the Federal Court proceedings.

Senator FAULKNER—It will not only be costs from AGS in relation to the court proceedings, will it? It will be broader than that.

Mr Moraitis—Also, AGS costs relating to the court proceedings, yes.

Senator FAULKNER—Yes, relating to the court proceedings.

Mr Moraitis—Also for the day of the court proceedings.

Senator FAULKNER—I think the previous question related to the court proceedings.

Mr Moraitis—Excuse me; I did not pick up the distinction.

Senator FAULKNER—So when are you expecting that those invoices or accounts will be provided to the department, please?

Mr Moraitis—I have sought confirmation of a date or time frame but I understand that it will be in a month or so. I don't have a specific date.

Senator FAULKNER—The status of it is now that the consent orders are public?

Mr Moraitis—Yes, as of this afternoon, I understand.

Senator FAULKNER—I think you outlined three orders—

Senator ROBERT RAY—I hope so.

Mr Moraitis—I beg your pardon?

Senator ROBERT RAY—I said I hope so.

Mr Moraitis—As I mentioned yesterday, as of yesterday there was no finalisation but in the course of today it has been settled. This all happened in the last 24 hours.

Senator ROBERT RAY—I don't want an investigation.

Senator FAULKNER—There is no need to have an investigation. I will ask someone from my office to go and get them; they are publicly available.

Mr Moraitis—As of early this afternoon, I understand, in the public—

Senator FAULKNER—That is right, yes—some time this afternoon, yes. And there are, as you indicate, three orders by consent.

Mr Moraitis—Yes. I will just check the detail, Senator.

Senator FAULKNER—Or are there five orders by consent?

Mr Moraitis—There are two points noted and three points to do with—

Senator FAULKNER—As I am not a lawyer, Mr Moraitis, could you explain to me the significance of the points noted?

Mr Moraitis—Yes. The first point was to note that, as we have pointed out, Mr Chester has revoked his determination. The second point was to note the terms of agreement between the parties concerning the use of a particular report. Then there are the court orders basically to ratify the agreement between the parties that I have mentioned: that the applicants be granted leave to discontinue the proceedings and that there be two orders dealing with the question of costs.

Senator FAULKNER—The court has noted the revocation; that is clear. What can you say to us then are the implications of the second note, if you like—the terms of the letters from the Australian Government Solicitor, Mr King, dated 2 May 2003, in particular paragraph 10, and 6 May 2003, in particular paragraph 8, copies of which are annexed to the order—

Mr Moraitis—Yes.

Senator FAULKNER—concerning any future use of the fifth respondent's report, the fifth respondent being Ms O'Ryan?

Mr Moraitis—Yes.

Senator FAULKNER—Ms O'Ryan's reports are dated 11 February 2003 and 11 March 2003.

Mr Moraitis—Yes.

Senator FAULKNER—What is the implication of that particular order in relation to the use of Ms O'Ryan's reports? Is this some sort of indication that the reports are unreliable? What is the significance of it?

Mr Moraitis—Paragraph 2 refers to the terms for the new determination process begun by Mr Kennedy. It relates to information to be considered by Mr Kennedy in the process of a new determination as discussed between the parties in their correspondence referred to in this paragraph.

Senator ROBERT RAY—Let us just confirm that attached to this order is correspondence of 2 May—is that right?

Mr Moraitis—Correct.

Senator ROBERT RAY—It is to the applicant's solicitor—

Mr Moraitis—Correct.

Senator ROBERT RAY—signed off by AGS. Then there is a one-page copy of a fax, dated 28 April, which is signed off by Mr Chester. Finally, there is a three-page letter, again to the applicant's solicitor, dated 6 May, also signed off by the AGS.

Mr Moraitis—Correct.

Senator ROBERT RAY—That is the complete lot of documents?

Mr Moraitis—Yes.

Senator FAULKNER—Does this mean that all or just part of Ms O'Ryan's report will not be provided to Mr Kennedy? I think that is the general thrust—

Mr Moraitis—The report per se will not be provided. Evidence which has been adduced by Ms O'Ryan shall be provided—that is in the terms of the letter.

Senator ROBERT RAY—Why are the reports, as opposed to the evidence, excluded? Is there a reason for that?

Mr Moraitis—The short of it is that the decision was made that we wished to ensure that Mr Kennedy has the appropriate information relevant to discussing the alleged breaches of the code of conduct he is examining.

Senator ROBERT RAY—Yes, that he has the relevant information. So you are saying that Ms O'Ryan's report, which would contain judgments, is not relevant to Mr Kennedy's inquiry.

Mr Moraitis—To the extent which it is not pertaining to the terms of his inquiry, correct.

Senator ROBERT RAY—No. I think we understand that only what is relevant to Mr Kennedy's inquiry will be given to him and those matters determined in an evidentiary sense to be the relevant will not be. I think we understand that. But are you also saying that some of the judgments exercised by Ms O'Ryan at the point at which she was a determining officer will be excluded?

Mr Moraitis—Yes, I understand that is the case.

Senator ROBERT RAY—If we go to the letter of 2 May, on page 2 it says that the matter sent to Mr Kennedy is what we would have called item 7 in Mr Chester's report and the three dot points. These are the matters sent to Mr Kennedy?

Mr Moraitis—Correct. They are the matters.

Senator ROBERT RAY—So we can now know that what has not been sent to Mr Kennedy is the matter of the foreign minister's discussion with New Zealand High Commissioner Lackey.

Mr Moraitis—That is correct.

Senator ROBERT RAY—Is there in fact no investigation now in the department as opposed to the AFP? Is there no investigation in the department on that particular matter or is there an ongoing one that excludes the applicant?

Mr Moraitis—I understand that there is an ongoing investigation.

Mr Chester—That is my understanding. Mr Tighe, who is unfortunately not with us, would be the better one to answer that, but my understanding from his evidence yesterday was that the departmental investigation into the leak has been, in the words I think he used—

Senator FAULKNER—Mr Tighe is reluctantly joining us!

Senator ROBERT RAY—I don't know about that—he was in the back stalls.

Mr Chester—I should not put words in his mouth.

Senator ROBERT RAY—I was about to say, 'Don't do that.' Mr Tighe, did you hear my question? Let me start again. I think what we can establish from the documents we read from the court today that, in relation to the Downer-Lackey leak—can I call it that; I do not want to be offensive about it—the applicant is no longer under investigation in that matter by the internal process of the department.

Mr Tighe—The Australian Federal Police inquiry into that issue is continuing. The department is continuing to assist the Australian Federal Police.

Senator ROBERT RAY—We understood that that inquiry was continuing and could have a scope covering everyone—who knows. But in terms of an internal department inquiry, such as a code of conduct inquiry or other, there is not other inquiry into that matter other than the police inquiry that you have described?

Mr Tighe—I would not judge our inquiry to have concluded, if that is what you are asking.

Senator ROBERT RAY—You are missing the point. I am not trying to trick anyone here. We have got your inquiry, which is the AFP inquiry—is that right?

Mr Tighe—That is the inquiry into the unauthorised disclosure of the information, yes.

Senator ROBERT RAY—Are there any other investigations in the department relating to that matter other than that one? That is what I am asking.

Mr Chester—There is no code of conduct inquiry.

Mr Tighe—No.

Senator FAULKNER—There is no code of conduct inquiry, Mr Chester, or any other sort of inquiry? Let us not narrow it just to a code of conduct inquiry. We know there is an AFP investigation that has not been concluded. That is a matter of fact, isn't it?

Mr Chester—That is right.

Senator FAULKNER—You have said now that there is no code of conduct inquiry into the Downer-Lackey record of conversation leak?

Mr Chester—No current code of conduct inquiry into that.

Senator FAULKNER—Is there any significance in your addition of the word 'current'?

Mr Chester—No.

Senator FAULKNER—There is no code of conduct inquiry into the Downer-Lackey record of conversation leak?

Mr Chester—That is correct.

Senator FAULKNER—Are there any other inquiries of any other type, apart from the two types of inquiry we have identified—namely, AFP and code of conduct—that are being conducted into this issue of the Downer-Lackey record of conversation leak?

Mr Tighe—There is no other inquiry in the department into the Downer record of conversation disclosure.

Senator ROBERT RAY—Just before you joined us, Mr Tighe, what I was trying to establish was that in terms of the applicant—that is the way we are referring to the suspended officer—Mr Kennedy is not looking at his behaviour in regard to the Downer-Lackey leak. That is right—we can establish that with certainty?

Mr Chester—That is correct.

Senator ROBERT RAY—I did not want to actually list the matters you may be going to there but is it true that the original code of conduct inquiry did look at that matter?

Mr Chester—That is correct.

Senator ROBERT RAY—But you have not referred that matter on to Mr Kennedy?

Mr Chester—That is correct.

Senator ROBERT RAY—Thank you.

Senator FAULKNER—Have we been able to establish and check with Mr Kennedy yet what his billing rate is for his consultancy?

Mr Moraitis—We have been trying to contact Mr Kennedy to get his agreement. We have left messages with him. He has not returned our calls. He is a very busy man, I understand.

Senator FAULKNER—So the answer is at this stage you have not got the information?

Mr Moraitis—At this stage, no, but as I pointed out yesterday we have taken it on notice and once that is agreed we will certainly provide that.

Senator ROBERT RAY—We do not know the fee. We did touch on it yesterday, so I do not want to go into it in great detail, but I was not fully apprised of the methodology that Dr Kennedy is able to undertake. We know that evidence has been referred to him, rather than previous judgments—is it fair to characterise it like that? Evidence relating to the three dot points from the investigation in the department has been referred to Dr Kennedy—is that right?

Mr Chester—That is correct. He has the primary evidence that has been collected.

Senator ROBERT RAY—Do we know if any notes from the interview with the applicant with the Australian Federal Police have been sent to Dr Kennedy?

Mr Moraitis—I think this is touching on an ongoing determination process by Mr Kennedy. I would prefer not to discuss the nature of that determination.

Senator ROBERT RAY—You may prefer not to, but I do not think I am actually transgressing here. We have been over the issue of the propriety of a departmental official taking notes at a Federal Police inquiry and then passing them on to a second inquiry. We have been through all that. I am going to ask whether those notes are going to a third inquiry. I

think it is a legitimate question; I do not think it is covered by any protection that you can claim here.

Senator Hill—The answer is that we do not know what the determining officer is taking into account in his consideration.

Senator ROBERT RAY—We may well not know that, but we have had information that—and the evidence is here in the documents attached to the court determination—evidence has been passed on, quite properly, to Dr Kennedy so he can help form part of his assessment. We have also had evidence at this committee that a DFAT officer sat in on a Federal Police interview at AFP headquarters and took notes. What I am asking is whether those notes, as part of that body of evidence passed on to Dr Kennedy, form part of that.

Senator Hill—Part of the case for his consideration?

Senator ROBERT RAY—Whether the department passed those on to him—not whether Dr Kennedy uses them or not. You cannot say it; I cannot say it. That is what I want to know.

Senator Hill—I am not sure that it is appropriate to ask the department at this stage to provide the department's brief to Dr Kennedy.

Senator ROBERT RAY—No, I am not putting any brief to Dr Kennedy.

Senator Hill—But you are asking whether the notes have been put by the department to Dr Kennedy.

Senator ROBERT RAY—As part of the evidence. We know that the evidence coming out of Ms O'Ryan's inquiry that she gathered together with the aid of other investigators has been passed on to Dr Kennedy—less her judgments, because she was a revoked determining officer, and also less Mr Doug Chester's judgments, which were also not passed on. That is quite proper. But, in that bulk of evidence passed on, I want to know whether the notes of the police interview were passed on. I am entitled to know.

Mr Chester—I think I can clarify that now. I have just been advised that those notes cover an issue that is not going to be looked at by Dr Kennedy. So they will not be passed on.

Senator ROBERT RAY—Thank you. See, that was pretty simple in the end.

Senator HILL—We got there.

Mr Chester—I was not sure of the scope of those notes—whether they covered issues that Dr Kennedy would be looking at.

Senator ROBERT RAY—I would be very worried if they covered the issues that Dr Kennedy is now looking at. I would want to know why the Federal Police were raising those issues when it was not in their brief. So that is good. I think we have covered the matters to do with the court judgment. I have to return to one another area, though, that is related to this. I asked a question on how Dr Kennedy could be appointed. I was first of all referred to section 15 of the Public Service Act. I did not find that sufficient, so you then very kindly referred me to chapter five—the basic requirements for procedure for determining breaches of code of conduct. When I found that insufficient, you referred me to an administrative circular, No. P0308. I searched that in great detail to try to find the appropriate reference to appointing an

outsider. I could not find it there. However, I went to the Public Service Commission site and found heading 2 'Agency procedures'. Have you now found that?

Mr Chester—I do not have that.

Senator ROBERT RAY—You are not able to assist me with that?

Mr Chester—I do not have that with me.

Senator ROBERT RAY—Did you never find it when you were looking for this? I then found under heading 2.3 'Appropriate authority for decision makers' a repeat of the information that is all through these other documents. It says about the determining officer:

He or she may be selected and authorised in accordance with the Agency's procedures. In accordance with the Directions, Agency Heads must take reasonable steps to ensure that this person is, and appears to be, independent and unbiased.

Those words would ring a bell, because I think they are in your administrative circular.

Mr Chester—That is correct.

Senator ROBERT RAY—One of the points made is that each department can have variations on a theme as long as they observe the basics.

Mr Chester—That is correct.

Senator ROBERT RAY—It then goes on to say:

In some instances, it may be appropriate for an Agency Head to select a person from outside the agency or outside the APS, if it is not possible to satisfy this requirement from within the agency.

That seems to support your appointing Dr Kennedy. But I am wondering why that aspect does not appear in your administrative circular. You picked up some aspects, which you are entitled to do, and you are entitled to discard others. But it appears from this administrative circular that you never actually picked this one up.

Mr Chester—The fact that that is not written in our admin circular is not meant to indicate that that option is not available to the department.

Senator ROBERT RAY—Okay. But it is a bit of a qualifier, isn't it? It says:

In some instances, it may be appropriate ... if it is not possible to satisfy this requirement from within the agency.

That is, the person appointed must appear to be independent and unbiased. By that are we saying that there was no-one in the Department of Foreign Affairs and Trade who could be regarded as independent and unbiased?

Mr Chester—No.

Senator ROBERT RAY—Because that is the precondition for you going on to appoint someone from outside. It is the only precondition, the only way you are allowed to do it.

Mr Moraitis—Senator, we confirmed advice from our legal advisers to the effect that appointing an external determining officer was appropriate.

Senator ROBERT RAY—I am challenging the advice, aren't I? It is probably the same advice that now you are going to have to pay costs for the applicant. It is probably the same

legal advice that could have been flawed all the way through. I am not necessarily going to accept that legal advice especially when you read that this is a conditional provision within the Public Service Commissioner's guidelines. You can do this if you cannot find someone who is independent and unbiased in the department. Again, I ask the question: was it the case that you could not find someone that was independent and unbiased in the department?

Mr Moraitis—Not necessarily. I think it is the question of wishing to set a standard of robustness and independence as high as possible given that the applicant has a view on the process. I cannot see why that is—

Senator ROBERT RAY—When did you last look at the legal advice that said you could appoint someone from outside?

Mr Moraitis—We sought confirmation—

Mr Chester—I think it was this morning.

Senator ROBERT RAY—That is written advice?

Mr Moraitis—A combination of both.

Senator ROBERT RAY—So there is written advice to that effect?

Mr Moraitis—I understand that there is.

Senator ROBERT RAY—Is it possible to share that written advice with us? It is not actually going to the case; it is only going to the appointment of someone. It is a very procedural thing.

Mr Moraitis—Not necessarily, Senator.

Senator ROBERT RAY—Are you able to show us that aspect of the advice that just went to the procedural aspects?

Mr Chester—I think this is getting onto dangerous ground in the sense that Mr Kennedy is going to proceed and do a determination and we are now talking about elements that one cannot rule out may be the subject of a challenge down the track.

Senator FAULKNER—Who provided the advice? Was it AGS?

Mr Chester—That is correct.

Senator FAULKNER—When was it sought?

Mr Chester—I do not know—

Senator FAULKNER—Let us find out.

Mr Chester—I will see if we can find out, Senator. All I can say at the moment is that it was sometime after mid-April.

Senator FAULKNER—Could you just take on notice when it was provided?

Mr Chester—We will.

Senator ROBERT RAY—Just to get it clear though, the written advice contains advice on the appointing of someone from outside the APS and other matters. I want to see what the

other matters are. Is that what prohibits you from sharing that legal advice with the committee?

Mr Chester—I think it is both aspects, Senator.

Senator ROBERT RAY—It is always possible to quarantine one from the other. I would hate to see you get all the way down this process to find, yet again, that it is a flawed process. I suspect it could possibly be, having read through the four sets of documents. You did not even know about the fourth one that actually allows you to appoint an outsider but in doing so you may well have not taken into account the relevant criteria.

CHAIR—I am sure that the people providing us with legal advice took account of the document.

Senator ROBERT RAY—We have a judicial system that exists on the fact that there are two views of legal advice. Constantly one side that is given legal advice is found to be wrong. That is why I would not have minded—not as an arbiter or anything—seeing the soundness of that aspect of the legal advice. I know governments only ever make legal advices available when it suits them.

Senator FAULKNER—When does your revocation of your determination date from?

Mr Chester—It was 28 April.

Senator FAULKNER—So it does not date from the date of the determination. The determination is dated 24 March; the revocation document is dated 28 April. I was wondering when the actual revocation comes into effect.

Mr Moraitis—In the sense that it is revoked, it has no status as such.

Senator FAULKNER—Once the determination has been revoked, the status is that there is no breach of the code of conduct by the applicant. That is true, isn't it? But we do know that some other matters, some other possible breaches or suspected breaches, have been referred to Dr Kennedy. That is its status; that is what it means, doesn't it?

Mr Chester—I think what it means is that my document, my determination that found that there had been breaches of the code of conduct in a number of areas, has no status and we revert back to a position of alleged breaches of the code of conduct and then move to a fresh determination of those alleged breaches of the code of conduct.

Senator FAULKNER—Did you examine the issue after your revocation on 28 April before further matters were referred to Dr Kennedy as to whether the applicant should resume duties in the department? Did you examine that issue?

Mr Chester—I believe we were precluded from doing that, but just let me check. Yes, we were precluded by the Federal Court action up until 7 May from making that assessment.

Senator ROBERT RAY—I hope this is my last question on this issue: let's not talk about this case, but in general if there is a code of conduct inquiry which eventually fails to establish enough evidence against an officer and the matter is ended, do all the details of that go on the officer's file?

Mr Chester—If there is no finding, my understanding is no. The file we are talking about is the conduct and ethics unit investigation file—

Senator ROBERT RAY—No. I assume each departmental employee has an employment file of some sort, tracking through what they have done in the department and commendations or otherwise from their heads. Does this matter—a failed matter—go on the file?

Mr Chester—My understanding is that it would not remain on the file.

Mr Varghese—The answer to that is that obviously the fraud and ethics unit conducting an inquiry would have files and those files would remain under the authority of that unit and would be archived in the normal way. My understanding is that there will be no record on the officer's personnel file unless there is a formal disciplinary procedure undertaken.

Senator ROBERT RAY—That is good.

Mr Varghese—So if it is a nil return, it will not appear on the file.

Senator ROBERT RAY—Excellent. Thank you.

Senator FAULKNER—Did you indicate in relation to the questions asking you that, because of the Federal Court action, the applicant could not recommence working in the department until 7 May—is that right?

Mr Chester—The suspension could not be reviewed.

Senator FAULKNER—Was Dr Kennedy appointed on 16 May?

Mr Chester—That is correct.

Senator FAULKNER—So what about the period between 7 May and 16 May?

Mr Chester—We are in the process of reviewing the suspension at present.

Senator FAULKNER—You are in the process of reviewing the suspension at present?

Mr Chester—That's right.

Senator FAULKNER—My question went to the revocation. I just wondered why the applicant might not recommence duties, and you indicated that this could not occur until 7 May.

Mr Chester—We couldn't review the suspension until 7 May.

Senator FAULKNER—You weren't able to begin a process of review—is that the point?—of the suspension until then?

Mr Chester—That is correct.

Senator FAULKNER—And a review of that began some time after 7 May, did it?

Mr Chester—That is correct.

Senator FAULKNER—Are you able to say when? The review of the suspension is all I am talking about.

Mr Moraitis—My understanding is that we are commencing that process.

Senator FAULKNER—I am sorry?

Mr Moraitis—We are commencing that process. We are commencing the process of reviewing the suspension.

Senator FAULKNER—You are commencing it?

Mr Moraitis—Yes.

Senator FAULKNER—And who conducts the review of the suspension? At what level is that conducted?

Mr Moraitis—It is conducted at SES level, I understand.

Senator ROBERT RAY—By whom? Not someone who has had something to do with it, one presumes.

Mr Moraitis—We will have someone who has not had any previous involvement in this process.

Senator FAULKNER—Yes, I am sure everyone would accept that. We would expect you to, and that is quite proper.

Senator ROBERT RAY—Someone who is independent and unbiased.

Mr Moraitis—No, as I said, someone who has not been involved in the previous proceedings.

Senator FAULKNER—Has it started? I thought you said it had started. Mr Chester said it had started, I thought.

Mr Chester—That is my understanding.

Senator FAULKNER—I would take it—

Mr Chester—I am sorry, the answer is the preliminary aspects of it have started.

Senator FAULKNER—Has the person conducting the review been appointed?

Mr Moraitis—Not yet, Senator.

Senator FAULKNER—And who makes the decision about who should conduct the review? At what level in the department? Is it a decision by the departmental secretary?

Mr Chester—It will either be Peter Varghese or me.

Senator ROBERT RAY—But you have had something to do with all this.

Mr Chester—Someone who will appoint the delegate to look at the suspension, not to do the process.

Senator FAULKNER—And where does the guidance in terms of those assessments about the suspension come from? Is it the Public Service Act again or internal departmental guidelines? What do you base this on?

Mr Chester—A mixture of internal guidelines and advice from our legal advisers.

Senator ROBERT RAY—Has there been any other activity taken towards the applicant?

Mr Chester—In what sense?

Senator ROBERT RAY—The applicant is under suspension.

Mr Chester—That is correct.

Senator ROBERT RAY—Has there been anything out of the ordinary, a bringing forward of clearances or anything to do with the applicant?

Mr Moraitis—Mr Tighe would have information on clearances.

Mr Tighe—I am sorry, Senator?

Senator ROBERT RAY—We are going through the processes of the applicant. There may be a review on the suspension. I am asking whether any other activities have been initiated in the department in relation to assessing the applicant, apart from whether the applicant should return to full duties.

Mr Tighe—Yes, Senator. We will be reviewing the applicant's security clearance.

Senator ROBERT RAY—That has not been done for five years?

Mr Tighe—It is being done within five years, yes.

Senator ROBERT RAY—Has it been done early?

Mr Tighe—Sorry, it has been less than five years since it was last done.

Senator ROBERT RAY—Let us go back to basics. The normal process is that, having been granted a security clearance, you are rechecked every five years—is that it?

Mr Tighe—There is a revalidation every five years. There is a review within that period, normally midway in that period. The security instructions also allow us to do a review at any stage.

Senator ROBERT RAY—To cut a long story short: was this just a normal review of the applicant or was it being initiated for other reasons?

Mr Tighe—It is an established part of our security practices.

Senator ROBERT RAY—You did not answer my question. Is this just the normal review—not a revalidation, because that is every five years—or has action been taken because the applicant is under suspicion of certain matters? That is what I am asking you very directly.

Mr Tighe—The review is taking place because information has become available to us that warrants doing a review.

Senator ROBERT RAY—You can see where we are heading, can't you, Mr Varghese? There are two alternatives: one we do not want to pursue and one we would like to pursue. Do you understand that? Let me put it this way: is this information that has become available related to any of the matters that have been investigated in the code of conduct inquiry or is it a completely separate matter?

Mr Tighe—For reasons of the integrity of the security processes and the privacy of any individuals involved, we do not discuss the matters that are considered in the course of doing security reviews.

Senator Hill—Because if he said it was not related, or not totally related, to these other matters, it is on the public record that there is another factor or other factors.

Senator ROBERT RAY—I see that and that is why I tried to phrase it in such a way. But you can also see it from the point of view of our questioning.

Senator Hill—Yes, I can.

Senator ROBERT RAY—If this is just another method to do over the applicant, I would not be too happy. I will leave it at that, because I understand that it is a very difficult area to explore. But I hope someone will take it on board, because it would not be an appropriate thing to do if it were only relating back to the code of conduct inquiry, of which most matters have lapsed.

Senator FAULKNER—Senator Hill, with respect, I would also like you to examine the evidence that the committee received from witnesses at the table because I think the senators who were asking questions laboriously went through the issue of further inquiries. In fact, we dealt with the issues of the AFP inquiry, the code of conduct inquiry and any further inquiry. It seems to me that we have now heard evidence that indicates that there is another inquiry going on, and I would like you to reflect on the evidence that we have received.

Senator Hill—We do not know whether it relates to the same matter or not.

Senator FAULKNER—I feel—and I am going to check to the *Hansard* record—that the committee has been misled in earlier evidence that was given at the table by witnesses. I am not saying that it was as a deliberate attempt to mislead the committee. I am not suggesting that. But I do believe the committee was misled when the very issue of further inquiries was raised. I will check the record and satisfy myself of that, but I ask you to do so, too, Minister.

Senator Hill—Having heard that, why don't we consider what you have said and see whether the officials want to make some further response to the previous questions that you apparently asked, of which I am obviously unaware?

Senator FAULKNER—Yes. I think the point I am making is a fair and reasonable one. I will certainly check the record on this. I make those comments quite seriously, because I do think that I very clearly went through these issues and, if there had been an inquiry into a security clearance, I think it should have been raised at that time. Anyway, I will check the *Hansard* record. I respectfully suggest you do so, Minister. No doubt the witnesses will also.

Mr Chester—Given that that comment refers to me to some extent, let me say that, with respect to your question asking about what inquiries were ongoing in relation to the applicant, I would not characterise a review of a security clearance as an inquiry.

Senator ROBERT RAY—I understand that. And you understand the point I have made, Mr Chester. Senator Hill is right to halt my line of inquiry because of where it may lead, but I am prohibited now from inquiring or probing the possibility—and I only say the possibility—that there is a premature review of a security clearance relating to code of conduct matters that no longer apply. That is a big difficulty that we have. Senator Hill is right: if there are other matters, it is not my business to probe them here.

Senator FAULKNER—I just want to be clear on one thing.

Senator Hill—I think you have been given the answer that the official, when he was responding to your question as to whether there are further inquiries, would not have included a security clearance review within the definition of 'inquiry'.

Senator FAULKNER—I am not going back to that issue. What I indicated to you, and I think I did it in a reasonable way, was that I would check the *Hansard* record. I said I was not

criticising witnesses at the table but I felt that I may have been misled and the committee may have been misled. I have asked you to look at the record, too. I accept the spirit in which Mr Chester has provided the information that he has. The issue I wanted to go back to was a different one. This question is to you, Mr Chester: in relation to the review of the suspension of the applicant, you have drawn a distinction regarding the preliminary aspects of reviewing the suspension. These are my words but I am drawing a distinction between that conceptually and what would be the substantive assessment of the suspension. That is a fair distinction to draw, isn't it?

Mr Chester—I understand the distinction, Senator.

Senator FAULKNER—Can you assist me so that I understand the two processes a little more fully than I do at the moment.

Mr Chester—Essentially, the first phase of it is appointing a delegate to review the material, to provide material to that delegate to make an assessment. I believe the applicant will be given a right to be heard in the process and for the delegate then to make a decision. So that is the second phase. The first phase, as I said, is collecting the information to give to the delegate and appointing that delegate to do it.

Senator FAULKNER—Thank you for that. Is the preliminary review almost automatic depending on the finalisation of the court process and the like? Do the cards fall into place as a result of that action being concluded and the like?

Mr Chester—The requirement is that the suspension should be reviewed. I think the terminology is 'at timely intervals'.

Senator FAULKNER—And that is a requirement of what?

Mr Chester—Of our internal procedures, which come from the Public Service Act.

Senator FAULKNER—So the preliminary aspects of the review come about as a result of internal departmental procedures and then a more formal review of the suspension would take place by a delegate appointed by either yourself or Mr Varghese. Have I got the picture right?

Mr Chester—Essentially, yes. I would not make the same distinction as you have about the preliminary element and the formal review. It is really a seamless process.

Senator FAULKNER—I was picking up on the terminology that was used by a witness.

CHAIR—Thank you, Mr Varghese, and your officials.

Australian Agency for International Development

CHAIR—We move to the examination of AusAID. I welcome Mr Tapp, Mr Davis, Mr Dawson and Mr Moore to the table.

Senator FAULKNER—In relation to 'Burma—human rights training assistance', could AusAID provide for the benefit of the committee an assessment of the human rights training in Burma?

Mr Moore—The human rights training for Burma has been under way since the middle of 2001. There has been a total of about nine workshops provided, through which about 200 participants have gained exposure to human rights principles and norms. The objectives for

the workshops have been modest from the outset. We have seen this as a process of beginning to sensitise the government of Burma to international human rights principles, and this has been effective in terms of the individuals gaining some exposure to those norms and principles.

Senator FAULKNER—What about how you approach monitoring and evaluating the training?

Mr Moore—The workshops are individually appraised by the participants, the presenters and people from the embassy who attend. The results are then reported back to the Australian government.

Senator FAULKNER—Does the human rights training extend to the military?

Mr Moore—It does not, but that is a very live issue as to whether or not it should. We are about to commence a second phase of the activity. Planning has been under way for that, and the question of participation is one which is under active consideration. The point has been made to us before that obviously a significant proportion of the human rights abuses in Burma are perpetrated by the military and therefore if one wants to change that culture one should look at their inclusion.

Senator FAULKNER—But why doesn't it extend to the military now?

Mr Moore—Initially the view was taken that assistance should be provided to those non-military officials in departments like home affairs and social welfare and that that was a good place to start.

Senator FAULKNER—When was 'initially'?

Mr Moore—I believe the first workshops commenced in June 2001.

Senator FAULKNER—I noticed that in response to a question on notice AusAID advised or, if you like, the minister advised that the government would consider the 'appropriateness of human rights for serving military members'. I wondered how that assessment was taking place or if it was taking place.

Mr Moore—As I indicated, the issue has been raised and has been the subject of discussion. No decision has been taken on that as yet.

Senator FAULKNER—Yes, but when you say the 'subject of discussion', where is this discussion taking place?

Mr Moore—The discussion has been both at a public forum where the policy has been questioned and also, as the minister has indicated, within various parts of the Australian government.

Senator FAULKNER—Also in answer to a question on notice, AusAID said that the expected outcomes of the human rights workshop 'improved knowledge and understanding of international human rights norms and standards among participants'. I think that sounds worthy and unexceptional, but I wondered how AusAID actually measured that, which is a substantive issue.

Mr Moore—The providers of the courses, the Castan Centre for Human Rights Law at Monash University, are very expert both in human rights training and in challenging

participants. Their work in these workshops has not just been didactic; it has involved putting people in hypothetical situations, and challenging perceptions. We have drawn heavily on their reports about the extent to which participants have been willing and able to be drawn into a consideration of human rights issues in their own experiences as government officials and, indeed, for some non-government participants such as members of the bar council.

Senator FAULKNER—So there is no doubt that you do benchmark against similar programs run by other governments?

Mr Moore—I think it is fair to say that the presenters are very aware of international standards.

Senator FAULKNER—Just to be clear: do you actually benchmark against programs run by other governments? Is that part of the benchmarking process?

Mr Moore—As you are aware, our human rights training program has been unique in Burma, so there is no international benchmark that is pertinent in this particular case.

Senator FAULKNER—So benchmarking is a bit of a challenge in that circumstance?

Mr Moore—As I said, I think the presenters are able to make that judgment and are very well equipped to make it.

Senator FAULKNER—They make the judgment, but they cannot make a judgment against the programs of other governments because you are saying basically that those programs are not in existence.

Mr Moore—In the context of Burma that is true. I can indicate, though, by way of comparison that a considerable number of agencies that are present in Burma have taken a close interest in the training and have encouraged, to date, its continuation as a way of maintaining some sort of dialogue with the regime to improve its human rights performance.

Senator FAULKNER—In relation to another area, can someone briefly outline what aid assistance AusAID is providing to the Indonesian provinces of Aceh and West Papua.

Mr Dawson—In relation to Aceh, at this stage the government is helping to meet humanitarian needs, particularly through existing UN mechanisms. There has been a contribution of \$1.8 million to support the operations of the UN Office for the Coordination of Humanitarian Affairs for its work in Aceh. That is part of a broader support for Aceh and Indonesia but it has helped them to set up an office for Aceh, which obviously helps with the monitoring of humanitarian conditions in the province. In addition, there has been funding for up to 300 kits which provide essential school materials, easily transportable through UNICEF. Those kits will begin to be delivered shortly. Australia has been a major contributor to the operations of the World Food Program in Indonesia, which has assisted with the distribution of food packages in Aceh through the Indonesian Red Cross. In relation to current assistance in Papua, I will ask Ms Newton-Howes if she has any further information.

Ms Newton-Howes—A number of our current bilateral programs in Indonesia include assistance to Papua. One of those is a technical vocational training program—part of the assistance goes to Papua. Some of our training programs train participants from Papua. We have an HIV-AIDS program which is operating in a number of provinces, including Papua. Those are the major activities.

Senator FAULKNER—Are you able to tell the committee whether any Australian NGOs or other organisations are operating in Aceh or West Papua? If they are, could you indicate which organisations they are?

Ms Newton-Howes—There are no Australian government funded NGOs currently in either Aceh or Papua. I understand from ACFOA that no Australian NGOs which are members of ACFOA have current activities in Aceh. There is no AusAID funding currently for any activities in Papua.

Senator FAULKNER—Are you saying there is none in Aceh?

Ms Newton-Howes—That is correct.

Senator FAULKNER—And none in West Papua?

Ms Newton-Howes—That is correct; no current activities by NGOs funded by AusAID in those two locations.

Senator FAULKNER—And there is no funding going from AusAID to any Australian NGOs or organisations undertaking aid delivery work in Aceh or West Papua.

Ms Newton-Howes—Assistance in Aceh is going through UN organisations, not through NGOs. No Australian government funding is currently going to activities in Papua.

Senator FAULKNER—When you say ‘UN organisations’, so I am clear, what do you mean precisely by that?

Ms Newton-Howes—Funding is through UNICEF and UNOCHA, the Office for the Coordination of Humanitarian Affairs.

Senator FAULKNER—And it is limited to those two organisations?

Ms Newton-Howes—Currently, yes.

Senator FAULKNER—What do you mean by ‘currently’? I do understand what the word ‘currently’ means—I know what the dictionary definition is—but you seem to be stressing it. Is this something that is likely to change?

Ms Newton-Howes—In the past, there have been some NGO activities funded by AusAID in Papua. There are no current activities.

Senator FAULKNER—The Indonesian government has made clear its attitude to the direct funding of NGOs in these places, hasn’t it?

Mr Dawson—The Indonesian government has on a number of occasions indicated the potential concern about the alleged link between Australian NGO activities in Papua and support for independence movements.

Senator FAULKNER—When you say it has indicated that, are you saying it has indicated it historically? It has made fairly strong representations, hasn’t it, over quite a long period of time.

Mr Dawson—Certainly there have been a number of occasions on which it has indicated that in the last year, yes.

Senator FAULKNER—Are you able to indicate, for the committee’s benefit, what has happened over the last year or so in this regard?

Mr Dawson—I do not have a full listing of the occasions on which it has been raised. I know that it has been raised in discussions with the Australian embassy in Jakarta. It has certainly been raised in discussions with the department of foreign affairs and AusAID in Canberra. I believe it was also raised in the context of the last Australia-Indonesia Ministerial Forum meeting.

Senator FAULKNER—Has AusAID been asked by government, by the Prime Minister or the Minister for Foreign Affairs, to investigate if any funds from AusAID or other government departments have been directly or indirectly used in support of Acehese rebels or the West Papuan independence movement?

Mr Dawson—We have looked very carefully at the funding going to Papua and Aceh through Australian NGOs, and we are satisfied that there is no evidence that Australian aid funds have been used in any ways that are contrary to the policies and laws of Australia or the policies and laws of the government of Indonesia.

Senator FAULKNER—What does that careful look involve?

Mr Dawson—We have looked at all the records that we have of funding for Australian NGO activity and we have looked at the acquittals of that funding.

Senator FAULKNER—But have you been specifically asked by government to do that?

Mr Dawson—No, but it was something that was a natural thing to do when these expressions of concern started to be raised.

Senator FAULKNER—So the investigations were instigated internally in AusAID, were they?

Mr Dawson—That is right.

Senator FAULKNER—Who made that decision?

Mr Dawson—We made it in AusAID. I certainly instigated some myself.

Senator FAULKNER—I am just wondering whether it was initiated internally or externally and at what level if it was done internally.

Mr Dawson—By the executive of AusAID.

Senator FAULKNER—Are you able to say whether AusAID is aware of any Australian funding being used to support the Indonesian security forces in Aceh?

Mr Dawson—I do not believe there is any Australian aid funding being used to support Indonesian security forces in Aceh.

Senator FAULKNER—You should be able to be definitive about that.

Mr Dawson—There is no Australian aid funding being used to support Indonesian security forces in Aceh.

Senator FAULKNER—I understand that, in relation to Australia's overseas aid program 2003-04, aid to Indonesia is to be substantially increased to \$152 million. That comes from the foreign minister's statement. That is correct, isn't it?

Mr Dawson—That is right.

Senator FAULKNER—That is going to focus, as I understand it, mainly on the two issues of governance and increased counter-terrorism support. Is that right?

Mr Dawson—No, that is not entirely correct. There is quite a lot of detail in the minister's aid budget statement covering assistance to Indonesia, including the main themes of that program: improved economic management, strengthening the institutions and practices of democracy, enhanced security and stability, and increased accessibility to and quality of basic social services.

Senator FAULKNER—Are you able to say which Indonesian agencies are actually going to receive those moneys and how much will go to those agencies?

Mr Dawson—As you would appreciate, in a program of that size we work across a large number of Indonesian agencies. But if you would like a list of our major partners, we would be happy to take that on notice.

Senator FAULKNER—I would appreciate it if you could provide that on notice. That might be a sensible way of dealing with it. I want to get a picture of expenditure in Iraq. What is the total expenditure of humanitarian and reconstruction assistance for postwar Iraq?

Mr Tapp—The commitment that has been made to humanitarian and reconstruction assistance in Iraq is \$100.5 million.

Senator FAULKNER—Has \$45 million been earmarked for miscellaneous aid projects in Iraq?

Mr Tapp—No. If I may, I will provide you with a very quick breakdown of that \$100.5 million—\$17.5 million has been allocated for preparedness planning and early operations, funds that went to various UN agencies and the ICRC and a couple of Australian NGOs. A significant amount, about \$6 million, went into the United Nations emergency preparedness fund. In addition, \$38 million has been allocated under the UN flash appeal and agencies working under the UN flash appeal. The flash appeal was issued by the United Nations to deal with the immediate humanitarian needs in Iraq. A further \$45 million has been allocated for reconstruction activities and \$40 million of that has been allocated to the agricultural sector. Australia is taking a particular lead in the agricultural sector in Iraq.

Senator FAULKNER—Is it true that AusAID is allocated \$37.9 million in 2003-04 for aid assistance to the Middle East?

Mr Tapp—Yes, that is what it says in the budget statement.

Senator FAULKNER—That is right; in the PBS.

Mr Dawson—And also in the aid budget statement, in table 1.

Senator FAULKNER—I am not sure that I have read that. Thank you for pointing me in that direction; I certainly will. The figures I had seen were an expected outcome of \$88.7 million in 2002-03 and \$37.9 million in 2003-04.

Mr Dawson—That is right—a budget estimate of \$37.8 million in 2003-04.

Senator FAULKNER—\$37.8 million, and \$88.7 million for 2002-03.

Mr Dawson—That is right, for the Middle East.

Senator FAULKNER—How much of that expenditure is intended to go to Iraqi reconstruction.

Mr Dawson—Those two years cover the full range of the \$100.5 million that the government has committed to Iraq, which Mr Tapp has just outlined. So it is split between those two financial years—the current financial year and the next financial year.

Senator FAULKNER—\$100.5 million over the two years?

Mr Dawson—That is right.

Senator FAULKNER—Are you able to disaggregate that across the two financial years?

Mr Dawson—For the purposes of planning, clearly the initial funding of \$17.5 million for emergency purposes has already been accounted for in the current financial year. Our anticipation is that the \$38 million allocated to the UN flash appeal will also be expensed in the current financial year. We estimated at the time the budget was put together that \$20 million of the \$45 million remaining for reconstruction activities would also be expensed during the 2002-03 financial year, which left \$25 million to be expensed in the following—that is, next—financial year. That was our anticipation at the time of the budget.

Senator FAULKNER—Does AusAID intend to supplement the \$37.8 million in 2003-04 with any additional funding?

Mr Dawson—The government has announced supplementation of \$38 million of that total commitment of \$100.5 million. At the moment there is no expectation that there will be any further supplementation in the next financial year.

Senator FAULKNER—I am not clear on the break-up of these figures. The figures are \$88.7 million in this financial year, \$37.8 million in the next financial year and an additional \$100.5 million over two financial years—is that correct?

Mr Davis—No, Senator. That figure of \$100.5 million is included within those two figures that you have just mentioned of \$88.7 million and \$37.8 million. There is additional expenditure in those lines as well for other expenditure in the Middle East, particularly for the Palestinian territories.

Senator FAULKNER—We are at cross-purposes here. Is there any additional funding for the Middle East beyond those figures of \$88.7 million and \$37.8 million?

Mr Dawson—No, Senator. That is the total for those tables.

Senator FAULKNER—What is the significance of the \$100.5 million? I understand that it comes from within the appropriation for those two years.

Mr Davis—The significance of that figure is that it is the component specifically for Iraq, within that total amount.

Senator FAULKNER—With respect to that \$100.5 million, you have given me a broad picture but you cannot give me a precise figure and disaggregating it across the two financial years. Is that what you are trying to say?

Mr Davis—Particularly that \$45 million element that Mr Dawson referred to.

Senator FAULKNER—Are you able to break these figures down, perhaps on notice? I heard what you said about a couple of elements of this. Would you be able to take on notice a disaggregation of those figures?

Mr Davis—Certainly; we can do that.

Senator FAULKNER—Unless you have it available here.

Mr Dawson—We have the main elements, if you are interested, Senator.

Mr Tapp—I have the information in terms of the breakdown of the 100.5. I can run through it. Of the initial \$17.5 million that was allocated for preparedness and planning, \$6 million was provided to the United Nations Central Emergency Fund; \$2 million was provided to UNOCHA for its role in coordination and coordination planning; \$2 million was provided to the International Committee of the Red Cross, particularly looking at their planning and preparation work in health, water and sanitation and internally displaced people; \$2 million was provided to UNICEF; \$1.5 million was provided to the United Nations High Commissioner for Refugees; \$1 million was provided to the Australian Red Cross; \$1 million was provided to CARE Australia; and \$2 million was allocated for the placement of aid experts in the United Nations International Organisation for Migration and for other United Nations and liaison roles.

Of the \$38 million that has been allocated to the flash appeal, \$7.5 million was provided to ICRC for their work in water sanitation, health and protection. The ICRC was able to continue operations throughout the hostilities and has been doing a superb job on the ground. Some \$7.5 million was provided as a further allocation to UNICEF—again some excellent programs on the ground. We provided \$3 million to the World Food Program to support the internal food distribution system that they are now running under the revisions which have been made to the Oil for Food program. We provided \$3 million to the World Health Organisation. We provided \$2 million to the United Nations humanitarian air services. They perform an important logistical role in the air transport of supplies and personnel into Iraq.

Some \$1.5 million has been provided to the UN Mine Action Service, particularly doing an assessment of mines and unexploded ordnance throughout the country. We provided \$1.2 million to the United Nations Joint Logistics Centre, which is responsible for the coordination of logistics and transport of UN and other agency humanitarian supplies. Some \$800,000 has been provided to the United Nations Humanitarian Information Centre, which performs an important role in providing information for agencies and the general public in relation to conditions on the ground and the various activities of different agencies. It has an important role in providing information to NGOs. CARE Australia has received \$3 million for its work in water sanitation activity. World Vision Australia has received \$1.2 million for its water and sanitation and environmental health work. Some \$800,000 has been provided to Save the Children Australia for their work in infection and disease management in paediatric hospitals.

At the moment the remains of the \$38 million is \$6.5 million, which is unallocated. We are awaiting the final assessments from various UN agencies and we are expecting very shortly a reissuing of the United Nations flash appeal. Based on that the government will be making the final allocations of the \$6.5 million.

Senator FAULKNER—Does this mean that there are countries in the Middle East region that in the past received ODA but will either not receive it or have the amount of ODA reduced?

Mr Davis—No, Senator. The large component of this amount will come from our humanitarian and emergencies allocation, which is not programmed prior to the year in question.

Senator FAULKNER—Have you factored into your forward planning the prospect that Australia may continue to have responsibilities as an occupying power in Iraq, possibly for a number of years? Is this a consideration for AusAID?

Mr Tapp—At the moment, the commitment that has been made is of \$100.5 million. As Mr Davis has just outlined, our humanitarian and emergency allocation, which has been increased to \$138 million in the next financial year, provides us with a great deal of flexibility to be able to respond to humanitarian and reconstruction needs.

Senator FAULKNER—When do you expect the flash appeal to be reissued?

Mr Tapp—In about two weeks time.

Senator Hill—I should say that we are providing this funding because we think it is the right thing to do, not because we believe we have any legal obligation to do so.

Senator FAULKNER—And are you able to indicate the extent of Australia's contribution?

Senator Hill—What do you mean? That's what we have been talking about.

Senator FAULKNER—I am aware of that, but let's just be precise: are you now saying that this is going to happen in two weeks?

Mr Tapp—What I am saying is that the United Nations will be reissuing—

Senator FAULKNER—Senator Hill, you may be aware of these things but not all members of the committee are. Is that something that I would have read in the newspapers? If it is, I can assure you that it has passed me by. Perhaps I have missed your words of wisdom on this subject, Senator Hill, and if I have I sincerely apologise. Is it known broadly in the Australian community that the flash appeal is to be reissued in two weeks time?

Mr Tapp—It is standard practice in these emergencies for the United Nations to issue an initial appeal and then it will often be revised as assessments come in. It is commonly known that the flash appeal will be revised in due course. Senator, you might be interested to know that, in relation to the latest UN figures which have been provided on the contributions by various countries to Iraq for humanitarian reconstruction, Australia is the fourth largest contributor. That is based on the latest information from the UN, which was provided yesterday.

Senator FAULKNER—What three countries are ahead of us?

Mr Tapp—The United States, the United Kingdom, Japan and then Australia.

Senator FAULKNER—Are you able to say what the quantum in relation to those countries are?

Mr Tapp—Yes, I think I may have some of that information available. The information which is available through the United Nations is that the United States contribution—

Senator FAULKNER—I am sorry, Mr Tapp, it is very hard to hear you.

Mr Tapp—Sorry, Senator. This is information which is available through the United Nations. The United States contribution is \$US543 million; the United Kingdom's contribution is \$US186 million; the Japanese contribution is \$US103 million—and I am rounding these figures up; and the Australian contribution is currently valued at \$US61 million.

Senator FAULKNER—Thank you for that.

CHAIR—How are you going, Senator Faulkner? You have 30 seconds left.

Senator FAULKNER—If that is the case, we're not going very well. How long have you got, Senator Mason?

Senator MASON—Probably 20 minutes.

Senator FAULKNER—I will cede the call to Senator Mason. I am not sure who coordinates this for AusAID but, depending on the progress of Senator Mason's questions, there may be a need for me to place some questions on notice. The alternative of course is too horrible to contemplate.

CHAIR—I am sure that AusAID will take some questions from you on notice.

Senator FAULKNER—Yes, we will probably deal with my other questions on notice, though hopefully we might be able to come back to some of them. But, before Senator Mason takes up the questioning, I want to be clear on one point—and I may have missed something here so correct me if I am wrong. Will Australia be making a further contribution to the flash appeal in addition to that already provided, or are we not going to make a further contribution? I might have the wrong terminology here, but I think I know what I mean.

Mr Davis—As Mr Tapp said before, there is still some unallocated money from the initial amount set aside for that flash appeal, and that is the amount that would be allocated when this new, revised appeal is released.

Senator FAULKNER—Okay. And that unallocated amount is?

Mr Tapp—\$6.5 million.

Senator FAULKNER—Australian?

Mr Tapp—Australian.

Senator FAULKNER—Are we talking about all or part of that \$A6.5 million?

Mr Davis—I assume the lot, yes.

Senator FAULKNER—I always worry about that word 'assume', Mr Davis. I understand what you mean.

Mr Davis—These in the end are decisions of the minister, not us.

Senator Hill—The officials have in mind that it would be that.

Senator FAULKNER—This is a decision made in this case by Mr Downer?

Mr Davis—That is right.

Senator FAULKNER—When would that decision be likely to be made?

Mr Davis—It would depend on when the flash appeal is reissued.

Senator FAULKNER—But you have been able to indicate to me a reasonable understanding of a time frame, haven't you?

Mr Davis—We would go to the minister after that time, which in our expectations is in about a fortnight.

Mr Tapp—About two to three weeks time.

Mr Davis—It is a matter of weeks.

Senator FAULKNER—You said before, I think, two weeks.

Mr Tapp—Something around two weeks, yes.

Senator FAULKNER—We may come back to this, if we can.

Senator MASON—Mr Davis, I have a couple of questions relating to methods of determining the integrity of the expenditure of funds overseas by AusAID. For example, if AusAID decides to build a bridge in Vietnam, how do we know the money is being spent on the bridge and not going to pay off local officials or whatever? What is the process of ensuring that that does not happen?

Mr Davis—There are lots of steps to the process that I can get Mr Proctor to go through in a bit more detail, but I will make a few general comments to begin with. The way in which we go about undertaking activities is through detailed work on planning, feasibility and then appraisal of activities before we commence. We do not provide, in our country programs in particular, cash. It is very much a case where we work through with our partner government what an activity will look like. We then will typically tender for that activity on the basis of a detailed design in the Australian system. So the very first point, I guess, is that we do not as a matter of course just provide cash and we do do it very much in terms of detailed preparatory work. As well, in that detailed preparatory work we put a lot of time and effort into ensuring that we can set up the monitoring mechanisms to check accountability during the life of an activity and we have periodic reviews of those activities. There are many more detailed steps in what we refer to as the project cycle that we can go through, if you would like.

Senator MASON—That is fine, Mr Davis. You are conscious, then, of the potential problem of bribery and corruption and so forth in Second and Third World countries.

Mr Davis—Sure.

Senator MASON—With the processes that you have just flagged, have you ever discovered any bribery or corruption? Have there been any instances, Minister, where AusAID money has gone to fund projects overseas and there has been evidence of some of that money—whether it is going to governments or whatever—being used to pay bribes or for some other corrupt practice?

Mr Davis—I am not aware of any such instance.

Senator MASON—So in Australia's overseas aid program there has never been any evidence of any corrupt practices in any Second or Third World country, ever?

Senator Hill—That is a bit different.

Senator MASON—I said any evidence.

Senator Hill—Bribes are a little more likely within commercial type projects. This is aid money, going to aid objectives. Why would one have to bribe anybody?

Senator MASON—Let me give you an example.

Senator Hill—That might help.

Senator MASON—Let us say a bridge is going to be built in Vietnam. Is it possible that when the knowledge of that particular bridge being built becomes public in Vietnam certain companies might wish to bid to build the bridge and that could involve the Vietnamese government favouring certain Australian or local companies, depending upon whether they give money to the government?

Senator Hill—This is a contract being let by the government of another country.

Senator MASON—Yes.

Senator Hill—In which Australian aid is contributing to the costs.

Senator MASON—Yes.

Mr Dawson—But our contracts are let by the Australian government.

Senator MASON—Tell me the process. Is there an audit trail of all aid money spent overseas?

Mr Dawson—We can account for all funding, yes.

Senator MASON—That is my point. You can?

Mr Dawson—Yes.

Senator MASON—So there has never been any example of aid money being used for purposes other than it should be?

Mr Dawson—Not that I am aware of.

Senator MASON—Would you know if it had been?

Mr Dawson—This requires a risk management approach. A lot of work goes into the design activity of major projects. Part of the design will be a risk management arrangement to cover that project. In a major contract that will involve, for example, independent verification of the costs associated with it. It will involve independent verification of the deliverables to that contract.

Senator MASON—What do you mean by independent verification?

Mr Dawson—In a major contract such as a bridge contract there would be separate contracted advice to AusAID to report on the performance of the main contractor.

Senator MASON—From where? If it were in Vietnam, where would you get the evidence that the project was not being overcharged? How would you know where the money was going?

Mr Dawson—A firm of construction engineers would be responsible for the construction of the bridge and a supervising engineer would be responsible for verifying that the work had been completed to a good standard and at good value.

Senator MASON—So you acknowledge that there is a risk of corruption in this process?

Senator Hill—I do not think he would say that. You only know what you know. He has spelled out how the government can be confident that corruption can be avoided.

Senator MASON—Is there a theoretical risk of corruption in this process?

Senator Hill—I suppose there is a theoretical risk of corruption in everything, but that does not take us far.

Senator MASON—You acknowledge that theoretical risk.

Mr Dawson—There are all forms of risk. You have to rate them and you have to have measures to deal with and mitigate those risks.

Senator MASON—That is fine; we are getting somewhere.

Senator Hill—I do not think we are getting far!

Senator MASON—You acknowledge it as a risk—you have acknowledged that.

Senator Hill—Only in a way that does not really advance the argument. The argument is: has the government found any evidence of corruption in its project? The answer was no. Does the government make efforts to ensure that there is not corruption? The answer is yes.

Senator MASON—The next question is: are those methods good enough? That is the issue.

Senator Hill—That answer to that is that the officials believe so.

Senator MASON—But that is not sufficient either. It is whether they are in fact.

Senator Hill—It is as good as you are going to get.

Senator MASON—Not necessarily. That is why I want to go through it.

Mr Davis—I think one of the ways that we work hard to make sure it is as good as we can get it is that we do not rely on just one source. As Mr Dawson was saying, we will often put in people to play a supervising role and we will go through probity checks at various stages of the process. So we do go that extra mile to make sure that there is that set of checks and balances that is so important to minimise any potential risk.

Senator MASON—Are you aware if other countries, large aid donors, have discovered corrupt practices in donee nations?

Senator Hill—What do you mean by ‘donee nations’?

Senator MASON—In countries receiving the aid.

Senator Hill—What we are talking about here is the Australian bilateral aid program, where the Australian government contracts with parties to deliver projects.

Senator MASON—Yes.

Senator Hill—So there are no doubt corrupt practices in many donee nations. All we are saying is that, in our contracts, we avoid being drawn into that culture by means that you have just heard of from officials.

Senator MASON—I understand that, but is there any evidence from other nations of concern about this issue?

Senator Hill—I think the question is: do we know of other countries with similar bilateral programs to ours which have had problems with corruption? Do you know of any?

Mr Davis—I do not know of any off hand.

Mr Dawson—I think it probably is fair to say that probity in contracts that are let for local implementation has been an issue of some commentary. Those issues particularly apply to concessional loan projects, especially by the major international financial institutions and the major loan donors—for example, Japan. There has been a lot of attention paid to the necessary checks and risk management treatments associated with those projects.

Mr Davis—And particularly with the multilaterals. That contracting would typically be done in-country.

Senator MASON—Does Australia fund many projects where there is, as you used the words, ‘local implementation’? In your words, that is where the greatest difficulty could be with corruption—is that right?

Mr Dawson—No, that was not what I said.

Senator MASON—Sorry; could you repeat that?

Mr Dawson—I think you were asking about knowledge of instances where there had been discussion about the potential for corruption, and I was pointing out that there had been discussion of the need to take risk management treatment against that—particularly in respect of large loan projects, especially for infrastructure.

Senator MASON—Do we do that?

Mr Dawson—We have no loan programs—

Senator MASON—That was my question. We do not have any of those, but other countries do. I understand. I was looking at your webpage before, trying to work through some of these issues. You have the Activity Monitoring Brief. You say that is an important monitoring tool for AusAID funded activities. Flipping through that, I could not see anything relating to any assessment of the integrity of the expenditure of funds in that. Or is that inappropriate? Am I looking at the wrong document? Is that the document you would have those sorts of checks in?

Mr Proctor—There are two components to that. The Activity Monitoring Brief is basically our management information system on the progress of activities, and we look at 500 to 600 of them in any given year. It has a range of issues that it monitors, including progress of the

project obviously and counterpart involvement et cetera. It does not have a particular item in it that relates to what you are asking. We have a very active audit process, separate from the AMB's. It is an annual process which is based on looking at our activities, prioritised by the materiality involved and the assessed risk of particular activities or contactors. We also audit our own posts. We have an audit committee which meets regularly, which is attended by a member of the Australian National Audit Office. I think our process is pretty well regarded by them. That is the primary mechanism by which we assess the expenditure of government funds through our contactors and our offices.

Senator MASON—And that includes NGOs?

Mr Proctor—There are audits of the use of moneys by NGOs.

Senator MASON—Through that auditing process, have you ever discovered any corrupt or potentially corrupt practice?

Mr Proctor—Not to my recollection. Many issues come up about appropriate accounting et cetera and items that might have been treated differently by, say, the contractors. But that is very different from talking about a corrupt payment. As I said, I cannot recall an instance of that, certainly in my time in charge of this office.

Senator MASON—You are satisfied, in effect, that the auditing that has happened with respect to NGOs and contractors has been satisfactory?

Mr Proctor—We have quite an active program of audits.

Senator Hill—AusAID audits projects, and AusAID is itself audited.

Senator MASON—Yes. But they are two different things, aren't they? One is internal and one is external.

Senator Hill—I do not know specifically what the Attorney-General has done, but it does efficiency audits all over the place. It does not just audit the accounts.

Senator MASON—Sorry, I may have misunderstood this: AusAID does the auditing of NGOs?

Mr Proctor—We organise it.

Senator MASON—I understand.

Mr Tapp—Every NGO which is accredited with AusAID is required to have an audit done on it on a regular basis.

Senator MASON—Mr Proctor, you would say that the Activity Monitoring Brief per se is not the appropriate avenue to pursue that sort of issue?

Mr Proctor—It does ask for the strengths and the weaknesses of an activity on the occasion in which the monitoring report is prepared. So, if there were a concern about the project in that regard, it could be raised in that report.

Senator MASON—You are exactly right. I just raised it because someone raised it with me. For example—and take my word for it—the web site talks about the procurement progress and it mentions things like that the equipment supplies have been acquired in accordance with the activity schedule and so forth. In other words, these issues could

conceivably fall within the province of this brief. But you are saying that, in fact, you have other methods of doing it and that this is not the appropriate avenue for doing it?

Mr Proctor—It certainly could be raised through that avenue, but the very precise checking of the appropriate procurement would be something an audit would certainly do when looking at the particular contract.

Senator MASON—I may put some other questions on notice.

Senator FAULKNER—It would be more sensible for all concerned if I were to put some considered questions on notice in written form—if that would suit AusAID?

Senator Hill—It certainly suits me because I am having a lot of trouble keeping my eyes open.

Senator FAULKNER—If it suits Senator Hill to have me put questions on notice, I am not going to do that! Given the hour, though, that might assist. I would appreciate it if AusAID could consider as early a response to some of these things as possible.

Mr Davis—Yes.

Senator FAULKNER—And I will also try to keep the questions down to a reasonable number.

Committee adjourned at 10.50 p.m.