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SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

ESTIMATES

(Additional Estimates)

MONDAY, 16 FEBRUARY 2004

CANBERRA

BY AUTHORITY OF THE SENATE

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SENATE**LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE****Monday, 16 February 2004**

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

Senators in attendance: Senator Payne (*Chair*), Senator Bolkus (*Deputy Chair*), Senators Bishop, Greig, Kirk, Ludwig, O'Brien and Scullion

Committee met at 9.04 a.m.

ATTORNEY-GENERAL'S PORTFOLIO**In Attendance**

Senator Ellison, Minister for Justice and Customs

Mr Robert Cornall, Secretary

Mr Ian Carnell, Deputy Secretary, Criminal Justice & Security

Mr Ian Govey, Deputy Secretary, Civil Justice & Legal Services

Mr Richard Oliver, General Manager, Corporate Services

Mr Trevor Kennedy, Chief Finance Officer

Mr Graham Fry, Acting General Manager, Information and Knowledge Services

Ms Kathy Leigh, First Assistant Secretary, Civil Justice Division

Mr Iain Anderson, First Assistant Secretary, Legal Services and Native Title Division

Mr James Faulkner, Assistant Secretary, Constitutional Policy Unit

Ms Karen Moore, Acting Assistant Secretary, Office of Legal Services Coordination

Ms Kathryn Shugg, Assistant Secretary, Native Title Unit

Mr Steven Marshall, Assistant Secretary, Native Title Unit

Ms Philippa Lynch, First Assistant Secretary, Family Law and Legal Assistance

Ms Sue Pidgeon, Assistant Secretary, Family Pathways

Mr Kym Duggan, Assistant Secretary, Family Law Branch

Mr Paul Griffiths, Assistant Secretary, Legal Assistance Branch

Ms Renée Leon, First Assistant Secretary, Office of International Law

Ms Youda Younan, Senior Legal Officer, Office of International Law

Mr James Graham, Principal Legislative Counsel

Ms Joanne Blackburn, First Assistant Secretary, Criminal Justice Division

Mr Geoff McDonald, Assistant Secretary, Criminal Law Branch

Ms Robyn Warner, Assistant Secretary, International Crime Branch

Dr Dianne Heriot, Assistant Secretary, Crime Prevention Branch

Ms Robyn Frost, Director, International Crime Branch

Mr Peter Ford, First Assistant Secretary, Information and Security Law Division

Mr Keith Holland, Assistant Secretary, Security Law and Justice Branch

Mr David Templeman, Director General, Emergency Management Australia

Mr Ed Tyrie, Executive Director, Protective Security Coordination Centre

Ms Helaine Hallahan, Director, Counter-Terrorism Policy Section

Australian Federal Police

Mr Mick Keelty, Commissioner

Mr John Lawler, Acting Deputy Commissioner
Ms Audrey Fagan, Chief of Staff
Mr Trevor Van Dam, Chief Operating Officer
Ms Dianne Carlos, Chief Financial Officer

Australian Crime Commission

Mr Alastair Milroy, Chief Executive Officer
Mr Andrew Phelan, Director Corporate Services

Australian Customs Service

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

Australian Government Solicitor

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

Australian Security Intelligence Organisation (ASIO)

Mr Dennis Richardson, Director General

Family Court of Australia

Mr Richard Foster, Chief Executive Officer
Ms Jennifer Cooke, General Manager, Client Services
Mr Bruce Hunter, Chief Finance Officer

High Court of Australia

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

Human Rights and Equal Opportunity Commission

Ms Pru Goward, Sex Discrimination Commissioner
Dr William Jonas, Aboriginal and Torres Strait Islander Commissioner and Acting Race
Discrimination
Commissioner
Dr Sev Ozdowski, Human Rights Commissioner and Acting Disability Discrimination
Commissioner
Mr Stephen Duffield, Director, Human Rights Unit
Mr Craig Lenehan, Acting Executive Director
Mr Domenic Viricillo, Acting Director, Complaint Handling

Insolvency and Trustee Service Australia

Mr Peter Lowe, Acting Inspector-General in Bankruptcy
Mr David Bergman, Legal/Policy Advisor

Office of the Privacy Commissioner

Mr Malcolm Crompton, Federal Privacy Commissioner
Mr Timothy Pilgrim, Deputy Federal Privacy Commissioner

CHAIR—I declare open this public meeting of the Senate Legal and Constitutional Legislation Committee. This is the additional round of estimates for the Attorney-General's and the Immigration and Multicultural and Indigenous Affairs portfolios. The committee will consider the portfolios in the order in which they appear on the circulated agenda. Proceedings will commence today with local agencies from the Attorney-General's portfolio, followed by the department itself. The Australian Customs Service will conclude the day's hearing. Today's hearing will be suspended for a lunch break from 1.00 to 2.00 p.m. and a dinner break from 6.30 to 7.30 p.m. These breaks will be taken as close to the scheduled times as possible.

The committee has authorised the recording and rebroadcasting of its proceedings in accordance with the rules contained in the order of the Senate dated 31 August 1999. The committee has agreed to the date of Friday, 2 April for receipt of answers to questions taken on notice and additional information. The committee requests that answers be provided to the secretariat in electronic format where possible.

I welcome Senator the Hon. Chris Ellison, the Minister for Justice and Customs and the Minister representing the Attorney-General; Mr Robert Cornall, the Secretary of the Attorney General's Department; and other officers of the department and associated agencies. I remind officers that 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 also draw to the attention of witnesses the resolutions agreed to by the Senate on 25 February 1988, to the procedures to be observed by Senate committees for the protection of witnesses and in particular to resolution 110, which states in part:

Where a witness objects to answering any question put to the witness on any ground, including the ground that the question is not relevant or that the answer may incriminate the witness, the witness shall be invited to state the ground upon which objection to answering the question is taken.

Resolution 116 states:

An officer of a department of the Commonwealth or of the State shall not be asked to give opinions on matters of policy, and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a Minister.

Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege. I also remind witnesses that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. I note that there is only one outstanding answer to questions on notice from the November supplementary estimates round. On behalf of the committee, I would like to thank the minister and officers of the department for their assistance in providing responses to all other questions. Minister or Mr Cornall, do either of you wish to make an opening statement?

Senator Ellison—I do not have an opening statement to make but I understand Mr Cornall does.

Mr Cornall—The outstanding question is No. 28, which required an analysis of reviews which had taken place since 1996. It is a very searching question. The preparation of the answer is well advanced and we hope to have that for the committee shortly.

CHAIR—Thank you very much. I appreciate that. As I said, the committee is grateful for the department's assistance with speedy responses to all other questions as a matter of course. We will move straight to the Australian Security Intelligence Organisation.

[9.08 a.m.]

Australian Security Intelligence Organisation

Senator LUDWIG—Good morning. The additional estimates provide something in the order of \$43.1 million over five years to establish the National Threat Assessment Centre. How many additional ASIO officers will be employed in this area?

Mr Richardson—The National Threat Assessment Centre will employ in total across government somewhere around 55 additional staff. Within ASIO itself it will provide in the order of an additional 45 staff.

Senator LUDWIG—Will they be additional to your current staffing level or will they be recruited?

Mr Richardson—They are being recruited at present and they will be totally additional to the current staff we have.

Senator LUDWIG—Will they be specialist ASIO officers for the National Threat Assessment Centre or are they just general intake that you are recruiting to fulfil—

Mr Richardson—We will move some people who are already in the organisation into the National Threat Assessment Centre and we will recruit behind them. Most people, however, are in the process of being recruited from outside the organisation and they will be a mixture of contract analysts and people on secondment from other agencies, who we will pay for.

Senator LUDWIG—I wonder if you could provide a breakdown as to the number of contractors and the number of staff that you will pay for in terms of how many additional spots you will recruit for the National Threat Assessment Centre so that we can get an idea of how it will be staffed and from where the staff will be drawn? Are you going to fund all of the 55 places or will you fund 45?

Mr Richardson—No, there will be a small number of staff who are employed in other agencies who will be involved with the National Threat Assessment Centre; however, in the majority of cases ASIO will either employ staff directly or reimburse the cost of staff to other agencies who are seconding staff to us. Either way, we will have around 45 staff, which we do not currently have, working in ASIO on threat assessment related work.

Senator LUDWIG—When will that be fully operational? Is it 50 per cent staffed at the moment?

Mr Richardson—Our recruitment processes, as is clear in the advertisements that we run, involve intrusive security vetting and intrusive psychological assessment. That process takes anywhere between three and six months. I think the decision to establish the National Threat Assessment Centre was announced by the Attorney-General in November. We are commencing our first training program for the people who are coming into that centre at the end of this month. I think it commences on about 27 February. That program runs for four weeks and then at the end of March we will commence another program of training for the rest of the people who have been recruited for the centre. We will have communications

staffed 24/7 by early April. The centre in its entirety will be operating on a 24/7 basis in May or June. That will be dependent upon just how quickly we can get everything in place.

Senator LUDWIG—You indicated that there were other agencies involved. How many staff, which will be on secondment and which you will pay for, will be drawn from other agencies?

Mr Richardson—There are five staff from the Department of Foreign Affairs and Trade. I will go back and look at the detail of this and I will advise the committee if I have provided you with inaccurate information. From memory, there are two staff from the AFP, two staff from the Defence Intelligence Organisation, two staff from the Office of National Assessments and two staff from the Department of Transport and Regional Services.

Senator LUDWIG—Have there been any difficulties with recruitment or are you getting plenty of applications?

Mr Richardson—We have had a lot of applications and a lot of interest. The first training program we are running at the end of this month is full to capacity and we hope that the one we run in March will also be full. Unless people to whom we have offered jobs pull out we are well on top of having everyone in place within the required time frames.

Senator LUDWIG—So effectively it will be up and running by June. I guess we will see you at around that period so we might leave that and ask you then how it is operating.

Mr Richardson—Sure.

Senator LUDWIG—As you may recall, the last time you were here we spoke about Willie Brigitte. In particular, we discussed the question of when Australia was notified of the threat posed in this country by Mr Brigitte. I am seeking more detail about the first cable from French authorities in September last year. I understand the Attorney-General, in the House of Representatives, said:

... the first communication from the French authorities was passed to ASIO's liaison officer in Paris on Monday, 22 September 2003. The communication was dated 19 September.

Perhaps you can help me with this. Was the ASIO liaison officer stationed in the Australian Embassy in Paris at that time?

Mr Richardson—That is right.

Senator LUDWIG—And the communication was dated 19 September; is that right?

Mr Richardson—That is right.

Senator LUDWIG—Have you ascertained from the French authorities whether it was sent on 19 September?

Mr Richardson—No, it was not sent on 19 September because it was personally, physically passed to our office in Paris on Monday, 22 September. It was physically given to us on Monday the 22nd.

Senator LUDWIG—Was it handed by the French to the ASIO liaison officer or did it pass through other hands?

Mr Richardson—No, it was passed to the ASIO liaison officer.

Senator LUDWIG—What time was it on 22 September?

Mr Richardson—I do not know.

Senator LUDWIG—Can you find that out?

Mr Richardson—Sure.

Senator LUDWIG—Thank you. Was the cable in French or English?

Mr Richardson—My understanding is that it was in French, which is perfectly reasonable and consistent with the way the French communicate with us and we communicate with them.

Senator LUDWIG—When was it transmitted to the headquarters of ASIO?

Mr Richardson—I would have to find out the precise time it was transmitted to ASIO. As far as I am concerned, we are accountable for the handling of that material from the time it was passed to us in Paris on 22 September. Regardless of when it was or was not sent to central office, we are responsible and accountable for it from 22 September.

Senator LUDWIG—Do you know whether or not it arrived in Australia, given the time difference, within a short period or on 22 September?

Mr Richardson—No, it was not sent immediately because there was no suggestion of urgency with the message, and it was not translated immediately, in line with other things that the office was doing. I would have to find out the precise timing for you but it certainly was not transmitted to headquarters within a day or two. It was longer than that. However, we are responsible for it from the time it was given to us.

Senator LUDWIG—Did you ask the French authorities why they dated it 19 September and handed it to you on 22 September?

Mr Richardson—No, I did not, because our objective in this from the beginning is to achieve particular outcomes. That is what we have been seeking to do. Our objective is not to go over detail of that kind, simply because that can be misunderstood in terms of its intent. I assume that if they had believed the communication was urgent and important they certainly would have advised us of that when they passed it across.

Senator LUDWIG—Have you since asked them about that?

Mr Richardson—Asked them about what?

Senator LUDWIG—Whether they regarded it as urgent or important.

Mr Richardson—No, I have not. In the communication that we received on 7 October, they certainly said that it was urgent, even though they did not communicate that message in a way consistent with it being urgent.

Senator LUDWIG—I will come back to that. So you will provide the date of transmission, or the date of translation, and when it arrived, given the time difference between France and Australia?

Mr Richardson—Yes.

Senator LUDWIG—Is a copy of that cable available to the committee?

Mr Richardson—No.

Senator LUDWIG—Why is that?

Mr Richardson—Because it is classified.

Senator LUDWIG—All right. At what level is it classified?

Mr Richardson—From memory, I think it is ‘confidential’.

Senator LUDWIG—Is it usual practice that those sorts of things are not provided to committees? My recollection is that some cables can be.

Mr Richardson—I would have to take advice on it, but I would certainly oppose providing a copy of that communication to the committee, given that there is a Joint Parliamentary Committee on ASIO and given that under legislation I am required to consult regularly with the Leader of the Opposition for the purpose of advising him on matters relevant to security.

Senator LUDWIG—Will a copy of the cable be made available to the joint committee?

Mr Richardson—If the joint committee wish to see a copy of the cable, again I would take advice on it. However, if the Leader of the Opposition asked to see a copy of that cable, it would most certainly be provided to him.

Senator LUDWIG—All right. I will not ask for the cable then, I’ll take your explanation, but I would ask you to check whether or not those documents can be made available to the committee. That would help me if we strike it again. If you cannot provide a copy of the cable, can you say what is in it—as much as you can?

Mr Richardson—Yes. In broad terms, it is essentially on the public record now. It said that they had advice that Willie Brigitte had travelled to Australia, departing Paris on 14 May; it stated that he was an Islamist; it stated that he had twice been to ‘the Pakistan-Afghanistan zone’; it stated that he had ‘reportedly received military training’; and it asked for advice as to whether he was still in Australia.

Senator LUDWIG—Was it translated in Australia or in France?

Mr Richardson—I do not know.

Senator LUDWIG—I am just trying to get the proper time line in this. Perhaps you could check that and also when your ASIO office in Australia was aware of the content of the cable. I understand you will take that on notice.

Mr Richardson—Sure.

Senator LUDWIG—Thank you. Did ASIO advise the French that Willie Brigitte was in Australia?

Mr Richardson—Yes, on 7 October, following our receipt of the second message on 7 October.

Senator LUDWIG—How did you do that—by cable or by some other mechanism?

Mr Richardson—That was by cable via our liaison office in Paris.

Senator LUDWIG—So the cable came from the liaison office in Paris to the French?

Mr Richardson—Sorry?

Senator LUDWIG—I am just trying to understand the sense of this: a cable was sent from your ASIO liaison office in France to—

Mr Richardson—No, we sent a cable to our liaison office in Paris. I am not sure how the liaison officer in Paris transmitted that message, but I do know that it was provided to the French on 7 October.

Senator LUDWIG—Is that 7 October Australian Eastern Standard Time?

Mr Richardson—It was dispatched on 7 October Eastern Standard Time—whenever it was—and it was delivered to the French authorities on 7 October Paris time, bearing in mind that depending on the time differences it could have been midnight or one o'clock in the morning.

Senator LUDWIG—Would you mind getting the sequence or the time line so that it makes a bit more sense, rather than talking about 7 October?

Mr Richardson—It is 7 October in both cases.

Senator LUDWIG—Is there a reason we would not have responded to the first cable?

Mr Richardson—As I have previously stated, it was treated as a relatively routine matter. You could argue that it should have been responded to a day or two before it was, but it certainly was not going to be treated urgently in terms of the message we received and because the French did not state it was urgent. We have a lot on and unless something is urgent we do not treat it as urgent.

Senator LUDWIG—How long would it have taken? When do these things get dealt with, then?

Mr Richardson—It should have, as a matter of course, been responded to in one to two weeks.

Senator LUDWIG—Did the 7 October cable have anything to suggest that these things needed to be dealt with?

Mr Richardson—On 7 October, yes. Although the cable was not sent as an urgent cable, in the body of the cable it did refer to the urgency of it. That was the first indication we had from the French that they attached any urgency to the request.

Senator LUDWIG—Is there a protocol to determine whether something is urgent, between the French and you?

Mr Richardson—There is no written protocol. We do not have written protocols.

Senator LUDWIG—I did not ask for a written protocol. I know you do not have them.

Mr Richardson—There is no written protocol but there is a protocol. The protocol between agencies is that where you have information which you deem to be important you make a point of drawing that to the attention of the receiving agency before or at the time you are sending the message, because most counterpart organisations globally do not have 24/7 fully staffed communication. You rely on people advising you that something is urgent and important so that your call-out and on call arrangements can come into play. We have a duty officer arrangement 24/7; we have a call-out arrangement 24/7.

Even when you are communicating with an organisation that has 24/7 fully staffed communication, you do, as a matter of practise and commonsense, advise that organisation that you are sending something that you deem to be urgent and important. For instance, the Americans, with their resources, are 24/7, self-evidently. If we are sending something to them which we consider urgent and important, regardless of the time of day or night we are sending that message—whether it is in normal business hours or whether it is not—we make a point of making personal contact with the US Embassy here and we make a point of our liaison office getting in contact with the relevant people there. That is the way communication is normally handled when something is deemed by the sending agency to be urgent and important and when the receiving agency is not aware of that.

Senator LUDWIG—Did you check with the ASIO liaison officer in Paris that, when the cable was handed to him, he was informed that it was something that he needed to take notice of or that it was otherwise urgent or something that they should respond to?

Mr Richardson—We are advised by our office in Paris that there was no suggestion of urgency when that message was passed across. I do not know whether they assumed we would automatically treat it as urgent, but when you deem something to be urgent you normally advise the person who you are passing that information to that it is urgent, and you normally explain why it is urgent.

Senator LUDWIG—Have you followed up with the French authorities to clear up that issue as to whether or not the protocol is otherwise broken down or that there was a problem in this instance, or did you consider that first cable still not urgent?

Mr Richardson—We have discussed those issues with the French, but overwhelmingly the cooperation with the French on the Brigitte matter has been absolutely excellent. Our objective is an outcome here. Our objective is not to get involved in a blame game in the middle of an investigation. I do not know the details of what was in their minds. I do not know the detail of why they communicated it when they did. It might have been simply an honest misunderstanding within their own organisation; it might have been that they assumed that we would automatically treat it as urgent. I do not know.

Senator LUDWIG—What escapes me is this. You indicated that the cable mentioned that he had received military training in Pakistan or Afghanistan. Post the issue, it seems to raise a question mark as to whether it could have been treated more importantly than an ordinary, routine cable, because of the content of it.

Mr Richardson—We are dealing, every day of our lives, with people like that. Simply that someone has reportedly received military training in Afghanistan and Pakistan does not automatically for us involve the pressing of panic buttons. There are some thousands of people who have received such training in Afghanistan and Pakistan. Some of them continue to have continuing links to terrorist organisations and some of them are people of real concern. Others are people who have been looked at quite carefully and in respect of whom authorities make a judgment that they do not pose a continuing threat. That statement of itself is not a statement of urgency, however it might seem to lay people. I can understand that lay people interpret it in a way in which it is not necessarily interpreted or seen by us.

Senator LUDWIG—I am happy to be classified as a lay person then. The problem I also have is that the ASIO annual report also talks about being aware of a number of Australians who received terrorist training in the late 1990s. It does not seem to indicate post 2000. Of course, it indicates that the level of instruction by these individuals ranges from basic military training to advanced terrorist tactics. You mentioned it in your annual report. It seems to elevate it beyond the ordinary.

Mr Richardson—No. There is complete consistency between what the annual report states publicly and what I am saying.

Senator LUDWIG—I am not trying to find an inconsistency; I am trying to find an explanation.

Mr Richardson—But it is precisely for that reason—i.e. that the level of training varies so widely. There are people in this country who have trained in Afghanistan and Pakistan who we no longer believe are a threat to security. There are others who we put in separate categories. As the annual report states, it remains an important priority in our investigations to particularly identify other people who might have undertaken such training.

Senator LUDWIG—It begs the question, though, that, if it remains a priority, when you see that in a cable, wouldn't you then respond quickly—you might classify it as urgent or non-urgent—to determine the level of training that the person has received so that you can then categorise it as being either a low-level threat or an urgent threat that needs addressing?

Mr Richardson—Not of itself. It was not until 7 October when we were advised by the French that (1) they attached urgency to it, even though they did not send that communication to us in a way consistent with it being urgent, and (2) he was possibly dangerous. We treated it as urgent from that point on. Whether they had that information and assessment on 22 September or whether that was a result of additional information they got between 22 September and 7 October, I do not know.

Senator LUDWIG—You are familiar with Jean Francois Clair and the interview on the *Sunday* program on 8 February?

Mr Richardson—Yes, I am.

Senator LUDWIG—In that case, I will not take you to the full exchange. The journalist said, following an explanation from Jean Francois Clair, and I quote:

JEAN FRANCOIS CLAIR: Apparently, take time for our friends to find him. He has been, in fact—we had to sensibilise them again on 3 October.

I assume that means, in a loose Australian translation, that they sent one cable and then had to send another.

Mr Richardson—They did not send a cable to us on the 22nd. The *Sunday* program reported that, and got it absolutely wrong.

Senator LUDWIG—Yes, you have indicated that they passed it to you.

Mr Richardson—We physically received a communication on the 22nd. I do not care what date it was dated.

Senator LUDWIG—I was just clarifying that. This is what was said in the transcript. I think you clarified that earlier, and I am not cutting you off—I will let you finish in a second. What it was leading to—and this is the crux of the issue, not who got it when, because I think you have explained that—is this exchange:

SARAH FERGUSON: And why was that?

JEAN FRANCOIS CLAIR: Pardon?

SARAH FERGUSON: Why did you go back?—

and this is the point I want to get to—

JEAN FRANCOIS CLAIR: Because we had no answer.

Was the information sought in the cable of the 19th information that had not been provided to France by ASIO? Do you see where we are now heading?

Mr Richardson—Sure.

Senator LUDWIG—We have gone past that little earlier bit, but I will let you finish if you need to clarify that further.

Mr Richardson—No.

Senator LUDWIG—So it seems to me that the French are saying—at least the French DST—that they did not get a response on the early one so they went back again with a second one, because they had not been provided with any information from ASIO. That seems to be consistent with what you have been saying today.

Mr Richardson—Yes, that is perfectly consistent. I can understand why they sent a further communication.

Senator LUDWIG—The reason they had not provided it is, as I understand your answer, that it was put in the ‘ordinary’ basket and would have been responded to in due course.

Mr Richardson—Yes.

Senator LUDWIG—And the 7th turned up before the due course.

Mr Richardson—As I said, I believe due course should have been between one and two weeks. I think it is perfectly reasonable and perfectly understandable that the French sent a second communication on the 3rd. But, given that that communication which we received on 7 October was advising us for the first time that (1) they believed it was urgent and (2) that Brigitte was possibly dangerous, I am a bit puzzled as to, firstly, why they did not provide that personally to our liaison office in Paris and, secondly, why it was not communicated to us in a way consistent with the claim of urgency.

Senator LUDWIG—That is what I am a bit curious about as well. You could say they lacked confidence in the first one getting there so they changed their process and then sent it. Did they send it direct to your communications room?

Mr Richardson—In which case, why didn’t they let us know that there was a message that was urgent and in which they were advising us for the first time that someone is possibly dangerous? We do not know that. They know that; they have that information—they are passing it to us. If they did not want to pass it through the office in Paris, I am a bit puzzled as

to why they did not make a point of contacting us in Canberra to let us know the message was coming.

Senator LUDWIG—I do not really want to get into too much speculation. I would not mind you finding out and advising the committee. It seems to me that one view is that they sent you a cable and passed it through the ASIO liaison office in Paris, they did not get a response in the time they thought they should get a response because of the view they took of the issue, they had little confidence in it getting to Australia or were not confident that it got to Australia from the ASIO liaison office and then they used a different method or different transmission directly to see if they could elicit the responses they wanted or advise you of the issue that they wanted to inform you about. That is one perfectly good explanation, but I would prefer your explanation rather than you being puzzled about it.

Mr Richardson—I do not see that as a perfectly good explanation at all because if they are in possession of information which they believe to be urgent and if they are in possession of information that states that someone is possibly dangerous and they are communicating that to another organisation, in office hours their time but at around 11 o'clock at night our time, I am puzzled as to why they would not contact us direct if they did not want to deal with our office in Paris. Addressing the latter point, given that they did not state any urgency in respect of the first message passed across on 22 September, I would have thought that most interactions between organisations of any kind would probably involve that organisation ringing up the liaison office, getting them in and stressing the urgency of it and passing across the second message at the same time. It is just possible—and this may not be the case but it is just possible—that there might have been some bureaucratic oversights on one side, which was not ours. It is possible.

Senator LUDWIG—I know you do not like to go over the old territory again but one would imagine that you would go and check to make sure it did not happen again.

Mr Richardson—Yes, and we have done that.

Senator LUDWIG—What have you put in place to avoid it?

Mr Richardson—What we have in place is the arrangement that has been in place for many years, and that is a clear understanding that where one organisation are communicating information which they consider to be urgent and important to the other organisation, then the sending organisation make a point of letting the receiving organisation know that it is coming.

Senator LUDWIG—So, tactfully, did you bring that to the French authority's notice?

Mr Richardson—We have discussed that, but in discussing that we have not gone over how precisely their communication worked within their own organisation. That would not be a productive line of inquiry by us. At the end of the day we have no control over it; therefore, we did not pursue that issue.

Senator LUDWIG—I did not ask you that.

Mr Richardson—We were concerned about the communication between them and us.

Senator LUDWIG—With regard to people in Australia like Brigitte, can the liaison office in Paris set their own course of inquiry?

Mr Richardson—I do not believe so but I will confirm that. If I have given you wrong advice I will come back to the committee in writing.

Senator LUDWIG—Thank you. Can an ASIO officer—perhaps not an ordinary one, but I do not know what you call them other than ASIO officers—initiate checks of whether someone is in Australia or not from—

Mr Richardson—Yes. They can in Canberra and in our other offices in Australia.

Senator LUDWIG—Perhaps you are going to check on whether they can initiate it from Paris or whether they then make a request back through Canberra to initiate the request.

Mr Richardson—The message was certainly sent back to Canberra.

Senator LUDWIG—Right. How long would it take for an ASIO officer in Canberra to initiate that inquiry?

Mr Richardson—Not very long at all. It is purely a matter of what priority you give to that check in the context of other things you are doing.

Senator LUDWIG—In respect of Mr Brigitte, when was the first initiation of that done?

Mr Richardson—I do not know. I would have to check. It was done on the 2nd, 3rd or 7th. I would need to check that.

Senator LUDWIG—Thank you; perhaps you could. In the sense of the first one—then we will try the second one—is the cable copied to other places or is it simply transmitted? Once it is handed to the ASIO liaison officer in Paris is it transmitted back to ASIO as one copy—either translated or untranslated, and you will advise us of that—or is it sent to the embassy in Paris or sent to the embassy in Canberra? Where else might it go?

Mr Richardson—It is sent directly back to ASIO on our own communication network. It is not copied elsewhere.

Senator LUDWIG—Is the second one the same?

Mr Richardson—The same. Well, the second one is slightly different. The first one was an intra-ASIO communication. The second one was a communication directly from the French authorities to ASIO in Canberra. So obviously the second one would not have been copied elsewhere either.

Senator LUDWIG—How did the second one come through?

Mr Richardson—It came through on the electronic connection that we have with the French authorities.

Senator LUDWIG—That was directly?

Mr Richardson—That is right.

Senator LUDWIG—Was that translated? Was that in English or French?

Mr Richardson—It was in French. As I said, from the time that was received on 7 October it was treated as urgent.

Senator LUDWIG—Why is that? If it was in French you would not necessarily know it had an urgency content, because you indicated that it did not have any external—

Mr Richardson—No, it did not. However, you do not need to be a French speaker to glance down something. I do not know the precise workings of it but it was identified very quickly as being urgent on the morning of the 7th.

Senator LUDWIG—In French time. How long did it take to get translated from then?

Mr Richardson—I do not know how long it took to be translated but we acted on that from the morning of the 7th.

Senator LUDWIG—At what time?

Mr Richardson—I do not know. I would need to take advice on that.

Senator LUDWIG—Perhaps you could find that out and find out how long it took to translate from the time the transmission was received and then from when you commenced your actions in respect of it. Was the ASIO communications centre manned at that time when the second one was received? Is it 24/7?

Mr Richardson—It was sent by the French, as I have previously stated, at around 11 p.m. our time on Friday, 3 October and it was received by us when our communications centre opened on Tuesday, 7 October—Monday, 6 October being a long weekend. Over that long weekend we had a duty officer on call, as we have a duty officer 24 hours a day on call. We have call-out arrangements for virtually all staff 24 hours a day and, if a communicator is not called out after hours, they do not go into the communications centre. The communications officer was not called out over that long weekend simply because we did not know that the message—a message that we are now told was urgent and important—had been sent. We accessed that message when we received it on Tuesday, 7 October.

Senator LUDWIG—So in that sense, nobody checks the messages over the long weekend.

Mr Richardson—No. We are not aware of the last time any organisation from anywhere around the world has communicated to us something which they considered to be urgent and important without first letting us know. We are not aware of the last time that happened.

Senator LUDWIG—So this was a first-timer?

Mr Richardson—It is certainly the first time in the time that I have been in the organisation since October 1996. I have checked with other people who have been in the organisation a lot longer and they cannot recall a similar incident.

Senator LUDWIG—How many messages come into the communications centre? Is it a continuous stream that comes in or is it ad hoc? I am just trying to get a sense of how this electronic screen works.

Mr Richardson—I cannot tell you the precise number of messages that come in in a day or a week. I can ascertain that and I can provide you with a briefing on that.

Senator LUDWIG—Thank you. Just keep it to the Friday or the long weekend or expand on that if you like. I am just trying to get a sense of that. The point is that over the long weekend the communications centre is unmanned—that is right, isn't it?

Mr Richardson—That is right. But there are on call arrangements. The suggestion that some people have made that ASIO was a nine-to-five operation is just damned insulting to the people in ASIO who are on call 24 hours a day by seven days a week. They are available for

work at any time and they get called out at any time. But we are not mind-readers. If someone has information which they deem to be urgent and important, if they do not let us know that they are sending that and if they do not send it in a way that is consistent with it being urgent and important, then there is not much we can do about that.

Senator LUDWIG—Yes, I am not suggesting that. Regarding the way that the communications centre operates, is there a system in the communication itself that alerts you to come in to deal with it or are all communications therefore deemed to be non-urgent that come through the communications centre?

Mr Richardson—Except where we are advised that a communication has been sent which is urgent and important.

Senator LUDWIG—Yes.

Mr Richardson—Unless we are advised that a communication is being sent which is urgent and important or unless we are sending a message which is deemed to be urgent and important, the communication centre is not open after hours.

Senator LUDWIG—So it is assumed that all communications sent through the communication centre are non-urgent?

Mr Richardson—It is assumed that any message that is being sent otherwise is of a precedence which, in the view of the sender, can be acted on at the opening of business on the next day.

Senator LUDWIG—Has there been any change in the procedures that has been adopted in terms of the communication centre since that incident?

Mr Richardson—No. It is a procedure that has worked over the years. This is the only time of which we are aware—certainly in recent years it is the only time—we have received a communication of this kind without being advised. We have not seen a need to change arrangements that have indeed worked very well. However, as you know from the initial question you asked, we will have 24/7 communication with the formation of the National Threat Assessment Centre, consistent with the announcement made by government in November. And, as the Attorney advised in the parliament last week, there will be extended communications operating from the end of this month, with 24/7 communication operating from early April.

Senator LUDWIG—What time on Monday or Tuesday did the communications centre become aware of the—

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

Senator LUDWIG—If you wouldn't mind. And you indicated earlier that you would take on notice how long it took to translate and indicate the action.

Mr Richardson—Sure.

Senator LUDWIG—I was just trying to get the whole time line into it.

Mr Richardson—Yes.

Senator LUDWIG—Was a check instigated on the Tuesday in relation to whether Mr Brigitte was in Australia or not?

Mr Richardson—Yes, it was, and the French were advised on 7 October—and, when I say 7 October, I mean 7 October Canberra time and 7 October Paris time—that Brigitte was still in Australia. We sent our liaison officer in to discuss the issue with the French on the seventh; we also sent him in on two occasions on 8 October to ascertain further information about Brigitte, and we received that.

Senator LUDWIG—Perhaps you can take that on notice in terms of also putting in the time line about from when the check was then made or instigated after the translation was done—how long it took for the response to come back as to whether or not he was in Australia.

Mr Richardson—Sorry?

Senator LUDWIG—If we follow the time line on the seventh, as I understand it, the cable was read, translated, deemed to be urgent and action taken. From that point, you would expect—and this is what I suspect you are going to confirm with me—that you would have ascertained at some point in that day whether Mr Brigitte was in Australia. At what time did you find out that he was in Australia and at what time did you then advise the French authorities? I would like that information so we can follow that time line.

Mr Richardson—Sure.

Senator LUDWIG—Thank you. Then I take it that the second cable is not available to the committee, on the same basis the first one was not.

Mr Richardson—No.

Senator LUDWIG—And it is still available to the Leader of the Opposition and perhaps the committee if asked.

Mr Richardson—It is available to the Leader of the Opposition and, consistent with the requirement under the act, I have consistently briefed the Leader of the Opposition on the Brigitte matter from the beginning. Consistent with that, I provided a briefing on 24 November last year which did provide details of the communication. There has been no cover-up.

Senator LUDWIG—I am not sure I asked for that, but thank you.

Mr Richardson—I am simply making the point that there has been no cover-up here.

Senator LUDWIG—I was not sure what point you were making, but I do not think I am alleging that.

Mr Richardson—That claim has been made.

Senator LUDWIG—Do you have access to passenger movements or do you have a hotline to DIMIA? I am not sure of the arrangement.

Mr Richardson—We can do that ourselves from within our own organisation. The connectivity between Australian border agencies is probably the best in the world. It is quite

unusual for counterpart organisations globally to be able to check that directly from their desktop, and we can.

Senator LUDWIG—So, from your communications centre, it can take a matter of minutes to check a passenger movement?

Mr Richardson—I do not know about a matter of minutes, but it can be done fairly quickly.

Senator LUDWIG—Perhaps you could get back to us on how long it takes.

Mr Richardson—Sure.

Senator LUDWIG—Given the set of circumstances that have transpired, which we have talked about today, has there been any communication with the French—and I was trying to avoid using the word ‘communication’—about changing or improving the information sharing arrangements between Australia and France in intelligence matters?

Mr Richardson—I think the intelligence sharing arrangements have always been good. The French have a highly professional and capable service, and it is a liaison relationship that is important to us. We are also important to them in terms of the window that we can provide to them. I cannot give you the exact dates, but within a matter of weeks following 7 October a division head from ASIO was travelling to Paris on another matter and we made a point of having senior level discussions with the French about the information sharing, the communication and the like.

Senator LUDWIG—Thank you.

Senator KIRK—On the last occasion we talked about a request by the Attorney-General to ASIO to review its legislation, in particular the questioning powers. If you recall, we had a discussion about that. Following estimates the parliament passed the ASIO Legislation Amendment Act, which addressed the issues that we discussed during our last meeting, in particular the issues that you identified in relation to Mr Brigitte. Has ASIO identified any further issues and brought these to the attention of the Attorney-General in relation in particular to the questioning powers of ASIO?

Mr Richardson—Not in terms of the practical application of the questioning powers. You will be aware that, as a result of the Brigitte matter, there were some practical shortcomings identified in the legislation and the parliament passed legislation in mid-December that rectified those practical shortcomings. We have not identified any further practical shortcomings, bearing in mind the fact—and it is not a matter for me—that there were differences between the government and the opposition about some of the foundation legislation last year.

Senator KIRK—When you say you have not identified any further practical difficulties, I understand you are saying that you have not seen the need to raise anything with the Attorney in relation to the practical application of the powers.

Mr Richardson—I see powers falling into two areas. One is the practical application of the legislation, which we would give advice on against our experience vis-a-vis Brigitte. There is another area that would fall into a policy arena where you could continue to have

legitimate differences depending upon what you believe your broader approach is with respect to the powers more broadly defined.

Senator KIRK—Generally it is only practical difficulties with the legislation that you would raise with the Attorney as opposed to the policy or foundational applications that you referred to?

Mr Richardson—It is the practical application of the legislation that is where our focus has been in respect of Brigitte. We can be asked for our views in respect of the second issue but that is more a matter for the Attorney-General's Department and for the minister.

Senator KIRK—The minister would perhaps seek your advice in relation to those policy issues if he were looking to make changes.

Mr Richardson—Yes.

Senator KIRK—Has there been any such approach made to you in relation to these matters?

Mr Richardson—I do not think it is proper to be canvassing detailed discussions that I may or may not have had with a minister on a policy matter.

Senator KIRK—Is it fair to say that there have been discussions?

Mr Richardson—No, my answer is precisely the answer I gave; no more, no less.

Senator LUDWIG—You do not want to expand on that answer, do you?

CHAIR—Mr Richardson has indicated quite clearly what his answer is.

Senator LUDWIG—Have you instigated a review of what additional information or policy changes you might want to consider? Is there any other work currently being undertaken by ASIO in respect of this area?

Mr Richardson—We undertook a lot of that work prior to the initial legislation being introduced into the parliament, which was quite some time ago. In terms of those broader policy issues we do not need to do any further work on them.

Senator LUDWIG—No further work has been requested to date that you are going to provide additional views on?

Mr Richardson—We have not needed to do further work within ASIO.

Senator LUDWIG—As I understand it, on 22 January 2004 the Office of the US Attorney for the Southern District of California issued a news release announcing the arrest in San Diego of Omar Abdi Mohamed and his indictment on two counts of making false statements in an immigration application. Is that your understanding?

Mr Richardson—I have not personally seen his press release but that is certainly consistent with the advice we received from the US authorities.

Senator LUDWIG—Have you had a look at the news release?

Mr Richardson—No, I have not.

Senator LUDWIG—Perhaps we can deal with it in another way, then. Do you understand that the allegations in relation to Mr Mohamed were that between December 1998 and

February 2001 the Western Somali Relief Agency, of which Omar Mohamed was president, had received \$351,000-odd from a charity called the Global Relief Foundation?

Mr Richardson—Yes.

Senator LUDWIG—I understand that the Global Relief Foundation—and this is where you might be able to help us—had its assets frozen by the US Treasury in December 2001, was designated as a terrorist entity in October 2002 and was alleged to have links with Osama bin Laden and al-Qaeda. Is that the allegation and the information as you understand it?

Mr Richardson—Sorry, is that the allegation?

Senator LUDWIG—The allegation first starts out with Mr Omar Mohamed. Is that the allegation? And has the detail that I have just informed you been verified from ASIO's perspective?

Mr Richardson—I think what you have said is right.

Senator LUDWIG—Do you need to check whether or not that is right?

Mr Richardson—No, in terms of the organisation that he allegedly—

Senator LUDWIG—Received some funding from.

Mr Richardson—Name the organisation again.

Senator LUDWIG—The Global Relief Foundation, which had its assets frozen.

Mr Richardson—Right. That organisation is deemed to be terrorist related in the US and I believe that it has been deemed to be terrorist related here in Australia.

Senator LUDWIG—And do you understand that the Western Somali Relief Agency had received funding from that so-called charity?

Mr Richardson—I am not aware of that, but I would not challenge what you have said.

Senator LUDWIG—The Global Relief Foundation was listed by the Australian government as a terrorist entity in Australia on 28 October 2002 under the Charter of the United Nations Act 1945—is that correct?

Mr Richardson—Yes.

Senator LUDWIG—So, as I understand it, it would be a criminal offence under the act for a person in Australia to have financial dealings with the Global Relief Foundation?

Mr Richardson—Yes.

Senator LUDWIG—In respect of Mr Omar Mohamed, do you know how many times he entered Australia prior to his arrest in the United States?

Mr Richardson—Yes, I understand that he entered Australia on five occasions between December 2000 and December 2003.

Senator LUDWIG—Do you know the dates on which he entered Australia?

Mr Richardson—I do not have them with me.

Senator LUDWIG—Perhaps you could take that on notice.

Mr Richardson—Sure.

Senator LUDWIG—Can you also provide in each instance not only the date of entry but also the date of exit?

Mr Richardson—Sure.

Senator LUDWIG—I also want to know the type of visa, if you are aware of it, that Mr Mohamed was travelling on and whether it changed. The visa category is the issue that I would like to elicit from you. Will you be able to provide that?

Mr Richardson—Yes, we can do that.

Senator LUDWIG—Is ASIO aware of other countries which Mr Mohamed visited at that time—in other words, where he went to and where he might have travelled to?

Mr Richardson—We are, but I am not aware of them all. I might also say that, during the whole of that time, he was not on any terrorist database. He was not on the US terrorist database—well, he was not on the terrorist database for the purposes of movement alerts shared with us by the United States. So the fact that he entered and left Australia during the time that I have mentioned is unexceptional.

Senator LUDWIG—All right, but you will be able to provide details of at least some if not all of the places he visited during that period he was travelling?

Mr Richardson—No, we will be able to provide some but certainly not all. We will be able to provide you with the details of when he entered and left Australia. That is what we can provide you with certainty. In terms of where else he might have moved around the world, we would not have all of that information.

Senator LUDWIG—So you would at least know the first port of call or the first destination of the aeroplane that he travelled on?

Mr Richardson—We would know the first destination of the aeroplane he travelled on. That does not mean to say he got off it at that destination.

Senator LUDWIG—I have experienced this with Immigration. I understand that.

Senator Ellison—Madam Chair, may I clarify something?

CHAIR—Yes, Minister.

Senator Ellison—Senator Ludwig asked about the indictment or the charge against Omar Mohamed in the United States. I do not believe it has been exactly clarified as to whether we are on the same wavelength in relation to what the questioning is on. Senator Ludwig mentioned a press release from the authorities in Southern California which related to Omar Mohamed. I want to clarify that that indeed related to the charge which was laid against Omar Mohamed, because the subsequent question to Mr Richardson was, ‘Are you aware that this was the charge?’ I do not think it was really clarified what charge Senator Ludwig was referring to.

CHAIR—Whether it was the charge that pertained to the press statement that Senator Ludwig was referring to earlier?

Senator Ellison—Yes. The thing is this: there was comment at the time that the charge against Omar Mohamed was related to migration. Now there is an issue that Senator Ludwig

has raised about the money that allegedly went from the Global Relief Foundation to the Western Somali Relief Agency.

Senator LUDWIG—Yes, I see where people might be confused. They might be related but separate.

CHAIR—The minister is just clarifying that and endeavouring to seek clarification, Senator.

Senator LUDWIG—Yes. I can make the news release available.

Senator Ellison—That would be helpful.

CHAIR—We will have a copy of that given to the minister and Mr Richardson.

Senator LUDWIG—Having now given that away, I cannot read from it and tell you what it was about.

CHAIR—No, but it will assist a clearer exchange of information, Senator.

Mr Richardson—My understanding is that the charge against him was, in fact, immigration fraud. My understanding is that certainly the charge announced then was not related to the funds in respect of the organisation Senator Ludwig referred to.

CHAIR—We will at least try to make sure that we are speaking from the same page.

Mr Richardson—Yes.

Senator LUDWIG—While we are waiting for that, has ASIO been investigating the purpose and details of Omar Mohamed's visit to Australia?

Mr Richardson—Yes.

Senator LUDWIG—Are they are of interest to Australian authorities in a terrorist or terrorist financing context?

Mr Richardson—Yes. They are of some interest but not in terms of fund-raising. They are of some interest in terms of getting a better handle on the relationships he may or may not have had in Australia. However, we are not at this stage aware of anything that is terrorist related.

Senator LUDWIG—So what can you say about this? This is unrelated to the immigration charges in the US. This is a separate issue, isn't it?

Mr Richardson—I can say very little. I provided a full and detailed briefing to the opposition spokesperson, Mr McClelland, a couple of weeks ago. I provided him with a copy of precisely the same written advice we had given to the Attorney-General. That was a classified brief that contained all the information. There is a limit as to how far I can go before Senate estimates in a public session.

CHAIR—This committee has always been cognisant of those restrictions, Mr Richardson, and has endeavoured to respect them on every occasion—and we will continue to do so. Won't we, Senator Ludwig?

Senator LUDWIG—I did not press you, Mr Richardson. In fact, what I did say was, ‘as far as you can tell me’. I know that you understand that, so I am not going to take exception to someone saying that I am not following the usual practices of this committee.

CHAIR—No, I was saying how well we were going.

Senator LUDWIG—Thank you. What I was asking was what you can say. As I understand it, it is distinct and separate from the issue in the US. That seems to be about the immigration problems he has over there. What I want to know was what you can say about those issues I mentioned, namely terrorism or terrorist financing in Australia.

Mr Richardson—We do not have any information that he was engaged in activities in Australia in relation to terrorism financing. Our inquiries here are not distinct and separate from inquiries in the United States. Clearly, they share information with us and we share it with them. While the charges that have been laid against him in the US are related to immigration fraud, the US are continuing their inquiries. Where their investigation will go I cannot prejudge.

Senator LUDWIG—No. But their inquiries are not confined to immigration fraud as far as you are aware and can inform the committee?

Mr Richardson—As a matter of course, you could assume that they would take forward inquiries not only related to immigration fraud but also related to other possible activities. The focus of their investigation over the last couple of years has been immigration fraud rather than specifically terrorist related.

Senator LUDWIG—When did ASIO first receive contact from the US authorities in relation to Mr Mohamed?

Mr Richardson—Again, I will need to take that on notice. We became aware of him through the media. Indeed, we would not expect to be advised in advance in relation to an immigration fraud investigation in the United States. The fact that we read about it in the press was not surprising.

Senator LUDWIG—Was that on 30 January 2004 in the *Herald Sun* newspaper article?

Mr Richardson—I cannot tell you the exact date but it was whenever it appeared in the Australian media here.

Senator LUDWIG—That is what I am trying to ascertain—whether or not it was from the *Herald Sun* newspaper, which published an article entitled ‘Accused terror banker slips out of Australia’.

Mr Richardson—Whenever the date was on which the first press report appeared in Australia, if it is the date on which you say—

Senator LUDWIG—Perhaps you can check on that as well.

Mr Richardson—I do not know whether there was a press report before. Whenever it first appeared in the Australian press is when we became aware of him.

Senator LUDWIG—Perhaps you can check on that and let the committee know, just in case there might have been an earlier article that I missed.

Mr Richardson—Sure.

Senator LUDWIG—How was that contact then made? Do you ring up the US and say, ‘What is going on’?

Mr Richardson—We saw the press article and we asked our office in Washington to make some inquiries. We were advised that the investigation related to immigration fraud and was not at that point terrorist related.

Senator LUDWIG—Was any information sought by the US in return about his activities in Australia?

Mr Richardson—I do not know offhand. There has certainly been an exchange of communication between ASIO and the US about his travel to and from Australia since then.

Senator LUDWIG—Perhaps, as far as you are able to inform the committee, you could similarly put that in a time line so that we can understand when you first initiated inquiries in the US, what their response was and whether they followed it up with any additional requests for information once they became aware that he was in Australia.

Mr Richardson—Yes, to the extent that I can, bearing in mind that we are talking about an active investigation in the US at this time.

Senator LUDWIG—Yes, I understand that, and that is why I keep prefacing my remarks with ‘as far as you are able, given the nature of it’. And I would be interested in knowing the nature of those inquiries and the character of them in terms of the request or what the US was seeking—as far as you are able.

Mr Richardson—Sure.

Senator LUDWIG—In your earlier answer you mentioned that ‘they’ are of some interest. Who are they?

Mr Richardson—Sorry?

Senator LUDWIG—In your earlier answer to a question—it took me a while to come back to it—you used the word ‘they’. I mentioned Mr Mohamed but your response was ‘they’.

Mr Richardson—I am sorry, I would not have a clue in what way I meant ‘they’ in that sentence. I would need to see the transcript. I honestly cannot—

Senator LUDWIG—Is there anybody else, then, as far as you are able to tell the committee?

Mr Richardson—Who?

Senator LUDWIG—In terms of Mr Mohamed, are there associates or is there someone else that you are also looking at in this instance?

Mr Richardson—People use the word ‘associates’ very loosely and I do not believe we are looking at anyone who could fall within the meaning of the word ‘associates’ as opposed to people whom he might have met or knew. I am trying to be quite precise because there is a bit of a tendency for commentators to assume that the only thing bad people do in their lives is to get around with other bad people. Of course, one of the difficulties we all face is that bad

people also have lives which in other respects can be relatively ordinary. Therefore you cannot assume that whoever has come in contact with a bad person is themselves a bad person. So you need to be careful in using the word ‘associate’ because it conjures up a sense that a person is related to the bad activity.

Senator LUDWIG—That word does have negativity attached to it.

Mr Richardson—In that sense we are not looking at so-called associates.

Senator LUDWIG—In terms of contact with the US authorities about Omar Mohamed, as far as you are able you are going to provide information about the information they are seeking and the information you have in respect of him. My understanding is that it was alleged in open court in the United States—and I am not sure whether you are aware of the transcript or the court and perhaps you might need to check on that before you answer—that Mr Omar Mohamed received money from a designated terrorist entity and had visited Australia on several occasions. Does that raise concerns that the US did not inform you about these issues?

Mr Richardson—No, because their advice to us is that the focus of their investigation, certainly up until the time of that initial press report, was on immigration fraud and, as I have previously said, I would not expect to be advised by the US authorities of an immigration fraud investigation unless there was a terrorist angle. As to what has been said in the court, we have not accessed the transcripts of that court hearing. We are liaising with the US authorities with respect to this person and we will take it from there.

Senator LUDWIG—So you are not aware of what has been said in open court?

Mr Richardson—No, we have not devoted resources to following a court case in San Diego which we were advised by the US authorities was related to immigration fraud. No, we have not.

Senator LUDWIG—So the US authorities have not contacted you about any allegations of terrorist links in Australia and sought additional information?

Mr Richardson—We have had subsequent discussions about other issues that have arisen after those press reports but they are not matters which I can go into in this forum.

Senator LUDWIG—So you would not expect a warning or anything like that from the US authorities in relation to his presence in Australia, either prior to or post what has been at least to date—

Mr Richardson—Given that they did not have him on their terrorist alert list, which we have access to, the answer to that is no.

Senator LUDWIG—In respect of the movement alert, do you know whether he was added to that list?

Mr Richardson—Yes, he was.

Senator LUDWIG—What date was he added to that list?

Mr Richardson—I cannot tell you the date off the top of my head, but he was subsequently—not on the day of the media reporting, or the one or two days—added to it.

Senator LUDWIG—Perhaps you could take that on notice and let us know what date he was added to the movement alert list.

Mr Richardson—Again, I will have to look at that in the context of the investigation, et cetera, but I can say that he is on the movement alert list.

Senator LUDWIG—This probably gets caught in the same answer, but you could let us know whether it was subsequent to the *Herald* article on 30 January, given what you have just indicated about whether or not you can inform me—

Mr Richardson—It was certainly subsequent to, but it was unrelated to any article in the media.

Senator LUDWIG—Why would it be unrelated to it? As I understand it, that was the first time—perhaps I have misheard—that you were aware of Mr Mohamed.

Mr Richardson—That is right, because when we are advised—we do not have people on the ASIO component part of the movement alert list because they have engaged in immigration fraud. It depends upon where investigations go and the like. Indeed, in respect of the movement alert list I think I have said all that I am prepared to say, and there will be a limit to what I am prepared to put in writing. We will not, as is usual practice, get involved in a situation where we are stating publicly who is on and who is not on a movement alert list. It is not very sensible.

Senator LUDWIG—Thank you. I appreciate the information that you have been able to provide. As I understand it, the Minister for Justice and Customs, Senator Ellison, who is at the table, issued a media release on 30 January stating that Omar Mohamed had been charged with immigration offences and was not on any watch list, and then—I am quoting from the press release—said:

The question of entry to Australia is therefore immaterial.

My question is really to you, Senator Ellison. Do you stand by your statement that the question of Omar Mohamed's entry into Australia was 'immaterial'?

Senator Ellison—You have to remember the context in which that statement was made. It was put to me that the matter concerning Omar Mohamed in the United States was terrorist related and that these visits to Australia were in that context of that. I said that the information I had at that time was that it was an immigration offence or charge, which is detailed in the press release you have mentioned, and that it was immaterial in that sense. The question I was being asked was 'Is this all related to terrorism?' I was basically saying, 'It is immigration related, the matter in the United States, and on that basis it is not terrorist related.'

Mr Richardson—I might add, if I may, that the minister's press release was put out following quite specific communication with the American authorities, who explicitly advised that the investigation was related to immigration fraud and also that he was not on any terrorist alert system. Therefore the question was immaterial in terms of whether he had come to Australia over the previous period.

Senator Ellison—I might add, Madam Chair, that the statement was put out as a result of incorrect statements made in the press by both the opposition and some journalists.

Senator LUDWIG—Is it still immaterial? It does not seem to be now—so circumstances have changed.

Senator Ellison—But you have to look at when the statement was made. You are asking me what was the reason for saying that at that time. At that time people were saying that Omar Mohamed had been charged with terrorist related matters in the United States. That was wrong. I was putting out that statement to clearly correct the record and to correct statements which were made with the implication that his visits to Australia were in that context as well. I was saying that the charges in the United States were immigration related. As Mr Richardson has pointed out, that was confirmed by the US authorities. What has happened since then is another matter, but you have asked me about the background to the statement at that time.

Mr Richardson—I would like to add again that I did provide a full and open briefing to your opposition spokesperson. Your opposition spokesperson has precisely the same information available to him as has the Attorney, and is he is aware of where things are at.

Senator LUDWIG—I turn now to the news release. Do you now have a copy of that?

Senator Ellison—The one from the United States attorney southern district, California, yes.

Senator LUDWIG—Have you seen that before?

Mr Richardson—No, I have not personally. I would not expect to see it personally.

Senator LUDWIG—No, I know that you are weighed down with more administrative and weightier tasks—and I do not mean that flippantly. In terms of you, I mean your organisation—we do not have ‘youse’ in Australia.

Mr Richardson—I would have to take that on notice. I do not know whether we have seen it before or not.

Senator LUDWIG—All right.

Mr Richardson—I do know that after the news items appeared in Australia we very quickly, almost immediately, pursued inquiries with the US authorities. You have asked me for the details of that and I will provide them.

Senator LUDWIG—And perhaps you can find out whether or not you obtained a copy of that news release independently.

Mr Richardson—Sure.

Senator LUDWIG—That would be helpful. It does provide a significant amount of information about the Western Somali Relief Agency receiving funds and a few other bits and pieces. Thank you.

Senator KIRK—The additional estimates provides \$8.6 million over four years to ‘enhance aviation security liaison’. Could you outline to the committee how that money is going to be spent and in particular whether there are going to be any new ASIO officers recruited with that money?

Mr Richardson—Yes, there are new ASIO officers for it. It is essentially designed to enhance our liaison arrangements with airports and the like, and there are additional ASIO staff involved.

Senator KIRK—How many additional ASIO staff?

Mr Richardson—From memory, I think there are seven or eight.

Senator KIRK—Are those persons going to be recruited from outside or are they being transferred from another part of ASIO?

Mr Richardson—It is possible that there may be a mixture of both, but the majority will be recruited from outside.

Senator KIRK—And when are those recruitments likely to take place?

Mr Richardson—The advertisements appeared in the press some weeks ago. As I have previously indicated, it will take between three and six months to recruit them.

Senator KIRK—So am I correct in understanding that the aviation security liaison is already under way and that there are already officers working in that area?

Mr Richardson—Yes, there have been officers working in that area for many years. This is designed to add to our capability in that area.

Senator KIRK—Could you enlighten me exactly as to what the role of the liaison officers is in this regard? Is it just talking to security people in the airports? What is their role?

Mr Richardson—It is working with other federal agencies and with airport authorities and with relevant state agencies at airports.

Senator KIRK—Just in order to obtain information about what is going on—I am just trying to understand how that works.

Mr Richardson—No, their primary focus is on people movements.

Senator KIRK—Are these persons located in the airports?

Mr Richardson—I will not say where they are located.

Senator KIRK—So the majority of the \$8.6 million is going towards funding these positions—

Mr Richardson—No, there will be some other expenses associated with it.

Senator KIRK—Are you able to inform the committee as to the nature of those other expenses?

Mr Richardson—Accommodation and the like.

Senator KIRK—Accommodation expenses for the persons who are—

Mr Richardson—Yes, and the like—technological support et cetera.

Senator KIRK—Secretarial support and the like.

CHAIR—Technological.

Senator KIRK—I want to move on to the topic of recruitment and retention more generally. You would be aware of an article published by Christopher Michaelson entitled, ‘What ASIO Needs: Better Resources, Not More Powers’. Are you aware of this?

Mr Richardson—Yes, I am aware of that article.

Senator LUDWIG—Do you want a copy of it?

Mr Richardson—No.

Senator KIRK—It is quite a short article. Seeing that you are aware of the article, I will not quote the whole passage. Essentially, the point he is making is that ASIO staff are seriously lacking in language and cultural skills and he also quotes you as having said that you can count on ‘three hands the number of Arabic speakers inside ASIO’. There is also mention made of the numbers of Australian recruits with Muslim or Middle Eastern backgrounds and it is stated to be very low. None of the ASIO graduates of November 2002 came from a non-English-speaking background. The point he is really making is the fact that there is a very low number of persons in ASIO with an ethnic background, in particular a background that would enable them to be able to communicate and understand issues in Arabic and the Muslim religion. I wondered whether this is a matter of concern to you and whether ASIO is taking any steps to address this situation.

Mr Richardson—I suppose the first thing with any discussion of that nature is to get facts right, and I am surprised that a researcher writing on ASIO would not access our publicly available annual report. If that person had done so he might have found on page 106 that it states that 12 per cent of ASIO staff in June 2003 came from non-English-speaking backgrounds. The issue of workplace diversity is an important one and it is a challenge for ASIO to get the workplace diversity that we would ideally like. We are not, however, about to engage in any quota system. We are not, however, about to give preference to people from particular backgrounds. I believe his comments about cultural awareness are wrong and in terms of language skills he is quoting me from an interview I gave in April of last year, I think, at the National Convention Centre—and, of course, time moves on. As I stated in that interview, there is no priority work not being undertaken in ASIO because of a shortage of language skills. Do we have all the language skills we would like? No, we do not. Are we seeking to recruit more? Yes, we are. Every year we address the issue of how we can get greater workplace diversity within a merits based system. We think about that and we work at that fairly hard. If you look at the historical figures, you will see that the percentage of people in ASIO from non-English-speaking backgrounds has increased from about six per cent in the mid-1990s to about 12 per cent as of June last year.

Senator KIRK—Is that 12 per cent representative of the entire work force?

Mr Richardson—Yes, it is representative of the entire work force.

Senator KIRK—Do you do any breakdown? Unfortunately, I do not have the report here.

Mr Richardson—Not in the publicly available annual report, no.

Senator KIRK—Perhaps you could give us some guidance then in relation to those persons who are ASIO officers, as opposed to support staff or technical support staff.

Mr Richardson—Yes, except that everyone is an ASIO officer. The linguists, whom we specifically employ for their language skills, are valued officers. Yes, we can provide that background, but we do have people working as parts of teams.

Senator KIRK—How many linguists do you have on the staff?

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

Senator KIRK—Could you give the committee some idea as to the percentage of persons who are linguists, compared to the overall work force?

Mr Richardson—No, I would prefer to give you that accurately.

Senator KIRK—We were talking earlier about the liaison officer who is based in Paris. You have liaison officers in various parts of the world. Are those persons trained in the language and do they speak the language of the country that they are in?

Mr Richardson—Yes.

Senator KIRK—So they would normally be the persons who would do the translations if and when—

Mr Richardson—No, they are not.

Senator KIRK—So professional translators are—

Mr Richardson—They may or may not; it would depend upon other things they are doing et cetera. They might do it in some cases; on other occasions they might not. There is no hard and fast rule.

Senator KIRK—And translators will be brought to the Canberra location to assist with translations of cables and documents and the like?

Mr Richardson—Yes, certainly.

Senator KIRK—Are the cables, transmissions and the like that ASIO makes to agencies overseas in English?

Mr Richardson—In English.

Senator KIRK—So that is the protocol?

Mr Richardson—Yes.

Senator KIRK—And then the translation is done at the other end?

Mr Richardson—Yes, and then they communicate with us in their language. Whether you translate at this end or at that end really does not matter; it just depends upon the arrangements you have in place with another organisation.

Senator KIRK—I think you said that you would give us a breakdown of the ethnic backgrounds of the ASIO work force. Is that correct; are you able to provide the committee with that?

Mr Richardson—Yes. I stand to be corrected, but I think that information is provided by staff on a voluntary basis. I do not think you can legally oblige someone to provide their racial background or their ethnic background.

Senator KIRK—If it is possible, could you also provide the committee with the number of languages that are spoken by these people, just so that we can get some idea of how many persons in the organisation speak various languages?

Mr Richardson—I am not prepared to provide a detailed breakdown of our language skills in the organisation. I will, however, seek approval to provide you with a briefing on it. I am not prepared to put on the public record precisely what languages we have people skilled in and precisely how many there are.

Senator KIRK—Thank you.

CHAIR—There are no further questions in this area, as I understand it. Mr Richardson, thank you very much for assisting the committee this morning.

[10.50 a.m.]

Australian Federal Police

CHAIR—Welcome. I take the opportunity to congratulate you, Ms Fagan, on your award of the Australian Police Medal in the Australia Day Honours List. I also congratulate all the other serving officers who received recognition in that manner.

Senator LUDWIG—On behalf of the opposition, I want to agree with your comments, Chair. It is pleasing to have recognition of the Australian Federal Police. I want to ask about the new International Deployment Group. There has been an announcement about the special, 500-officer International Deployment Group within the Australian Federal Police. Perhaps you can tell us what its role is going to be.

Mr Keelty—Largely it is an amalgamation of a number of ad hoc deployments that we have been engaged in over a period of time. You will be aware that at the current time we have a number of police serving in East Timor with the United Nations, a number serving in Cyprus with the United Nations and a large number serving in the Solomon Islands. They are Australian Federal Police officers as well as Australian Protective Service members. The idea of the IDG is that, rather than have these ad hoc deployments, we put some structure around it. There are a number of reasons that has become necessary. One is that in order to be selected for a United Nations posting, for example, you need to minimise the number of commitments you have back in Australia so that you can spend the maximum amount of time within the mission. You also need a certain number of years of experience to qualify for one of those missions. The difficulty that I foresaw after the government made the commitment to Papua New Guinea was that we were going to have some 400 to 500 officers in the AFP and the state and territory police who would suddenly become unproductive in order to qualify for all these overseas missions. That is the first problem.

The second problem is that, in trying to engage these missions, it is very difficult to recruit for them, because once you start recruiting it is some years before a person gains enough experience to be in a position to participate in one of the missions or at least take on some of the capacity building roles that have been required as part of those missions. Therefore, we rely heavily upon state and territory police to supplement our numbers when we are going to these deployments. Again, my fellow commissioners are in a difficult position, because they cannot recruit to an unspecified number of positions that the Commonwealth or the AFP may require to deploy overseas at short notice. To give some certainty to the state police

commissioners about being able to backfill any numbers that they might provide to the International Deployment Group, the idea is that now that the group has been established we will use existing funding to give some certainty in strategic work force planning about the number of police we need, what skills are required and what deployments they will go to.

Further to that, when you look at the work we are doing in, for example, the Solomon Islands, we are actually making arrests and therefore getting involved in prosecutions. So when, for example, a group of 55 come back from Solomon Islands some of them will have ongoing commitments in the Solomon Islands, so their deployment back in Australia is somewhat qualified and many of them access leave. We are starting to get some very complicating factors around these international deployments. To put some structure around it I put forward a suggestion to the government that we create the International Deployment Group. The reason it needed to go to government is that much of the work that is being done is capacity building. When you look at the Law Enforcement Cooperation Program it is about capacity building, and you cannot train or build the capacity of another police force in the region unless you have some sort of experience in policing so we could not do it with new recruits. So we needed to actually create some group that could do the capacity building and the overseas deployments.

What we have done is put forward a proposal that we amalgamate the moneys from law enforcement cooperation programs that are dealing with capacity building with the money for peacekeeping or similar operations. When you extrapolate the figures out to 2007 and 2008 it comes to the order of \$1.1 billion, which in itself is a significant amount of money and of resource management. The whole idea of the IDG is that we compartmentalise that, we put a senior person in charge of it and we give some certainty to the ad hoc arrangements, so when people come back into the AFP work force they do not have ongoing commitments from any of these overseas postings, they go through their medicals, they expire their leave and they are ready to be productive once they return from a period of time in the IDG.

We had a consultant in to talk about how long someone should spend in the IDG. We will advertise it shortly, but it will probably be from 60 to 80 weeks, so it will basically be from one to two years that someone can serve in the IDG. The idea is that you may serve, for example, six months in the Solomon Islands and come back and expire your leave, you may then go to Thailand and do a capacity building program under the Law Enforcement Cooperation Program and you may then come back and go to Papua New Guinea. It is to give some flexibility within the IDG, but also to give some structure around what were becoming very ad hoc arrangements.

Senator LUDWIG—I guess that is the direction of the questions I have in mind. Did you commence a review to give you these sorts of answers? From what I am hearing from you it seems a little ad hoc, and that seems quite unlike you and the way you administer the AFP. What I am trying to ascertain is whether you have ensured all bases are covered in developing the IDG or the program. You have mentioned a consultant but, prior to that, did you commission or commence a review to establish what the objective was, what the goals were, what the performance criteria were, what outcomes you expected to receive and any pitfalls that might need to be dealt with?

Mr Keelty—There was no specific review other than to access a consultant to provide advice on more appropriate ways to arrange the deployments, and I will ask the chief operating officer to expand on that shortly. If you think about it, 12 months ago today we knew nothing about being required to put large numbers of police in the Solomon Islands or Papua New Guinea. So part of this has been, in response to the needs of government, to be able to structure something that would provide a response to government and provide a response to the people involved in the deployments in order to manage their affairs a lot better than we were. When we just had East Timor and Cyprus it was much more manageable, but now we have grown significantly in that area and we had to change; we could not continue to manage it as an organisation. As I say, one of the biggest concerns in my mind was the productivity of the organisation elsewhere, and part of this IDG is aimed at addressing that issue. I will ask the chief operating officer if he wants to expand on that.

Mr Van Dam—There are possibly two reviews that fit into the IDG outcome. One was a review that we conducted internally of our personnel deployment to the Solomon Islands. That was designed to try to learn the lessons, as early as possible, from our deployment to the Solomons. It was commissioned internally and gave us some insight into the logistical and organisational arrangements that might be worth looking at in the context of future deployments. That then combined with the preliminary decision to go into Papua New Guinea. Those two things—the experience of the Solomon Islands and the experience of Timor, and the likely decision to go into Papua New Guinea—are what commenced the process of internal consideration of a better and more sustainable methodology for delivering those offshore deployments.

Once that in-principle judgment had been made internally, we then had another consultant come in to give us some advice on what structural arrangements might be necessary by way of delivering staff to the IDG, how long that would be feasible, what the conditions of service that might surround that might be and what some of the other logistical and administrative dimensions of bringing people into an IDG might look like. That review has been more focused on how we might do this. The first review was really on the sorts of areas that we should cover.

Senator LUDWIG—That came from the first review as a consequence of post-Solomon Islands experience, as I understand your evidence.

Mr Van Dam—We commenced it very soon after the completion of our first deployment into the Solomons with a view to learning those lessons.

Senator LUDWIG—It did not relate directly to the development of an IDG as such though?

Mr Van Dam—Not at that time.

Senator LUDWIG—So all you have in terms of a review that you have conducted is the consultant in terms of how to make an IDG work—is that right?

Mr Van Dam—And the lessons learnt from the Solomon Islands experience, which we will then feed into the managerial framework and decisions for the IDG.

Senator LUDWIG—So there was no strategic review of the outcomes that you might expect to obtain from establishing an IDG?

Mr Van Dam—Not in the form of a formal review.

Mr Keelty—You do not have to have a review to have a good idea. This is something that is built up from experience in East Timor. Just in the Solomon Islands alone to date there have been 858 arrests. So you see that we had to do something rather than just sit. If we had a review we would still be waiting for the outcome of the review to make a decision to move ahead. At any minute now, depending on what happens in PNG, I have to go back to the organisation and also to the state and territory police commissioners and try to put together more staff to deploy in a staged way to PNG. This really was a way to address, as I said before, a number of complex issues that were emerging. I needed the consent of the government because I wanted to amalgamate a number of programs.

You asked before if there are any performance indicators. It is an amalgam of the current performance indicators in those current programs. We would need to review upon implementation how we are going to do it. There may be some gaps still to emerge at this point in time. It may be impractical to fully employ people for the period of time I am talking about—that is, 60 or 80 weeks. We are going to learn a bit as we go along here. No one commissioner in this country, and I suspect in the world, has police waiting to be deployed. We do not have a reserve like the Army Reserve.

Senator LUDWIG—I am not sure they are waiting to be deployed either!

Mr Keelty—This was a way of pooling the contemporary police skills and experience that are required for these missions and minimising the impact on the rest of the organisation. That was the thing that was paramount in my mind. I saw the Solomon Islands mission grow. By any measure it has done an absolutely outstanding job, and I invite the committee to come and have a look at the work our people have done in the Solomon Islands.

Senator LUDWIG—I think we need the concurrence of the minister.

Mr Keelty—For example, some of these 1,426 charges are mass murders. They are complex investigations. We are obviously going to have to have a commitment from those people for some time yet, and to have them back in the work force is a bit of a folly. We cannot count them on current staffing because their actual time attribution would mean they are doing other things—principally their part of the International Deployment Group.

Senator LUDWIG—I am just a little surprised that there was not a review. The AG's area seems to be resplendent with reviews. That is no reflection on AG's, but every time I ask a question they are undertaking a review in a particular area. It is perhaps not a formal review. What can you provide the committee? Can you provide the consultant's report or details of the area they are looking at, just so we can understand what you are now doing?

Mr Keelty—I will ask, through the minister, what we can provide.

Senator LUDWIG—Perhaps you can take that on notice.

Mr Keelty—I am assuming we can provide things like the consultant's report, providing it is not commercial-in-confidence, and the proposal that we put forward to the government on the IDG.

Senator Ellison—We will take that on notice. Advice to government is not normally divulged in estimates committees but we will certainly see what we can provide to the committee.

Senator LUDWIG—Thank you, that would be helpful, Minister.

Senator Ellison—Maybe we could give some thought to the other matter we mentioned earlier.

CHAIR—When you have made that decision, Minister, it may also be of assistance to the committee, given the importance of the IDG in this initiative, to obtain a briefing. We need to be armed with the information that is able to be provided so that it is on the public record but we could also obtain a briefing from the new head of the IDG, whoever that may be. Has that announcement been made?

Senator Ellison—It is Mr Shane Castles. There is no problem with the briefing once that information is determined.

Senator LUDWIG—I am trying to put something in context. The Howard government minister has announced the IDG and I am trying to ascertain which came first—the announcement or the establishment. It seems to me there was a review of the Solomon activities and then there was a good idea. I do not care who owns the good idea but I wanted to find out who commissioned the consultant? Was that you? Who commissions those sorts of things?

Mr Keelty—We commissioned the review as part of the governance for our strategic work force planning. I wanted to be frank about offering the plans and documents et cetera because there needs to be transparency on this. There are no smoking mirrors here. This is about proper work force planning. The discussions about this go back some months. Even before July last year when the RAMSI—the Regional Assistance Mission to the Solomon Islands—was created I called upon my state and territory counterparts to discuss the availability of other police for deployment from the states and territories. It has been an ongoing discussion since July last year. Of course, once the issues in PNG were announced by the government it became necessary to sit down and work out a better way to do business. The particular thing I focused on was the long-term commitment our people in the Solomon Islands were going to have. It was not like East Timor where they came in for six months, then left and had no ongoing commitment with the United Nations. The intervention in the Solomon Islands is quite different.

Senator Ellison—I might add that last year I was asked a question about having a special force which could be deployed overseas in relation to the Australian Federal Police and other police services in Australia and I made a public statement then that it was something that the government had under consideration. So it is certainly something which is being discussed in the public domain, in government and with respect to AFP. I even think it was discussed at the police ministers council when they last met.

Senator LUDWIG—I have a question in terms of some more general issues on how this will work, such as the analysis of the number of officers—and you have already indicated the time that they might be deployed, where they will come from, whether they will include additional recruitment or secondments—as well as an analysis of any additional training they

may require in language, expertise or knowledge of procedures that may be adopted in the country of placement and whether they will be full time for the 80 weeks. Are those sorts of issues touched upon in the consultant's report or can you deal with them separately?

Mr Keelty—Some of them may be touched upon in the consultant's report, but largely I can answer them separately. At the moment we do a two-stage predeployment. Firstly, we train them at Wanggirrali Ngurrumbai here in Canberra, which is our overseas deployment training area where we give them a course that skills them up in the specifics of the mission to which they are going to be sent. With RAMSI, because RAMSI is not only an Australian policing response but is done under the Pacific Islands Forum, they are then deployed to Townsville where they meet the other police agencies that are contributing to RAMSI. They have some interaction in terms of predeployment training and then they are deployed. Each mission is different so it is important that we provide specific mission training, and that is done largely at Wanggirrali Ngurrumbai. Increasingly, the AFP is being required to carry out some of this training itself. We do not have any difficulty with that, but one of the things we would like to try and do is create a centre of excellence for overseas police deployments at Wanggirrali Ngurrumbai.

In addition to my state and territory counterparts, it happens that at the moment I am also the chair of the South Pacific chiefs of police group. At our meeting in December last year, we spoke about one of the problems that besets the police forces of the South Pacific, and that is that many of those police forces are small police forces and cannot contribute to the UN in ones or twos because it is just impractical. I know this may not be an issue for this committee, but it puts into context the question you are asking about how much thought was put into this project. What we as a united group have proposed is that we have the Pacific Islands Forum contribute to the United Nations under the auspices of the Pacific Islands Forum. Those people will also be trained at Wanggirrali Ngurrumbai. In terms of predeployment training, there is a significant amount of planning and preparation that goes on there. Some of the other skills needed—such as language skills and cultural skills—are imparted during that training.

In terms of numbers, for each of the missions that we deploy to we provide the government with an estimate of the numbers. We do some preplanning. With the Solomon Islands mission we went up with the Department of Foreign Affairs and Trade as a whole-of-government response and did a significant amount of initial planning to come back with a figure of police and APS officers that we thought would be appropriate for that mission, and we planned the mission. For example, RAMSI has a number of stages. We are now into stage 2, which is the consolidation stage. We lead up to an exit plan for each of these missions. For the Papua New Guinea mission, although they have not deployed as such yet, a lot of the preplanning has taken place already in terms of the numbers required, the training required and the inoculations required for these people. So we look after the HR side of it as well. In terms of whether the consultant's report touched on any of these HR matters, I would defer to the chief operating officer.

Mr Van Dam—The consultant's report is primarily focused on the human resource management dimensions so it does touch on a range of the issues that the commissioner has raised—medical, psychological, number and planning issues et cetera—but it does not go into a range of those other logistic dimensions.

Senator LUDWIG—As you indicated, the IDG is not going to be a standing force. How many people will be tasked to it? Is there planning as to how many people you will have trained, or how many people will go through the training at any particular time, and how many people will be tasked to it for the 80 weeks?

Mr Keelty—Just on current figures alone—with our commitment to East Timor, Cyprus and the Solomon Islands and the proposed commitment to Papua New Guinea—it is envisaged that the IDG will consist of up to 500 police. The final number will be determined following further deliberations about the future of East Timor. The United Nations is due to withdraw from East Timor on 20 May this year. The government has funded the AFP to have an ongoing role in East Timor in terms of in-line capacity building but we will not know, until the UN Security Council meets this month and agrees on the future of the UN in East Timor, whether we will have a larger commitment. So the number will vary. The point is that if the government in the future requires us to undertake a further mission in some part of the region then we would seek to have the IDG supplemented by an amount of money and we would recruit, either from the states and territories or from our own resources, into that group.

People will rotate through this. It is not like the Army Reserve, which is a full-time reserve. People will rotate through the IDG in a similar way to the way they rotate through the UN missions and overseas missions that we currently have. The idea behind that is that we have contemporary skills and experience to deploy and we provide a significant career opportunity for people. For example, some of these missions have significant benefits in terms of entitlements that people, at some time in their lives, may wish to access—whether it be for financial or other reasons. So we want to try and keep it not as a reserve that we call upon when we want to but as a fully operational part of the AFP that is, as I said, headed up by an AFP officer.

One of the things that we want to give some thought to is the capacity building area. Of the work that we do in the region, some is done by the AFP and some is done by private providers through the law and justice programs under AusAID. So we want to have a close look at having some consistency in what we are doing in capacity building in the region as well. Again, whilst there was no review, there has been quite a deal of thought and planning by the executive of the AFP into establishing something that will be able to provide solutions to some of the difficulties that we foresaw should we continue down the path that we are going along with these overseas deployments.

Senator LUDWIG—Will the IDG consist only of AFP officers or will you have a contingent of state or ACT—as distinct from Australian Federal Police—officers?

Mr Keelty—It will have contributions from each of the states and territories. Again, you have highlighted one of the other complicating factors, which was to be able to inform with some certainty other commissioners or even other state police ministers of the number of police we would require from their forces. As you can imagine, without mentioning any police force in particular, different police agencies go through different stresses from time to time, in terms of demands made upon them by the community and the expectations that they have. They may not have spare capacity to send overseas and it may not be appropriate for them to be in that sort of position. This will allow us, as part of the 500, for example, to say, ‘New South Wales Commissioner, you can recruit 25 people from here that we will use until

2007-08.’ It may go beyond that, but we are only talking about the current known forward estimates. We will do that around the country, including in the ACT, where there has been some tension about policing numbers. We have communicated—and I certainly have personally spent a lot of time—with the ACT minister, Mr Bill Wood, to ensure that we had the numbers appropriate.

Senator LUDWIG—If your force is roughly 500, though, how many positions would be filled from outside the Australian Federal Police?

Mr Keelty—We have not actually determined that number at this point in time, only because the commissioners are being—

Senator LUDWIG—Because they will need training, they will need to go through the centre and all those sorts of issues, so you will have to identify at some stage how many you will need. You will need to know how many you will then task internally to be able to fulfil the rough quota of 500. I am trying to work out the composition. Perhaps you could take it on notice, but I would have thought that, if you had established the IDG, you would have considered the composition of the IDG and how it would be tasked. I imagined you would have already had that, but it seems that we are exploring it as we go. I hope you can dispel that impression I have.

Mr Keelty—I know exactly the need and I know exactly the figures that the other state and territory police commissioners have told me they can access.

Senator LUDWIG—There is a difference, then, is there?

Mr Keelty—The problem is that they have not been given the opportunity to recruit against a forward figure. We should go into some detail on this, because this is important.

Senator LUDWIG—Otherwise you are leading to a shortfall, as I understand it.

Mr Keelty—No, this is important. I do not want you to think that this is smoke and mirrors or anything like that. We have the lowest attrition rate in our history in the AFP. The attrition rate of sworn officers is currently 3.3 per cent; it is unheard of.

Senator LUDWIG—I am pleased about that, because when we first met it was quite the reverse.

Mr Keelty—It was. We have turned that around, and people are staying in the organisation for a lot longer. So we are able to access significant experience from within the organisation. I am keen also that we do not lose people who are caught up in this CSS issue—having to leave at 54 years and 11 months and two weeks—who are loyal and committed to working in the community and who could also be very much a part of this and have contemporary skills and experience as opposed to people who have gone and who we have to retrain and reskill. There are a couple of dynamics there that we want to tap into.

The final numbers for the states and territories will be accessed when we determine what figures we can provide from within the AFP without having a detrimental effect on current programs for which we have been funded. That part of the strategic work force planning is important to us. We have been specifically funded for things like the National Illicit Drug Strategy, for people-smuggling, for sexual servitude, for counter-terrorism and for aviation security. So there many programs that we have been specifically funded for and we want to

make sure that we do not drop off in those programs. That is one of the reasons we want to compartmentalise the IDG and minimise the operational and productivity impact on the rest of the organisation.

Senator LUDWIG—Have you reviewed whether it will have an impact on your current staffing and your current ability to meet demands? You have mentioned ACT policing, and my colleague has indicated that she has some questions in relation to that issue that she wants to ask. It seems to me—and I will be frank with you—that the way it is bubbling along is a bit ad hoc. I do not know whether—and I will give you an opportunity to explain whether—it will negatively impact upon current AFP tasks, but how will you meet the commitment without it doing that?

Mr Keelty—I am disappointed, to be frank, that you find it ad hoc. I would have thought, with all of the complexities of what the AFP is facing at the moment, that we needed to have a well-thought-through solution that looked at all of the problems and challenges that we are facing—and this represents that. It will need to be reviewed. It will certainly need to be reviewed because of the mere nature of some of the short-term work that is involved here, some of the lapsing programs that are going to be tied up into this, so we will need to have almost continual review of it. As for the stakeholders, I have spoken to the United Nations—through the Australian Ambassador to the United Nations, John Dauth—I have spoken to the South Pacific chiefs of police, I have spoken to the Australian police commissioners and, as the minister points out, the Australasian Police Ministers Council raised this as an issue at its last meeting, so we have listened to a number of the stakeholders. We have looked at the internal issues ourselves. We had commissioned some consultant work, as the chief operating officer pointed out. It is not ad hoc. There are a couple of ways by which we could have gone about this, but to me this was the most pragmatic way, a way that does in fact combine in the one group a lot of the different programs that had a similar outcome.

The very nature of policing is almost ad hoc: just how much resource is going to be committed on a particular day at a particular time. That is the nature of policing; it is highly operational. It is to try to get some structure around that and also to balance the commitment that we have got to the other areas of policing that we have to fulfil by way of the funding that the organisation receives. It is anything but ad hoc. This is something that has taken some months of consideration to work through while discussing it with a number of stakeholders. To me, it is a solution that I am happy the government has accepted and has allowed us to do, because otherwise we would certainly not have been able to group the funding programs together.

There is a long-term benefit out of this, a much more strategic one that might not be immediately apparent. If we were to go up to Bacau in East Timor today and speak to the East Timorese police and ask them how they investigate an arson, my suspicion is that, depending on whether the last police officer there was a Queensland police officer, an AFP police officer or a Victorian police officer, they would have a way of doing arson in Bacau different from what we might have somewhere else. That is a United Nations mission. I think what we need to do if we are going to do this effectively, not only for our own community but for the communities of the region, is to find centres of excellence within the police organisations in this country and actually use those centres of excellence to deliver their programs within the

region. If you think of the future in which we might all be using the one computer system, we might all be using the one form, what that actually does is build for Australia a much safer and more secure community. It is a long-term vision but I think it is something that would benefit all Australians and the people in the region, the communities in the region in particular.

Senator LUDWIG—In terms of your current capabilities, have you identified any areas within your domestic capabilities which might be stretched as a consequence of the development of the IDG? What strategies have you put in place or do you intend to put in place to overcome that?

Mr Keelty—There are no areas that we have identified at this stage that may be left without resourcing. As I said, we have the lowest attrition rate in our history.

Senator LUDWIG—Are you telling me you have got too many?

Mr Keelty—I am telling you that had these missions not come to be part of the responsibility of the AFP we may well have had too many. But the fact is that we are not in that position so we do not have to turn our minds to that. Sorry, I have now forgotten the second part of your question.

Senator LUDWIG—I knew I would do that. I was even going to say that surely you were not looking for more work, but perhaps you will ignore that unless you feel that you have to comment. What I am concerned about is whether or not you will be stretched in terms of capability and expertise in certain areas as a consequence of pulling those officers away from their current tasks or their volunteering to go to an IDG and so leaving a particular area where their expertise might have been valuable. The second part of my question concerns how you are then dealing with that. Should it be occurring, if it is occurring?

Mr Keelty—I think I answered the first part of the question.

Senator LUDWIG—Yes.

Mr Keelty—To answer the second part of the question, the strategy is that the chief operating officer, the national manager for human resources and I have been doing some strategic work force planning and we are meeting on a regular basis to ensure that productivity in the other areas does not drop off. We have target figures, as you may be aware, Senator Ludwig, for each of the crime types. The other initiative we are taking is the move to a functional model from 1 July this year. Rather than be based on geographical lines, we are now moving more towards a functional model. That will come into effect from 1 July this year, and you will see that reflected in the portfolio budget statement produced for the next financial year. Moving to a functional model will allow us to have our national managers become more accountable for the delivery of the programs in the other areas that you speak about. So the initiatives are: one, the strategic work force planning that I am doing with the chief operating officer and the national manager for human resources; and, two, the move to the functional model that will assist in the governance arrangements to ensure that we are not dropping off in performance in the other areas.

Senator LUDWIG—How far away are you from moving to a functional model?

Mr Keelty—We have partly moved there already. It will commence from 1 July because we have to have all our finance and IT systems aligned with it. We have moved all the general managers who used to sit in the regions to Canberra. They now sit as heads of functional models for vacancies that have been created. We have advertised those vacancies. If you take cognisance of the fact that we have, for example, Andy Hughes in Fiji as the Commissioner, Sandra Peisley in East Timor as the Commissioner of the United Nations civilian police force, a national manager doing the Papua New Guinea program and Ben McDevitt heading up the Regional Assistance Mission to the Solomon Islands, we have a number of what would be national managers offshore. We have advertised nationally to fill some of those positions and we should have it up and running by 1 July.

Senator LUDWIG—Have the ACT government asked about whether the IDG will impact upon their resourcing needs? It is a general concern.

Mr Keelty—I have spoken to the ACT government about the IDG. They are happy with this arrangement because it will give them some certainty in numbers. They have 42 in the first RAMSI contingent and they have 36 in the second. This will enable them to recruit against a permanent figure.

Senator LUDWIG—Thank you.

Senator KIRK—I have some questions in relation to policing in the ACT. In general terms, has the number of AFP officers in the ACT per head of population increased or decreased over the last 10 years?

Mr Keelty—I will take that on notice because I do not have the Productivity Commission figures in front of me, but let me say that the number of police per head of population is but one figure that contributes to understanding how many police are required to police a particular area. For example, a large proportion of the population in the ACT is security cleared. That does not occur elsewhere in Australia. The infrastructure in Canberra in terms of the roads and the transport facilities, and hence the time taken to travel from one job to another, is much different from what it is in some of the more heavily populated capital cities.

Policing numbers per head of population are but one figure that can be considered. It is not the only figure. In fact, it is a very misleading figure in many ways. If you go back to the statement of Sir Robert Peel, when he started policing way back in 1829, you will see he said that it is the absence of police that is an indication of good law and order. Whilst it might be convenient for people to argue the numbers from time to time—and I have to be careful how strongly I argue this, because I never want to find myself in that situation—policing numbers per head of population provide a very misleading figure.

Senator KIRK—What figures do you have that are more enlightening as to whether there has been an increase or a decrease in policing effectiveness in the last 10 years? What measure do you use?

Mr Keelty—I will be able to give you the figures. The Productivity Commission prints these figures, so we should be able to access them rather quickly. I should point out, though, that the actual question of policing numbers is one that I frequently discuss with the ACT minister, so it is something that we both have a common understanding of. I do not want to disclose what the ACT government's strategies are for the future, but we do have very helpful

discussions about staffing figures. There is absolutely no tension between the ACT government and the AFP about current policing figures.

Senator KIRK—So you meet on a fairly regular basis to discuss this matter?

Mr Keelty—Yes, we have. As it turns out, the arrangement for policing in the ACT is up for renewal in 2005. The ACT minister and our own minister have communicated on that and we have been very actively engaging the ACT government on plans for the new arrangement to come into place after next year.

Senator KIRK—What exactly is the process to determine whether or not there will be a renewal? Is there a review done by the ACT government, by you or by both of you?

Mr Keelty—I do not know that the ACT government or the federal government have disclosed anything on that, but the arrangement is for five years and I think there needs to be two years notice if the arrangement is not going to be renewed. We have not had any notification that the arrangement is not going to be renewed. In any event, it is too late; we are inside the period. I should point out that the discussions with the ACT government have been very fruitful. We have just appointed a new chief police officer to the ACT, so we have been fully engaged. I would expect some sort of review to establish the foundation of the new arrangement when it commences after 2005.

Senator KIRK—So the renewal is not automatic if there is not two years notice; is that correct? There is still a review process; is that what you are saying?

Mr Keelty—If it were not going to be renewed now, it would be 2010 before the arrangement would change.

Senator KIRK—Am I correct in understanding that there still is some form of review that takes place before the new agreement is entered into?

Mr Keelty—It is not necessarily a formal review. We and the ACT government need to sit down to establish the new arrangement. There is an arrangement between the Minister for Justice and Customs at the federal level and the Chief Minister of the ACT, represented by the Minister for Justice and Community Safety in the ACT. Under that arrangement there is then an agreement, and the agreement is between the chief police officer and the ACT minister on the productivity and the outputs of the ACT policing element of the AFP.

Senator KIRK—So the new arrangement sits under the agreement—

Mr Keelty—The agreement sits under the arrangement.

Senator KIRK—Will those terms be renegotiated or reconsidered in light of past performance or anything like that?

Mr Keelty—The arrangement is a five-year arrangement. The agreement is on an annual basis. There are specific performance outputs that they have to achieve under the agreement. There are 37 specific performance indicators for policing in the ACT. The arrangement is one where, for example, during the bushfires in Canberra last year we boosted the number of police here in the ACT by bringing our own resources in from the national area. Similarly, during President Bush's visit late last year, we were able to increase the numbers here in the ACT. Conversely, when we require specific community policing expertise, we go to the ACT

government and seek to have people seconded, for example, for the investigation of murders on Norfolk Island and other places where we have a national responsibility.

Senator KIRK—Are you aware of whether the services that the AFP is able to supply to the people of the ACT have increased or decreased over the last few years? Is this something that is measured?

Mr Keelty—It is something that is measured. I could only give you anecdotal material there. The chief police officer for the ACT is accountable to the ACT Assembly, through a similar estimates type process, on the specifics. Anecdotally, there has not been a performance drop-off. In fact, the crime rates here in the ACT have dropped significantly in the last two years. If I am wrong on that I will come back to the committee.

Senator KIRK—You would be aware of the report *Out of the ashes: rebuilding the police frontline*. It was produced by the Australian Federal Police Association.

Mr Keelty—Yes, I am.

Senator KIRK—There are some claims made in there along the lines that the AFP is no longer in the position to carry out proactive crime prevention functions in the ACT. I wonder if that is accurate. Do you agree?

Mr Keelty—I would dispute that document. We have a longitudinal study being done by the Australian National University on the impact of some of the proactive policing measures that we have done in the ACT. It is specifically on two operations: Halite was one and there was a major operation before Halite—I am sorry, I cannot remember its name. We have engaged the university to do longitudinal studies about the impact of those proactive policing strategies that saw break and enters in the ACT drop significantly, to well below the national average. The other operation was Operation Anchorage. That led to legislative reform in the ACT in terms of looking at re-offending whilst people are on bail. The statement by the association in that particular document is unfounded but is not unusual in an election year, because it is an election year in the ACT.

Senator KIRK—So the claim they make that ACT policing is currently in a staffing crisis you do not agree with?

Mr Keelty—It is absolutely rubbish. The ACT government and ourselves agreed to 42 police being deployed to the Solomon Islands. The ACT government and ourselves agreed to 36 in the second contingent. That is because they saw that they could do without those staff. In fact, that was on advice from the management of ACT policing. Whilst it might be convenient to talk about policing numbers from time to time, often it is more smoke and mirrors and not much substance. The ACT government and ourselves, and particularly myself and the minister—in fact both ministers—have been in close consultation about policing numbers in the ACT.

Senator KIRK—I have some questions in relation to so-called sex tourism in Bali and the response of the AFP to that. Could you tell me whether any action was taken in response to the naming of a number of Australians suspected of sex tourism? There was the naming of a number of people in a particular report, the report being by Child Wise, the child sex abuse watchdog. I wonder if you could inform us about that.

Mr Keelty—The specific report that you are referring to was referred to us last week by the minister. From memory, it had been separately referred to us by Child Wise. The AFP is very active in investigating persons suspected of travelling overseas for the purposes of undertaking paedophile activity. In fact, I launched the commercial for Child Wise, which is the program to discourage travel for sexual abuse purposes. Since the creation of the offences under crimes of child sex tourism, on 5 July 1994, we have received over 75 referrals, 71 of which we accepted for investigation. Sixteen of those have resulted in arrests within Australia. It is something we have been particularly active in domestically.

Our research indicates that, of Australian nationals apprehended overseas, 22 persons have been charged with child sex tourism offences. I can give you a list and the number of countries. In relation to Bali specifically, we are aware of the allegations. We have to be careful that, should a prosecution arise from those allegations, we do not enter into the detail of it, but we are certainly very much aware of it. We are working with the Indonesian National Police on the issue and we are also working with other non-government organisations in order to maximise the amount of information we have. It may be of some interest to you, Senator, that we now have a liaison officer posted in Bali.

Senator KIRK—I was going to ask you about that.

Senator Ellison—We have also established the Transnational Sexual Exploitation and Trafficking Team. It covers both this and the area of sex trafficking, but sexual exploitation of both women and children is included in that.

Senator KIRK—I mentioned before, as did you, Child Wise. As we are both aware, it publishes a list of persons that it suspects of being involved in sex tourism crimes. I understand that three years ago Child Wise listed William Brown as a person allegedly involved in child sex tourism crimes in Bali. Was there any investigation into those claims by the AFP at that time?

Mr Keelty—During 1996 the AFP and the Indonesian National Police conducted preliminary inquiries into paedophile activity on the island of Lombok in Indonesia. As part of the preliminary investigation process we consulted the Commonwealth Director of Public Prosecutions. An assessment was subsequently made of the case and it was determined that there was little likelihood of a successful prosecution. I can give you the reasons for that, because I think there is a significant amount of public interest in this. One was the inability to track down some of the other alleged offenders and uncorroborated statements of the young victims. In some cases there was little more than an allegation and not much in terms of physical evidence, which is difficult in any sexual offence investigation. There was some thought from the DPP about the difficulty in the admissibility of evidence of the young people.

At that stage—we are talking about 1996-97, when the matters were referred—there were some difficulties in progressing the investigation within Indonesia. I think it is fair to say that the relationship between us and the INP was not as strong as it is today. We acted upon the issue at that time. It has become current again and I think it is fair to say that we are looking actively at the matter again. I do not want to go into any detail on that—only to say that our relationship with the INP in Bali has very much improved and we have now put a liaison

officer there. Should we be able to mount evidence sufficient for a prosecution that will be done but, again, in all of these cases we have to respect the rights of all the individuals involved and to do nothing that would negatively impact on a fair trial should a trial occur here in Australia or elsewhere.

Senator KIRK—You just described what occurred in 1996. It is now some eight years on. Have there been ongoing inquiries and investigations throughout this period into individuals, or has there just been a surge of activity in the last year or so?

Mr Keelty—I will ask the acting deputy commissioner, John Lawler, to outline the work that has been done thus far.

Mr Lawler—As the commissioner has indicated, issues of child sex tourism, sex slavery and sexual servitude are of very great interest and importance to, and a high priority for, the organisation. We have active investigations in relation to all of those matters. In relation to the specifics of the case that you have referred to, the transnational sex offence team are constantly gathering intelligence, analysing that intelligence and, where appropriate and necessary, either forwarding that intelligence for further investigative action or communicating that information to other law enforcement agencies that have an interest in the information and intelligence we have uncovered.

Senator KIRK—As part of the investigations you are describing, has there been investigation of claims that have been made about individuals adopting or fostering underprivileged children with a view to sexually abusing them?

Mr Lawler—Yes. There are an array of circumstances in which these offences are perpetrated. We need to understand that such offences are complex by their very nature, given the fact that young children are preyed upon in such a way that the offences normally take place in jurisdictions and within cultures that are very different to our own and the need to respect the jurisdiction of the country in which these offences are alleged to have been committed. The answer to your question is yes, we are aware of circumstances where this has occurred. We are active in monitoring this and working closely with our law enforcement counterparts right across the region.

I can say that we have achieved considerable success in not only preventing offences being committed, against young children particularly, but also in aiding the investigation of prosecutions in those countries—and the commissioner has identified some of those countries in which Australians have been arrested. Furthermore, we have been very active and effective in investigating matters relating to the child sex tourism offences under part 3A of the Crimes Act.

Senator Ellison—I can add that during my visit to South-East Asia prior to Christmas last year this subject was part of conversations that I had with my counterparts in the countries I visited. In fact, in Cambodia during my visit we announced an agreement with Cambodia in relation to an MOU on this subject. I saw first hand the work that the Australian Federal Police are doing—being the only foreign police force allowed operational status, as I understand it, in Cambodia—working with the Cambodian police in relation to this issue and investigating and helping them investigate other foreign nationals, not just Australians. So the international network the AFP has is really a crucial tool in this particular problem. From the

governments' point of view, we attach a very high priority to it. In relation to questions which have arisen in relation to Bali, over the past week or so my office has been in contact with two families and, due to one parent being overseas, it has not been possible to meet. But I hope to meet with them in the very near future.

Mr Keelty—I know there has been significant media speculation on some of these cases, but I would not want the committee to think that there has been some grand awakening to this crime. I recall vividly that in March 2001, after being appointed commissioner, I actually visited Cambodia and specifically addressed this issue with the Cambodian national police and the then Australian Ambassador to Cambodia. In addition to that, the Australian police ministers council met in 2002. An outcome of that meeting was that a register of paedophiles ought to be created, and a working group was put in place. So we have been trying to advance in this area over a number of years. I did not want to specifically go into the Brown case because, as I say, there are other issues now that need to be reviewed. The first reference to that—when we looked back at our files—went back as far as 1992. The AFP has been very active in the initial investigation into allegations of former diplomats. In fact if I recall correctly, Mr Lawler was part of that investigation team. So there has been a significant amount of work done here. That has led to recommendations for changes in the legislation to give the legislation extraterritorial powers. So we have been active. I think there is a sense of frustration from some people that they do not see people being arrested and charged, but it is a very complex issue in terms of the gathering of admissible evidence.

Senator KIRK—There was mention made before of the appointment of an AFP officer in Bali. Could you inform the committee as to the nature of his or her duties?

Mr Keelty—Obviously his or her duties will be in accordance with the liaison officer duties that we have in relation to posting people elsewhere. Two weeks ago I was in Bali with the Australian Minister for Foreign Affairs and the Attorney-General for a counterterrorism summit. I met with the chief of the Bali police and discussed that the biggest priority we have got outside of terrorism and the prosecutions for the Bali bombings is child sex tourism. I have a good relationship with the head of the Indonesian National Police in that area and he is very much aware of our concerns in Australia.

Senator KIRK—So a focus of the duties of the AFP officer will be sex tourism?

Mr Keelty—Initially it will be sex tourism, but that is not to discount other crimes. He has certainly got the message from me about how important this is.

Senator KIRK—Good. Is there any connection at all between the posting of this officer in Bali and the setting up of the Indonesian centre for law enforcement cooperation that was announced by the minister on 5 February?

Mr Keelty—There are two other projects in Indonesia. One is the establishment of the transnational crime centre in Jakarta. That is being done under our Law Enforcement Cooperation Program. The transnational crime centre is a bilateral arrangement where we and the Indonesian national police work on all crime types, including not only people-smuggling and sexual servitude but also the area of narcotics and economic crime. The law enforcement cooperation centre announced by the Minister for Foreign Affairs is specifically a multinational centre to be established in Semarang, which is where the police training centre

is outside of Jakarta. The purpose of that centre will be to skill not only IMP officers but also regional police in counterterrorism skills, particularly forensic skills, intelligence skills and terrorist tracking skills.

Senator KIRK—Are Australians involved in that?

Mr Keelty—Yes, we are. The program will be delivered under the AFP's Law Enforcement Cooperation Program.

Senator KIRK—You were describing before events that took place in 1996 and I said it has been eight years between 1996 and where we are today. I want to get a picture of what activities the AFP has been involved in in relation to sex tourism claims. I understand that there have not been any charges laid during that period. Am I correct there?

Mr Keelty—We need to clarify whether you are speaking specifically about Mr Brown or whether you are speaking about child sex tourism generally.

Senator KIRK—I am speaking generally.

Mr Keelty—I think I mentioned before that since 1994 we have received 75 referrals; 71 of these have been accepted and have become investigations. Sixteen of those have resulted in arrests in Australia. Of those 16, 12 investigations have secured convictions. Three prosecutions were dismissed and charges have been laid in relation to the remaining matter. Overseas we have been working in cooperation with other agencies. We have seen 22 people charged and eight convicted. There are eight ongoing investigations and one charge has been withdrawn. One person has been acquitted. One person was deceased before the proceedings were completed. One matter was dismissed. One person was deported out of the country. One reported to the military police for investigation; it was not an Australian military officer but a serving military officer from another country. The countries where Australian nationals have been arrested include Indonesia and in particular Bali. In Mexico there have been two. In New Zealand, the Solomon Islands and Papua New Guinea we have arrested three. In East Timor, Samoa, Canada and the Philippines four have been arrested. In India and Cambodia there have been two arrests. The other countries are Sri Lanka, Honduras and Fiji.

Mr Lawler—From 1 July to 30 December 2003, there have been 31,699 investigative hours committed to child sex tourism and work by the transnational sexual exploitation team, at a cost of just on \$1 million to the AFP. In addition to the figures the commissioner has read out about our work both within Australia and overseas, work has been undertaken in the context of training, liaison and the investigations that I have just spoken about. Importantly, there has been close cooperation with other Commonwealth agencies and non-government organisations to develop protocols and to build interaction, cooperation and coordination between our respective agencies. I can report that that work has been very successful.

Senator KIRK—How many AFP officers do you have who specialise just in this area?

Mr Lawler—The approach that is taken by the transnational sexual exploitation team is aimed at delivering intelligence driven investigations. We have an intelligence capacity located here in Canberra within the AFP's Transnational Crime Coordination Centre. In a flexible way, that accesses investigational resources around the country but specifically in Sydney and Melbourne at the moment. We have a total of 27 people, but you need to

understand that in the context of a flexible capacity. One of the real strengths of the AFP has been the ability to deliver that capacity wherever it might be needed, either around the country or overseas. To aid you further, in the context of the 27 people we have five in Canberra, six in Sydney and another six in Melbourne. We also have a capacity in Adelaide and Perth and we have three people in Darwin. That is as it stands but, as I said, that can change depending on the priorities at the time.

Senator KIRK—What date was the liaison officer in Bali appointed?

Mr Lawler—That appointment has been undertaken very recently. The person is currently in Jakarta receiving familiarisation training. Might I just say that the issues of transnational crime, particularly in Bali, have been identified for quite some period of time. In actual fact, it was proactive activity by the AFP that commissioned a feasibility study to look at the crime picture particularly in Bali, and that resulted in a decision being taken by the commissioner to place an officer to Bali. This process has been ongoing for 12 months or more.

Senator KIRK—You say the appointment was quite recent. Can you give us the date?

Mr Keelty—Whilst we identified the need for the appointment, we needed the consent of the Indonesian authorities to allow the appointment to take place. It has been, as Mr Lawler said, going on for some 12 months. We had a feasibility study. We actually applied for funding for it and were given funding by the government. The visa was issued to the individual the week before last, two weeks ago. We immediately deployed him to Jakarta for in country briefings and I understand he will start in Bali this week or early next week.

Senator KIRK—Was this person previously part of the transnational sex trafficking team, if that is the correct term for it?

Mr Lawler—With all our liaison officers, we endeavour through an equitable and transparent process to select the very best people available to serve our country abroad. I cannot comment on the specific skill sets of the member concerned. Suffice it to say that he would be a very experienced officer.

Mr Keelty—He is not only an experienced officer. The issue here is not so much that person undertaking the investigations by himself; he will call upon the expertise back here in Australia that will then be deployed, as with every investigation, to supplement the local police. Remember that we are in another country. The people there have sovereignty. There are some delicate issues to work through in terms of taking action.

Senator KIRK—Finally, could you advise the committee why Mr Brown was allowed to return to Bali after the renewal of his passport in July 2002? This was reported in the *Canberra Times* in January this year. I understand that the police did want to interview him in relation to his association with another infamous paedophile, so I am concerned to know why he was permitted to return to Bali.

Mr Lawler—Thank you, Senator. I think I can answer that question. As the commissioner has indicated, the person you refer to was of interest to the Australian Federal Police and the Indonesian National Police and we did undertake initial inquiries in relation to that matter. Subsequently, in 1997, after an assessment and for the reasons the commissioner has previously articulated, the file on that particular matter was closed. As a result there were no

outstanding warrants in relation to that person, nor were there pending criminal charges. As a result of that, as with any Australian citizen, they are free to come and go as they choose, from and to Australia.

Senator KIRK—Was there liaison between the AFP and DFAT in relation to this individual?

Mr Lawler—There has been extensive liaison and close cooperation between a range of Commonwealth government and state government agencies in relation to Mr Brown and in the context of the gathering of intelligence, the sharing of intelligence and liaising within the roles and responsibilities of those various agencies.

Senator KIRK—Thank you.

CHAIR—The committee is acutely aware of the time. Senator Ludwig is going to endeavour to deal with these next issues expeditiously. I am unsure how that will leave us with the lunchbreak. We will make a reassessment at 1 o'clock.

Senator LUDWIG—Thank you. The Australian Protective Services is now under your control, if I can use that expression. Since the announcement of the air security officer program in 2002, how much has been spent in each year so far and what is the expected expenditure of the ASO program for the remaining years of the initial four-year program?

Mr Keelty—The funding of the ASO program is through a combined appropriation established in the PBS as the enhanced aviation security measure. The initial budget funding for the enhanced aviation security measure was \$20.7 million during 2001-02. Specifically on the ASO, initial funding of \$6.7 million was provided during 2001-02. During 2002-03 the actual expenditure relating to the program totalled \$13.8 million, considerably less than the \$17.8 million budgeted for the year which resulted from delays in initiating international ASO flights. The underspending offset overspending in the counterterrorism first response part of the program, which required an upgrade. The operating funding for 2003-04 is \$18.1 million. I might have to take on notice how much of that has been spent.

Senator LUDWIG—Thank you, I am happy for you to take that on notice. How much has been allocated in the out years? Do we know whether a decision has been made to extend the program and how much money is going to be committed in the out years?

Mr Keelty—I am not sure whether it is in the PBS. I do not know that we have that figure.

Senator LUDWIG—I am happy for you to take that on notice. It is a four-year program. As to how much is going to be allocated, is that a matter for this up-coming round of the budget?

Mr Keelty—Senator, with your consent, could I take that on notice? I do not have that figure in front of me.

Senator LUDWIG—Yes, thank you. Turning to Senator Ellison, you said on the *AM* program on Tuesday, 16 December—you might recall, or you might not—that air marshals could be on flights to Singapore as early as that day. As I understand it, that is not in fact what occurred. As I understand it, the issue of who was going to pay for the flights had not been finalised with Qantas. In fact the Chief Executive Officer of Qantas, Geoff Dixon, commented at the time that he had not even seen the full paper justifying the decision to put sky marshals

on international flights. There was, I think, some media around that time in respect of that. Why did you make the announcement without having got Qantas's agreement?

Senator Ellison—As I recall it, I did not give any date as to when the air security officers could be flying internationally. In fact I can confirm that they did start flying prior to the end of last year, prior to the end of December. I think that particular interview was the result of an agreement that we had reached with the Singaporean government. I met with my counterpart in Singapore and a joint statement was made in relation to the agreement. I thought it was appropriate that, because the two governments had reached agreement, there be a public statement. That was agreed to by the Singaporean government. What we were saying there was that the Australian government had agreed with the Singaporean government that there should be air security officers operating on flights between those two countries and that there would be reciprocal rights—that is, the Singaporean government could put its air security officers on its flag carrier and vice versa. I think it is entirely appropriate to make a public announcement when the two countries have reached an agreement. I do not have that interview before me, but I did go to Singapore around that time, and that interview would no doubt have been in relation to the visit to Singapore and that agreement.

Senator LUDWIG—It is just that in the *Sydney Morning Herald* on Wednesday, 24 December, there was the headline 'Wrangle over cost grounds air guards'. It indicated:

But the plan collapsed yesterday when Qantas told Senator Ellison's office it not was not prepared to bear the commercial loss of providing seating for up to two marshals per flight.

Had any of that been explored prior to reaching agreement with the Singapore Airlines—that is, how the agreement with Singapore was going to be implemented?

Senator Ellison—The negotiations between the government and Qantas are confidential on the basis that I do not think Qantas, nor the government, would want to go into details of discussions we have on air security. As you would appreciate, I have discussions with people like Qantas and Virgin, and it is inappropriate that I reveal the detail of those discussions. I can say, though, that agreement was reached with Qantas on Christmas Day when Mr Dixon and I had a telephone conversation. Indeed, we might have had a couple on Christmas Day around lunchtime, I recall. That resulted in this interim agreement. The details were then made public. I believe it is an arrangement which is an appropriate one and one which is important for aviation security.

Senator LUDWIG—When you went public with it after reaching agreement with Singapore Airlines, didn't you consider that in fact in going public with them it would alert Qantas to the problem? Why did you go public so early? Why didn't you wait? It would seem more prudent to wait until you had at least secured Qantas's agreement, and then it may not have spoiled your Christmas lunch.

Senator Ellison—There were two parties to the agreement in relation to Singapore and Australia. When you form agreements with other countries they are generally announced. To have attempted to keep it under wraps, so to speak, would have been unsuccessful and would not have been appropriate. There was a meeting taking place between an Australian minister and a Singaporean minister with responsibilities for these matters, and it was generally known in the bureaucracies and elsewhere—with journalists—that aviation security was going to be

discussed. To have come out and said, 'I'm not commenting on whether agreement has been reached or not,' would have been inappropriate. There was a public interest in knowing whether or not we had had an agreement with Singapore, and that was an overriding factor. Certainly the Singaporean government agreed that it should be made public, and there was a joint statement.

Senator LUDWIG—Are there agreements with other airlines that fly out of Singapore, like the Emirates Airline or Gulf Air—or is the Singapore Airlines the only airline with an agreement?

Senator Ellison—You can only really put your own air security officers on your own flag carrier because of the fact that, once the doors close on a foreign-flagged aircraft, as I understand it the laws of that country then apply—you have jurisdiction. It has never been the case that we have purported to have Australian air security officers operate on any flag carrier other than our own. Naturally, in dealing with other countries, we do it on the basis that their air security officers will operate on their flag carriers.

In order to negotiate in relation to other flag carriers we would have to deal with those governments. I cannot really go into whether or not Singapore has had discussions with those flag carriers, because that is a matter for the Singaporean government. But I can say to you that we dealt with the Singaporean government on the basis of their program relating to their flag carrier and our program relating to our flag carrier. I think that there would be jurisdictional problems if you were to have any other nationality of air security officer operating on a foreign-flagged aircraft, unless that foreign-flagged aircraft had the consent of its government and they delegated to that foreign ASO jurisdiction. There would be very difficult legal questions in that situation.

Senator LUDWIG—Have we done that at all?

Senator Ellison—We have been exploring agreements with governments in relation to their own flag carriers, but we have not to my knowledge expanded that to having foreign air security officers on other aircraft under another nation's flag. I am not aware—certainly not from our part and I think internationally—of any other country attempting that. I understood that the statement by the United States, when it was saying that it might require countries to have air security officers, was saying that it was requiring them to have their own air security officers on their own flag carrier. They were not saying that United States air security officers had to fly on those foreign-flagged aircraft. I made inquiries at the time, and that was my understanding and the advice that I had received.

Senator LUDWIG—We are going round in circles a little on this, but why wouldn't you then talk to Emirates Airlines or Gulf Air—and then the nations from whence they came—to ensure that flights coming from Singapore have sufficient security on them? Or are you satisfied that they do? If you had evil intent, wouldn't you then just not fly Qantas; wouldn't you fly Gulf Air or something else?

Senator Ellison—We have a number of countries that are interested in air security officer programs. I cannot really divulge, due to the sensitivities of these discussions, who may or may not be involved in that. But I think that in the first instance it is ideal to have the agreements with the countries that you are dealing with in relation to their own air security

officer programs. What you would have if you had wanted to discuss it with Emirates Airline would be a tripartite situation of the United Arab Emirates government, the Singaporean government and the Australian government. We could not really negotiate with UAE on their air security officers flying from Singapore to Australia without involving the Singaporean government. It really would be a three-way agreement, because they would have to embark on the aircraft in Singapore with a weapon and they would need the Singaporean government's consent. These agreements are best achieved bilaterally. They are complicated enough as it is without having multilateral agreements.

Senator LUDWIG—Are there any airlines that you have been in consultation with or had talks with that have expressly rejected air marshals?

Senator Ellison—The two domestic airlines in Australia certainly have not. They are the two airlines that Australia has jurisdiction over. We have not had discussions, to my knowledge, on any foreign airline. As to whether some foreign airline has rejected it in relation to their own government, I am not aware of any.

Senator LUDWIG—Wouldn't it to be of interest to us, in terms of national security, to determine whether or not foreign-flagged airlines coming into Australia have got sufficient security? I think that is what you indicated the Americans were asking. Wouldn't we also be curious to ensure that those foreign-flagged airlines do have the same or similar security to what we have imposed on or required of our airlines so as to ensure that any planes coming in have got sufficient security?

Senator Ellison—The first issue you raise is: am I aware of any airline rejecting an air security officer program? Certainly not with the airlines that we have dealt with. As to the international situation, I am not aware of any.

Senator LUDWIG—Perhaps I could confine it: what about in terms of flying into Australia—those that we have an interest in?

Senator Ellison—Yes, and it is on the record that Canada have approached us—we do not fly to Canada—in relation to having their air security officers operate. I have indicated publicly that we are sympathetic with that, and I understand the matter is progressing. In relation to the United States, there has been much publicity on the negotiations for that agreement, which I understand have progressed a great deal. As to when that agreement will be reached, it is very close to finalisation. But certainly we have no problem with United States air security officers entering Australia on their flagged carriers. It is a question of people approaching us and saying: 'We want to be involved. Would you be willing to negotiate with us?' I think we are now up to 30 countries that have taken on the air security officer program; there is a growth internationally. But it is something which you have to deal with on a bilateral basis, and we are doing that.

Senator LUDWIG—How many agreements have been made?

Senator Ellison—We reached agreement with Singapore in December last year. The agreement with the United States is imminent. As I said, the one with Canada is progressing. That is one which relates to Canadian aircraft. Because we do not fly direct to Canada the issue of Australian aircraft does not arise. There are a number of other discussions which are pending that I think it is inappropriate for the government to reveal at this stage.

Senator LUDWIG—As I understand the program as you have outlined it, if we were, for argument's sake, post the US agreement, an air security officer would travel in on a US plane—

Senator Ellison—A US air security officer.

Senator LUDWIG—Yes, and there could be Australians on board who then could face arrest by the US security marshal.

Senator ELLISON—Yes. You have to remember that if something occurs on that US aircraft it is committed within US jurisdiction and US laws apply. Similarly with Qantas, if an Australian air security officer arrested a foreign national for an offence on one of our planes, our jurisdiction would apply.

Senator LUDWIG—They could potentially face the death penalty under a US law.

Senator Ellison—Yes, that is right.

Senator LUDWIG—When a person is arrested by the United States, are there any reciprocal arrangements for returning them or dealing with them, or does the law of the jurisdiction apply?

Senator Ellison—The law of jurisdiction applies, as I have outlined. The question is then a logistical one—that is, where the person disembarks from the aircraft. If the aircraft landed in the United States and the person disembarked in the United States, that person would be taken into US custody and of course US laws would apply.

Senator LUDWIG—What if they disembarked in Australia?

Senator Ellison—In relation to disembarking in Australia and the offence having occurred in a United States jurisdiction, that person would be taken into custody in Australia and would then have to be returned to the United States to be dealt with. The query is, of course, whether that person may also have committed an offence against Australian law, which may well be the case, because if it was an act of terrorism then the person may well have offended the laws of both the United States and Australia.

Where someone commits an offence within a foreign jurisdiction, the convention is that they are dealt with first in that foreign jurisdiction. For instance, we have seen many times that where people have committed an offence overseas and are wanted in Australia for other matters they have been dealt with first in relation to the matter they committed overseas and then faced extradition to Australia. In relation to the scenario that you have pointed out, I would imagine that, having committed the offence in a foreign jurisdiction, that rule would apply—that they get dealt with first in the foreign jurisdiction.

Senator LUDWIG—Is there any arrangement in place, or would they have to go through the normal extradition process to be sent back to—

Senator Ellison—We might have an officer from the Attorney-General's Department, Geoff McDonald, who could assist with this.

Senator LUDWIG—Perhaps you could help me with fixing my bad characterisation of the law.

Mr McDonald—Where the person, as the minister described, has committed an offence in Australia and also the US, you can have a situation where they would be dealt with in Australia if the offence was a different offence and then extradited to the other country. There is a possibility that the same ingredients of the offence could be same, in which case there would be double jeopardy issues. For example, if a person committed an act of terrorism which was against US and Australian law and the person was dealt with in Australia first, there might be double jeopardy issues about extraditing the person to the US or vice versa.

Senator LUDWIG—If the offence was committed over Australia, for argument's sake—I am just trying to get a sense of which law applies—and it was on a US aeroplane and the air marshal intervened, it would be an American offence. So when they landed they would be taken into Australian custody and then extradited back to the US.

Mr McDonald—Much depends on where the plane is. If the plane is over Australia, there is also a situation where you have co-jurisdiction. So if it occurred while it was over Australia, this co-jurisdiction and, under the sorts of arrangements we are talking about, the jurisdiction where the person landed would be the jurisdiction that would have first—

Senator LUDWIG—To clarify, you are saying it would be Australia that would have first—

Mr McDonald—Yes. That is the sort of arrangement we are talking about. Obviously there are discussions with various countries and of course the arrangements can—

Senator LUDWIG—If it was committed over the Atlantic then it would be the US that would have the first call?

Mr McDonald—That depends.

Senator LUDWIG—If it was overflying Hawaii at the time?

Mr McDonald—Obviously if it was committed over the Atlantic then there could be other issues coming into it, depending on where it was in the Atlantic. But—

Senator LUDWIG—In the sense of what airspace it was in?

Mr McDonald—US law over the Atlantic is probably something I am not best qualified to comment on.

Senator LUDWIG—So it would depend on where it was.

Mr McDonald—Yes. If it was near a Spanish island or something like that there could be co-jurisdiction between the Spanish territory and the US. In our case, there are offences which apply on an Australian aircraft and they would apply as well. It is reasonably complicated.

Senator LUDWIG—I am not sure you have thrown light into the corner but you have been helpful.

Senator Ellison—I should have clarified that it is not hard and fast that extradition is rubberstamped under the Extradition Act.

Senator LUDWIG—I will come to that. We have got some other questions on extradition. Does Australia have the option of requiring US carriers to place US air marshals on flights to

Australia from the US that Australian authorities believe pose a heightened security risk? Can we require US carriers to provide US marshals?

Senator Ellison—Are you asking, ‘How does the threat assessment operate?’ So, if we assess there is a threat to a particular flight, they then have to follow that?

Senator LUDWIG—Yes, if there is an issue that is raised, you would obviously communicate it to the US authorities. How do US authorities respond to that? Will they then, as a requirement, put an air marshal on board, given that you have indicated there is heightened threat assessment? What is the process involved?

Senator Ellison—This is subject to the agreement being negotiated with the United States. I think it is inappropriate at this stage to discuss the ins and outs of the discussions between the United States and Australia. If the question were framed more generally we could perhaps answer that but, as to the specifics of what has been said between the United States and Australia, at this stage it is inappropriate for us to be talking about negotiations with another country that are still in progress.

CHAIR—I will see if Senator Ludwig is of a mind to cast his question in the general.

Senator LUDWIG—Yes, I am happy to cast it in the general and we can use Singapore as an example of where an agreement has been signed. If a heightened security threat is provided by Australia in respect of a flight, what do you normally require if that occurs? Do you require the carrier to provide an air marshal? Or do you cancel the plane or ask for it to be cancelled? What happens?

Mr Keelty—The arrangement at the moment is that if a threat is assessed for a particular flight then the airline operator is advised of that particular threat and we then mount whatever action is necessary. I have great difficulty in talking about the air security officers, because it is a discrete operation of the AFP and the less detail that is public the better. All we would be doing would be feeding opportunities to people to look at the vulnerabilities of the arrangement. If a threat comes in, in general it will be assessed, the airline operator will be advised of the threat and activity will occur to either eliminate or reduce the risk.

Senator LUDWIG—More simply then: the US can require us to put an air marshal on board. Can we require them to put one on? Is that the reciprocal arrangement that will operate?

Senator Ellison—That is getting into a specific situation.

Senator LUDWIG—Just tell me that you do not want to answer and we can move on.

Senator Ellison—I do not think it is appropriate that we answer that in particular in relation to the US-Australia situation. But, in dealing with the program generally, of course you would exchange information in relation to threat assessments. One would expect cooperation with another country in relation to information that you had, just as we would cooperate with any other country that gave us information that related to any threat assessment. I think the Inspector-General of ASIO has indicated the level of intelligence exchange that we do have. In a general sense, you would expect that to happen and, depending on the advice that you receive, consequential action to be taken.

Senator LUDWIG—More generally, in terms of the APS and managing the ASOs, has a target level of staffing been required or been achieved and are there figures on what the turnover rate is, what the retention rate is and what the staff morale is like—in other words, the human resourcing issues?

Mr Keelty—If I could take the opportunity to answer your previous question about funding arrangements, there is ongoing funding of about \$18.5 billion per year. For the 2004-05 financial year it will in fact be \$19.2 million because there is going to be an estimated carryover from this year. In relation to the number of air security officers, we have reached the target that we have been funded for. In terms of the retention rate, I do not have the figure in front of me but I know that we are about to start another course very shortly—next month. We have had little difficulty in maintaining the numbers since we have had certainty about the funding.

Senator LUDWIG—What is the retention like? Will you provide that detail?

Mr Keelty—If I could take that on notice, I will give you a specific attrition rate for the air security officers.

Senator LUDWIG—Are you aware of any troubles or problems with retaining employees in the area?

Mr Keelty—To be honest, I think there was some uncertainty at the beginning until we got certainty about the funding for the program. Now that we have certainty about the funding for the program the issue of retention seems to have diminished somewhat. To be quite honest, the reason for the tension was that some of the people employed as air security officers were in fact on leave without pay and are serving police officers. They just needed to know a little more about their future, so once the funding was secured that tension seemed to dissipate.

Senator LUDWIG—But you will take that on notice. Perhaps you can also provide information on whether or not all the positions that have been allocated have been filled.

Mr Keelty—Yes.

Senator LUDWIG—Thank you. I do not have any further questions in relation to the Australian Federal Police.

CHAIR—As there are no further questions, I thank Commissioner Keelty and his colleagues for attending. Before we conclude this session, I want to put on the record, in relation to the previous discussion on the International Deployment Group, that I had the opportunity, through another committee, to visit the Solomons in late December and meet with and be briefed by some members of the AFP deployed there and see the sort of job they were doing. It was particularly interesting to see the difference between those roles and the roles I had previously observed in East Timor. They are fundamentally and profoundly different, so I imagine the IDG will go to addressing those requirements, those sorts of challenges. The feedback in both Honiara and the villages was overwhelmingly complimentary and supportive of the work that deployed Australians were doing—as part of both the ADF and the AFP, but in this context I am talking about the AFP—particularly the work of Deputy Commissioner McDevitt. So I would like to place on the record those

observations and ask you, Commissioner, to convey those views to Deputy Commissioner McDevitt and his colleagues who are deployed there and those who have returned.

Senator Ellison—Yes, Madam Chair. Can I quickly say before I forget, on the matter raised by Senator Ludwig of the briefing on the Solomons, that there is no problem with that. That even includes the committee should it be minded to visit the Solomons.

CHAIR—Thank you very much for that offer, Minister. We will pursue that elsewhere.

[12.47 p.m.]

Australian Crime Commission

CHAIR—I welcome Mr Milroy, Mr Phelan and other officers of the Australian Crime Commission.

Senator LUDWIG—How far away is the annual report?

Mr Milroy—I can advise you that on the 13th of this month we received the final comments and we will be referring the results to the minister this week.

Senator LUDWIG—As I understand it, the problem is that the report has to be signed off by all the various stakeholders before you can provide it. Is that why it takes so long, or is there another reason? Annual reports are normally due on 31 October, aren't they?

Mr Milroy—That is correct.

Senator LUDWIG—This report wasn't.

Mr Milroy—That is correct.

Senator LUDWIG—I was giving you the opportunity to agree with me that it normally has to be signed off by the other stakeholders before you can make it public. That is right, isn't it?

Mr Milroy—That is correct.

Senator LUDWIG—And the last stakeholder, as you indicated, has just finalised their interest in it?

Mr Milroy—Yes.

Senator LUDWIG—Who was that?

Mr Milroy—Victoria.

Senator LUDWIG—And now it can be made available?

Mr Milroy—That is correct.

Senator LUDWIG—You then send it to the minister's office for their final input. I take it that the minister is the last in the loop.

Mr Milroy—That is correct.

Senator LUDWIG—And it can then be made available. Is there a process that you would like to work on with your minister about making it available earlier? We get the opportunity in November to talk to you about the annual report and we get the opportunity now to talk to you about the annual report. You can imagine that by May, with all due respect, it is a little stale

because what we want to talk to you about in May is the budget, and if we keep going like this you are never going to be questioned on the annual report. That might be good for you, but I would like you to come back with a better method as to how we deal with it. I understand there are always these sorts of delays but, unless this is your responsibility, perhaps the minister could take on board talking to the Attorney-General about how we might be able to at least provide accounts or some information earlier than now so that at least we can deal with it in course.

Senator Ellison—As there are state and territory counterparts involved, we will see what we can do. I can perhaps convey your comments, as they are on the record, to your colleagues who are the various ministers in those states and territories and we will see if together we can move things along more quickly.

Senator LUDWIG—I understand that everyone has to have a look at it, and I am not complaining about that, and that may take time to work through. Given that, I am trying to understand whether or not you want to look at a process that might allow it to be expedited or to be released in part so that we can at least have a look at the figures or expenditure on some of those issues. In other words, we might be able to truncate the report in a number of areas so that you can release that which you know can be dealt with early. I do not know, but it seems that the process that you have adopted will always lead to this result, irrespective of governments, because of the amount of people that have to be consulted and the amount of time that will take.

Senator Ellison—I will take it up with the intergovernmental committee, the other ministers, and see if there is some way that we can give advance information to the estimates committee. I am sure they will not have any problem with that. I cannot speak for them, but I really cannot do this without their agreement.

Senator LUDWIG—I understand that, so I was asking whether you could just have a look at the process. That is as far as my inquiry goes.

Senator Ellison—I will undertake to the committee that I will take that up with them and I will see what we can do.

Senator LUDWIG—Thank you, Minister. There was a media release issued on 15 November announcing the seizure of some 753 firearms as well as firearm parts following a series of raids across Sydney the previous day. Were all of these firearm and firearm parts found in the one location?

Mr Milroy—The operation had been on for some period of time and the large bulk of the weapons were seized in the one location, but the operation resulted in a large number of the weapons coming from the same source.

Senator LUDWIG—How many locations were involved in total?

Mr Milroy—I would have to take that question on notice, because it was a fairly long project that involved quite a lot of operational activity.

Senator LUDWIG—Without going into operational detail, as far as you are able, could you provide the number of locations and the number of firearms and firearm parts that were found in each particular location?

Mr Milroy—Yes, and I must indicate also that the operation is still continuing.

Senator LUDWIG—That is why I asked you to tell me as far as you were able within operational requirements. This may also be impacted by that statement: have you established the ultimate source of the firearms? If the operations are continuing, the short answer will be that it is an operational matter.

Mr Milroy—That is correct. There are still matters to be pursued.

Senator LUDWIG—So you are unable to answer that?

Mr Milroy—At the present moment, yes.

Senator LUDWIG—What can you say about it then? Can you inform the committee where they have come from and perhaps how the investigation is going? What part can you tell us of this story?

Mr Milroy—It is a joint operation between the ACC and the New South Wales Police which has been in operation for some months. Over a two-month period commencing in September the New South Wales Police and the ACC recovered 812 of these .32 calibre key ring firearms and some other .32 calibre handguns, a machinegun, 49 stun guns and component parts sufficient to manufacture a further 2,500 key ring firearms. Also recovered were ammunition, drugs, drug manufacturing items, passports and suspected stolen property. As I indicated, the investigations are still continuing in a number of other areas. And the use of the coercive powers program is still under way to give us a better understanding of the involvement and the manufacturing of these weapons.

Senator LUDWIG—Can you say whether they were manufactured in Australia or whether they had been trafficked in.

Mr Milroy—Yes, they have been manufactured in Australia.

Senator LUDWIG—The media report indicates that a gun trafficking syndicate had been smashed. Can you give us more information about that? Is that the extent of what you can say?

Mr Milroy—Based on the results to date, yes. There are still further inquiries to be completed.

Senator LUDWIG—Would you say there were any other syndicates involved? Was this a domestic syndicate or an international syndicate? Or has this scenario now, although under investigation and still part of the ongoing operation, been effectively closed down?

Mr Milroy—There are still inquiries continuing in relation to the extent of the syndicate and whether its tentacles are in Australia or overseas. Those inquiries are still continuing.

Senator LUDWIG—Prior to the 14 November raids were there any other seizures or operations—I do not know what you call them—that you had executed in this area?

Mr Milroy—Yes.

Senator LUDWIG—How many of those were there?

Mr Milroy—I will have to take that question on notice, if possible.

Senator LUDWIG—As far as you are operationally able to tell us, can you tell us the type or nature of them and what was seized? Were they a raid? How would you categorise them?

Mr Milroy—I think I indicated they were .32 calibre—

Senator LUDWIG—No, I mean what they were in terms of their nature—whether it was a raid, whether it was firearm parts, and what they were. I mean whether it was just key rings or anything else.

Mr Milroy—I indicated that there were 812 fully assembled .32 calibre key ring firearms. The component parts to make 2,500 were also recovered.

Senator LUDWIG—In terms of the potential international connections, those operations are still ongoing, are they?

Mr Milroy—That is correct.

Senator LUDWIG—What can you tell us about that?

Mr Milroy—It is clarification mainly in relation to the design of the weapons.

Senator LUDWIG—Is this one operation or is there a special task force that has been set aside for this? Or is this part of the ACC's ongoing investigations into a wide variety of trafficking of guns and gun parts?

Mr Milroy—It is part of the special investigation which was approved by the ACC board in May 2003. There was approval to conduct special investigations into firearm trafficking. I can indicate that a number of investigations have been carried out through all jurisdictions with partner agencies in a variety of joint investigations.

Senator LUDWIG—Thank you.

CHAIR—Thank you very much for assisting the committee.

Proceedings suspended from 12.58 p.m. to 2.01 p.m.

CHAIR—I call the committee to order. We will continue our examination of agencies as they appear on our program. We will work through the Insolvency and Trustee Service Australia, the AGS, the High Court, the Family Court, HREOC and the Privacy Commissioner and then come back to outcome 1. If ITSA have left, it is possible to put the questions on notice. That was not done through me, Minister.

Senator Ellison—I am sorry, but I just—

CHAIR—There is no need to be sorry.

Senator LUDWIG—I am happy to put any remaining questions to ITSA on notice.

CHAIR—Thank you, Senator Ludwig. That is very helpful.

Senator Ellison—Thank you, Senator Ludwig.

CHAIR—Has that happened in any other regard? Is there any other agency who has been told it is not needed but was originally on the program?

Senator LUDWIG—Now is your opportunity!

CHAIR—It would be bad to dismiss the entire department on that basis though, Minister. We will start then with outcome 2, Coordinated federal criminal justice, security and emergency management activity, for a safer Australia.

Senator KIRK—My first questions are in relation to the International Criminal Court. The additional estimates provide for an increase in Australia's contribution to the ICC in 2003-04 of \$1.585 million. Could you explain why that amount was necessary?

Mr Cornall—This simply reflects an increase in the budget of the court.

Senator KIRK—So the budget of the court has increased by the amount and that was the contribution we were required to make?

Mr Cornall—Yes.

Senator KIRK—The overall increase in the budget of the court must have been quite significant; is that correct?

Mr Cornall—It was, yes. It was a matter of some concern to us that it had gone up so significantly in its second year of operation, but that is what happened.

Senator KIRK—What was the total increase of the budget of the ICC if our contribution was \$1.5 million?

Mr Cornall—Ms Warner has the figures.

Ms Warner—Australia's contribution to the ICC for the period 2003-04 will be approximately \$2,072,056.90. For the budget in the previous year, we contributed \$1,894,922 to the ICC, so it is the difference between those two figures.

Senator KIRK—The figure \$1.8 million or thereabouts was the amount contributed in 2002-03—is that correct?

Ms Warner—Yes.

Senator KIRK—What is the amount that we will be contributing in 2003-04?

Ms Warner—It will be \$2,072,056.90

Senator KIRK—So about \$2.072 million. That is a fair amount in excess of the budgeted figure.

Ms Warner—That has gone up a bit, yes.

Senator KIRK—It has gone up a lot.

Ms Warner—Yes.

Senator KIRK—Are you able to answer the question I asked about what the overall budget of the ICC is? I understand it is not within your province, but I am trying to determine what sort of percentage Australia is contributing.

Ms Warner—I will have to take that on notice.

Senator KIRK—What sorts of activities or expenses have resulted in this blow-out in the budget that Australia has had to contribute towards?

Ms Blackburn—The participation in the ICC's budget and finance committee is managed by the Department of Foreign Affairs and Trade; there is a Department of Foreign Affairs and Trade officer who is a member of that committee. Detailed discussions on the formation of the budget of the ICC would be better directed to the Department of Foreign Affairs and Trade.

Mr Cornall—I wonder if I could come back to your question about the total budget of the court. In euros, the total budget put forward by the court for 2004 was Euro55,089,000. Australia's percentage is 3.37 per cent.

Senator KIRK—That percentage has remained the same, despite the increases in the budget?

Mr Cornall—I understand that is the case, yes.

Senator KIRK—How do they determine the contribution of each of the individual states?

Ms Blackburn—There is a formula provided for determining the respective contributions of state parties. They use the UN scale of assessment, which is a standard scale across a lot of UN bodies. It is adjusted for the number of parties, and there are presently 92 states party to the ICC statute.

Senator KIRK—So is it the case that Australia is required to contribute approximately 3.37 per cent of the budget of the ICC, regardless of how much the expenses of the ICC blow out?

Ms Blackburn—That would be correct. Any change in Australia's percentage would arise from an increase in the number of state parties.

Senator KIRK—Assuming that that remains the same, then whatever the budget is, Australia has to contribute that percentage?

Ms Blackburn—That would be expected outcome, yes.

Senator KIRK—I am concerned that, as the budget blows out more and more—obviously, it is something over which we have no control—the amount we are contributing is going to keep increasing.

Mr Cornall—That was our reaction, too, Senator. May I make one further observation: the figure of Euro55.089 million was the draft budget. Looking again at this briefing note, I see that the final budget was Euro53.071 million.

Ms Blackburn—I think you could also add to that that it is a new institution, so I think it could be reasonably expected that in its initial years there would be some fluctuations as it sets itself up. We would certainly expect that you would get to a stage where the budget arrangements would be more predictable.

Senator KIRK—Thank you. I also have some questions in relation to the article 98 immunity agreement. Have negotiations concluded with the United States in relation to article 98?

Ms Blackburn—Article 98 agreement negotiations with the United States are continuing.

Senator KIRK—Over what period of time have the negotiations been taking place?

Ms Blackburn—I am advised that the negotiations commenced in July 2002, and they are continuing.

Senator KIRK—How recently was there a meeting between officials to negotiate the article?

Ms Blackburn—There have been several meetings. I think in the past I have indicated that these negotiations are active. There has been continuing engagement in various forums between officials of the Australian government and officials of the US government.

Senator KIRK—Has there been any discussion during the course of the negotiations that would possibly prevent Australia from surrendering American nationals to the International Criminal Court?

Ms Blackburn—It would be inappropriate for me to disclose details of the negotiations. I can, however, say that Australia is a signatory to the ICC statute and any article 98(2) agreement must enable Australia to meet its obligations under the statute.

Senator KIRK—Has the government established any time frame for the conclusion of the negotiations in regard to article 98?

Ms Blackburn—Are you asking if I have a timetable for conclusion?

Senator KIRK—A timetable for conclusion, yes.

Ms Blackburn—No, I have no timetable for conclusion of the negotiations.

Senator KIRK—How long is it likely to take? We have already been negotiating it for 18 months. Why is it so difficult?

Ms Blackburn—Article 98(2) agreements are a serious matter and there are a number of issues that need to be discussed and agreed between the parties to those agreements.

Senator KIRK—So it is not unusual for it to take this length of time?

Ms Blackburn—I cannot comment comparatively with negotiations with any other countries. We do not regard the present progress of these negotiations as being unusual. There are a number of issues that need to be resolved and discussions are continuing on those matters.

Senator KIRK—So it could go on for another six or 12 months; I could still be asking this question in 12 months time?

Ms Blackburn—Perhaps, Senator.

Senator KIRK—Has the government sought any legal advice as to whether the agreement is consistent with Australia's obligations under international law, including the Rome statute?

Ms Blackburn—As we have not yet finalised the negotiations on the text of the agreement, there is no point at this stage in asking whether or not it does meet the obligations under the treaty. Clearly, any agreement which is finalised will meet those obligations as the government is advised at the time.

Senator KIRK—But, as the negotiations are taking place, surely there must be legal advice being provided as to whether or not the negotiations are consistent with the requirements of the treaty?

Ms Blackburn—That would be expected, yes.

Senator KIRK—We have been discussing negotiations between Australia and the United States in relation to article 98. Has Australia approached or been approached by any other countries to negotiate a similar article 98 immunity agreement with them?

Ms Blackburn—My answer is no to all of the variations of that question.

Senator KIRK—So no, we have not approached any other countries; no, we have not been approached by any other countries in relation to article 98?

Ms Blackburn—That is correct.

Senator KIRK—Has the government decided whether to sign the agreement on the privileges and immunities of the ICC?

Ms Blackburn—I believe that matter is still under consideration.

Senator KIRK—How long has it been under consideration?

Ms Blackburn—I apologise for giving you any form of run-around but, again, the privileges and immunities agreement is being handled by the Department of Foreign Affairs and Trade and it is officers of that department who have been involved in the negotiations on the agreement. At this stage the government is continuing to examine the agreement to determine what steps would be necessary for its implementation in Australia, and at this stage I cannot provide you with any further details on that.

Senator KIRK—So my question should be directed to DFAT officials. Would you be aware of whether there is a national interest analysis?

Ms Blackburn—No. That work would indeed be managed by the Department of Foreign Affairs and Trade. They are the lead agency on that agreement.

Senator KIRK—Would you have any idea as to when the government expects to table the agreement, or is that again something I would need to ask of DFAT?

Ms Blackburn—You would need to direct that question to DFAT.

CHAIR—Is there anything further on the ICC?

Senator LUDWIG—I have no more on 2.1.

CHAIR—Do you have further questions on the ICC, Senator Greig?

Senator GREIG—I have some similar questions. I could not quite hear all of the questions that Senator Kirk was asking so I am sorry if I am repeating some of them. The former Attorney-General, Daryl Williams, and Foreign Minister Downer have both publicly stated that the Australian government received a request from the US for Australia to enter into an article 98 agreement pursuant to the Rome statute. Can you confirm that such a request did come from the US?

Ms Warner—Yes, I can confirm it.

Senator GREIG—In what form did that come? Was it a letter? If so, from whom?

Ms Blackburn—Can we take that on notice?

Senator GREIG—Sure. Assuming that it is a letter or a communiqué, did it set out the proposed terms of any such agreements?

Ms Blackburn—I would give to you the same answer as I have given to the other questions: disclosing the details of the progress of the negotiations would not be appropriate.

Senator GREIG—Is it possible for a copy of the communiqué to be provided to the committee?

Ms Blackburn—To which communiqué are you referring?

Senator GREIG—The request for Australia to enter into an article 98 agreement.

Ms Blackburn—I will take that on notice. I do not know what it says so I will need to consider its text.

Senator GREIG—Has there been any subsequent communication between Australia and the US regarding this issue?

Ms Blackburn—The negotiations on whether or not an article 98(2) agreement should be entered into have been going on since July 2002. That has involved a number of communications between both parties.

Senator GREIG—Can those communications that you speak of be provided to the committee?

Ms Blackburn—Again my answer would be that they are confidential negotiations between the Australian government and the US government. It would be inappropriate to disclose them at this stage.

Senator GREIG—Foreign Minister Downer has said publicly that the government is sympathetic to the US request for an article 98 agreement; similarly, the former Attorney-General stated that, in principle, Australia has no objection to such an agreement. Is that still the government position?

Ms Blackburn—That is still the government position. We are still negotiating with the US.

Senator GREIG—The government would, I am sure, be aware of some various legal opinions, which have been made public, that argue that the article 98 agreements are illegal and contrary to the Rome statute. Have those opinions being taken into consideration in the negotiations?

Ms Blackburn—I cannot answer whether the specific opinions you are referring to have been. Obviously before the government tabled any article 98(2) agreement in the parliament or prepared a national interest analysis, it would have to form a view that the article 98(2) agreement was lawful and consistent with its obligations under the statute.

Senator GREIG—Is it the case that the government has sought legal advice on that point?

Ms Blackburn—Could you excuse me one moment, please?

Mr Cornall—In relation to this matter, obviously in advising the government the department takes full account of the legal position and is most concerned to ensure that any outcome is consistent with Australia's international obligations. Those issues are being taken into account in the negotiations. The position also is that a large number of countries which

are signatories to the Rome statute have come to the view that they can enter into article 98(2) agreements. So there is a body of opinion internationally that agreements of that type are admissible in international law.

Senator GREIG—At this point in time, from which department or sector has advice come forward to the government on this point?

Mr Cornall—To the best of my knowledge, the advice has come through this department.

Senator GREIG—Is the government prepared to waive legal professional privilege to inform the committee of the substance of that advice?

Mr Cornall—That would be a matter for the government.

Senator Ellison—Normally we do not reveal legal advice. If there is a way forward to reveal this I will have a look at it, but can I just say that we do not normally reveal legal advice given to government. There have been occasions where it has been done. I will see what I can do, but I will do so on that basis.

Senator GREIG—Can the committee be informed of how the process of a potential article 98 agreement with the US has been managed administratively by the government—that is, which departments have been involved and what their respective responsibilities have been.

Ms Blackburn—Within the Australian government, the Attorney-General's Department and the Department of Foreign Affairs and Trade have both been engaged in the negotiations with the United States. I am reminded that the Department of Defence is also included in those negotiations.

Senator GREIG—Obviously a range of political and diplomatic considerations as well as legal considerations are relevant to the issue. Has the Attorney-General's Department been involved in any assessment of such political considerations or have those issues been left to the Department of Foreign Affairs and Trade?

Ms Blackburn—I am sorry; can you explain what you mean by 'political considerations'?

Senator GREIG—I am talking about the political consequences of entering into an arrangement of this nature. My question is: is the politics of the issue something that the Attorney-General's Department has been dealing with or has it been left to Foreign Affairs and Trade?

Ms Blackburn—To the extent that there is a need in these negotiations and in advising government to assess the consequences of concluding the agreement for both Australia and the United States, all of the departments contribute to that assessment. I am reluctant, however, to label that 'the politics of it', because departmental advisers are advising government on the detail of the agreement, on the form of the agreement and on whether, in the view of the agencies going through these negotiations, it meets the treaty obligations and Australia's legal requirements. I do not know if I have answered the question.

Senator GREIG—Can I take it from your answer—and correct me if I am wrong—that part of the advice on this issue from the Attorney-General's Department to the minister is political advice?

Ms Blackburn—I am troubled by answering that, because I do not know what you are trying to get at by the use of the word ‘political’.

Senator GREIG—Political advice as opposed to administrative or legal advice.

Ms Blackburn—We provide the government with advice on all of the issues that arise from the action under consideration, whatever that might be. As public servants, we do not advise the government on ‘political’ issues, as that term is normally used. If you are referring to the politics of the relationship between Australia and the United States then assessment of the impact of activities and the state of a bilateral relationship would be normal advice which would be provided by the Department of Foreign Affairs and Trade in the course of its ordinary business.

Senator GREIG—Thank you.

Mr Cornall—Just before we leave that matter, Senator, you asked about legal advice and I said all legal advice would come through the department. It is very common for the department to test questions with the Australian Government Solicitor, with whom we have a very close relationship, and include their advice or take notice of their advice in forming our opinions. I just want to be clear about that with respect to your earlier question.

[2.25 p.m.]

CHAIR—We will move on to output 2.2, Legal services and policy advice on security law. I thank the officers for output 2.1.

Senator BOLKUS—Can I start off by asking about recent developments in respect of both Hicks and Habib. I gather they were visited by Australian officials quite recently. Was that both of them or just one of them?

Mr Cornall—Both of them.

Senator BOLKUS—When were they visited?

Mr Cornall—In the first week of February.

Senator BOLKUS—I presume they were interviewed. Who met with them?

Mr Cornall—My understanding is that it was officers from our embassy in Washington.

Senator BOLKUS—Are you on top of those details, or should we ask foreign affairs who visited them and what sorts of interviews were conducted?

Mr Holland—The purpose of those visits was welfare.

Senator BOLKUS—We have been granted diplomatic access, I gather—or are we still conducting welfare visits? Wasn’t there some distinction between the two concepts of visits?

Mr Holland—For the purposes of this, the visits were designated as welfare visits. In terms of the personnel who attended, apart from knowing that they were from the embassy in Washington, I do not have those details.

Senator BOLKUS—We have asked for diplomatic access to both of them. Has that been granted?

Mr Holland—It would be consular access, I think. That is an issue that you would need to take up with the Department of Foreign Affairs and Trade.

Senator BOLKUS—In terms of the meetings, do you have any idea as to what sorts of issues were raised by either Hicks or Habib? Were they complaining about any specific aspect of their conditions?

Mr Holland—My understanding is that as a result of those visits the officers were able to determine that they appeared to be in good physical condition. In terms of the nature of the discussions broader than that, I am not in a position to say.

Senator BOLKUS—Is that because we should take those questions to foreign affairs or is that because of some other issue?

Mr Holland—It was the people from Foreign Affairs and Trade who visited.

Senator BOLKUS—So you are not aware of any complaints that they may have raised?

Mr Holland—Not specifically, no.

Senator BOLKUS—What about generally? What complaints did they raise?

Mr Holland—I am trying to draw upon memory here in terms of what I have seen. My memory is that so far as Mr Hicks was concerned I am not aware of any complaints that he was making of a specific nature that I would be able to identify.

Senator BOLKUS—Did either one of them allege that they had been beaten at any stage?

Mr Holland—There had been allegations made about that in the past, or allegations of torture, which the government took up with US authorities, who assured them that that was not the case. In terms of whether or not either of them made a specific claim about that, I am not aware of that.

Senator BOLKUS—So those allegations were raised in the past?

Mr Holland—In the media. It had been raised in the media that people living on Guantanamo Bay had been subject to torture, and that was why we raised this issue with the Americans at that time. I am sorry if I gave the impression that it was raised because we thought they had raised it specifically. It was raised because it had been raised on a general basis.

Mr Cornall—The Australian officials have visited Mr Hicks and Mr Habib on a number of occasions over the period of their detention in Guantanamo Bay, and it is my recollection that on each occasion when they came back they reported that they were in apparent good health.

Senator BOLKUS—Sure, Mr Cornall. That is a general answer. Someone can look as if they are in good health, but it does not necessarily mean that they have not been beaten or they have not been suffering some sort of mental torture.

Mr Cornall—I do not recall any suggestion to that effect in anything I have read.

Senator BOLKUS—That might be a more recent concern. In that circumstance the Americans told us that everything was okay and we just accepted that? I think, Mr Holland, you said that when you raised it you were assured that it was not happening.

Mr Holland—Yes, Senator. We were given assurances that this is not the policy of the United States government and that it would be illegal to engage in those activities. I do not remember the exact words but certainly those comments were made. My recollection—given that this was a little while ago—is that the President was asked the question publicly and made some similar comments and gave assurances. It was quite an issue that was running at the time.

Senator BOLKUS—We all know that it is not official policy of government to beat prisoners, but somehow it seems to happen. Are you not concerned that, despite that official assurance that it is not the policy of government, it may have happened in that instance or it may be happening to others from other countries? Conditions generally in Guantanamo Bay have attracted a fair degree of international criticism. Are we just satisfied with a bland response from the administration?

Mr Holland—It goes a little bit further than that. My understanding is that there have been no complaints made to some international organisations where you would expect complaints to be made. I would like to confirm some of the details of that and take the question on notice and get back to you because I do not want you to get the impression that that is the only basis upon which we are accepting that there has been no torture.

Senator BOLKUS—You mentioned international organisations. The ICRC was concerned last October at the worrying deterioration in prisoners' mental health. That is an international organisation that is pretty well respected, and they are obviously complaining. Have you had a chance to pursue that aspect of the condition of Hicks and Habib?

Mr Holland—Short of medical tests that would need to be done to determine something like that, no.

Senator BOLKUS—Could we not ask for medical tests? Both of them have been there for quite a while. I presume they are in solitary confinement, are they?

Mr Holland—I think that is correct. I am simply trying to recall now exactly what the conditions are. I think that is correct; they are in solitary confinement.

Senator BOLKUS—They are in solitary confinement. Do we know if they have access to radio, television, library books?

Mr Holland—No, I do not know that offhand but I am happy to take that on notice.

Senator BOLKUS—I presume that, being in solitary confinement, their contact with other people would be pretty limited. Do we know to what extent they have access to exercise facilities and exercise yards?

Mr Holland—We do know that they are able to engage in some exercise. In terms of access I think it would be true to say that Mr Hicks at the moment is in a very different class. He is in a different class in the sense that he has had access to his designated defence lawyer and access to his Australian legal consultant. I also understand that he has now appointed a United States civilian attorney to his defence team. So he has been having contact with his defence team. I do not know the extent of that contact at this stage; it really is a matter between him and his lawyers. We also know that he has spoken to both his mother and his father by phone.

Senator BOLKUS—How far away are we from Habib having access to his lawyers?

Mr Holland—We do not know that at this stage. The government has asked the United States authorities to move as quickly as they can to finalise or determine his circumstances.

Senator BOLKUS—When did we make that request?

Mr Holland—That request has been made at every opportunity that arises. I am sure that it was raised by the Attorney-General when he visited the United States a few weeks ago.

Senator BOLKUS—So we could have been waiting for almost two years now for them to respond to this request. I am trying to get some ideas as to when it was first raised. Would you like to take that on notice? It is a considerable amount of time. What are we doing to try to press the point?

Mr Holland—The PM certainly raised it with President Bush when he was here. My recollection is that it has been raised since then. But we will take it on notice and confirm that.

Senator BOLKUS—What sort of responses do we get?

Mr Holland—That they are moving; it is in process.

Senator BOLKUS—Going back to that question of isolation and access to mind-stimulating or physically stimulating facilities, we do not know about access to library book or access to wireless.

Mr Holland—No, I would like to check on that as well, whether it is the same in relation to both people.

Senator BOLKUS—In terms of access to exercise yards and so on, do we know if they have access to those sorts of resources?

Mr Holland—I know that there is some exercise that is allowed, but the latitude of that is fairly restricted.

Senator BOLKUS—What do you mean by that?

Mr Holland—In the sense that it is not every day, for example, that they are allowed to exercise, and the area in which they are allowed to exercise is restricted.

Senator BOLKUS—Do you know how big that area is? Can you tell us how big it is?

Mr Holland—No, I cannot. To the extent that we know, we will see if we can find that out for you.

Senator BOLKUS—Is it restricted in terms of time?

Mr Holland—I think it is, yes.

Senator BOLKUS—Is it restricted with respect to duration of time?

Mr Holland—It is restricted in the sense of the amount of time that you can do it, yes.

Senator BOLKUS—Is it restricted as to the time of the day? Can it be done during the day?

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

Senator BOLKUS—Can you find out whether it is night only or day?

Mr Holland—Yes, we will see what we can do.

Senator BOLKUS—And what is the duration? I have asked you a couple of times. I do not know that you do know.

Mr Holland—No, I do not know the duration.

Senator BOLKUS—So you will find out for us. Mr Habib is seemingly, from all reports, in a worse condition than Mr Hicks. Did he ever raise any complaints about his treatment, for instance, on the way to Guantanamo Bay, in Egypt or other countries?

Mr Holland—That was so long ago, Senator, that I am sorry cannot answer that. I will have to take that on notice.

Senator BOLKUS—ICRC was concerned about people going on hunger strikes and also attempting to commit suicide. Apparently, from the report I was reading, something like one in five Guantanamo detainees had been put on antidepressants and 21 had tried to commit suicide a combined total of 32 times. Is there any indication that Hicks or Habib have either gone on hunger strikes or tried to commit suicide?

Mr Holland—No.

Senator BOLKUS—Is that because we do not know? Have we asked about that? Or is it because we just take the assurance that they are in good condition?

Mr Holland—As I say, the people who have been there have been able to talk to them and been able to make some assessments. As the committee would know, and as has been reported in the past, Mr Habib did have a pre-existing condition for which he was on medication, and attempts have been made by authorities to get him to take that medication from time to time. That has not always been successful and I am not sure what the position is right now in that regard.

Senator BOLKUS—You mentioned earlier the restricted area for exercise. How big are their cells?

Mr Holland—A lot of those details are not known, certainly not known to me. It may well be known to those who were involved in discussions with them, whether they were law enforcement or intelligence agencies. I am not certain of that but I can certainly see what we have.

Senator BOLKUS—It is a pretty important aspect though, isn't it, if they are in detention in a small cell and isolated. We do not know if they have access to literature or radio or any other entertainment. They have been there for quite a considerable amount of time. In those circumstances you would expect any sane person to deteriorate in condition. When you say they are in a good condition, how do we know that? You say there are people there assessing them. Who are those people?

Mr Cornall—The people who have come from the embassy who have spoken to them face to face.

Senator BOLKUS—You can sit here and look at me and make an assessment as to whether I am sane, or vice versa, but what about medical checks?

Mr Cornall—No, we stress physical condition, Senator, because we appreciate that an untrained person would not necessarily be able to make that assessment.

Senator BOLKUS—Have we asked for an outside medical person to monitor their situation—their condition—and make an assessment as to how they really are?

Mr Holland—What we do know is that Mr Hicks needed some sort of medical treatment and has been very positive in his references to the medical treatment that they are receiving at the facilities. In fact, as reported in the newspaper last year, he sent a letter to his family in which he referred to the medical treatment that he was receiving as being first-class, or words to that effect. So the medical facilities at the camp are first-rate. Mr Hicks' has spoken to quite a few people now—his defence team and of course his parents—and I think there have been some reports from those people on his condition as well.

Senator BOLKUS—You mentioned mail services. What access to mail services does he have? You said there was some communication from his parents.

Mr Holland—He phoned his parents.

Senator BOLKUS—So there is no access to mail?

Mr Holland—Yes, he has access to mail. He can write to his parents and his parents can write to him, and they have done so.

Senator BOLKUS—Can Habib?

Mr Holland—Yes, certainly.

Senator BOLKUS—We dwelt on Hicks there for a moment, but is there any indication of Habib having any continuing health problems?

Mr Cornall—We have said before that he has an underlying medical condition that he was being treated for to the extent that he would accept the treatment. That position remains the same now.

Senator BOLKUS—Do we know if it has deteriorated or improved?

Mr Cornall—I do not know whether we know the answer to that. The issue has been raised with the Americans and we understand that it is very much at the forefront of the minds of the medical team there. That is as far as we can take it.

Senator BOLKUS—Have we contemplated asking the Americans for access to be given to an independent medical assessor, either psychological or physical?

Mr Cornall—I do not believe we have asked that, on the basis that it has been reasonably clear in all of our discussions with them that that sort of access would not be permitted.

Senator BOLKUS—Would there be a problem in asking for that, given that they have been there for quite a long time now and their nerves must be pretty well tested?

Mr Cornall—We can take that on notice and see what can be done.

Senator BOLKUS—On 25 November the Attorney announced in a press release that there was an agreement between the governments as to prosecution of Hicks and Habib. Can we get a copy of that agreement?

Mr Holland—It is a confidential agreement between the United States and Australia, but the key elements of that agreement as it relates to Mr Hicks and Mr Habib and how the process will deal with them in the course of any military commission have been made public. We have ourselves prepared a document that sets out the key elements of the agreement and the guarantees of rights that they have under the military commission order as well as under the terms of the agreement between the United States and Australia. We are more than happy to make that document available.

Senator BOLKUS—I would like to see that, but as for the broader document I am sure we all agree that any agreement by government as to how a person is prosecuted would be seen by any court in this country as something that the defence would need to have full knowledge of. Why is that not the case here?

Mr Holland—To the extent to which that agreement directly relates to the trial and the prosecution—if there is one—of those people, those details have been made public.

Senator BOLKUS—So what are you telling us the rest of the agreement says? I think the Attorney announced that it was an agreement as to the prosecution, and there are obviously parts of that agreement you are not going to tell us about. How, for instance, if you were Hicks' lawyers, could you be assured that the parts of the agreement that have not been released do not impact on any aspect of the conduct of the trial?

Mr Cornall—The rules for the military commission are set out in a number of military commission rules, which are widely available. The qualifications or the understandings about how those rules might apply in relation to Mr Hicks are all made known to the defence attorneys—for example, an assurance that the death penalty would not apply to Mr Hicks and so forth. So those arrangements in relation to the particular circumstances of Mr Hicks have all been made known to the relevant defence attorneys.

Senator BOLKUS—I suppose my question still stands though: how can the US and Australian lawyers be sure that anything that is being held may not impact on the conduct of the trial? How can they be sure, for instance, that it does not relate to judicial officers that might be appointed or whatever? How can you have an agreement as to prosecution and keep it secret from the defence?

Mr Cornall—I do not think we are keeping it secret from the defence. The essence of all of the matters that have been agreed over a period of time is publicly known and well known to the defence attorneys.

Senator BOLKUS—Did the US ask for the agreement not be released?

Mr Holland—At the time that the discussions took place and this agreement was entered into, it was certainly seen as applying only to the case of Mr Hicks. The United States government was certainly of the view that it should be seen as that and not as setting any precedent. I think that things have moved on since then. We are happy to take this question on notice and see what can be done. But, reinforcing what the secretary has said, although the documents that govern the conduct of the commissions have been publicly available for quite some period of time, it is clear that all of the guarantees that are included in them have not really been reported on. Therefore we decided to put a document together which summarised

all of those as well as the details of the agreement between the United States and Australia as it governed the conduct of the proceedings. We are happy to make that document available.

Senator BOLKUS—Thank you, I will be glad to see that. Have similar agreements been entered into with other countries whose nationals may be involved?

Mr Holland—Not that I am aware of.

Mr Cornall—You are aware that only six people have so far been designated as possible for prosecution. So at this juncture only those six people and their countries would be considering these sorts of issues.

Senator BOLKUS—Some people have been sent back to their country for trial, I gather, in recent days.

Mr Cornall—Not that I am aware. People have been released on the basis that they are no longer of intelligence or security interest. I am not aware of anyone being sent back to their home country for prosecution.

Mr Holland—The secretary may not be aware that this past weekend there was a report that a Spanish national was being returned to be prosecuted in their home country, which is consistent with what the United States has told us—that is, they are prepared to repatriate people where those people can be prosecuted in their home country or are no longer of law enforcement or intelligence interest to US authorities. The person that I think you have in mind is the Spanish national who is being returned to his country to be prosecuted under the laws of his country in relation to terrorism offences. That is only from newspaper reports—I have not seen anything other than that.

Senator BOLKUS—So we are still of an opinion that Hicks and Habib, on return to Australia, could not be charged with any offence here? Is that our view?

Mr Holland—That is correct.

Senator BOLKUS—To have come to that view we must have had some access to the evidence against them.

Mr Holland—On the basis of the evidence that was available to Australian law enforcement authorities, the Australian law enforcement authorities and prosecuting authorities have advised that no prosecution can be mounted in Australia against either of these individuals.

Senator BOLKUS—When did they come to that conclusion?

Mr Holland—I would have to check on that.

Senator BOLKUS—My concern is that maybe things have moved on and that, with a better testing of evidence, information and so on, there may be a need for reappraisal.

Mr Holland—No, in terms of the activities of Mr Hicks there were investigations continuing during last year. There was certainly a brief of evidence that went to the DPP and they concluded that there were no grounds for prosecution in Australia. I think that evidence was reviewed again recently and a similar decision was reached.

Senator BOLKUS—So we have come to our own independent conclusion that there is no charge which can be made against Hicks here but, in coming to that conclusion, we are of a view that the evidence is sufficient for him to be charged in Guantanamo Bay on US offences?

Mr Holland—Putting it another way—

Senator BOLKUS—I actually put it that way for a reason, Mr Holland.

Mr Holland—I know, but I have to answer it in the most helpful way I can. The government has consistently said that, on the basis of the evidence available to prosecuting authorities, there are no grounds to prosecute Mr Hicks or Mr Habib under any laws in Australia that were current at the time of their activities. If, however, the evidence was there to support any charges the United States authorities had, then the United States could go ahead and do that. It is not saying that the charges that the United States might have had are exactly the same as ours. Certainly, if the terrorism laws that came into effect last year were in place at the time that these activities were engaged in, it is possible that a different outcome would have been reached.

Senator BOLKUS—Taking you two steps back, are we of a view that there is sufficient evidence for Hicks to be charged with an offence under US law?

Mr Holland—That is not a decision for me or the Australian government to make. To be perfectly honest, at this stage, charges have not yet been laid. Without knowing what those charges are, it is not possible to say whether or not the evidence would support those charges.

Senator BOLKUS—There is only one thing wrong with that: he is an Australian national and he has been held for over a couple of years. We take an interest in Australian nationals who may be held unfairly overseas and we raise complaints about such incarceration world wide. I would have thought that, in these circumstances, it would have been a requirement to look at the evidence about and to make an assessment with a view to—for instance, if you thought that there was insufficient evidence—raising consular requests on his behalf. You are telling me that you have not made that assessment?

Mr Holland—I certainly have not, no.

Senator BOLKUS—Don't you think someone should? You have the evidence before you. In order to work out whether we should be acting more strenuously with respect to Hicks, shouldn't we make an assessment as to whether we think he has been held fairly or unfairly?

Mr Cornall—We do not have the evidence before us. We have had access to Mr Hicks and Mr Habib through the AFP and through ASIO, and they have conducted extensive inquiries in relation to any possible offences in Australia.

Senator BOLKUS—But to have come to that conclusion, Mr Cornall, you must have had some evidence before you.

CHAIR—Senator Bolkus, perhaps we could let Mr Cornall conclude.

Mr Cornall—Yes, we had. We had all of the evidence that the AFP was able to generate in its investigation and in its interviews. But, in terms of the evidence that the Americans have, we have not been party to their interviews, we have not seen the transcripts of their interviews

and we do not know the full strength of their case. As Mr Holland has said, the American process is different to the Australian process inasmuch as, if for example they go into plea negotiations, they do so without necessarily laying charges first—that is part of the negotiation.

Senator BOLKUS—Sure. I suppose we can go around in circles on this for some time. My point is one I would like you to consider—to see what the AFP have had access to and whether we are in a position to make an assessment as to both Hicks and Habib and whether there is an avenue for us to go back to the Americans on the basis of that assessment.

Mr Holland—Certainly during the course of the discussions that we have had with the Americans we have seen some of the brief of evidence that they have but, as the secretary said, we have not seen everything that they might have. In terms of the decision that was going to be made, and that was a decision for them whether or not they had sufficient evidence to undertake the prosecution, we had clearly and obviously agencies here that had focused on what they had available on the basis of the laws that existed at that time.

Senator BOLKUS—Have we taken advice on the legality of Hicks's or Habib's detention?

Mr Holland—I am sorry, Senator, what do you mean?

Senator BOLKUS—On the actual legality of it, factoring in the facts and the evidence that may be there against them. Have we taken advice on whether they are being legally held in Guantanamo Bay?

Mr Holland—I think the Office of International Law may have looked at the issue. Have we had occasion to revisit that? I think the answer, as far as I am aware, is no.

Senator BOLKUS—Would you take on notice whether advice was taken, whether it was from the Office of International Law or elsewhere. I know we have constraints here but I will put a request in anyway to see if we can get a copy of that advice or you can give us some assurance that the detention is legal. Going back to the agreement between governments, I gather the UK are trying to get an agreement as well, as are other countries.

Mr Holland—Yes, as I understand it. I understand they are having discussions with the United States authorities.

Senator BOLKUS—I think there was some discussion towards the end of January that some UK prisoners may go back to the UK for trial. Is that the case? Would you like to take that on notice?

Mr Cornall—There have been reports in the paper. I do not know that we can take it much further than the newspaper reports.

Senator BOLKUS—Please take that on notice. I suppose what I am leading up to is this: what if you get to a situation where the UK or Spain or any other country, but particularly the UK, gets, through their agreement and negotiations with the United States, a better outcome for their citizens? Do we have a capacity to revisit this after this agreement has been signed?

Mr Cornall—We have an agreement with the United States that, if the outcome negotiated by the British in respect of their detainees is more favourable than the outcome we have

negotiated, then the benefit of those additional negotiations should flow through to the Australian detainees as well.

Senator BOLKUS—Is that part of the agreement that has been made public, or is that part of the agreement that is not?

Mr Holland—We have said that from the very beginning in the public documents that have been released.

Senator BOLKUS—A final request I have is to see if we can get some independent medical assessment of both of them. I think there is particular concern about Habib's condition, so if you like you can take that on notice.

Mr Holland—Certainly.

Mr Cornall—Senator, just before we leave this issue, one of the points that the government pressed very strongly for was for an Australian legal consultant to be part of David Hicks's defence team. We have been successful in that. Mr Kenny has been to Guantanamo Bay twice and has had extensive discussions and no doubt will be bringing all of his relevant defence expertise to the advice given to Mr Hicks, along with that of Major Mori, who is the defence counsel, and Mr Dratel, who is the US civilian counsel now involved in the matter.

Senator BOLKUS—Do Kenny and the other lawyers have a capacity to negotiate with the administration before Hicks is charged?

Mr Cornall—Yes, that is what they have been doing, I understand.

Senator BOLKUS—Don't we think it is important for Habib to have the same legal capacity to do so?

Mr Cornall—Yes, I do, but before you get to that stage he has got to be designated as eligible for a military commission trial. He has not been put in that category yet. So there is an initial step that has to be taken before that situation arises. That is why we have asked for Mr Habib's situation or his status to be resolved as quickly as possible.

Senator BOLKUS—But in any pretrial assessment isn't it really important, if not critical, to have lawyers, especially in someone like Habib's case where he may have all sorts of problems communicating, to be able to help him get through the morass of evidence and misinformation and information that might be against him?

Mr Cornall—As I understand the American process, that is when the lawyers are involved.

Senator BOLKUS—All right, I will leave my request as I put it earlier.

CHAIR—We are still on output 2.2, Legal services and policy advice on security law. Are there any further questions on that area? Senator Kirk, do you have questions on 2.2?

Senator KIRK—I have a couple. Last year the Attorney-General announced that he had asked the department to review the antiterrorism legislation that was passed by parliament in the middle of last year, in particular the questioning powers, and to identify any changes that might be necessary. Could you confirm that that did occur and what the terms of the Attorney-General's request were?

Mr Holland—That review did take place and was one of the outcomes reflected in the amendments in December.

Senator KIRK—The advice you gave the Attorney ended up in the amendments that were passed in December last year?

Mr Holland—Yes, that is right.

Senator KIRK—They were the only changes that the department identified?

Mr Holland—At this stage we are looking at how the legislation is working—and that is the whole suite of legislation that is in place. We are looking at it in terms of how it relates to similar legislation in other jurisdictions and clearly we are guided by any advice which the agencies might bring to us identifying any practical problems they are experiencing in operating under the legislation.

Senator KIRK—You have been consulting with and seeking the advice of the agencies such as ASIO and others that are affected by it?

Mr Holland—That is correct. We have a relationship whereby we do not need to call them. They will let us know if—

Senator KIRK—I see. If they are having difficulties they will approach you and raise it with you. Has that occurred?

Mr Holland—Yes, and it has occurred in areas tangential to the terrorism legislation itself, for example in telecommunications interception. Our ongoing relationship with law enforcement and intelligence agencies, built up over the years through TI, has resulted in that relationship transferring across to the terrorism area as well. They know who to call and who they can talk to if they have identified any problems.

Senator KIRK—At present there is no formal process for them to raise issues with you, it is just done informally—is that correct?

Mr Holland—In terms of the terrorism legislation that is correct, bearing in mind that—and I stand to be corrected here by the law enforcement agencies—I am not aware of any prosecution that has yet been initiated under the terrorism legislation. Certainly no agency has suggested that they have not been able to prosecute because of problems with the legislation.

Senator KIRK—To backtrack a little here, the Attorney-General made the announcement that he had asked the department to review the antiterrorism legislation. Is it correct to say that you conducted the review and made a number of recommendations and that the amendments that were enacted in December were the result of those recommendations that you made?

Mr Holland—It is not quite as formal as that. We were aware that there were things that had been left out of the legislation through the negotiating process as the whole suite of legislation went through the parliament. The one that we knew was going to probably be tested fairly early on was of course the questioning regime and also, as you would be aware, the terrorism legislation dealing with the listing of terrorist organisations. Certainly in that area it became obvious very quickly that there was a problem in being able to act immediately you became aware that an organisation had been engaged in terrorist activities. The focus had

been on trying to deal with that problem, which we are still doing, as you know, and on any problems that have been identified of a practical nature that have arisen under the ASIO amendments.

Senator KIRK—I am trying to establish whether this is a process of ongoing review of ASIO's powers. Even though you say it was not that formal, there was an investigation done, these problems were identified and the amendments addressed them. I am trying to get clear in my head whether this is a process of ongoing assessment.

Mr Holland—It is a two-way street. I think that is the best way of describing it. Rarely would a week go by without discussions between people in the Security Law Branch and the legal advice staff in ASIO. In fact, we worked together on the legislation. One of the officers had been in my branch. It is of that nature. It is working as one so that you do not need a formal process to say, 'We'll have a meeting on this on Monday.' It is a very fluid two-way street in terms of testing with each other how it is working.

Senator KIRK—So the Attorney has not been involved and has not made any formal request that there be a review?

Mr Holland—I did not mean to give you that impression. Certainly the Attorney has raised issues that he has asked us to explore. I should have made that clear. I am looking at it in a practical sense, because invariably what happens is that when it starts operating you get people saying, 'There is a problem; how can we fix this?' But certainly the Attorney has initiated work himself in the branch.

Senator KIRK—Is the review that the Attorney asked for ongoing?

Mr Holland—Yes.

Senator KIRK—When are you expecting to be able to provide the minister with some recommendations or some advice in that regard?

Mr Holland—That is an ongoing thing. We go back and answer the questions that he has raised and tell him what he wants to know. It is not finite in that sense. As I said, it is an ongoing thing.

Senator KIRK—Thank you.

CHAIR—I understand that Senator Ludwig has put some questions on notice. It may take some time to coordinate a couple of those, certainly before the end of the estimates process. I thank the officers who have appeared. I particularly thank Mr Templeman and Mr Tyrie—I know you have been in the audience during the morning but we do not need to examine you directly this afternoon. When we returned from lunch, I indicated the advice from the minister that we would not be dealing with the Insolvency and Trustee Service Australia this afternoon, so ITSA were advised they were able to leave. That is also the case with the Australian Government Solicitor. I have been advised by my colleagues that they are not required for examination now, so we will move to the High Court.

[3.08 p.m.]

High Court of Australia

Senator LUDWIG—The annual report refers to an increasing number of cases filed in the court's original jurisdiction, particularly immigration cases. I think it is an issue we have perennially raised with you. If possible, could you provide a breakdown of how many of these were remitted to other courts—in other words, I would like to know the total number of original jurisdiction immigration cases, as far as you can identify them as being that, together with how many have been remitted to other courts. Can you take that on notice, unless you can provide it.

Mr Doogan—I refer you to page 8 of the annual report. Under the heading 'Workload Changes', the second paragraph states:

Of the 2,131 applications for constitutional writs filed, 1,947 were remitted to either the Federal Court of Australia or the Federal Magistrates Court during the past year.

Senator LUDWIG—How many of those were immigration cases?

Mr Doogan—The first paragraph under the heading 'Workload Changes' states:

Of those applications, 2,105 (or 99 per cent) involved migration matters.

Senator LUDWIG—Has there been an increase in that number over the last couple of years?

Mr Doogan—Certainly over the last couple of years, yes. In comparison with the previous year, the number of constitutional writs filed increased from 300 to 2,131.

Senator LUDWIG—What has caused that increase? It seems quite a large jump.

Mr Doogan—The Muin and Lie cases, which we discussed previously, were the major source for these cases. The trend, though, has of course declined. Perhaps in the interests of time it might be convenient if I were to give you two tables. The first one actually deals with all current immigration matters within the court as of 11 February. It shows a breakdown by each registry around the country and the type of matter involved. From that table you will see that presently within the High Court there is a total of 348 migrations matters.

Senator LUDWIG—Could many of those have been lumped together in one discrete bundle—if class actions are no longer available in this area?

Mr Doogan—No. The biggest individual number is made up of special leave applications, of which there are 205.

Senator LUDWIG—And do they relate to single matters or to separate issues?

Mr Doogan—To 205 single matters.

Senator LUDWIG—Just to distil that a little further, how many actions would be attributable to section 486 prohibiting class actions? In other words, if you did not have section 486, how many would then be able to be put together?

Mr Doogan—I cannot answer that, I am afraid.

Senator LUDWIG—Are you able to say what impact the migration legislation amendment judicial review legislation had on the workload?

Mr Doogan—In general terms, migration work has, in the year under review, made up the bulk of the work of the court—in terms of filings and so on. Again, I can also update tables

that I have previously brought to these hearings to show a comparison year by year of the various types of immigration matters filed, including up to 30 January this year. You will see from this table that, so far this current financial year, there has been a significant decline. To put it in percentage terms, last year immigration matters accounted for 82 per cent of the filings in the court and to 30 January this year they had dropped back to 47 per cent.

Senator LUDWIG—Are you aware of any explanation for that?

Mr Doogan—It is probably that the vast majority of the matters that followed on from Muin and Lie have now been disposed of in terms of being remitted to the Federal Court—that is predominantly the reason. They are only now starting to creep back, if you like, in the form of special leave applications.

Senator LUDWIG—Are you able to say with any confidence whether that will be the ordinary workload that you will experience over the next couple of years, if Muin and Lie was a peak in the system?

Mr Doogan—The best I could say, based on experience, is that a significant number—and I cannot put a percentage figure or an actual number on it—will in due course go around in a loop and come back to the court by way of special leave applications.

Senator LUDWIG—I guess that begs the next question: how many special leave applications to the High Court are granted? Is that reflected in your annual report?

Mr Doogan—Yes, it is.

Senator LUDWIG—I will be able to find it from there, thank you. Do you keep a tally of appeal cases? Is the number of appeal cases that are dealt with each year reflected in the annual report?

Mr Doogan—Yes.

Senator LUDWIG—I can deal with that as well. As I understand it, when your annual report was released it was accompanied by a statement from the Attorney-General that suggested that the court was in a state of crisis. Would you say that you are unable to deal with the cases you have before you?

Mr Doogan—No, I would not.

Senator LUDWIG—It does not seem to be the evidence that you are presenting at the moment. It seems that you are actually dealing with the cases.

Mr Doogan—I am frankly not aware of a statement made by the Attorney-General that the court was in crisis.

Senator Ellison—Madam Chair, could we source that comment—if there is any evidence of it? The secretary and I were just querying that ourselves. I am not aware of that being said.

CHAIR—Senator Ludwig, can you help the minister?

Senator LUDWIG—Yes. I have a copy of it here. It is from 22 January 2004 and is titled ‘High Court workload needs addressing’. I could make a copy available but then I am going to have trouble referring to it.

Senator Ellison—If we could see a copy of the article we could see whether or not that was an indirect quote.

CHAIR—I have a copy of the press release, Minister. Is it a press release, Senator Ludwig? We will get that copied, Minister.

Senator Ellison—Perhaps we could just move on while we have a look at that—

CHAIR—Certainly.

Senator Ellison—in fairness to Mr Doogan. So often we get these situations where something is referred to and it is not provided to the officials.

CHAIR—We will get that back as soon as we can. Senator Ludwig, are you continuing?

Senator LUDWIG—I am always pleased to make a copy available. Would you say that the workload of the High Court is more or less than it has been in the last couple of years?

Mr Doogan—To say that it has been constantly growing is the best way to deal with that. I can give you information to date. Comparing the coming year up to the end of January with the same period last year, the number of special leave applications and civil matters has risen. The number of criminal special leave matters is about the same. Appeals are up in both civil and criminal matters and there is a substantial drop-off in the number of constitutional writ matters. Putting that into perspective, 518 constitutional writs had been filed as of 31 January 2003. By comparison, this year it has dropped away to 130. So I would say that the overall work remains fairly constant but the work associated with constitutional writs and remitter to the Federal Court has declined.

Senator LUDWIG—So you are not experiencing a significant increase in the case load that you are now sharing between High Court judges, it appears. In other words, the work is being done, the matters are being remitted and the court is dealing with the workload. Is that what you are saying now?

Mr Doogan—Yes. I am saying that in absolute numbers it has fallen away to the way it was, say, two years ago.

Senator LUDWIG—So, far from increasing, it has plateaued and is in fact decreasing.

Mr Doogan—Only decreasing in the constitutional writs, and that is the immigration workload. But if you move out of that field into the area of general civil matters, that in fact has increased. Again, at 31 January 2003 there were 307 new civil special leave applications. By comparison, this year in the same period there were 355.

Senator LUDWIG—The immigration matters, then, are no longer, in my words, blocking up the system?

Mr Doogan—No.

Senator LUDWIG—I think we have been covering that for a while, but you are explaining now that it does not appear to be the case.

Mr Doogan—That is right. A large number of them have actually been remitted elsewhere. Again, as we were talking about earlier, they will trickle back.

Senator LUDWIG—They might come around again, but not perhaps at the same time and not in the same number.

Mr Doogan—Yes.

Senator LUDWIG—In terms of the civil jurisdiction areas, is it under control growing at a disproportionate rate? Can you comment on that?

Mr Doogan—I would not say that it was growing at a disproportionate rate; I would just say that it is growing. There may well be, if the trend to the end of January this year continues through to the end of the financial year, that on the civil side there will be, say, a 25 per cent increase.

Senator LUDWIG—Are the resources that the High Court currently has adequate to deal with that?

Mr Doogan—Yes, I would say they are. Of course, included in that is the work from a group that we have spoken about over the last several years—that is, a significant proportion of the work from the unrepresented litigants.

Senator LUDWIG—Perhaps we can either call them self-represented litigants or one day settle on a title to give to these people. Just dealing with that particular topic, it is, as you know, a problem across all jurisdictions. Page 9 of your annual report says that self-represented litigants account for 42 per cent of special leave applications, although 99 per cent are refused. I think we have talked before about what measures you have in place. Have you established any new measures that we have not already covered since that time? As we commented last time we were here, it is not going away and it seems to be growing.

Mr Doogan—It is growing. The 42 per cent that we mentioned was 40 per cent the year before—so in 2002 it was 40 per cent and in 2003 it was 42 per cent. Currently in the year to date it is 46 per cent. So we are fast approaching the 50 per cent mark.

Senator LUDWIG—So what are we doing with that?

Mr Doogan—We have previously discussed the issue of fees; we have previously discussed the issue of the rules and so on. I can simply say to you that I believe this issue will be affected by two things that are current. One is the review of the rules that we are undertaking within the court. That is fast nearing completion and we expect that soon we will be in a position to put those rules out to the profession for comment. One of the changes that we would propose—at least in draft form—is to give consideration to introducing discretion for whether or not there is to be a hearing or whether or not the case can be dealt with on the papers. You will recall, Senator, that that was something we have discussed, but it had also been recommended by the Law Reform Commission.

Senator LUDWIG—I am not sure how it would work in the High Court but it will be interesting to see how it gets developed.

Mr Doogan—Yes. The second aspect relates to the fees. I would anticipate that the review which the department is undertaking as part of the overall civil justice review may have a bearing on that as well.

Senator LUDWIG—I just wanted to return to the High Court workload that needs addressing and give the opportunity to the minister to respond. There are a couple of issues in there and I will go to them first. It is stated:

The Government established the Migration Litigation Review late last year to look at more efficient management of migration cases. The Government is considering the recommendations of the review.

That is the penultimate paragraph to the news release. Is there a final review, is it public and is it available to the committee, Minister?

Senator Ellison—Firstly, can I say that the press release did not say that the High Court was in any crisis or mention the word ‘crisis’ but it did mention that the workload needs addressing.

Senator LUDWIG—I think they were my words and I am suggesting that it is in crisis. When you read it, it looks like it is suggesting that it is in crisis. It says, ‘High Court workload needs addressing’.

CHAIR—Your interpretation, Senator Ludwig; the minister’s clarification.

Senator Ellison—I think Mr Govey can now address the question of the status of the review and where we are at on that.

Mr Govey—The report that you are referring to is with the Attorney-General. The question of its release is a matter for him and the government and, at this stage, I am not aware of any decision having been made either to release it or not to release it.

Senator LUDWIG—When was it sent to the Attorney-General?

Mr Govey—I think a close to final draft went to the Attorney just before Christmas and there was some minor editing performed by Ms Penfold. It then went to him in final form around the first or second week of January.

Senator LUDWIG—Thank you. Minister, I am sorry I cut across you. Did you have anything further to say in relation to the news release or will we move on?

Senator Ellison—I think the news release is self-explanatory. It talks about a need for systemic change. It is not criticising the High Court in any way; it is just looking at a more efficient management of migration cases. The review is with the minister and I do not think I can take it further.

Senator LUDWIG—Mr Doogan, did the High Court—or you as registrar—make a submission to the legal aid inquiry that the Senate Legal and Constitutional References Committee is undertaking?

Mr Doogan—No.

Senator LUDWIG—I cannot remember seeing your name. I did not know whether one was in draft or had been provided. Have you had a look at that issue at all, because occasionally they turn up in your court as well?

Mr Doogan—As best we know the situation to be, where a matter has merit and the person simply does not have the resources to fund it, one of two things happens: either they decide for themselves to approach one or other of the legal aid bodies or, alternatively, either

themselves or through a suggestion from the court, they will approach a bar association for pro bono assistance.

Senator LUDWIG—I do not have anything further in that area; that has adequately answered the question I asked. Unless you had any further comment to add, we can move on.

Mr Doogan—I have only one quick comment—that is, that the truth of the matter is that many of these cases would not warrant legal aid, on the basis that they are unsustainable arguments being advanced. We know of instances where the reason that people have been unrepresented is that they have been unable to find a lawyer who was willing to put forward the specific arguments that they wish to put.

Senator LUDWIG—And not because of a shortage funds?

Mr Doogan—I am sure there are occasions where there is a shortage of funds, but there are also the other cases where the arguments just are not sustainable.

Senator LUDWIG—Thank you. I do not have any further questions in this area.

CHAIR—Thank you very much, Ms Carolyn Rogers, Mr Christopher Doogan and Mr Howard.

[3.31 p.m.]

Family Court of Australia

CHAIR—We move now to the Family Court.

Senator KIRK—Could someone give the committee some information about the reduction in the number of counsellors at the Family Court since 1996?

Mr Foster—I would have to take that question on notice. I did not bring those figures back to 1996 with me. I only have the more current figures with me.

Senator KIRK—At the same time, could you look into the reduction in the number of mediators as well—or do you have that information here?

Mr Foster—The counsellors and the mediators are one and the same.

Senator KIRK—I take it, though, that there has been a reduction in the number of the counsellor-mediators?

Mr Foster—From memory, when I first came to the court four years ago there were 137 counsellor-mediators in the court and there are currently 87 counsellor-mediators. That came about four years ago when the court made a decision that it would step back from voluntary counselling in the major cities where that service was available from alternative service providers.

Senator KIRK—So has that drop in numbers happened over four years or did it happen four years ago?

Mr Foster—It started four years ago. Over a period time a number of counsellors left the court. It happened in a reasonably short period of time.

Senator KIRK—What impact has this reduction in the number of counsellor-mediators had on the workload of the court?

Mr Foster—That was work that was shifted from the court to the private sector—basically the community based organisations, which received additional funding from the government to do that sort of work. So the impact in terms of the court is that we just got out of that business of pre-trial counselling—except in the rural and remote areas where we still do that work. In some country areas that service is not available from community based organisations.

Senator KIRK—So are the 87 persons concentrated in remote and rural areas or do you still have some of them in the capital cities? I understood that you said they moved out to remoter areas.

Mr Foster—We still have mediators in a whole range of rural and remote areas.

Senator KIRK—Are there any concerns at all about the provision of timely family reports to the court as a result of resourcing issues?

Mr Foster—I am advised that that is not the case. We have had to make some work improvement and productivity changes to the way we operate within the court, but we are meeting our time lines that are requested from the court within reasonable periods. There has also been a change in the format of the family reports. So there have been some work practice changes to ensure that we meet the appropriate standards for the court.

Senator KIRK—Why did those work or productivity changes come about?

Ms Cooke—Some of these changes came about from feedback that we were getting, from judicial officers and other stakeholders, that the reports could be made more concise, with a different format that had more emphasis on the analysis, rather than a lot of background and narrative material. We also commissioned some research that included a follow-up with clients. We established a new format. We have not cut down at all on the assessment phase, so the full assessment is done with the children and with the parents, but the actual write-up has been modified and that has resulted in some improvements in our time standards for the production.

Senator KIRK—Could you inform the committee as to whether or not the new arrangement sharing resources with the registry of the Federal Magistrates Court has posed any problems at all or had any resource implications?

Mr Foster—We do not actually share resources with the Federal Magistrates Court. The Family Court of Australia provides services to the Federal Magistrates Court. The work in terms of filings has transferred to the Federal Magistrates Court. Up to the time that the matter comes under the direct control of a magistrate, that work is performed by Family Court of Australia staff. So in terms of a filing, we do all the necessary preparation for registry and indexing et cetera and receiving money on those files.

Senator KIRK—So there has not really been very much change—that is essentially what you are saying?

Mr Foster—We operate two systems because the systems are, for good reason, different. I guess that has brought in an extra dimension and put pressure on the staff in having to understand the difference between the two systems, but in general terms it is still the same overall workload that is being performed in the registry.

Senator KIRK—Are you able to inform the committee about the status of the process for the appointment of a new chief justice?

Mr Foster—That is a matter for the government, I would have thought.

Senator KIRK—Minister?

Senator Ellison—My advice is that that is with the Attorney. If there is anything further I can add I will take that on notice and get back to you.

Senator KIRK—Has there been any consultation with the Family Court in relation to this matter?

Senator Ellison—Between the minister's office and the Family Court or the department, or both?

Senator KIRK—Both, yes.

Senator Ellison—Again I will take that on notice and see what the Attorney can advise.

Senator KIRK—Does the court keep figures about the delays for hearing matters generally—the time taken to hear cases and the delays that are in the system?

Mr Foster—Yes, it does. Would you like some information about the current position?

Senator KIRK—Yes, if you could provide us with the information over the last 12 months that would be helpful.

Mr Foster—I can read it into the *Hansard* or provide you with a paper that sets it all out, whichever you prefer.

Senator KIRK—You could just table the document, as we are a little short on time.

Mr Foster—Certainly. It sets out what is happening on an aggregate basis across the court, plus a breakdown in the major registries and what is actually happening compared to our standards.

Senator KIRK—Does that also show the cases that involve children? Is there some breakdown as to the types of cases?

Mr Foster—It will not actually show the difference between children and property matters because they are grouped together.

Senator KIRK—They are often tied up together.

Mr Foster—Yes.

Senator KIRK—If you could table that it would be helpful, thank you.

Mr Foster—Certainly.

Senator KIRK—In relation to legal aid, did the court put in a submission to the legal aid inquiry?

Mr Foster—Yes, it did.

Senator KIRK—Is that a publicly available document? Can you provide the committee with a copy of that?

Mr Foster—I am not sure where that is with the committee but I would imagine that is a matter for the committee of inquiry.

Senator Ellison—It is up to the committee as to whether it is released.

Senator KIRK—Within your submission did you address the question of the impact on self-represented litigants? We asked the High Court a number of questions about this. Does the Family Court have the most recent statistics in relation to self-represented litigants and could it provide them to the committee?

Mr Foster—We are still working on the figures. The only figure we have is that in 40 per cent of our matters, at some stage during the proceedings, at least one party is self-represented.

Senator KIRK—Did you say 40 per cent?

Mr Foster—Yes, 40 per cent at some stage during the proceedings.

Senator KIRK—What sort of measures has the court taken in order to address this question of self-represented litigants?

Mr Foster—We have actually done a fair bit. Towards the end of last year we sent a copy of the report of phase 1 of the self-represented litigants project achievements which was published in July to all federal politicians. The report set out all the achievements to date. Since that time we have done a couple of other things. We have introduced a new case management system from a client perspective which provides for all self-represented litigants, once their matter gets to the trial notice stage, to be contacted by the court. We offer to provide them with procedural advice, referrals to legal aid or community legal centres and the like. We try to assist them in the preparation of their trial.

Senator KIRK—Are these measures working? Are the numbers of self-represented litigants falling or increasing?

Mr Foster—That system has only been operating since November, so it certainly has not been evaluated. The figures we are working on are still that 40 per cent figure that I have previously mentioned.

Senator KIRK—So the 40 per cent figure has been fairly constant over the last few years?

Mr Foster—It has, yes. We are looking at a new process, which has really come out of the self-represented litigants project relating to a less adversarial process. Also it was part of our submission to the inquiry of the House of Representatives committee. You asked the question about what we were doing in terms of self-represented litigants, if that would be of interest to you?

Senator KIRK—Yes.

Mr Foster—We recognise that promoting adversarial behaviour is not necessarily always consistent with the need for cooperative long-term parenting relationships after separation. The court decided it was probably time to have a good look, in a broad sense, at what the system was doing, and we have set up a pilot project. It is called the less adversarial project, for the want of a better term. The key features are yet to be finalised because it will be a pilot. The aim is to have a significantly different approach to trial management with judicial control

rather than party control. In court terms, this is not about a judge banging heads together; it is about trying to reach a proper decision by consensus but with the judge playing a much greater role in the system.

Senator LUDWIG—Have you told the parties it is about a less adversarial approach?

Mr Foster—It is by consent. Anyone who joins this particular pilot will be there by consent and there is quite a significant amount of information which will advise the parties what they will be getting themselves into if they actually get into this system. It is an attempt to make the system less adversarial. The pilot with 100 cases is to commence in Sydney and Parramatta early next month, we anticipate.

Senator LUDWIG—I would be interested to follow that through in terms of outcomes or reviews. If you could make that information available, it would be very helpful.

Mr Foster—Certainly.

Senator KIRK—What is the time line for the pilot? How much time is set aside for it?

Mr Foster—It is a bit open ended at the moment. We do not know how long people will take to get through the system, because the process will evolve and change—which is the very nature of a pilot. But there is obviously an evaluation as part of this particular process. It is 12 months or until we get 100 cases. It depends on how long it takes to get the number of matters, people by consent, coming into this particular project.

Senator LUDWIG—I did not think it was a particular area where consent arose that much. Perhaps you can persuade me otherwise. I can understand the direction you are trying to take in the sense that if you can get people to consent then they are probably halfway there, anyway. It seems that the sticking point is trying to get them into the room to work it out anyway.

Mr Foster—This is more about managing the trial process. It is anticipated that, by consent, some of the formal processes that now go with a trial will change. For instance, there would be much greater control over the number of witnesses that could be called and the judge might make decisions about experts. There is a range of issues such as that, which people need to know about before they get in there. It is quite a different system from the one that currently exists.

Senator LUDWIG—I will read it with interest.

Senator KIRK—You mentioned that you had a report on self-represented litigants—phase 1, I think it was—about the achievements that you have made. Could you make that report available to the committee?

Mr Foster—Absolutely. That should have happened, because we sent it to every member of parliament. We will certainly make copies available to the committee.

Senator LUDWIG—I think the Senator has asked for it on behalf of the committee because, although we might have copies of it, if the committee gets it then we can make it public through our processes.

Mr Foster—Certainly.

Senator LUDWIG—That would be helpful, I suspect, for those people who follow this area.

Mr Foster—We can certainly do that.

Senator KIRK—Has there been any discussion about—or has the court formed a view about—potential referral from the states to the Commonwealth in certain areas? I am thinking in particular of de facto property disputes.

Mr Foster—I think that is ground that is quite clearly a policy matter and it is probably not appropriate for me to respond to that.

Senator Ellison—I do not have any information on that. I will take it on notice and get back to you.

Senator KIRK—Thank you. Finally, I would like an update on the national roll-out of Project Magellan.

Mr Foster—In relation to Magellan, agreement has been reached in every state except New South Wales. We are still having discussions with New South Wales; that is the last place to go.

Senator KIRK—When is it expected that New South Wales will be under way?

Mr Foster—The discussions are ongoing. At this stage the court cannot reach agreement with the appropriate department to commit to the project. That is about as far as I think we can take it. All other registries have begun work on Magellan cases. I do not think I can take that matter any further.

Senator KIRK—When can we expect to see the first set of formal reporting from Project Magellan?

Mr Foster—It will differ a bit from registry to registry because it is over a 12-month period and each registry would need some sort of separate evaluation. So it will be an iterative process in that regard. It will certainly not happen within 12 months.

Senator KIRK—In the other states the project has been going for what period of time?

Mr Foster—It varies a bit but it is recent. It is only over the last few months, basically.

Senator KIRK—Are there, or will there be, any resource issues associated with the roll-out of the project?

Mr Foster—Certainly not for the court. We actually believe that resources might be saved through this process by the early intervention. That was certainly the findings from the evaluation of the pilot project of Magellan. The number of hearings reduced significantly and the time taken was reduced. Certainly, the number of cases that needed to go to a full judicial determination or trial was significantly reduced.

Senator KIRK—Do you have the results of the pilot there to provide to the committee—or just what you were reading about the number of hearings being reduced and the time reduction?

Mr Foster—Yes, it was an external review and published, so I can certainly make that report available.

Senator KIRK—Thank you. That is all I have for the Family Court.

CHAIR—There being no more questions for the Family Court, Mr Foster, thank you very much to you and your colleagues.

Mr Foster—Thank you.

[3.50 p.m.]

Human Rights and Equal Opportunity Commission

Senator LUDWIG—Are there any new appointments going to be made this year in relation to the commission?

Mr Govey—That question is one that would be better handled by the department.

Ms Leigh—This year the position of Aboriginal and Torres Strait Islander Social Justice Commissioner will become vacant on 5 April. That is the substantive vacancy that will arise. In addition, the acting appointments of Race Discrimination Commissioner and Disability Discrimination Commissioner will become vacant on 3 April.

Senator LUDWIG—What is the intention of government toward those acting positions? Are you going to fill the acting positions?

Ms Leigh—That, of course, will be a matter for the Attorney and the government. The Aboriginal and Torres Strait Islander Social Justice Commissioner position has been advertised. The question of the acting positions, as I say, is a matter for the government and the Attorney.

Senator LUDWIG—Minister, can you advise the committee as to what the intention of government is in respect of the two acting positions that have now become vacant?

Senator Ellison—I do not know if the brief I have here covers that.

Senator LUDWIG—I am happy for you to take on notice.

Senator Ellison—It is not an area I have responsibility for. I will take that on notice and get back to the committee.

Senator LUDWIG—Thank you. Dr Jonas, does the uncertainty that seems to surround the filling of vacancies and the Australian Human Rights Commission Legislation Bill 2003 before the parliament—which, in part, will abolish, as I understand it, specialist commissioners—create a level of uncertainty in the operation of the commission in your view?

Dr Jonas—It has not created any uncertainty and it has not created any difficulty in operating for me.

Senator LUDWIG—What happens if the two acting positions are not filled quickly? What would you do then?

Dr Jonas—I will not be there so it would be very difficult for me to say what will happen.

Senator LUDWIG—Who will be there?

Dr Jonas—That is a matter for government, I would suggest.

Senator LUDWIG—I did not want to put it any higher than that. Who still cares about the human rights commission? Would anybody from the commission like to advise the committee as to what their view is?

Senator Ellison—I think it is a matter for the government as to appointments—

Senator LUDWIG—It is not the appointments that I am asking for; it is the ongoing viability of the commission. You have got no appointments. There are two acting positions and you are going to take it on notice as to whether they are going to be filled or not. We do not have any advertisements. We do not have any knowledge of when they are going to be filled. We know that they are going to be vacant shortly and I would imagine that the commission in its operation would be concerned about having vacancies and not having a process in train now to have those positions filled in the short term so that the commission can continue its good work. Maybe I am wrong. Maybe everybody is happy and these positions are going to be filled and the people know who they are and the government is just waiting to make a decision. Maybe the commission feels that it has a high confidence in government filling those positions and it has a high confidence that it will be able to continue its good work. Perhaps the commission could assure me that I am wrong.

Senator Ellison—I think that question is one that can be put to officials in relation to how the commission is operating in those circumstances.

CHAIR—To whom are you addressing your question, Senator Ludwig?

Senator LUDWIG—I was happy for the commission to answer it but, if they do not feel able to answer it or comment on it, then I am happy for the department to comment on it. If the department does not want to comment on it, I am happy for the minister to comment on it.

Mr Cornall—I am not sure, Senator, that the officers understood that the minister was saying that he is happy for them to comment on how the commission is operating at the present time.

Ms Goward—The experience in the past has been that the commissioners that remain act, as you would know, whilst the positions are being filled, but the policy units which support each commissioner of course are not changed by the retirement of a commissioner. I guess they then have the job of supporting somebody in an acting capacity and there is an issue of acquainting yourself with the issues. But the policy units are really the backbone of the work of the commission and in that sense the pressure on the commission through having to act people in commission positions is somewhat reduced.

Senator LUDWIG—In the interim though, if no-one is appointed in the short term, is that work shared around among existing commissioners?

Ms Goward—I think it will be up to the president to decide whether one of the existing commissioners takes on those roles or whether the work is divided into bits.

Senator LUDWIG—I do not know but I am hoping that someone can tell me.

Dr Jonas—Let me add a point of clarification for at least one of those positions. I think that when the position of Social Justice Commissioner was advertised the advertisement said it was expected that the person who was appointed would also act as the Race Discrimination

Commissioner. I think that the advertisement actually stated that. So that would certainly reduce concern about uncertainty with one of the positions.

Senator Ellison—Yes. But there is no statement by the government that no-one is going to be appointed. That is an assumption that is not open to be made, as I understand it. Perhaps the department can answer this.

Ms Leigh—I can simply comment that it seems to me quite hypothetical at the moment to be speculating about that. There is plenty of time to be making new acting appointments. They do not expire until April and we are in February. Acting appointments do not take very long to make at all.

Senator LUDWIG—Thank you. It did not start as a big issue. I was just hoping that someone would tell me how the process was going to operate, but nobody seems to want to say other than that the positions expire in April. You would have ordinarily thought that, given that they were acting positions in the beginning, the advertisements would have already gone out at least for one of them or some consideration would have gone into that to ensure that the position is filled and that there is continuity to ensure that the people are given an opportunity to respond to an advertisement. You know yourself that it takes anything up to 28 days or more for a closing date and for submissions to be then considered and dealt with, and we are already towards mid-February.

Ms Leigh—It would not necessarily be the case that they would be advertised. In fact, in the past they have not been, which is why I say there is a considerable amount of time available to make those arrangements.

Senator LUDWIG—Yes, I understand they can also be appointed. As you have said, the positions do not necessarily have to be advertised. I was also giving you the opportunity to tell me either that you will appoint them or that it is not the intention to appoint anybody; you might be waiting for the HREOC bill. I do not know. I am trying to elicit that response.

Ms Leigh—The government is aware that these appointments will expire. It is under consideration in the normal course. It is not a matter for me, as an official, to talk about the details of government plans for appointments, but it is in hand in the normal course.

Senator LUDWIG—That is probably the short answer I wanted to hear in the beginning.

Senator KIRK—At the last estimates we heard that the release of the report on children in immigration detention had been delayed. There are a lot of people who are quite anxious to see this report. Perhaps you could give us an update on where it is.

Dr Ozdowski—I would be pleased to give you an update. We received comments under section 29 from the department of immigration and ACM. The section 29 comments are on the recommendations of the report and tell us what the department intends to do to implement the recommendations. It has been my responsibility to incorporate these comments into the report. I received them in February. The report has now been sent for professional layout and I hope to transmit it to the Attorney-General some time in the third week of March.

Senator KIRK—So the comments from DIMIA have now been incorporated into the report and it has been sent for layout?

Dr Ozdowski—That is right. It is basically a matter of producing the report now. It is finished.

Senator KIRK—In the meantime, is HREOC undertaking any other work in the area of children in detention or has this been its primary focus?

Dr Ozdowski—Complaints are always coming to us; the commission handles many complaints. I am not sure whether there are complaints about this, but we can ask somebody else to provide you with that answer. I have also started to conduct research to find out what is happening in terms of employment discrimination against people who have expunged criminal records. This is about people who committed a crime a long time ago and how it impacts on their employment chances—whether there is discrimination. It was one of the areas where the commission was receiving a substantial number of complaints.

Senator KIRK—At the last estimates you mentioned that HREOC was doing some work on racial vilification and that a report would be available early this year. Could you advise the committee where that is up to?

Dr Jonas—I think that was the project I was involved in, the Isma project, looking at vilification of Arab and Muslim people in Australia. It is almost ready. The first draft has gone to the other commissioners for their comments and I am waiting to get those back. We will see where we go from there with the form that it will take and what final form we will actually publish it in. I suggest that perhaps by the middle to the end of March it should be out.

Senator KIRK—So I will be able to ask questions about it at the next estimates in June?

Dr Jonas—Sure.

Senator KIRK—What are some of the key areas that the report will cover?

Dr Jonas—The project was called Isma, an Arabic word for ‘listen’. We went and listened to what people had to say. It will cover the experiences of the people who have been subjected to racial vilification, and that covers things right across the board—from name calling to people’s perceptions that they are unfairly treated by the media, police and education authorities and to the out-and-out loutish behaviour they have experienced in public places where attempts are made to pull off the hijab of the women and people have been spat on and told to go back to where they were born even though they were born in Australia. There is a range of experiences. We will be categorising those forms of experiences and possibly, although we are not certain at this stage, making recommendations about what might be done about them.

Senator KIRK—Thank you; I look forward to reading it.

Senator LUDWIG—Ms Goward, what projects are you currently working on in relation to work and family matters?

Ms Goward—We have just begun scoping some work on child care, which at this stage is discussing with various interested parties the options that are before us. As you might be aware, we have a very complicated project on sexual harassment that we are about to release publicly, and that has taken most of the unit’s focus. This year we hope to do more in the area of child care and options, particularly options for taxation treatment and so on.

Senator LUDWIG—Where is that up to at the moment?

Ms Goward—We have had some meetings with some interested parties in the business sector who are interested in exploring the options. We have had interest from professional women's groups who are keen on a particular option, which we think might be only one of a number, and some women's NGOs have also been involved. We would like to see this worked in with some focus on the role that men can play in families as well. That will be a major focus of any work and family work that we do from now on.

Senator LUDWIG—Is it intended to provide a report, or a review or case study? I am not sure exactly of the direction in which you intend to go.

Ms Goward—There are a number of options as to how you could progress an issue as complex and as broad as work and family. One of them might be that you take a couple of public policy proposals and scope and model them; another might be that you conduct a range of community consultations and in further detail elaborate on what the problems are. A lot of that has been done, as you would know, by a couple of authors and academics. Some of the other options might be that you enable, through your research, other agencies to pursue these issues in ways that suit them and their constituencies. I am thinking particularly of business taxation measures. We have not quite decided where they will be yet. As I say, the sexual harassment report is going to be released at the end of March and that at the moment is a major focus.

Senator LUDWIG—Perhaps we can return to that in May and see where you get to in that time. Have you received a response from the government with respect to the paid maternity leave?

Ms Goward—No.

Senator LUDWIG—Do you expect one? It has been a while now, hasn't it?

Ms Goward—It was not a report to parliament and arguably it is for governments to consider in the way they see fit. If it had been a report to parliament or a report commissioned by the government perhaps your question might be more pointed. In the circumstances it is up to them to decide how they respond to it.

Senator LUDWIG—Do you receive complaints in relation to violence against women or sexual assault? Do they come into your area?

Ms Goward—We do get some complaints about sexual harassment.

Senator LUDWIG—That will be part of the report you are going to provide later on.

Ms Goward—Other than that, we do not deal with violence per se.

Senator LUDWIG—Do you investigate those complaints?

Ms Goward—We investigate complaints of sexual harassment, and if they involve sexual assault or physical assault then that is included too, of course.

Senator LUDWIG—Do you provide the figures in the annual report?

Ms Goward—Yes, the commission's role is to conciliate those complaints. It does not find parties guilty.

Senator LUDWIG—I understand the limitations that you have.

Ms Goward—That is included in the annual report figures.

Senator LUDWIG—The current initiative you have is the report that you are going to provide at the end of March. Are there any other initiatives that are ongoing in relation to this area?

Ms Goward—In relation to sexual harassment?

Senator LUDWIG—Yes, and violence against—

Ms Goward—That report will be quite significant. It is the first national survey on the incidence of sexual harassment. It has also got a revised code of conduct. We have revised it in light of both the survey and the review of our own complaints, which was a fairly thorough review which we completed at the end of last year. The suite of papers that will be released at the end of March will make quite a significant contribution.

Senator LUDWIG—I might leave it until then; perhaps we can talk about it in May.

Ms Goward—We do have a series of youth challenges that are focused on sexual harassment, which were very successful last year and which we are going to extend this year for high schools.

Senator LUDWIG—Are they in a kit form or something?

Ms Goward—Yes. You can also get those materials on the Web.

Senator LUDWIG—Terrific. Thank you very much.

CHAIR—We have nothing further for the Human Rights and Equal Opportunity Commission. I thank all of the commission and Mr Duffield for attending. We move on to the Office of the Federal Privacy Commissioner.

[4.12 p.m.]

Office of the Federal Privacy Commissioner

Senator LUDWIG—I have put a number of questions on notice but I just wanted to home in on some now. The area that I wanted to have a look at was regulating the credit reporting regime. That is part of your responsibility, as I understand it. Is that right?

Mr Crompton—Yes it is part of our responsibility, under part IIIA of the Privacy Act.

Senator LUDWIG—Do you receive complaints in that area?

Mr Crompton—Yes, we do.

Senator LUDWIG—How many complaints do you receive in that area? Are they detailed in that they are broken down into the type or nature of the complaint and how much they involve?

Mr Crompton—I think the deputy commissioner can help us at this stage.

Senator LUDWIG—Thank you.

Mr Pilgrim—I do not have them broken down into fine detail but we could take that on notice. I can give you some figures for the current financial year to date. We have received 136 complaints relating to the credit area generally. For the previous financial year—the year

2002-03—we received 209 complaints, and for the 2001-02 financial year we received 186 complaints relating to the credit area.

Senator LUDWIG—In terms of the resolution of those issues, is there a tail? In other words, how long does it take for those matters to be addressed by the Privacy Commissioner and either resolved or otherwise dealt with?

Mr Pilgrim—We try to resolve all our complaints in a quick way as best we can, given the number of complaints we are receiving at the moment. I can only refer to general figures relating to the time it takes us to resolve all our complaints as opposed to just the credit ones. I would point out, however, that as part of our complaint handling process we have a triage process up front to determine whether the complaint is of a serious nature, which may require it to be brought up the queue to be dealt with sooner rather than later.

Senator LUDWIG—I take it that credit reporting is part of those complaints made in that area. Your statistics go to the whole number of complaints, so they are included in that. What is that like? How long does it take you, aside from the triage, to respond to complaints that have been made?

Mr Pilgrim—I will get those figures for you.

Senator LUDWIG—Thank you.

Mr Pilgrim—To give you an idea of that, at the moment we close 31 per cent of our complaints in less than 10 days—and I would add there that they would be the easier ones to deal with, the ones that are clearly out of jurisdiction or something along those lines—58 per cent of our complaints are dealt with in 30 days or less and 73 per cent of our complaints are dealt with in 90 days or less.

Senator LUDWIG—Is that improving over time? I think I have been asking you this for a couple of years.

Mr Pilgrim—It is improving slightly—not dramatically but slightly.

Mr Crompton—The introduction of the triage process that was mentioned by the deputy commissioner has meant that the more serious cases are being brought forward and dealt with. The triage process means that the number of the cases that can obviously be dealt with very quickly—in other words, if the answer is no, tell them straight away—have improved the statistics a lot at the front end. But the price that we have paid within the resources that we have at the moment is that some of the complaints that do require a genuine investigation but do not appear to have significant consequences are waiting longer to be dealt with. So our oldest complaint is actually getting older at the moment but with the benefit of at least getting through the ones that either can be dealt with very quickly or are urgent in some way.

Senator LUDWIG—You must be familiar with complaints that relate to erroneous credit reports that can sit on your record and affect your credit rating. They might relate to something in the order of a \$50 video store problem; however, if they are not resolved or sorted out, as I understand it they can affect your credit rating when you apply for a mortgage or a home loan. They could sit there perhaps sight unseen and you may find that you are refused a loan or a mortgage as a consequence. Do those sorts of complaints come to you as well?

Mr Pilgrim—Yes, they can come to us. Just to pick up on one comment, Senator, they would not sit there sight unseen. As I said, we would go through and make an assessment of all the complaints as they come in.

Senator LUDWIG—Sorry, I meant more sight unseen to the consumer—or they may ignore them. They may not necessarily come to you with the video store issue, but as I understand it they are likely to come to you when they are refused a mortgage because of their credit rating. If it becomes a significant issue at that point, they will bring it to your attention.

Mr Pilgrim—Yes, credit complaints generally are high on the triage process so they are the ones we would look for first—for that particular reason, that they could be impacting on someone's credit rating. I would also point out that, as part of the process, we do require some demonstration that the individual—that is, the complainant—has tried to resolve the matter with the organisation they have the dispute with prior to coming to our office for us to assess the complaint.

Senator LUDWIG—How large is that problem? Is there any way of understanding the scale of that problem, or do you only see the tip of the iceberg in terms of those people who come to you with a credit rating problem? How many consumers would have an issue sight unseen until they actually apply for a loan? Do you do any work in that area?

Mr Pilgrim—We have not done any work that I am aware of in that particular area. We do keep in regular contact with Baycorp, which is one of the larger credit reporting bureaus. We could probably find out some information via them if the committee is interested in that.

Senator LUDWIG—Probably not. If there is, I will put it on notice and we can follow it up from there.

CHAIR—Are you putting any questions on notice, Senator Ludwig?

Senator LUDWIG—Yes, I will put the remaining questions to the Office of the Federal Privacy Commissioner on notice. I do thank the officers for their attendance today.

[4.20 p.m.]

CHAIR—We now move to outcome 1, An equitable and accessible system of federal civil justice. We need to deal with that in a reasonable time frame bearing in mind that we have an indicative agreement to go to Customs at about 5.30. We will start with civil justice now.

Senator LUDWIG—What appointments do you have coming up in the next couple of years? There is the Chief Justice of the Family Court, the HREOC commissioner and the Privacy Commissioner. We have dealt with the HREOC commissioner, I think. What steps have been taken so far in relation to those other positions? Some of them are more problematic than others. Can you perhaps just tell us the process you intend to take?

Mr Cornall—The appointment of the Chief Justice of the Family Court is a matter for the Attorney-General, in accordance with the normal process of judicial appointments. The Privacy Commissioner's position has been advertised, we have received applications and we are moving now to do interviews with a view to the government being in a position to make a decision in time for the new person to be in position in April 2004.

Senator LUDWIG—I understand the appointment of the Chief Justice of the Family Court is a matter for the government, but is it going to be announced imminently or is the protocol to wait for the departure? I am not sure on that—it does not often happen.

Mr Cornall—I am unable to answer that, because it would be a matter of how the government wishes to handle it. The latest information I have—and if I am wrong, Ms Leigh or Mr Govey will correct me—was that the chief justice was not planning to retire until July but was planning to go on leave from a date in March or April. His formal retirement is still some time away. Ms Leigh reminds me that he has not formally resigned, although he has foreshadowed that that is his intention.

Senator LUDWIG—We might leave it until May, then. The appointment of the Privacy Commissioner is well under way and you have applications. Is there a date that one has to be appointed by?

Mr Cornall—We are working towards having a decision made on a replacement at the conclusion of Mr Crompton's term, which is a date in April—I do not have the exact day in front of me. Whether it works out that way remains to be seen.

Senator LUDWIG—I will follow that up again in May. The press release of 22 January I mentioned said that the government was considering recommendations in relation to migration review. That is on the minister's table, as I understand it, waiting for release. Perhaps we could talk about some of the background first. Was there a team put together to provide information to the review?

Mr Govey—Yes, there was. The head of the review was Ms Hilary Penfold, who at that stage was the head of the Office of Parliamentary Counsel. She was asked to undertake this exercise with a small secretariat. People came from a variety of agencies, including this department, DIMIA and the Refugee Review Tribunal. They worked on that very intensely for a period of about two months. I should say, though, going back to your previous statement, that what I think I said before was that the question of whether the report would be released was now a matter for the Attorney-General.

Senator LUDWIG—Yes. I did not ask for the report—yet.

Senator BOLKUS—Was there no-one from the courts involved in the review?

Mr Govey—Yes, there was also somebody from the Federal Court on the secretariat. There was also a steering committee, which I chaired, which comprised people from various agencies—including the Department of the Prime Minister and Cabinet, DIMIA, a federal magistrate, a Federal Court member and the Refugee Review Tribunal.

Senator LUDWIG—So the steering committee preceded the review committee?

Mr Govey—We had meetings of the steering committee during that two-month period. I think there were two or three meetings every fortnight. We provided input to Ms Penfold's team on an ongoing basis. I should add that she and members of the secretariat also participated in the steering committee meetings. So we worked together.

Senator LUDWIG—And who was consulted? Is there a list of those who were consulted by, if you like, the Penfold review committee?

Mr Govey—We do have a list, which we can probably hand up, of the people who were consulted.

Senator LUDWIG—Thank you. Did it make separate recommendations or are they the same lot that are before the minister?

Mr Govey—It made a series of recommendations which are part of the report.

Senator LUDWIG—In relation to the National Action Plan on Human Rights, on the last several estimates occasions we have discussed the government's lack of progress in producing a revised National Action Plan on Human Rights. Is it possible that we have changed our view about that now and you can provide some clear, definitive information about where it is up to, what it is doing and when we will see the outcomes?

Ms Leigh—Yes, I am pleased to tell you that, since the last estimates hearing, the department has made significant progress towards finalising the national action plan. During December, the department sent out sections of the national action plan for updating to other agencies and also to sections within the department. We have all of those revisions back; they came back during January. We have collated them and standardised them in terms of format to go into the final report. We are now at the final editing stage.

Senator LUDWIG—So when do you expect it to be completed?

Ms Leigh—I am quite hopeful that by the end of this month I will have something to provide to the Attorney, if not by the beginning of next month. We are already halfway through this month, so very imminently.

Senator LUDWIG—So post the next election.

Ms Leigh—I beg your pardon, Senator?

Senator LUDWIG—It could be as late as next year then?

CHAIR—That would not be before the end of the UN decade on human rights and good governance education.

Senator LUDWIG—No, but it has been longer than I have been here. It seems to be a long time.

Ms Leigh—I said it would be the end of this month, which is two weeks away.

Senator LUDWIG—I see. So you will have one shortly.

CHAIR—And then it is to be released by the Attorney. Is that the process?

Ms Leigh—Yes, exactly. I am very hopeful that by the end of this month we will have it with the Attorney. If not by the end of this month—which is, after all, two weeks away—then it will be early in the next month.

Senator LUDWIG—Can you put a plug in for the Attorney that the committee would like a copy of it at some point?

Ms Leigh—Certainly.

Senator LUDWIG—Thank you.

CHAIR—So would the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade—but that is not for discussion here. We move now to output 1.2.

Senator LUDWIG—I have a couple of questions left, but I might put them on notice in relation to output 1.1. I think we covered some of them earlier. In respect of output 1.2, the review of the legal outsourcing arrangements, at the last estimates I think you would recall that we were clarifying the amount of government spending on lawyers for the previous four years. Can you now clarify what was spent in the 2002-03 year? That was one of the issues we were trying to ascertain: how much has been spent both in that area and on legal aid in the same period? What I have been doing, if you have not already noticed, is looking at what you are spending in legal aid compared to what legal outsourcing is.

Mr Govey—We do not make that connection, so the figures you are seeking for legal aid would need to come from Ms Lynch or one of her colleagues.

Senator LUDWIG—I know you might not make that connection but everyone else seems to, unfortunately.

Mr Cornall—I take it that when you look at the legal aid figure you are looking at the legal aid program, the Community Legal Centre program and the Commonwealth's own legal aid programs so that you are adding up all those things.

Senator LUDWIG—I am happy for you to provide that breakdown so that it is a lot more meaningful. The more information the committee has the better to make that examination. What we were also looking at was the government spending on lawyers for the 2002-03 year. Do you need to take it on notice or do you have that available?

Mr Anderson—We have not collated figures for the 2002-03 year. The recently completed survey and report looked at the four years ending in 2001-02. As we indicated on a previous occasion we do not, as a general rule, keep track of spending by individual agencies. That is a matter for which each individual agency is accountable. At the moment, we do not have any plans to look at the whole of government legal expenditure for the 2002-03 year.

Senator LUDWIG—Will you be?

Mr Anderson—We have no plans to do so at the moment.

Senator LUDWIG—When will we next know how much you have spent on the legal outsourcing from the various departments and sections? Do we have to wait for another couple of years until someone does another review?

Mr Anderson—We believe it makes more sense to do it on that sort of basis. You are able to look at a couple of years so that you can see any trends that are emerging each time you do that sort of exercise.

Senator LUDWIG—Don't you think the trends are pretty clear now, that it is increasing?

Mr Anderson—Certainly it is increasing and the previous report in 1997 had suggested that it was likely that it would increase as well. But then there is a question with the different categories within which it is increasing.

Senator LUDWIG—You can only effectively provide a breakdown of the contract amounts of the type of work contracted that the Attorney-General has entered into in terms of legal outsourcing. You cannot say with any certainty what others have done. I would have to go to each individual department to clarify that.

Mr Anderson—For the 2002-03 year?

Senator LUDWIG—Yes.

Mr Anderson—That is correct.

Senator LUDWIG—Perhaps you could at least do the A-Gs and we could have a look at that please.

Mr Anderson—Certainly.

Senator LUDWIG—Is the responsibility of the Office of Legal Services Coordination within your area?

Mr Anderson—That is correct.

Senator LUDWIG—Does it include the overview of the legal outsourcing? Is that part of their responsibility? In terms of not only managing it in the sense of ensuring that they are getting value for money but also ensuring that it is meeting the needs of the various departments, where do their responsibilities start and finish?

Mr Anderson—The role of the Office of Legal Services Coordination is to assist departments with their outsourcing exercises or generally with their purchasing of legal services, which also includes the legal services they choose to get internally. We assist them generally to make sure that they get the kind of legal services that they need and that they do so in a manner which is consistent with the government's articulated policy in the legal services directions. When it comes to the making of any individual outsourcing or purchasing decision by an agency, it is the chief executive of that agency who has the accountability for the making of that decision, for ensuring that it is carried out properly and meets their needs, as it is with any other purchasing or outsourcing decision.

Senator LUDWIG—In terms of the Office of Legal Services Coordination, when they deal with mediation or alternative dispute resolution and those issues, if the government were to encourage that, and I understand that it does, do they put that in the contract for the outsourcer or the provider to deal with?

Mr Anderson—That would be one way in which it could occur. The legal services directions currently state that agencies should seek to avoid litigation wherever possible—which implicitly says, 'Use ADR where possible'—but it is then a matter for individual agencies as to whether they want to put specific clauses about ADR in agreements with their legal service providers.

Senator LUDWIG—That is helpful because I was trying to understand how you can make that statement, but I cannot understand how it is then related to individual departments who make that decision, because if they choose not to then how do you know?

Mr Anderson—One way in which we know is that, if individuals or corporations who are dealing with a government agency believe that that agency is declining to use ADR and is

doing so unreasonably, they can make a complaint to the Office of Legal Services Coordination which can look into that to see whether the agency is acting appropriately in terms of the model litigant and in terms of generally seeking to avoid litigation wherever possible. At the same time I should note that to have an ADR process you generally need to have consent on both sides and it is not always the case that people involved in disputes with the government wish to utilise an ADR process.

Senator LUDWIG—No, but I was trying to ascertain how many times the government may not consent.

Mr Anderson—There will certainly be times when the government will be engaged in activity that does not lend itself to an ADR activity. That is going to be more so the case as you go down the spectrum towards offences in criminal related matters.

Senator LUDWIG—You do not require, in the outsourcing, that each department put in an ADR clause as such, do you?

Mr Anderson—No. The content of each outsourcing contract is in itself a matter for an agency. We have provided some model clauses to cover a range of different issues, but it is ultimately a matter for each agency.

Senator LUDWIG—Do you have a model clause to cover ADR?

Mr Anderson—Not at the moment.

Senator LUDWIG—Are you intending to prepare one or produce one for ADR?

Mr Anderson—At the moment we are just relying upon the fact that the legal services directions themselves point agencies towards ADR. As we have indicated before, we are looking at a review of the legal services directions with an issues paper which will raise the question of ADR and whether the legal services directions could usefully contain more material on ADR to assist and guide agencies.

Senator LUDWIG—Are you aware that most agencies are not using guides or do not have guides in relation to when they should use ADR?

Mr Anderson—I am not aware.

Senator LUDWIG—Do you think it is something you should be aware of?

Mr Anderson—We are expecting that we will get a lot of feedback when the issues paper on the legal services directions goes out, given that in its current format—and ultimately it will be a matter for the Attorney—it does propose to expressly raise ADR.

Senator LUDWIG—Perhaps you should have a look at the questions on notice I have received back in relation to this area from all the departments. With regard to the amount in terms of the agency's record keeping, and the Auditor-General's review of the Commonwealth expenditure on legal services, do you know when they are likely to commence the review of this area? Have you been in consultation with them?

Mr Anderson—Yes, there has been continuing consultation. They are going to start a scoping study. I think their timetable for that is by the end of March. That is a scoping study for the audit itself. Then, subject to their own processes with respect to the outcomes of that

scoping study, I think they hope to start the actual audit itself by May. Ultimately you would have to ask them of course, but that is our understanding.

Senator LUDWIG—All right. Have they indicated when it is likely to be completed? If the scoping study starts in May, did they give you an indication of the time lines involved?

Mr Anderson—If the audit starts in May, no, they have not said when that would be completed.

Senator LUDWIG—So the decision to undertake an audit will not be known until some time after May in any event, after the scoping study. They do a scoping study first, they decide whether they are going to do it and then, having made a decision either yes or no, it flows from there.

Mr Anderson—That is our understanding.

Senator LUDWIG—Has there been any progress on the discussion paper looking into the issue of equal opportunity briefing of lawyers?

Mr Anderson—There has been one development on that front which is that, at the Standing Committee of Attorneys-General, the attorneys all agreed that they should seek to have regard to a Law Council draft policy which was being developed. Generally, all attorneys were in agreement that such a policy was desirable. But this is also something which is being covered in our review of the legal services directions which currently do encourage the wide briefing of counsel and, in particular, the briefing of women barristers. That is an issue that will be raised in more detail with reference also to the work of the Victorian Bar Association, which has developed a model briefing policy, and to some other work that others have done. That will all be canvassed in the issues paper as well.

Senator LUDWIG—Does the advice in relation to the war on Iraq come within this area of output 1.2? Mr Govey, do you know which area that comes within?

Mr Govey—Yes, it is under the Office of International Law.

Senator LUDWIG—Which number is that under?

Mr Cornall—It is 1.4.

Senator LUDWIG—I see; it is under international law. We will get to that shortly. Chair, I do not have any more questions in relation to 1.2.

CHAIR—We will move on to output 1.3, Legal services and policy advice on family law and legal assistance and the administration of government programs providing legal assistance and family law related services.

Senator LUDWIG—I will have a look at this area. I may have some questions to put on notice. Perhaps I need to do the regional law hotlines as quickly as I can.

Ms Lynch—Senator, we have the update of the usual hand-up to give you on regional hotlines. Is that what you require?

Senator LUDWIG—Yes, thank you very much.

CHAIR—I am sure, though, that Senator Ludwig has a unique question to formulate on the matter.

Senator LUDWIG—We got half the questions answered the other day. As I understand it from the hearing the other day in relation to the legal aid inquiry, the department is intending to ditch the regional law hotlines and revamp them into a new or expanded program. When will the new program be under way?

Ms Lynch—The changes will take effect from 1 July. The CLCs will continue to deliver the service until that time, so that gives them time to put arrangements in place. We are in discussions with the legal aid commissions. The current arrangements would stay in place until next 1 July or 30 June.

Senator LUDWIG—When are the responses of the legal aid commissions likely to be forthcoming?

Ms Lynch—I think we have now had positive responses from all the commissions that we have approached. We have not gone to the ACT Legal Commission because there is no need for them to provide a service in the ACT. I think now that all the commissions we have written to have responded and all of them have made favourable indications to taking it on.

Senator LUDWIG—Is it intended to have an evaluation of the regional law hotlines program as it is presently produced?

Ms Lynch—The program is constantly monitored in terms of calls et cetera—you have seen the figures that we hand up to you at estimates—but I understand that there is not a formal review planned.

Senator LUDWIG—So there is not going to be a formal review?

Ms Lynch—Not that I am aware of.

Senator LUDWIG—So this is about the only area in which you do not postreview something? I think that is a rhetorical question. Is the Family Law Branch still within this area?

Ms Lynch—Yes.

Senator LUDWIG—Do you deal with that, Ms Lynch?

Ms Lynch—Yes.

Senator LUDWIG—The government released its report *Every picture tells a story* on 29 December last year. I understand it was a consensus report of all parties. Who made the decision to release the report between Christmas and the new year? I have not have an opportunity to ask. Is it that they reported out of session and they just decided on that date?

Ms Lynch—I understood that it was tabled out of session by the committee.

Senator LUDWIG—So by the chair. When will the government respond to that? I know it was only tabled on 29 December but, firstly, is the government considering a response and, if the government is considering a response, is there a time line that you are aware of as to when that response might be forthcoming?

Ms Lynch—The government is considering a response and a considerable amount of work is being done. I am not in a position to give you a timetable of when a government response

would be made; that would be a matter for government. But a considerable amount of work is being done at present.

Senator LUDWIG—One of the recommendations was to provide a tribunal but, as I understand it, the Prime Minister dismissed that recommendation or that idea. Did the Attorney-General provide any advice to the Prime Minister in relation to the report and if so what was it? I mean advice as distinct from the report or as distinct from the issues.

Mr Govey—I do not think it would be appropriate for us to get into the question of what advice the Attorney-General has provided or might in the future provide in relation to that. I think all we can say is that the Department of the Prime Minister and Cabinet, the Attorney-General's Department and the Department of Family and Community Services all have an interest in the various recommendations of that committee's report and we are working together to provide advice to government.

Senator LUDWIG—There were some questions I had in relation to legal aid funding but I think you undertook to provide that earlier, so I will not go through the minutiae of the information. Could we just get an appropriate breakdown of the legal aid spend.

CHAIR—Thank you, Ms Lynch. Senator Ludwig, will we now move on to output 1.4, Legal services and policy advice on international law?

Senator LUDWIG—Yes, thank you. The first area of interest I have is on the advice given on the war on Iraq. Can you advise whether the A-G's Department, particularly your section, was responsible for providing advice to the Attorney-General in respect of the legality of joining the war on Iraq?

Ms Leon—As you know, the advice of the office and the senior legal adviser in the Department of Foreign Affairs and Trade on the legality of the war was tabled in parliament.

Senator LUDWIG—Did that come from your section?

Ms Leon—The advice was co-authored by Bill Campbell, who was then head of the Office of International Law, and Chris Moraitis, who was and is senior legal adviser in the Department of Foreign Affairs and Trade.

Senator LUDWIG—Was that the final draft or were there a number of drafts produced? I am not sure of the process.

Ms Leon—The advice that was tabled was the final advice on the legality of the war in Iraq.

Senator LUDWIG—Is that done like a barrister's brief? That is the only comparison I can make, where a barrister may provide advice or an opinion in respect of a matter. But in this instance it is the section. Does the advice go through a number of iterations before someone finally says, 'This is the draft we're putting forward,' or do you provide one—a bit like when I worked in the Public Service—and then it goes backwards and forwards until someone says, 'Yes, that is the advice I want'?

Ms Leon—In this case the advice was co-authored by the head of the office, so it was not that he had to go back to himself to clear it. He worked on the advice in conjunction with his colleague in the Department of Foreign Affairs and Trade and while they may have gone

through a process of discussing and drafting the exact text it is not the case that the advice was drafted by a junior officer and then went through various iterations. It was authored by Mr Campbell and Mr Moraitis themselves.

Senator LUDWIG—When was that prepared? I forget whether it had a date on it.

Ms Leon—The advice was given on 12 March 2003.

Senator LUDWIG—Was that given to the Prime Minister and the Minister for Defence or was it just given to the Prime Minister? I suspect that should be through the A-G.

Mr Cornall—I am not sure that we have those details of the process with us here today.

Senator LUDWIG—I am happy for you to take that on notice. I am just trying to understand how that works, for future reference when we might be able to ask again, because you do not normally provide legal advice, as you know.

Mr Cornall—No.

Senator LUDWIG—Now I have one record of one.

Mr Cornall—We have always said that it is a matter for the relevant minister. In this case the Prime Minister took the decision to table the advice in parliament.

Senator LUDWIG—It is always encouraging to see that. We now have one on record. I was curious to see how the process worked so that if we get to that position again and ask him for advice I can understand a little bit more of the process involved. You are not able to say where the advice went after that?

Mr Cornall—After what?

Senator LUDWIG—Where did it go, in the sense that it was provided to the A-G and the A-G then provided it to the PM—did the PM then provide it to cabinet?

Mr Cornall—I do not know that we are in a position to say.

Senator LUDWIG—It is not your advice once it leaves your pen, I take it?

Mr Govey—What we can say is that the advice was available to all relevant ministers including the Prime Minister, and the Prime Minister decided that it would be appropriate on this occasion, having regard to the nature of the matter, to table it in the parliament.

Senator LUDWIG—We might move on then. In respect of optional protocol and the prevention of torture, did the A-G's Department appear before the JSCOT committee?

Ms Leon—The Attorney-General's Department appeared before the JSCOT committee.

Senator LUDWIG—Was that you, Ms Leon? I had the opportunity of being on JSCOT once before and I think you appeared. Did you appear there?

Ms Leon—I appeared and so did Ms Leigh, for the Civil Justice Division. The Department of Foreign Affairs and Trade also appeared.

Senator LUDWIG—Was a national interest analysis provided or did you simply appear to give evidence?

Ms Leon—It is not at the stage of having a national interest analysis.

Senator LUDWIG—I know, but you might have prepared a like document.

Ms Leon—No.

Senator LUDWIG—This might be one more question for the Attorney-General, Minister. Since Australia's appointment to chair of the UN Commission on Human Rights, is it likely that there will be a request—I would not put it as high as a pressure—or an understanding that Australia might lead by example and sign the protocol? You might want to take that on notice for the Attorney-General to answer.

Senator Ellison—Yes, I would like to take that on notice.

Senator LUDWIG—Given that that position has now emerged and the protocol is unsigned by this government, does that create an expectation that Australia will sign? I am not familiar with—

Senator Ellison—That is a cross-portfolio matter which does touch on the Attorney-General. I will take it on notice.

Senator LUDWIG—Thank you very much. Was the position of the government as to why there was no intention to sign at this point advised to JSCOT? I will check the record rather than redo it here.

Ms Leon—We did discuss the matter at length with the committee. In brief, we outlined for the committee the government's substantive and procedural concerns with the optional protocol, both in procedural terms—the sense that the protocol had not really been advanced to a position where there was considerable agreement amongst the states involved in the working group as to the nature of the obligations it should contain but that it was nevertheless adopted without consensus—and in substantive terms. There was also the fact that the standing invitation to visit is inconsistent with the government's view expressed in the context of the treaty body reform initiative to the effect that visits by UN bodies should only occur on a case-by-case basis where there is a compelling reason for a visit, not on the basis of a standing invitation. Those matters were discussed at some length with the committee.

Senator LUDWIG—And they are on the record?

Ms Leon—I believe they are already up, at least in a proof version of the *Hansard* record.

Senator LUDWIG—I am sorry; I will undertake to go and read that. If I need any clarification, I will follow it up in May rather than do it here. I understand there are a number of releases in the government's sex trafficking initiative. Is the initiative designed to address sex trafficking from overseas? Is it in the same area of international law or have we bounced out of here again?

Senator Ellison—It is criminal law.

Senator LUDWIG—I could not work out in my own mind whether it would be international law. If it is a criminal law matter and those people have already left, I can put it on notice.

Mr Cornall—I cannot see Ms Blackburn here, so that would be the most convenient thing to do.

Senator LUDWIG—If they were smart, they would have gone once their section had passed. Is the Office of the Status of Women under this area? My questions relate to the same issue in that they are about the victims of sex trafficking. It is not so much about criminal law; it is about whether that office has a role in dealing with sex trafficking.

CHAIR—Except it falls under Finance and Public Administration in estimates.

Mr Cornall—The office is part of the Department of the Prime Minister and Cabinet.

Senator LUDWIG—Yes.

Senator Ellison—Is your question whether they are involved with—

Senator LUDWIG—It is about whether A-G's has a role in any of this as well. Obviously it is partly to do with the Office of the Status of Women, but I want to ask about the victims of sex traffickers and it is about criminal law in that sense. I was wondering if any initiatives or money came out of A-G's in this area, particularly outside of prosecuting or pursuing sex traffickers as such. Is there any consideration for the victims as well? There are always criminal compensation funds and those sorts of initiatives—

Senator Ellison—Victim support?

Senator LUDWIG—Yes.

Senator Ellison—Victim support was part of the package that we announced but if you are talking about criminal injuries compensation there has not been—

Senator LUDWIG—I know you have considered the earlier part but I want to ask about the second bit as well.

Senator Ellison—Victim support is part of the package but criminal injuries compensation is not and there is no provision at the Commonwealth level for criminal injuries compensation at all. There is no proposal for it either.

Senator LUDWIG—There are some questions I would like to ask but I might put them on notice and they can get back to the criminal branch, which they will relate to. But Finance and Public Administration—

CHAIR—Yes, the Office of the Status of Women in the Department of the Prime Minister and Cabinet—

Senator LUDWIG—I will go back to them for those questions.

CHAIR—They are meeting as we speak.

Senator LUDWIG—I will have to hurry.

CHAIR—We will now move to Output 1.6, Legal services and policy advice on information law.

Senator LUDWIG—In terms of freedom of information, are there internal reviews of the applications that are made to ascertain what information is being released and whether it is timely? In other words, do you have an audit or a review of that process?

Mr Ford—I am not sure I understood all of the question.

Senator LUDWIG—I will try to expand it then. FOI applications are dealt with by departments, and departments determine whether or not a certain request for a document meets the relevant legislation and they decide to release it or it does not get released. But in terms of the overall piece of legislation, that is your responsibility. That is right, isn't it?

Mr Ford—Yes.

Senator LUDWIG—Do you then conduct a review, an audit or a check to see if departments are doing what they are supposed to do, with perhaps an internal review of a selection or a sample of applications to see how the process is working?

Mr Ford—No, we do not do it with that sort of formality. We do monitor how things are going in terms of statistical reporting.

Senator LUDWIG—I have not use the word 'monitor' all day.

Mr Ford—I could not say we review what the departments do, no, because they are subject to appeal to the AAT. We note what is going on.

Senator LUDWIG—Then how do you monitor?

Mr Ford—The statistical returns are a major part of that, and they are reported, of course, in the FOI annual report. We see our role, if I understand what you are getting at, more in terms of reporting to parliament on the matters that we are required to in the FOI annual report.

Mr Carnell—The ANAO is currently conducting an audit of selected agencies for FOI processes. Attorney-General's is one of those agencies and there are several others. I think that they are looking to report in about May of this year.

Senator LUDWIG—Yes.

Mr Carnell—That is another means by which there is scrutiny of how agencies perform in the FOI area.

Senator LUDWIG—Who sets the fee?

Mr Ford—The departments to which the applications are made.

Senator LUDWIG—Do you monitor whether the fees are waived or whether they are reasonable or unreasonable?

Mr Ford—Only to the extent that it is reported upon and, again, the figures are published—and I have got some in my brief—in the report, I think.

Senator LUDWIG—Yes. In the categorisation of those, who then checks to see whether it is reasonable in relation to the number of refusals that are provided or granted? Is it only the AAT in that sense? Is that what you are saying to the committee?

Mr Ford—As Mr Carnell said, there is a review being done by the ANAO and that will throw some further light on it when that comes out.

Senator LUDWIG—I was just surprised, given that it is your piece of legislation, that you do not look at it in more detail to see how it is administered by the departments—that was all. I had a number of questions that related to that but, given your response, it probably means that I might have to put those on notice to other departments to see how they deal with them.

Mr Ford—Yes. It is partly a resource issue, Senator. There are two or three people working on FOI matters and it is a matter of what priority we can give to that kind of work.

Senator LUDWIG—What I wanted to seek from you was confirmation that I might have been misinformed. But I understand some allegations are made that the fees are high, that the information is not provided and that people find the process daunting and not easily worked through. Some of these, I suspect, are broad complaints that are made—some valid and, clearly, some not so valid. I was trying to ascertain whether there is some validity in them or at least whether there is an auditing or checking process to ensure that their concerns can be dispelled where they can and, where they cannot, addressed rather than having the formal process of people pursuing their rights under AAT.

Mr Ford—I understand the point. I think the ANAO report will assist in making that kind of judgment. But the fee rates themselves have not been changed since they were introduced, and it does vary quite a bit. The fee may be imposed at the start, at the front end when the application is made, and then be reviewed further down the process when it is apparent whether or not the amount of work involved is as great or greater than was initially estimated.

Senator LUDWIG—More broadly then, is there any review being proposed by the Attorney General's Department in the legislative area—like the FOI Act itself?

Mr Ford—No. There is a proposal to extend the FOI Act to contractors where work is outsourced from departments, and that is in the legislative program. But beyond that, at this stage, no, there is no major review going on.

Senator LUDWIG—Whereabouts is that on the legislative program?

Mr Ford—I just have to refresh my memory, but I think it is included in the program for the coming sittings. I just have to check.

Senator LUDWIG—Thank you. I do not recall it. I should, I guess, if it is going to end up in the Senate at some point. I will have a look for that, anyway. So that is a bill that has been introduced?

Mr Ford—It has not been introduced yet, no.

Senator LUDWIG—So it has been drafted?

Mr Ford—Yes.

Senator LUDWIG—And is it with the minister?

Mr Ford—Yes.

Senator LUDWIG—That is probably why I do not know about it yet: the minister has not taken me into his confidence. Is there a timetable for that to be produced?

Mr Ford—As I said, it is in the program, but I do not have the details as to when it is expected to be introduced. It is not one of the top priority bills.

Senator LUDWIG—You can prescribe organisations by regulation. Section 4 contains the definition of 'prescribed authority'. Do the regulations provide how many organisations have been prescribed?

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

Senator LUDWIG—If you would not mind, thank you. You could even point me to it. I think we are now working through developing the legislative instruments database as well. That might be available on that. In the interim, I was wondering if you could go back to 1996, to the number of organisations that are prescribed.

Mr Ford—Okay.

Senator LUDWIG—Are there any other reforms that are on the agenda? I think the ALRC has commented on this area a number of times in the last couple of years.

Mr Ford—No.

Senator LUDWIG—I was starting to think it is only related to contractors.

Mr Ford—It is only that aspect, yes.

Senator LUDWIG—That is helpful, thank you.

CHAIR—Thank you, Mr Ford.

Proceedings suspended from 5.08 p.m. to 5.16 p.m.

CHAIR—Let us reconvene with output 1.7, Legal services and policy advice on native title. Senator O'Brien has some questions in this area. Senator O'Brien, Mr Anderson is here to assist you.

Senator O'BRIEN—Why was the native title division merged with the Office of Legal Services Coordination on 30 June last year?

Mr Anderson—That was simply an administrative measure. They were both small divisions with relatively small administrative needs. Combining the two areas gives a better ability to meet the admin needs of both divisions through a slightly larger admin pool of staff. But the staff otherwise, in carrying out the work of both divisions, has remained unchanged.

Senator O'BRIEN—There has been no change to staffing?

Mr Anderson—No.

Senator O'BRIEN—There has been no change to the budget?

Mr Anderson—No.

Senator O'BRIEN—It was just an administrative arrangement?

Mr Anderson—It was just an administrative arrangement.

Senator O'BRIEN—According to the web site of the National Native Title Tribunal, as at 19 December last year 47 native title determinations had been made, 31 of which were determinations that native title exists at least in part. The extent of native title coverage is very slight, isn't it, with no successful claims in any state or territory other than Western Australia, Queensland and the Northern Territory?

Mr Anderson—I believe that is currently correct.

Senator O'BRIEN—What is the extent of native title coverage in area—in hectares or square kilometres?

Mr Anderson—I would have to take that on notice. I will go back one question. You asked about native title determination in areas outside Western Australia, Queensland and the Northern Territory. There have been some consent agreements about native title, and there is one at least in New South Wales that I am aware of as well.

Senator O'BRIEN—But no determination.

Mr Anderson—I would have to take on notice whether that involved a determination by consent or simply an agreement.

Senator O'BRIEN—Has any work been done to show what percentage of the Australian landmass is taken up by native title claims that have been successful?

Mr Anderson—The National Native Title Tribunal does provide a mapping service and they have quite extensive maps of claims and successful claims but, as you would appreciate, the extent of success would vary with each claim. You might have one claim that involves a determination of exclusive rights and another claim that involves a determination of non-exclusive rights, so it is very difficult to map in any readily comprehensible way the different types of determinations you can have. But certainly the NNTT does maintain this extensive mapping service generally of claims over Australia, and that is, I think, accessible through their web site.

Senator O'BRIEN—But not of successful claims?

Mr Anderson—I will have to take that on notice—as to whether they note that as well.

Senator O'BRIEN—What does the Commonwealth spend each year on the contesting of native title claims?

Mr Anderson—In this financial year, for example, the Commonwealth's total expenditure on the native title system is just under \$120 million. Components of that go to the Federal Court and the tribunal, and they are involved in the determination of claims. Are you after only the Commonwealth expenditure as a party in claims?

Senator O'BRIEN—I was after what the Commonwealth expended. Firstly, let us see what its costs are as a party in the litigation process rather than in any other way.

Mr Anderson—In addition to the Federal Court and the tribunal, considerable money goes to ATSI. The Commonwealth as a party has a budget of around \$2.5 million for its own participation as a party each year in litigation and mediation.

Senator O'BRIEN—Has that varied over the years since 1996?

Mr Anderson—It has varied. It has gone up slightly within that period, and the expenditure has varied within that budget as well.

Senator O'BRIEN—How efficient is the determination process? For example, what is the average time for determinations?

Mr Anderson—You would be better placed addressing that question to either the tribunal or the court because they do keep a lot of case management statistics. The Commonwealth is only a party to a relatively small number of the claims. There are over 600 total claims at the moment, and the Commonwealth is a party to 181. As a party the Commonwealth does not

actually monitor the time it takes to resolve matters but the tribunal and the Federal Court do maintain detailed statistics on those matters.

Mr Cornall—We could take those questions on notice for those agencies, if that would be of assistance.

Senator O'BRIEN—That would be useful, thank you. I would like a breakdown by category: consent determinations, litigated determinations and unopposed determinations, as to how long each one takes. You have just told us that there are 600 native title claims outstanding in the process.

Mr Anderson—Yes, that is correct—620-odd.

Senator O'BRIEN—How many are represented or assisted by native title representative bodies?

Mr Anderson—The majority would be but I would have to take on notice the precise numbers.

Senator O'BRIEN—The last two native title reports from the social justice commission have concluded that native title representative bodies are not adequately funded to carry out their statutory functions. In the 2002 native title report the commissioner said:

The inadequacy of resources and resultant limits on the ability of NTRBs to perform their statutory functions appropriately has been drawn to the attention both of the courts and of the Commonwealth on a number of different occasions. Although there was an increase in this funding in the 2002 Federal budget, it remains inadequate ... for the recognition and protection of native title under the NTA, and also for the protection under human rights law of people's right to enjoy culture.

Is this division responsible for advice to the Commonwealth on the overall effectiveness and efficiency of the native title system?

Mr Anderson—Yes, we are, although the funding of native title representative bodies in itself is a matter for Senator Vanstone. That falls within her portfolio.

Senator O'BRIEN—You provide the advice, however, on the functionality of the system?

Mr Anderson—We provide advice on the overall system. That is right. We do that in consultation with a range of agencies, including AT SIS and OATSIA. We do work with Senator Vanstone's portfolio in that.

Senator O'BRIEN—The department's annual report says that this division provides support to the Native Title Coordination Committee and the native title consultative forum.

Mr Anderson—That is right. And the coordination committee is this department, OATSIA, AT SIS, the Department of the Prime Minister and Cabinet, the Department of Finance and Administration, the Federal Court and the National Native Title Tribunal.

Senator O'BRIEN—That comprises those bodies?

Mr Anderson—They are all members of the Native Title Coordination Committee: that is the body which is primarily trying to advise the government on the overall system.

Mr Cornall—I should add that we also administer legal aid grants to bodies which are responding to native title claims. Those grants are administered through our Family Law and Legal Assistance Division.

Senator O'BRIEN—Could you summarise the activities of those two bodies for me?

Mr Anderson—The coordination committee's main focus of recent times has been to carry out a review of the additional funding that was made available in the 2001-02 budget. It has reported to government on that funding and on the current operation of the native title system as such. It is about to embark on a further review with a view to advising the government in the context of the 2005-06 budget—because the additional funding that was provided in 2001-02 was on a four-year basis, so that will expire. Currently the coordination committee is mainly looking at the further financial needs of the different elements of the system.

The consultative forum itself is a much broader body that includes representatives from peak bodies such as the fishing industry council, the mining council, native title representative bodies and ATSYS. Each state and territory government is invited to attend and the Local Government Association also attends. So there is a very broad range of people there. The main function of that body is to provide a forum in which all the members can exchange their views on the current issues within the system, and the health of the system, and hear and discuss the views of the other participants in the system. The forum is not a decision making body as such.

Senator O'BRIEN—The annual report says that the Prime Minister approved a new policy on native title application in March last year and that this policy is directing the division's litigation and negotiation work. Can you describe the consultation process with Indigenous Australians that occurred prior to the approval of the new policy?

Mr Anderson—I do not believe there would have been a consultation process with Indigenous Australians expressly before that policy was formulated. There would have been, certainly, consideration of the usual matters being discussed by both the coordination committee and the forum—and that would have informed that policy—but there would not have been express consultation.

Senator O'BRIEN—Is a copy of the policy available on a web site or can you supply a copy?

Mr Anderson—No, it is not publicly available.

Senator O'BRIEN—So it is not possible for the committee to receive a copy of it?

Mr Anderson—That would be a matter for the government.

Senator O'BRIEN—Could you take on notice?

Senator Ellison—We will take it on notice.

Senator O'BRIEN—How has the policy changed the division's work?

Mr Anderson—The native title system is still a very young system. It is still evolving. As there have been significant decisions within that system by the High Court—in cases such as Yorta Yorta, for example—they have given a lot of impetus to how cases can be proceeded with and what parties can negotiate on as opposed to needing to litigate on. They have also had the effect, at times, of speeding up or slowing down the progress of cases—because obviously parties will put a case on hold if it is going to be affected by a significant decision coming from the High Court. So at different times throughout the history of the native title

system the division itself has focused its efforts on the areas that most needed attention. One of those areas had been seeking to get clarification from the courts.

Now we are actually seeking to focus much more on negotiation. That policy also guides us as to the type of matters that the Commonwealth will be involved in—for example, where there is a significant policy interest, which might be in an area where there is still a lack of legal clarification, such as native title in offshore waters. That has only been considered once by the court. We have had some guidance, but there are still questions. Then there are other cases where we might have a property interest and we are looking at whether we can resolve the protection of our property interest by means such as negotiation as opposed to being a fully participating party throughout the life of the litigation.

Senator O'BRIEN—According to your web site, the unit has an educative role. It is one of the division's key tasks. How does the unit perform that role?

Mr Anderson—Primarily we perform that role by providing education, awareness and assistance to other Commonwealth government agencies. We provide what we call native title 101 seminars to teach other agencies about how native title is likely to apply to them, and we customise the seminar to their particular legislation and to the activities that they are engaged in. We also provide assistance to agencies involved in agreement making with respect to Indigenous land use agreements. We provide detailed assistance to them. It is not so much legal advice—we leave that to their legal advisers—but policy advice on how they can attain the sorts of outcomes they are after through agreement making with Indigenous communities.

Senator O'BRIEN—Is there a specific officer or set of officers to perform this task?

Mr Anderson—There is a particular team within the unit that carries on that function.

Senator O'BRIEN—How large is that team? How many people are in that team and what sort of budget does it have?

Mr Anderson—There are usually either three or four people in that particular team. They do some other things as well, but that is one of their functions.

Senator O'BRIEN—How big is this area in the department itself?

Mr Anderson—The native title unit itself currently has 16 people.

Senator O'BRIEN—How would you measure the performance of the education unit, if I can call it that?

Mr Anderson—I believe it has been highly successful at doing what it set out to do in raising the awareness of different departments and agencies on the impacts of native title. Often, in our experience, people do not set out to think about native title. They think that what they are doing is regulating a particular type of activity—it might be fishing, bioprospecting or something like that—and they do not, at the outset, think about native title. But, after we have gone out to agencies and run these seminars, we find that we have a lot of contact with them and they pick up the need to think about native title very early on in planning their future activities. I think it has been quite successful.

Senator O'BRIEN—Thank you. Those are all the questions I have in this area. I have some questions that I will need to put on notice to HREOC, particularly on the Aboriginal and Torres Strait Islander Social Justice Commission.

CHAIR—Dr Jonas was here earlier this afternoon, but we are to give those questions to the secretariat to place on notice to HREOC. If Senator Ludwig and Senator Kirk do not have any further questions, that concludes questions on outcome 1 and therefore questions to the department. Mr Cornall, I thank you and your officers very much for assisting us today.

Mr Cornall—Thank you, Madam Chair.

[5.36 p.m.]

Australian Customs Service

CHAIR—We will resume consideration of these additional estimates with the Australian Customs Service. I welcome Mr Woodward, Mr Drury and Mr Jeffrey to the table.

Senator MARK BISHOP—Mr Woodward, could I ask you at the outset to turn to page 190 of the PBS. I want to have a brief discussion on some of the matters arising out of the departmental measures there. Can you firstly explain the supplementation of \$43 million for this financial year? It is referred to as capital in the notes two from the bottom. It is capital for what—running costs, building costs, staff costs?

Mr Woodward—I will certainly give you an impression of it, Senator. What we have found this financial year is that there have been a number of pressures on the Customs budget in a number of areas: firstly in relation to the build of the integrated computer system relating to cargo; and secondly in relation to the build of the CCF, the connection facility which will enable outside connectors using either EDI or interactive methods to connect to the systems. They are two significant parts of the budgetary problems that we have had. I think I may have referred to them in the last Senate estimates. Other areas that have caused us a number of pressures include a number of initiatives that have been taken in the last couple of years which we have not had supplementation for. I will mention a couple of examples. There are some aspects of the transport and storage of firearms. There was a decision on the part of the government to X-ray 70 per cent of air cargo. There have been shortages in relation to the logistics component of the cargo examination facilities, or CEFs. That is not only the X-raying but also the examination component of it.

Another component is the need for us to deal with the pay increases accorded to our staff, which were negotiated several years ago. There is an ongoing impact in that area as well. I have not attempted to cover everything, but I think you have a feel for the sorts of pressures that we have been under which have led to the judgment on our part of a capital shortfall of about \$43 million.

Senator MARK BISHOP—I have a feel for the major pressures that the organisation is facing at the moment. How much of the \$43 million is going to be allocated to the one first mentioned—the ICS?

Mr Woodward—Can I stress that we did not do it that way. In other words, there is not an equation between one and the other. We can give you a bit of an idea of the shortfall, but the shortfall will in fact exceed \$43 million. There has been an expectation on the part of the

government, which is quite reasonable, that we do everything we can to tighten our belt and reduce the amount of the shortfall. So we have not attempted to come up with a precise linkage of A, B, C, D and E to \$43 million.

Senator MARK BISHOP—And that was hinted at in the PBS by the use of the word ‘interim’?

Mr Woodward—That is right. The final amount of the shortfall is not known. That is our best estimate. I am sure that the government would not want it to be more. We are trying to do everything we can to reduce the call on additional funds this year.

Senator MARK BISHOP—I am not particularly in the business of allocating blame, particularly at this stage—I just want to get a handle on what it is. Is that \$43 million interim capital injection to cover programs, costs, targets and tasks until 30 June this year?

Mr Woodward—Yes.

Senator MARK BISHOP—So you will come back in May and do that?

Mr Woodward—Yes, that is right.

Senator MARK BISHOP—When I asked you the figure for ICS, you said that you did not do it that way. But you do have a figure of \$43 million—it is not \$58 million or \$27 million; it is relatively exact.

Mr Woodward—That is right. We can come up with approximations of the various components, but a simple addition of those components would exceed \$43 million. That is really what I am saying.

Senator MARK BISHOP—Can you give me those approximate components, subject to the caveat that you have, sensibly, just outlined?

Mr Woodward—The first component, which is the build of the ICS, is about \$35 million—that is a total of the pressures that are on us. The second for the connect facility we expected at the time we prepared the figuring to be of the order of \$20 million; a third component—

Senator MARK BISHOP—Stop there. We are talking about this interim \$43 million. The first figure was \$35 million and now you are saying that it is \$20 million for the CCF?

Mr Woodward—Yes, \$20 million. The third component is the fact that, while the CMO project continues, we will continue to need to maintain the old Unisys mainframe, which, from memory, is costing about \$1.25 million a month, which would be about \$15 million in a full year. I mentioned to you the logistics component of the examination facility, which could go as high as \$13 million, but consideration is being given to aspects of that by the government.

Mr Jeffery—The figures that Mr Woodward has just been reading out to you are the full costs in the year, not necessarily the overruns. We budgeted for some of them but the pressure comes on because of the additional cost. Some of the other areas that he mentioned earlier were areas like the \$3.85 million that was removed from our budget to go to the department of transport for Melbourne IQI, the quarantine initiative; the storage of firearms, which is a bit under \$2 million; and the additional effort we have put into cargo screening of about \$8.4

million, for which we were not fully funded. There were also some operating costs for Coastwatch which I think, unless I am corrected, relate to exchange rate fuel costs and standing charges which have been a bit higher—and they are \$3.7 million.

Senator MARK BISHOP—Are the figures that you are talking about full year figures?

Mr Jeffery—Yes, they are full year figures.

Senator MARK BISHOP—Until 30 June 2005?

Mr Jeffery—Until 30 June this year.

Senator MARK BISHOP—Until 30 June 2004?

Mr Jeffery—Yes, the 2003-04 financial year.

Senator MARK BISHOP—The figures you and Mr Woodward outlined roughly amount to about \$100 million—is that correct?

Mr Jeffery—I have not added them up but it is pretty close to that.

Senator MARK BISHOP—So that \$100 million represents the cost overruns in the major areas as outlined on a full year basis until 30 June 2004?

Mr Jeffery—Mr Brocklehurst has just told me that we budgeted for about \$30 million of that so roughly \$70 million is the overruns. There is the \$43 million, and the savings we have to make make up the rest. We had already budgeted for about \$30 million, which were covered principally over the first two—

Senator MARK BISHOP—So you budgeted for a cost overrun of \$30 million; that leaves a deficiency of about \$70 million. The government has granted you an interim \$43 million. Where does the other—

Mr Jeffery—We have to find about \$25 million in internal efficiencies.

Senator MARK BISHOP—That is almost one for one or one for two.

Mr Jeffery—Yes, pretty close.

Senator MARK BISHOP—Pretty close to one for two. Now can I go back to ask about that \$43 million they have given you on an interim basis. You gave me the figures for the build of the ICS, \$35 million; the CCF, \$20 million; the old user mainframe extended usage, \$15 million for a whole year. Can you now convert those to the subcomponents of the \$43 million equity injection?

Mr Woodward—I am not sure whether we can just at the moment, because what we have done is to budget for some of the figure that we have mentioned for the ICS and for some of the money that is relating to the CCF as well. I think we would need to have a close look at that particular question.

Senator MARK BISHOP—All right. You said that the overrun cost on the ICS was \$35 million.

Mr Jeffery—No, \$35 million is what we expect the ICS to cost us this year. It is not the overrun cost; it is what we expect it to cost this year.

Mr Woodward—The \$43 million relates to our money this year, not an overrun. The \$43 million is not an overrun figure; it is the cash injection that is required.

Senator MARK BISHOP—What I am trying to find out, Mr Woodward, is this. You have got serious cost overruns you have identified in at least six areas, which you have just been telling us about in the last 10 minutes, and the government has given you an interim injection of capital of \$43 million. You already had \$30 million from previous budget figures up your sleeve for anticipated cost overruns and either you have been told or you have agreed to find another \$25 million odd in savings. I understand that. What I want to know is where you plan to allocate that \$43 million capital injection given to you on an interim basis.

Mr Woodward—We will be allocating it to the areas that are appropriate. Large slabs of it—

Senator MARK BISHOP—Which are those specific areas?

Mr Woodward—A significant contribution will be made into the integrated cargo system and the connect facility. Other parts of it will be to deal with the pressure points that arise generally as a result of all of those pressures. We do not have a formula that says—

Senator MARK BISHOP—Yes, you do—you do have a formula. It might be flexible, it might be variable, it might change over time. But the government having given you capital of \$43 million and you having agreed to find savings of \$25 million or \$27 million, you have plans in progress as to where you are going to make the savings and you know, or your planning people know, where the bulk of the \$43 million is going to be allocated. That is just forward planning. I am asking you where it is going to be allocated. Is 85 per cent of the \$43 million, for example, going to the ICS, or only 20 per cent? That is a reasonable question.

Mr Woodward—The answer that I gave you before is accurate, that a fair component of it will be for the integrated cargo system and the CCF and to enable us to pay the bills in each of the other areas of Customs.

Senator MARK BISHOP—Can you be more specific on that ‘fair’—what does fair mean? Is it 95 per cent or is it 51 per cent?

Mr Woodward—I do not think I have got a figure that—

Senator MARK BISHOP—Someone does.

Mr Jeffery—Senator, can I attempt to explain it this way. When we went to government we estimated that we would have a shortfall. We sought and received a \$43 million cash injection. We also made undertakings to make internal savings, which we have already outlined. At the end of the day we identified cost pressures, which are the ones we have explained to you, but we did not allocate the funds as such by saying, ‘This goes to that; this goes to that.’ What we were saying was, ‘As we get to the end of the year we will need funds of this order to pay the running costs of the organisation,’ but without allocating them. We identified what the pressure points were but without saying, ‘There is \$2.3 million to go CCF and there is \$1.2 million here.’ We were saying: ‘This is what it is going to cost us this year, we believe, on our best estimate. This is, in a gross term within our budget, what our shortfall will be. To meet those costs we need the figures that we have just outlined to you.’ We did not and have not split it up.

At the end of the day, as Mr Woodward said, if you look at those figures and you say, ‘The main pressure points come from CCF, ICS and then in this descending order,’ you can assume that that will be where you will be at the end of the year and where you will have to allocate those funds. But it may not necessarily be so, depending on billing processes and on rates of effort in some areas. We may have incurred some of the costs earlier in the year. So it is not a case of where we apportion this much to that project and this much to that project; we apportion it across the budget to ensure that at the end of the year we will not be in deficit.

Senator MARK BISHOP—So the government has given you \$43 million cash and you have got to save \$27 million, and you only generally know that you are going to allocate it to particular pressure points. I just do not accept that.

Mr Woodward—We have got to pay the bills and there will be a whole set of bills coming in across the whole of Customs. We were asked to arrive at our best estimate as to the cash injection that would be necessary to enable us to survive this particular year. There is a basic assumption that we will put in place other measures to produce savings. That is a condition of that cash injection. There will be a review conducted and the review will assist ministers in taking eventual decisions on the final cash injection that is needed. But a process has been put in place.

Senator MARK BISHOP—You are saying that you need on a temporary basis the \$43 million to pay the bills between now and the end of the year?

Mr Woodward—For the totality of Customs.

Senator MARK BISHOP—And the bulk of that falls within those half a dozen areas that you identified—is that a fair comment?

Mr Jeffery—The bulk of the pressure that led to that falls within those areas identified.

Senator MARK BISHOP—Some of those areas are minor—the transport and storage of firearms, to which you have allocated \$2 million on a whole of year basis, so on a half-year basis it is probably \$1 million—and you have identified minor amounts in the other three areas.

Mr Jeffery—I think that of the amounts we have identified the transport and storage issue is \$1.8 million over the year higher than we were allocated to fund that. It has cost us \$1.8 million. Some of the areas are minor but in aggregate they start adding up.

Senator MARK BISHOP—They do. But, of the \$43 million, would I be wrong if I asked this question? The great bulk I define is 85 per cent, 90 per cent, 95 per cent—figures of that amount. Is that money going to be allocated to tasks and programs associated with the ICS and the connectors at the CCF?

Mr Jeffery—Let me put it the other way around. The costs of the ICS and the CCF are a significant contribution to our being overextended and the others to a lesser extent. At the end of the year depending on how the cash flow goes, yes, they will be the major contributors—I have not worked the proportions out but you could work out that amount proportionately from the numbers we gave you—but I cannot say that we allocate it that way.

Senator MARK BISHOP—No. But, if I said to you that they are going to take up 80 per cent of the costs of the additional injection, that would be pretty well right?

Mr Jeffery—I would say that on doing the calculation of the figures that led to us requesting the additional money.

Senator MARK BISHOP—Having got that, on the computer system what are the major problem areas? The cost blow-out is \$35 million on a whole year basis, so what are the problem areas?

Mr Jeffery—Let me correct again. The blow-out in the whole year is not \$35 million; the cost is \$35 million in a whole year.

Mr Woodward—We have with us two of our people who were at the last meeting, Mr Harrison and Ms Peachey.

Ms Peachey—I will deal with the ICS side and Mr Harrison will deal with some of the computer side. To reconfirm those figures, you might recall from the last estimates that I said that the ICS contract was originally for \$29 million. We had one contract variation that was gazetted last February, about a year ago, which is \$15.4 million. That relates to the final part of the ICS development, the input declaration side particularly. Of course, the pressures for that additional increase, which we had not originally budgeted for, are occurring now as that build is completing, so that puts that in perspective. We had already budgeted for about \$43 million to be spent on the ICS development, not just IT development but also our transitional costs—our help desk and our industry support.

To put that in perspective, that was budgeted up front this year—that is to give it a bit of context. You then asked—and correct me if I am wrong—where the problems are at the moment. I will start with the ICS and then ask Mr Harrison to speak on that a little bit more. At the last estimates I said to you that the version 4 build of the ICS development would be completed on 24 December. We have had a slippage of 19 days on that. At the moment with that final part all of the code is now cut for the ICS development and that final part of it is in product test. That will now roll out about 29 April or early in May, instead of on 29 March, in terms of the development of the integrated cargo system.

Senator MARK BISHOP—Ms Peachey, I do not really want to go into a detailed discussion of CMR now as I plan to do that later. I just wanted to know: where were the cost overruns, the problem areas in principle, in the two, the ICS and the CCF?

Ms Peachey—Okay. I would say there is that one major contract variation. There has been no other change other than the normal change requests that have rolled through, which are gazetted. They probably amount to about \$4 million over the two-year life of the project. The ICS project itself has had one major contract variation. That indicates the cost pressure. The other part of the total CMR package is the Customs connect facility, the gateway. I will ask Mr Harrison to speak on that.

Senator MARK BISHOP—So in the CCF the cost blow-out from last time was \$4 million?

Ms Peachey—No. In the ICS there has not been any cost blow-out from last time at all. We budgeted for change requests as well. So what I have said to you is this: we had the original contract of \$29 million, there has been one major contract variation of \$15.4 million—so that is one cost pressure that we have had in the development of the ICS—and then we have had a

series of change requests, which are normal in any IT development, over the two-year period amounting to about \$4 million.

Senator MARK BISHOP—Wait a minute; I must have misunderstood. Mr Woodward just told me that one of the two areas where there were major cost pressures was the ICS. So that is what Mr Woodward said, and now I have asked where in particular those are arising and you are saying it is only \$4 million over two years and that it was anticipated and not budgeted.

Ms Peachey—No, I said that we have had a \$15.4 million increase. That has all been self-funded, or funded internally in Customs, so that is an additional cost pressure that arose from the major contract variation that was negotiated a year ago but it impacts on this financial year. That has all been internally funded, so that is where the cost pressure on the ICS side has arisen.

Senator MARK BISHOP—You disclosed that \$15 million at the last round of estimates?

Ms Peachey—Yes, I did, but it impacts in this financial year in terms of the cost because we pay against a milestone delivery. We are getting to the stage of the final ICS build and so our payments—or a large part of them—will occur this financial year.

Senator MARK BISHOP—So you say that \$15 million has been funded out of internal sources to date?

Ms Peachey—Yes.

Senator MARK BISHOP—Is the \$43 million interim capital injection that we are talking about now going to reimburse some of that \$15 million or is that to be used for different or additional areas within the ICS?

Ms Peachey—No, our costs for the ICS are as I have explained them. Mr Woodward explained how that allocation is. But if I am doing my budget this financial year it sits around the contract price for the ICS delivery, plus my own internal costs, obviously, for our own staff, our transition costs, our support for industry et cetera. That all formed a part of the budget as it related to the ICS. The drawdowns against milestone delivery incorporated that \$15.4 million in my budget this year.

Senator MARK BISHOP—So none of the \$43 million interim capital injection that has just been granted by the government is going to be allocated to ICS matters?

Ms Peachey—It could possibly be in terms of the decisions that Mr Woodward and the executive make. But that is the cost that Customs will incur for the ICS development this financial year, which, as I have explained, relates to the normal drawdowns against milestone deliverables.

Senator MARK BISHOP—So is any of that \$43 million that has just been granted by the government going to be allocated to the ICS, Mr Woodward? Ms Peachey just told me she had a cost overrun of \$15 million, it has been absorbed by internal savings within the department, and there has not been a request for it to be reimbursed or supplemented. But you told me that one of the major cost overrun areas warranting the \$43 million was the ICS. Unless Ms Peachey is the wrong officer at the table, none of it appears to have been allocated

there. So I want to come back to you as to where it has been allocated or where it is proposed to be allocated.

Mr Woodward—Can we go back to where we started. You added up \$100 million worth of pressures, and we said that we had \$30 million roughly that we had funded internally. We have given you an outline of the areas where we are under pressure—significant areas where we are under pressure generally as distinct from any internal budgeting that might have been conducted in relation to the carrier management re-engineering project. The large slabs of that, if you added them up \$100 million, were the integrated cargo system, the connect facility, the legacy systems rehosting and logistics in relation to the CES. They are very significant components of the gross figure of \$100 million, from which \$30 million needs to be deducted. I cannot explain it any better than that.

Senator MARK BISHOP—Why not? You have got \$43 million from the government. What I am hearing you say is this: you have got significant cost pressures and you have got significant overruns. You have identified five or six areas, and the government has given you \$43 million to fill some of the holes until the end of the financial year. That is what I am hearing you say. I then asked for the detail of where there is going to be any allocation of that \$43 million to the ICS, which you have identified as a major cost pressure, and Ms Peachey said ‘none’. So it is a major cost pressure but it is not going to be supplemented. So I am asking where the money is going.

Ms Peachey—Excuse me, Senator; I think I have been misrepresented in saying that I said ‘none’. What I said is that that is the budget that I have put forward for CMR, and it includes those additional costs of \$15.4 million. That has been provided to the chief financial officer, in that there may be a revision of allocation if I am already funded for that or the pressures, and therefore the funding, are somewhere else. What I have said is that the major change in the ICS cost is \$15.4 million, and that we advised last year.

Senator MARK BISHOP—The major cost is the \$15 million, which you identified at the last round of estimates.

Ms Peachey—That is right.

Senator MARK BISHOP—To date you have been funding that out of internal costs.

Ms Peachey—Yes.

Senator MARK BISHOP—Now you have an extra \$43 million that you did not have last time we met, and I am asking what amount of that is going to the ICS. You may not be saying it, but I am hearing you say that the answer to that is none. That is where I find the disconnection.

Mr Woodward—The difference that we are trying to get across is that Ms Peachey has the responsibility of looking after a budget for CMR. I have got the responsibility for the entire Customs budget. What we are doing is continually re-evaluating how our money is going out the door and what calls there will be in the future, and we are continually reassessing where we have to allocate that money. In other words, it was not a static position where we said, ‘Here is a firm \$43 million and of that X will go there and Y will go there.’ All we have are approximations at this stage. As we get closer to the end of the financial year obviously the

picture will get much clearer. As I said to you at the beginning, very significant components of the net \$70 million, less savings which we will achieve, will go into those big areas that I have just mentioned to you.

Senator MARK BISHOP—Will any funds be allocated to Coastwatch?

Mr Woodward—We have identified a particular problem in relation to rise and fall provisions in relation to Coastwatch. That issue has been taken up with the minister and, through the minister, with his colleagues, and that particular difficulty I think is on the point of resolution. I do not see any other call on Coastwatch's funds. I am not able to go any further in relation to that particular rise and fall angle.

Senator MARK BISHOP—Is that because that is still to be resolved by government?

Mr Woodward—There has been an exchange of correspondence involving the minister and two of his senior colleagues. My expectation is that it will be resolved very quickly.

Senator Ellison—We will take that on notice because there is a piece of correspondence I need to have a look at and if there is anything I can come back with this evening, I will.

CHAIR—Thank you, Minister, that is very helpful.

Senator MARK BISHOP—Can you tell us about fisheries, Mr Woodward?

Mr Woodward—In relation to fisheries specifically and the \$43 million, we have had funding provided to us in relation to the Southern Ocean. In the context of government decisions in relation to the scope of Southern Ocean work, I have no reason to believe that we will not live within our budget in relation to fisheries matters in the Southern Ocean—and that is the major area of difference.

Senator MARK BISHOP—Arising out of this capital injection, will extra people be employed?

Mr Woodward—No. As I have explained in the last couple of Senate estimates committees, our staffing numbers are reducing. While there may be some areas—and the Marine Unit is an example—in which we will be putting on additional staff, the total trend will continue to be downwards in relation to our staff numbers.

Senator MARK BISHOP—You answered some questions on notice to that effect. We got them in the last couple of days. At last estimates the figure that you were talking about for total staff reduction was 142.

Mr Woodward—It was 142 but on the other side of that coin I think we got money for 13 additional staff for the Marine Unit. So it is really about 150 that we were looking to reduce by. That is throughout the year, of course.

Senator MARK BISHOP—How many of those 150 have gone?

Mr Woodward—I will talk about numbers as distinct from individuals. As at 14 January our full-time equivalent numbers had reduced by 158.

Senator MARK BISHOP—So the whole year reduction had by and large been achieved by January?

Mr Woodward—No, because the reduction we have to achieve is a full-year figure.

Senator MARK BISHOP—And the figure that you had in the budget papers last year was 142.

Mr Woodward—Yes, but I said that there were 142 generally, offset by 13 extra that we will get in relation to the Marine Unit. So we are aiming to shoot for an average of about 150 throughout the year. I will give you an example. To reduce by 150 throughout the year, if you only do it in six months, you would have to reduce by 300 to get an average figure of 150. As we did not immediately reduce by 150, we will have to continue to reduce our staffing numbers.

Senator MARK BISHOP—I accept that there are 13 or 15 on the marine side but if the budget figures last May said you were going to reduce staff by 142—

Mr Woodward—It is an average for the year, as distinct from a number from one point to another.

Senator MARK BISHOP—I have never heard of this distinction!

Mr Woodward—It is clear in the—

Senator MARK BISHOP—I am sure it is—an average for the year. What was the anticipated net reduction for the full year when you had—

Mr Woodward—142 and 153—the figures I have mentioned—are the full-year average figures.

Senator MARK BISHOP—Didn't you just say that you had roughly reduced the Customs figures by 150 as at 14 January?

Mr Woodward—It is 158.

Senator MARK BISHOP—158?

Mr Woodward—That is right. That is the reductions from 30 June—or 1 July but I think it is 30 June—to 14 January. If you subtract one figure from the other that equals 158 full-time equivalents. That is the figure I have mentioned.

Senator MARK BISHOP—If you have reduced from 30 June until 14 January by 158 FTEs and your target was 142 plus the 15 for marine, have you not achieved your target?

Mr Woodward—The 158 is not an average figure. The 142 is an average figure. They are two different figures.

Senator MARK BISHOP—Explain to me the difference. I have never heard this distinction.

Mr Woodward—The best example that I can give you is the one that I just mentioned. Let's say Customs had to reduce by an average of 150 over 12 months, which means that if you reduce by 150 on the first day of the financial year then you have achieved your 150 reduction on that first day. But, in most cases, if you aim to reduce you will do it progressively so that for every day or every month that you do not achieve, using this example, 150 then you have to reduce by more than that to get your average for the whole year.

Senator MARK BISHOP—All right. Are you doing it by attrition, voluntary redundancy or what?

Mr Woodward—It has been virtually entirely natural attrition. There have been a couple of cases that I am aware of—possibly one handful; it could be two handfuls but I think it is only one handful—where we have adopted an approach which is available under the Public Service Act of offering incentives for individuals to consider their position and leave. But in large part it has been through natural attrition, resignation, retirement et cetera rather than through any redundancy program.

Senator MARK BISHOP—Do you have any idea what the forward figures are going to be like as we approach 30 June? For example, will they be 250 or 280?

Mr Woodward—There are a couple of factors that will be involved in that. One is that I am absolutely determined that we are not going to impact seriously and adversely on our ability to discharge our statutory responsibilities and to discharge what the government wants us to do. That is one requirement. If I get to the point where I believe we are going to cut below that, we will have to go to the minister and get him to raise that point.

Secondly, it depends on attrition, because I do not propose to embark on a program of redundancies as we have done in the past. Related to all of that is the overall economic situation, which would impact on the desirability of individuals to seek careers elsewhere or to remain in Customs. Obviously that is tied into attrition rates.

Senator MARK BISHOP—So what you are telling me is that you are—

Mr Woodward—I do not have a figure but the simple arithmetic would suggest—and I do not think you can apply simple arithmetic in this case—that, if we got 158 by 14 January, in round terms that is 150. If you extrapolated that very simply you would get to 300. If we were to head close to a 300 reduction then my first test of impacting adversely on our ability to discharge our responsibilities would come into question.

Senator MARK BISHOP—So it appears, in the most general and vague sense—at one and the same time—that you are heading to a figure of around about 300.

Mr Woodward—No, in my judgment it will be less than that, and it is a factor that we will be taking up with the external review, which I understand has not been masterminded by us; it has been masterminded by the department of finance. It will be taken up as part of that and it may be that relief is provided.

Senator MARK BISHOP—It may be. Do you have the figures of your FTE numbers as at 30 June last year? I am talking about total FTE employment in ACS. Around 3½ thousand?

Mr Woodward—It was 4,684 as at 31 December—so it was 4,826.

Senator MARK BISHOP—So it was 4,826 FTEs as at 30 June 2003.

Mr Woodward—Of course you get the complications of head counts as well, and the head count figure is different.

Senator MARK BISHOP—That is right; you answered the question. The cost you had for the CMR last time we met was something of the order of \$145 million. Is that still the current figure or has it gone down or changed?

Mr Woodward—The figure is 146, but what we said last time continues to apply. To quote what I said last time—and this continues to apply with one change, and that is the figure:

The figure over the last two years from 2001-02 to now and the projected figures for the remainder of this financial year for the integrated cargo system, the ICS, and the connect facility, which Ms Peachey has mentioned and which is the reference to the IBM that you have in your notes, will total \$145 million by the end of this financial year.

Our latest assessment is that it is a fraction over 146, give or take. It might be a fraction over 146.

Senator MARK BISHOP—So those figures you gave us last November are pretty much on track.

Mr Woodward—Yes, they are basically accurate.

Senator MARK BISHOP—Are there any proposals to increase levels of cost recovery under consideration by government at the moment?

Mr Woodward—That question brings in train a couple of issues. One is that there is a new cost recovery regime that has already been legislated. In legislation passed a couple of years ago there is a new regime for cost recovery which has a number of essential differences from the current regime—for example, the distinction between air and sea cargo has been taken away. That regime was predicated on our understanding of cost recovery in the circumstances that it then applied. I think I mentioned to you on the last occasion that the pressures which will flow, firstly from the logistics component of the X-ray facilities, will cause that amount of cost recovery—because there is a ceiling and we have reached the ceiling—to be revisited. What the decision will be is a separate thing. Secondly, I think we would need to have another look at the legislative cost recovery regime to see whether, in the light of our experience over the last couple of years and the views that are continually being expressed by industry—and we do listen to industry—any changes need to be made. If there are changes that need to be made, we would put those to government.

Senator MARK BISHOP—That is what you said last time. Coming to the final point first, which is your consultation with industry and any changes that you might put to government: have we got to that stage yet?

Mr Woodward—The only specific issue that we have raised with ministers, at least with our minister and progressively with other relevant agencies, is whether the logistics component for the X-ray facilities ought to be factored into the cost recovery regime. That is the only fact that I can recall.

Senator MARK BISHOP—You are talking about the land ports here, aren't you?

Mr Woodward—I am talking about the sea cargo facilities. That is all we have raised at this stage. What the eventual decision is is a matter for the government.

Senator MARK BISHOP—You have formally put a position to the government for the government to consider?

Mr Woodward—We have put to our minister—and I am aware that other central agencies are aware of it; whether they have put it to their own minister, frankly, I do not know—an

option of varying the existing ceiling so that full cost recovery to take account of the logistics component of X-ray facilities is embraced.

Senator MARK BISHOP—You used your words very carefully—‘full cost recovery ... of the logistics component’ of the existing facilities.

Mr Woodward—Yes.

Senator MARK BISHOP—That is a serious amount of money, isn’t it?

Mr Woodward—I cannot remember if we raised this at the last meeting, but we have already increased the charge to pick up, I think, about \$16 million worth of additional logistics related costs, and that took the total charge on sea cargo entries to about \$44. There is a shortfall of around \$6 million or \$7 million in a full year.

Senator MARK BISHOP—I am surprised you say that it is so light, Mr Woodward. I thought I saw some figures come across my desk suggesting that the actual cost was of the order of \$93 or \$94, not in the middle of the 40s as you said. You did use the words ‘the logistics component’ of the X-ray facilities.

Mr Woodward—Yes, because there are other components of imports already recovered.

Senator MARK BISHOP—Where the full cost is already recovered or partially recovered?

Mr Woodward—No, we have a cost recovery regime which applies to imports. The cost recovery regime applies to commercial entries, to reports and to costs that already take place in relation to sea and air cargo. What we are talking about is the new dimension, and the new dimension is the logistics component of sea cargo.

Senator MARK BISHOP—What if the government were to allow your claim of \$6 million or \$7 million?

Mr Woodward—If it were simply applied, it would be a couple of dollars per entry. We would have to take that on notice, but when you compare it with \$44 the amount is not huge.

Senator MARK BISHOP—Maybe the figures I saw were wrong; I thought we were talking seriously—

Mr Woodward—I am wondering if you have in mind another figure which might add up to something like the figure you are talking about. The logistics cost per year is about \$24 million—and, as I said, we are already recovering about \$16 million or so of that. It could well be that what you have in mind is a three-year or four-year figure for the total logistics costs, because many of our budget papers do in fact talk about the four-year costs of arrangements.

CHAIR—We will continue questions after the dinner break.

Proceedings suspended from 6.29 p.m. to 7.30 p.m.

CHAIR—I reconvene this meeting of the Legal and Constitutional Legislation Committee hearing additional estimates. The committee was in the midst of questions to the Australian Customs Service and I invite Senator Bishop to continue.

Mr Woodward—Chair, may I first provide some updated information?

CHAIR—Of course.

Mr Woodward—We mentioned a figure of about \$2 towards the end of questions before the meal break. Some quick figuring over the break would suggest it would be closer to a \$5 increase.

Senator MARK BISHOP—Thank you, Mr Woodward; I will come back to that. Can we finish off the questions on the supplementation to budget. Let us talk about the audit that is going to be done. Who is going to conduct that review or audit?

Mr Woodward—The terms of reference for that have to be settled between the minister and the minister for finance. A framework involving steering committees and working groups will be involved, but at this stage there has been no consultant appointed—unless the minister is aware of any change in that.

Senator MARK BISHOP—No consultant has been appointed?

Mr Woodward—No consultant has yet been appointed, but there will be a consultant. It will be an external consultant that will be engaged to provide the objective advice. It will have support from the department of finance and from Customs staff as well.

Senator MARK BISHOP—When do we anticipate the review will commence?

Mr Woodward—As soon as the consultant is appointed, I guess.

Senator Ellison—I think the minister for finance can answer that question. I have written to Finance, pressing upon them the need to move things along.

Senator MARK BISHOP—Do we have any idea of the time frame that is going to be allocated to carry out the task?

Senator Ellison—Can I just clarify the question. If the reporting date is what you are looking at, we envisaged it being done by June. As for the length of time, it all depends, if you are going to do it in that interim period, on how soon you appoint a person to do the review. I have indicated that I think it should be done as soon as possible.

Senator MARK BISHOP—You have got to sort out the detail with Senator Minchin—

Senator Ellison—Yes.

Senator MARK BISHOP—and allocate the task to a consultant. You want it done ASAP. Do you have a time frame to have it concluded prior to the May budget or at the end of the financial year, or is it a lot bigger than that?

Senator Ellison—They were saying we should have it done by June but my own view is that I would like it done sooner.

Senator MARK BISHOP—All right. Have you determined a cost as yet?

Senator Ellison—I am not aware of that.

Mr Woodward—The cost of the consultancy? Because the selection processes have not proceeded, the answer is no.

Senator MARK BISHOP—Okay. When you say you want to allocate it to a consultant, are you going to approach an individual or a firm to do it, or is it a public tender process? What is the process to achieve that?

Mr Woodward—The lead for that—and this is not the only consultancy of this kind that is under way—is the department of finance. We will be following department of finance endorsed processes, which are of course under the umbrella of an exchange of correspondence between the two ministers and agreement on terms of reference between the two ministers.

Senator MARK BISHOP—So that issue of whether it is going to be an approach by Finance to a particular individual or firm or a public tender process has not been decided?

Mr Woodward—We do not know whether it will be a person, a firm or a partnership. At this stage we do not know.

Senator MARK BISHOP—Have the terms of reference yet been agreed between the two ministers?

Mr Woodward—There has been an exchange between the two ministers.

Senator Ellison—We are waiting for a response on that.

Senator MARK BISHOP—Are you able to tell us the terms of reference?

Senator Ellison—Not really. It is subject to correspondence, so it would be premature at the moment. It has not been worked out yet.

Senator MARK BISHOP—When it has been worked out and signed off by you and Senator Minchin, could I then ask for a copy of the terms of reference to be provided to the committee?

Senator Ellison—Yes, we will take that on notice.

Senator MARK BISHOP—Is it intended that the report be made public when it is concluded?

Mr Woodward—My understanding is that these processes are undertaken in the context of consideration by senior ministers in a budgetary context. To the best of my knowledge, none of the reports has ever been made public, so I would think it most unlikely.

Senator Ellison—It is in the budgetary process, and that was the decision regarding the review.

Senator MARK BISHOP—And that was the decision?

Senator Ellison—It was part of the budgetary process that the review be conducted, so that is why the review cannot be made public.

Senator MARK BISHOP—That is all right. I am just asking whether or not it would be.

Senator Ellison—We will take the terms of reference on notice.

Senator MARK BISHOP—Okay. So can I assume from that then that, if you are thinking about a report date in June of this year, any recommendations that government might choose to implement would not occur in the May budget of this year?

Mr Woodward—A facility—described in a non-accounting term as an overdraft—has been made available, and we will have access to it under very close scrutiny by the Department of Finance and Administration.

Senator MARK BISHOP—What is the extent of that overdraft access?

Mr Woodward—That is the \$43 million that we are talking about.

Senator MARK BISHOP—Sorry; this review is about going forth into the future, isn't it?

Mr Woodward—There are two aspects to it. The driving force is the \$43 million. In a sense there will be an element of confirmation of that—in other words, what expenditure is justified this year. There is also a forward-looking component in it—in other words, what will Customs need to survive adequately in the period ahead. So it is current and a projection.

Senator MARK BISHOP—There are two parts to it.

Mr Woodward—Yes.

Senator MARK BISHOP—Could I ask you to turn to page 198 of the PBS, Mr Woodward. If you look at the two columns in table 2.1 headed 'Performance Information 2003-04 Budget' and 'Performance Information 2003-04 Revised' and go down to the material on the RAAF P3 Orion 250, there is essentially no change in those two lines, yet there are savings of some \$27 million which are described on page 201 as 'Downward adjustment by the Department of Defence in resources provided free of charge (\$28.028m) for the civil maritime surveillance program'. There is a significant cost reduction as a result of Defence carrying out that work. Why is that not reflected in changes in the performance indicators—if they are doing the job for significantly less?

Mr Woodward—The briefing I have is that the cause of that is the revised hourly and daily rates for P3s and for patrol boats. In other words, we get a certain number of hours of P3 time and we get a certain number of days of patrol boat time. The amount of work which is being and will be undertaken by P3s and patrol boats will not be significantly different. My briefing indicates that the \$30 million comes from the revised hourly and daily rates which are applied by Defence to the P3 and patrol boat time. The multiplication of the hours and days by the sea day and aerial rates equals a reduction of about \$30 million. That is the briefing I have. If any correction needs to be made to that, I will let you know.

Senator MARK BISHOP—That confirms what you have in the PBS—that the charge from Defence for the P3s and the patrol boats is going down by almost \$30 million. That is a large amount of money by any means.

Mr Woodward—Yes, but it is notional. In accounting terms you have got to provide that information because it is a service that is provided to Customs. We get it free of charge, and if it were being done on a commercial basis then we would be paying a lot more. But we do not pay Defence that amount, so whether it is \$120 million, \$140 million or \$150 million the net amount of flying that we do is not dependent on that.

Senator MARK BISHOP—Is the net number of hours for which the P3 Orions and the patrol boats are going to be allocated to carry out the task reduced by any amount?

Mr Woodward—My briefing indicates that there has been no substantial difference, but I stress that the number of hours flown and the number of days sailed by patrol boats do vary year by year. Our intention is to get 1,800 days of patrol boat activity. Sometimes it is a bit more and sometimes it is a bit less. The intention is to get 250 hours of P3 time. Sometimes it is a bit more and sometimes it is a bit less because there are operational circumstances involving us and, separately, the Defence Force. So those figures are not extraordinary when you look over history.

Senator MARK BISHOP—I am not really seeking to question you on the margins of time flow in the tasks done by Defence. It is just that there is a decrease in the costs that Defence charge you of almost \$30 million—in excess of 10 per cent. The obvious things that come to my mind are, firstly, why they are doing that and, secondly, whether it means a reduction of 10 per cent in flying hours or 10 per cent in patrol hours.

Mr Woodward—I am not aware of any substantial reduction. That is not the basis on which my briefing has been provided, but if I have to make a correction then I will certainly do so.

Senator MARK BISHOP—Have Defence informed you as to why they are reducing their costs by \$30 million?

Mr Woodward—They may well have. We work on the basis that it is up to them to work out their accounting treatment. It could well be—and I am guessing—to do with the fact that the patrol boats are getting older and depreciation may be a factor. The P3s are getting older too. But we would need to check that out with Defence. I do not think we have that information. We use the figures they give us.

Senator MARK BISHOP—When they provide those figures to you or the officer who is responsible for having those negotiations with Defence, what do you do? If a major client of mine said, ‘I am going to reduce your costs, Senator Bishop, from \$280-odd million to \$250-odd million in a period of less than six months,’ I would ask why. I would be thinking I had been overcharged in the first place and wondering why there was this huge reduction.

Mr Woodward—We are not actually overcharged. The point I was trying to make was that we get those services provided for nothing. It costs us nothing. My interest is in how many days of patrol boats I am going to get and how many hours of P3 time I am going to get. If Defence charges us a bit more or a bit less notionally—because we do not actually pay a cent—that worries me less than the days and the hours, which is where you have started out from.

Senator MARK BISHOP—I understand that proposition. But it costs someone, doesn’t it? It costs Defence or the taxpayer.

Mr Woodward—Then you get into questions that I think you would need to put to Defence and you may well involve the government. There is an expectation that we have a certain number of days and hours. Given the fact that the patrol boats are there, they have got to be used for something. If you have that number of patrol boats, it is best that they are used productively rather than unproductively, and I believe they are. It is the same for the P3s, because the work that the P3s do for us, as I am told, is extraordinarily good training for pilots, observers and aircrew.

Senator MARK BISHOP—If you turn to page 210 of the PBS, point 2 ‘Other revenue’ reads:

Other comprises revenue received free of charge from the Department of Defence.

That confirms your point. It goes on:

Defence revised their estimates downwards from budget by \$28.028m based on a revised level of support they expected to provide for the civil maritime surveillance program.

What does that mean?

Mr Woodward—My assumption is that it is an attempt to pick up the area that we have just been talking about. What I have given you is the briefing that I have been provided. What I have also said is that, if there is any correction that I need to make to that, I will.

Senator MARK BISHOP—But Mr Woodward, this is the PBS of the ACS. This is the set of documents you signed off on as the chief executive officer. I am asking you: what is the detail of ‘revised level of support’? Did you request a revised level of support? Did they impose it upon you? In what areas does it apply? It is your PBS, not theirs.

Senator Ellison—Yes, but it is Defence’s rates and the reasons for Defence lowering their rates is really a matter for Defence. But we might be able to find someone who can help.

Senator MARK BISHOP—It is a program, Minister, within this department. It is the civil maritime surveillance program. Surely someone asked the question.

Senator Ellison—Mr Brocklehurst might be able to help.

Mr Woodward—I just had that checked. What has been said there is not correct, and I apologise for that. The explanation I gave you previously is the correct explanation.

Senator MARK BISHOP—What is incorrect?

Mr Woodward—The reference to ‘revised level of support’ should have been based on revised charge-out rates in relation to P3s and patrol boats. That is the advice I have. If there is any clarification or correction of that, I will put that in writing to you.

Senator MARK BISHOP—Why was ‘revised level of support’ put into the notes to the financial statements?

Mr Woodward—I cannot tell you any more than I have done. The advice I now have is that the explanation I have given you is right and those words are not right.

Senator MARK BISHOP—Who signs off on these statements? Is there a chief accounting or financial officer?

Mr Woodward—They are agreed to by our chief financial officer.

Senator MARK BISHOP—Who is that?

Mr Woodward—Mr Brocklehurst.

Senator MARK BISHOP—Is Mr Brocklehurst here?

Mr Woodward—Yes, he is here.

Senator MARK BISHOP—You have heard the discussion, Mr Brocklehurst?

Mr Brocklehurst—Yes, and I can confirm that that statement is incorrect.

Senator MARK BISHOP—Why did you sign off on it, then?

Mr Brocklehurst—I can only admit to having missed that point when I reviewed them.

Senator MARK BISHOP—The reduction in the price of a contract goes down by somewhere between 10 and 15 per cent in a six-month period, involving almost \$30 million of notional allocation, and you as the chief accounting officer did not notice it. Is that what you are telling me?

Mr Brocklehurst—No, we did notice that the amount had fallen by \$28 million and that it was based on the revised charge that Defence advised to us.

Senator MARK BISHOP—When did you know that the words ‘revised level of support’ were incorrect?

Mr Brocklehurst—Only just now.

Senator MARK BISHOP—Who told you?

Mr Brocklehurst—I did not realise it was incorrect until it was raised here.

Senator Ellison—What we talking about is another department’s area and asking why they reduced their price. You do not often ask people why they reduce their price; you take the advantage and be thankful for it. I will take it on notice and take it up with the Minister for Defence. Really, we need to go to Defence to ask them what was behind that.

CHAIR—Thank you for that undertaking, Minister.

Senator MARK BISHOP—You can go to the Department of Defence and ask them. What I find odd is not that the Department of Defence have reduced the quantum of the contract—so be it, that happens, there are variables. What I find surprising is that the chief accounting officer of the department was unaware of it.

Senator Ellison—He was saying—

Senator MARK BISHOP—No, he said that he had only just become aware of it now.

CHAIR—Perhaps you might let the minister finish.

Senator Ellison—No, the reason for it was that they either reduced their charge-out rates or there was a revised level of support. In these documents you are looking at an acknowledgment of a downward estimate of just over \$28 million, and that has been reported. What we have been talking about for the last short while is the reason for it—why Defence would suddenly cut their rates by \$28 million. That has really been the argument, not the fact of whether it was done or not. We all knew that, it is in the papers. It is the question of why.

Senator MARK BISHOP—That is right—why it was done. Mr Brocklehurst was unaware of the reason as to why it was done until Mr Woodward put forward the proposition.

Mr Woodward—What I have said, Senator—and I believe I apologised, and I apologise again—based on the information that I have, is that there are several aspects of the words in there that are wrong and should not have been in there. I apologise for that.

Senator Ellison—The amount of money is not wrong and the estimate downwards is not wrong. It is just the fact of how it came to pass, and that is something I will take on notice and ask the Minister for Defence.

CHAIR—Thank you, Minister. It would not be the first time that we had seen an erratum to such documents.

Senator MARK BISHOP—Can you take on notice, Mr Woodward, firstly whether there will be any changes in the number of hours flown by the PC3 Orions and the number of days operated by the patrol boats pursuant to the civil maritime surveillance program? Secondly, if there are going to be changes, what are the nature and quantum of the changes and where and when will they be implemented?

Mr Woodward—Does that question relate to this financial year or next financial year?

Senator MARK BISHOP—It relates to the period of time in which the budget was sought to be allocated.

Mr Woodward—In other words this financial year. I understand question.

Senator MARK BISHOP—Now we will turn to the free trade agreement. The PBS reveals a projected decrease in duty collections for the Thailand free trade agreement. Is there any estimate available for the US agreement as yet?

Mr Woodward—No.

Senator MARK BISHOP—Have you provided any figures to the government negotiators?

Mr Woodward—We have to see the details of the agreement. Obviously, as we have mentioned to you before, we have been involved in some technical aspects of the negotiations. We have to see the text of the actual agreement. The government's view is that questions in relation to the nature of the agreement and the implications of it should be dealt with by the Department of Foreign Affairs and Trade.

Senator MARK BISHOP—Your department has been provided with a copy of the agreement?

Mr Woodward—No.

Senator MARK BISHOP—Before you dig a hole too deep, I just came from a Senate estimates hearing at which the Department of Communications, Information Technology and the Arts had a copy of the text. It was yet to be put through what they called the 'legal scrubbers'. They answered extensive questions on the effect of the FTA on their department. From memory, they said that that was common across government. Are you telling me that the ACS has not been provided with any other detail of the proposed US free trade agreement as it applies to Customs?

Mr Woodward—I can tell you quite categorically that I have not seen the agreement. I am not sure whether anyone else has seen the agreement. My understanding is that it would not be made available for several weeks. My last point is that we had very clear guidance that questions in relation to the agreement should be directed to the Department of Foreign Affairs and Trade.

Senator MARK BISHOP—The department of communications had a copy of the agreement and answered extensive questions. Mr Woodward, you said you have not seen it. Has any other officer in the department been given a copy of the proposed US free trade agreement as it applies to the ACS?

Mr Jeffery—We have been involved in the negotiation of two parts of the agreement, one dealing with rules of origin and the other dealing with intellectual property. We have seen those parts. We have not had access to a full set of the agreement. The negotiations in relation to tariffs and tariff rates are a protective issue that is dealt with by the Department of Industry, Tourism and Resources. At the end of the day, estimates such as the one you have here in relation to Thailand will basically be done by Treasury and provided to us as the impact on the budget, which we provide in our budgetary estimates each year for revenue collections and revenue forgone.

Senator MARK BISHOP—The only copies of the draft agreement that you have been provided with relate to the rules of origin and intellectual property?

Mr Jeffery—Yes. They are the two areas we are actively involved in.

Senator MARK BISHOP—Okay. Who does the calculations on changes in tariffs and excise in Customs?

Mr Jeffery—Estimates of the impact on the budget of tariffs and tariff collections are usually done by Treasury. The Department of Industry, Tourism and Resources, as the department responsible for industry assistance matters, would have been negotiating any changes in tariff rates. Then in association with the Treasury they will work it out, we will be told and we will inject it into our budget.

Senator MARK BISHOP—You do have knowledge of the reduction in duty collections from the Thailand free trade agreement, don't you?

Mr Jeffery—Yes. They are reflected in the PBS because that is now public and has been sorted out.

Senator MARK BISHOP—Are there any additional running costs that Customs will bear as a result of the Thai and Singapore agreements?

Mr Jeffery—There may be some compliance costs in relation to some of the issues, but they are relatively minor and I believe we are absorbing those.

Senator MARK BISHOP—You are absorbing those?

Mr Jeffery—We have indicated that if they become major we will put forward a request for additional funds, but at the moment we believe they are relatively minor.

Senator MARK BISHOP—Are systems changes required to reflect variations in duty? Are they extensive or minor?

Mr Jeffery—The relevant reference files in the computer systems reflect duty changes, and how many tariff items are covered depends on how extensive they are. Sometimes they are massive; sometimes they are fairly small. It is a reference file that refers to what the duty rates are for each country. They are going to be fairly extensive because they reflect a rate applying to those countries.

Senator MARK BISHOP—Are the changes that have to be done fairly extensive?

Mr Jeffery—You will have to show for each tariff line what the rate of duty applicable is to that country. That will be fairly extensive.

Senator MARK BISHOP—How many tariff lines would you have for Thailand? Thousands?

Mr Jeffery—I will correct this if I am wrong but last time I had a close look there were something like 2,500 or 2,800 tariff lines. You may have to put a rate in against every one of those. I will have to take that on notice and check it. The number of tariff lines was around 2,500 or 2,800. I will confirm the figure. I might be a bit high.

Senator MARK BISHOP—Are the figures for Singapore similar?

Mr Jeffery—That is the number of lines in the Australian tariff. Against each of those you will have to put a rate for Singapore, Thailand and eventually the US.

Senator MARK BISHOP—I see.

Mr Jeffery—So you have your tariff, which gives you the descriptions, and then—do not hold me to the number, which I will take on notice, but there might be 2,500—for each of those items you would have to reflect the applicable rate.

Senator MARK BISHOP—So is that line item a generic descriptor? For example, you would have manufactured steel product and then you might have light coil, hot coil, partial coil—

Mr Jeffery—That is correct.

Senator MARK BISHOP—and grades of coil.

Mr Jeffery—You will have a six- or eight-digit tariff item breaking it down. We then have to line them up against whatever the agreed outcome of the free trade agreement is. Some of them will be free at the moment, so you will not have to make any changes.

Mr Woodward—That is the point I want to stress. The majority, in terms of numbers, are duty free now. The rate is zero. As you cannot get any less than zero, all those that are currently zero are not going to be affected by a zero rate for Thailand or the United States. You are only focusing on those areas where there is a duty rate. They tend to be in textiles, clothing, footwear, motor vehicles—those sorts of areas.

Senator MARK BISHOP—So we are talking about 2,500-odd lines minus those that are zero tariff multiplied by the number of subentries or subcomponents for each that has to be changed.

Mr Jeffery—The 28 would be the total number and then the numbers will reduce it, so it will go down from 25 or 28. I will get the reasonably precise figure for you.

Senator MARK BISHOP—Was budget supplementation provided to do this for the Thailand and Singapore FTAs?

Mr Jeffery—To change the tariff rates? I do not believe so.

Senator MARK BISHOP—All right. Will these changes have to be incorporated into the CMR?

Mr Jeffery—They will have to be incorporated in a reference file that will apply in our current system and in any future system. The tariff rate reference file changes any time the rate of duty changes. The best one I can instance for you are the changes that occur every six months for alcohol, tobacco and cigarettes. We regularly make changes. Some are larger than others. The biggest ones usually occur when the international system changes. Sometimes there is a change to the harmonised system every three, five or seven years, but it depends on how big the items are on which the duty rate changes. Normally, out of the old industry assistance or Productivity Commission reports you would have the duty rate change, say, on motor vehicles and you might change 100 or 150 items. On a chemical item you might only change one, but it just depends on how broad it is. This is a broad one so it will cover basically anything that is not duty free.

Senator MARK BISHOP—What are the major changes proposed in the rules of origin as they apply, Mr Burns?

Mr Burns—The rules of origin changes for the US free trade agreement are pretty extensive. They will involve a complete rewriting of the rules of origin insofar as trade with the US is concerned.

Senator MARK BISHOP—A complete rewriting?

Mr Burns—Yes.

Senator MARK BISHOP—So what are the key—

Mr Burns—There is a different process by which they will be determined.

Senator MARK BISHOP—Is there? What was the old process?

Mr Burns—The old process involved simply, I think, the country of origin of the goods. The new process depends on where that is, where the goods are made and the originating materials which qualify for preferential treatment. There are a whole range of different criteria that have to be applied under the FTA, and they are different.

Senator MARK BISHOP—How many criteria are there?

Mr Burns—I do not think there is any particular number of criteria; there is just a different system. As we work that system out and start to work on the actual changes, we will see how that has to be presented.

Senator MARK BISHOP—What are the new criteria that are going to have to be applied?

Mr Woodward—We have guidance—the minister may want to involve himself in this—that questions in relation to the nature of the free trade agreement should be referred to the committee dealing with Foreign Affairs and Trade.

Senator MARK BISHOP—No, I do not accept that, Mr Woodward. I do not accept at all that you can say, ‘I am not going to answer questions about my own agency,’ when you have the brief in there and you have been involved in the negotiations.

Senator Ellison—Customs can answer only those questions on areas which it has been involved in but cannot go beyond that. If this is an area which is going beyond the involvement of Customs, it is quite clear that Customs cannot be expected to answer.

CHAIR—I think that is an entirely valid response.

Senator MARK BISHOP—But these are the two points—rules of origin and intellectual property—that Mr Burns said Customs had been involved in, and he has a brief there. I am not asking about matters that are to do with tariff reduction and organised by Treasury; I am asking about the matters that Mr Burns said Customs was involved in.

Mr Woodward—There are contextual issues that have to be taken into account. All these fit into the broad framework. We have not seen the agreement.

Senator MARK BISHOP—He has got it in front of him.

Mr Woodward—We have guidance which suggests that questions in relation to the agreement ought to be put to—

Senator MARK BISHOP—Where is the guidance?

CHAIR—Senator Bishop, I am trying to hear out Mr Woodward, which would be helpful for the committee and the process.

Senator MARK BISHOP—Table the guidance that says it is not to be asked here.

CHAIR—Senator Bishop, I just asked you to let me hear out Mr Woodward, which is not an unreasonable request and one I intend to pursue. Please continue, Mr Woodward.

Mr Woodward—I do not have with me the guidance that we have. We certainly had guidance and—

Senator MARK BISHOP—You do not have the guidance here? Can you get it? It is in written form, isn't it?

Mr Woodward—We have guidance. I will need to check whether it was in writing or whether I got it orally.

Senator MARK BISHOP—So we might have verbal guidance.

CHAIR—We might all know what Mr Woodward does or does not have, Senator Bishop, if you would simply let him complete his answer in response to a question from the chair. Please continue, Mr Woodward.

Mr Woodward—The information we have is that, because the agreement has been negotiated on a total approach, individual agencies should refer questions that are put to them by the committees to the committee that deals with foreign affairs and trade as the Department of Foreign Affairs and Trade is the overarching authority in relation to the agreement.

Senator Ellison—Perhaps I can assist. I will undertake to take these questions on notice.

CHAIR—If answers cannot be provided this evening, Minister, you will do that?

Senator Ellison—I will do that.

CHAIR—And you will assist Senator Bishop by providing a response as soon as possible, I hope. I certainly was not under the impression that Mr Burns indicated that he had the text of the document in front of him at all, Senator Bishop, which you implied or indicated earlier. Mr Burns can you clarify what it is that you have?

Mr Burns—I certainly do not have the text of the agreement—

Senator MARK BISHOP—What have you got?

Mr Burns—I have some notes from my staff as a briefing for me. To clarify, what we have is a policy outcome from the FTA negotiations in Washington. The rules of origin was one of the last issues resolved—a very complex issue. That was done between the ministers and we have had that reported back to us. We, like other agencies that are responsible for implementing those changes or considering what needs to be done to implement those changes, are considering what that work is. That is where we are right now. I do not think my staff have seen the text of the rules of origin. They are hundreds of pages long and we have not seen them yet but they should be public in the next few weeks.

Senator MARK BISHOP—Mr Woodward, who advised you, in what form and when that these questions were not to be answered here in this estimates round at this committee?

Mr Woodward—My recollection is that it was oral but I will find that information—

Senator MARK BISHOP—Oral from whom?

Mr Woodward—From Foreign Affairs, but as to who in particular I have no idea. I will get the information—

Senator MARK BISHOP—What—you received an anonymous phone call?

CHAIR—Senator Bishop, I do not think that is necessarily what Mr Woodward said.

Senator Ellison—In government, quite often you have a central agency or department that deals with an issue which involves many other portfolios. It is a decision of government that questions in relation to that issue be taken on board by that particular agency or department. Attorney-General's is the lead agency for a number of issues where it takes questions and has the lead. It is not uncommon to have that. We will take that on notice and provide the answer to Senator Bishop. We will see if we can do it tonight.

CHAIR—And in relation to other questions that Senator Bishop is seeking responses for tonight, if they cannot be responded to tonight, Senator Bishop, the minister has indicated he will take those on notice.

Senator MARK BISHOP—Did you make a diary note of the conversation, Mr Woodward?

Mr Woodward—They did not talk to me. My officers—

Senator MARK BISHOP—Who did they speak to?

Mr Woodward—I cannot even recall which officer told me, but, no, I do not have a diary.

Senator MARK BISHOP—Let us see if I have got this right: you have now changed your story and so it was someone else in the department who received a phone call.

Senator Ellison—No, I think what—

Senator MARK BISHOP—That is what he just said.

Senator Ellison—No, Mr Woodward's evidence was that we received advice. He did not say he personally did. You have to remember that as the CEO of Customs he is referring to Customs receiving advice. I do not think it could be said that he was saying emphatically that

it was him personally. He has indicated the situation and we will make some inquiries. If we can get that information to you tonight we will.

Senator MARK BISHOP—Which officer advised you that they had received a phone call from DFAT, Mr Woodward?

Mr Woodward—Sorry—

Senator MARK BISHOP—It is the name of the officer.

Mr Woodward—I cannot tell you the name of the officer because I—

Senator MARK BISHOP—Why not?

Mr Woodward—If I knew I would tell you.

Senator MARK BISHOP—You can't recall?

Mr Woodward—I do not know. We have a number of people involved and a number of areas involved in relation to the free trade agreement—various parts—and as to specifically who I cannot tell you.

Senator MARK BISHOP—You can't tell me because you do not recall?

Mr Woodward—I cannot recall who the officer was, but I can certainly recall that there was guidance that was provided to us. I have said that I am perfectly happy to follow up with something in writing on that particular issue.

Senator MARK BISHOP—So you had verbal advice from an officer of your department, whose name you cannot recall, that you are not to give evidence to this committee on Customs matters that your own department acknowledges it was involved in—that is, rules of origin and intellectual property?

Senator Ellison—Madam Chair, I—

Senator MARK BISHOP—I have never heard a greater load of nonsense in my entire life, with due respect.

Senator Ellison—Madam Chair, there is no need for that. I have sent a member of my staff to visit the offices of the ministers for foreign affairs and trade and we will get to the bottom of it. You will have that answer before we leave tonight.

CHAIR—Thank you, Minister.

Senator Ellison—Can we move on?

CHAIR—Indeed.

Senator MARK BISHOP—I have never heard a greater load of rubbish in my entire life, Mr Woodward.

CHAIR—Senator Bishop, you should hang around in the Senate for a little bit longer sometimes.

Senator MARK BISHOP—That is what it is: rubbish.

CHAIR—I think it is inappropriate to speak to officers in that manner, but that has always been my view.

Senator MARK BISHOP—It is a very difficult proposition to understand—that the chief officer of the department does not recall verbal advice from his own officers.

CHAIR—I can imagine how you might find it difficult to understand.

Senator Ellison—Madam Chair, it is entirely reasonable that Mr Woodward might not remember who spoke to him on a given matter—who the officer was—and in fact, quite frankly, the identity of the officer is totally immaterial. If we need any directive on who will answer these questions, we will have that shortly from either the Minister for Trade or the Minister for Foreign Affairs.

CHAIR—Thank you for that undertaking, Minister.

Senator Ellison—I have given my undertaking that we will take these questions on notice. As is the case with Customs—and Senator Bishop would know this—Customs implements a good many areas of government policy but it does not have policy making responsibility. So when you ask Customs about various things, such as when you are dealing with excise and a few other things, you have got to go to Treasury or somewhere else to get the answer, because they do not have responsibility for policy making for rules of origin and copyright, for instance. That is a matter which resides elsewhere. I have taken these questions on notice and I would ask that questions be put to the officials in a reasonable fashion.

Senator MARK BISHOP—I would request that you instruct the chief officer of the department to answer questions in a like fashion. That would be a more useful thing.

CHAIR—Senator Bishop, do you have any questions?

Senator MARK BISHOP—Yes, I do. Can we now turn to cost recovery. What is the total of the Customs budget which is cost recovered in part or in full?

Mr Jeffery—Can I get a bit of clarification, Senator. Are you talking about cost recovery for the import processing side? We basically have two cost recovery regimes: we have one covering import processing and we have one for the passenger movement charge.

Senator MARK BISHOP—For both—the total and then the disaggregated amounts.

Mr Jeffery—The passenger movement charge raises \$296.5 million. I will have to get some advice about how much of that comes to Customs, because that figure covers customs, immigration and quarantine activity. We administer that. I am told that is not hypothecated—it does not come directly to us. So the charge raises that. We get a budget appropriation to run those but we manage the \$295 million. The import processing charge raises, if my maths is correct, about \$118 million. The basic import processing charge, which is the charge that applies to the processing of imports and exports, is \$92.3 million. On top of that, there are two separate charges that have been added in: one is the one we were talking about earlier for the container X-ray facility and that is the logistics charge, which raises about \$16.3 million; and the charge added on for IQI, which is the old foot-and-mouth charge of \$10.6 million.

Senator MARK BISHOP—What was the last one?

Mr Jeffery—That is the quarantine initiative charge.

Senator MARK BISHOP—In terms of that import processing charge, does that reflect 100 per cent of the actual cost? If not, what figure does it reflect?

Mr Jeffery—It is close to 100 per cent. It reflect the cost to us of providing the import processing but it does not cover issues like community protection or exports. It is the cost of processing imports. So it is the documentation costs, the technology costs and those sorts of things. I would add that that component of the charge has remained unchanged since 1997. What we raise varies on the basis of the volume of imports, of course.

Senator MARK BISHOP—The other figure was \$296 million. What was that for?

Mr Jeffery—The passenger movement charge.

Senator MARK BISHOP—Is that also 100 per cent of the actual cost or only a percentage?

Mr Woodward—A point to make in relation to both of them—and I think we have made this point before—is that they are taxing acts. While there is an attempt to actually recover the costs, there is no necessary coincidence of the actual costs and the charge. All of the money goes back into consolidated revenue and we get appropriation to enable us to cover the costs of our operations.

Senator MARK BISHOP—I understand that point. The government levies a charge, it goes into consolidated revenue and you need to get X amount of dollars to run your department.

Mr Woodward—The original intention was to make both as close as possible to the actual costs. The difficulty with the passenger movement charge was that it was an attempt to pick up the costs of Customs, quarantine and Immigration. We actually administer the fund.

Senator MARK BISHOP—But the original intention was to make the actual cost as close as possible to the charge that is made?

Mr Woodward—That was the original intention. It has not always worked out that way in relation to the passenger movement charge. I think there have been differences in the way in which the various components—that is, Customs, Immigration and Quarantine—have actually done their calculations. I can recall that, in at least one year when we were probed at this committee, there was a fairly significant difference between the assessed costs and the amount of the charge.

Senator MARK BISHOP—Was that policy decision to try to make the actual costs reflect the charge to the user a decision of the current government or the previous government? Is it a longstanding decision?

Mr Jeffery—The passenger movement charge, according to my advice, was introduced in July 1995. That was under the previous government.

Senator MARK BISHOP—And the import processing charge?

Mr Jeffery—That was introduced in 1997.

Senator MARK BISHOP—So there has not been any change in the policy approach by government since the two charges were introduced?

Mr Jeffery—On the import processing charge, they have used that methodology to raise the charges for the container X-ray facility and the IQI initiative. The container X-ray facility was, I think, last year and the IQI was about two years ago.

Mr Woodward—There have been changes in concept. The original concept of the import processing charge would not have embraced what we describe as community protection. Obviously, container X-ray facilities are about protection of the community, so there has been an evolution in approach.

Senator MARK BISHOP—By ‘community protection’ do you mean measures that have been determined by the government post September 11?

Mr Woodward—No, I mean all of those initiatives that I can describe as having a law enforcement orientation. That could be drugs, firearms, terrorism—it could be a whole host of things. The original concept did not embrace community protection; that has now been watered down to that extent. But no charge currently applies in relation to exports.

Senator MARK BISHOP—Can we now talk about CMR. Can I have a report on the current state of play of the ICS and any slippages in the timetable?

Ms Peachey—Senator, you will remember that at the last estimates I took you through a timetable of the various phases, so I will build on that. It really is the last phase that we are in at the moment, which is the second part of imports—the import declaration side. You do not want me to go back through any of the stuff that I gave you before?

Senator MARK BISHOP—I do not, unless there has been a change from what you outlined.

Ms Peachey—No change from the last time, only to the last phase, and that relates to the import declarations. I said at estimates last time that the build would be completed on 24 December. In fact we have had a 19-day slip to that build timetable—it is finished now—and we have moved into product tests, so we have slipped about a month. Other than that, there is no change to the timetable on the ICS side.

Senator MARK BISHOP—Is the import declaration the most recent module for testing?

Ms Peachey—It is just in testing with the consortium at the moment; it has not come to us for testing. I am sorry, did you mean for the industry test side?

Senator MARK BISHOP—Yes.

Ms Peachey—No, exports is the module for testing with industry, and there is the first phase of the imports testing on the cargo reporting, although our concentration has mainly been on the exports side.

Senator MARK BISHOP—So where is the export testing at?

Ms Peachey—Still a little slower at the moment than we would want. You will recall that at estimates last time I said to you that we were aiming to roll exports out for live, to ‘go live’, to replace the current exit system on 1 March. You will be aware of announcements that have been made that that date has slipped, but it has not slipped to another date. In December we met with the software developers and industry representatives and talked to them about the process for industry testing. You will be aware, as you have made comments about it, that our first product that went into the industry test environment was unsatisfactory—it had a number of incidents that were reported to us. You will recall our discussion last time.

Senator MARK BISHOP—Yes.

Ms Peachey—So, in consultation with the software developers and with some key industry users, we determined that we would make a lot of the fixes to the exports—the incidents that had been reported to us—and put another version into the industry test environment, which we did on 21 January. We were going to move for a Christmas period but of course that was not their desire, and that gave us an opportunity to do some more resolution for some incidents. So on 21 January we put a new version into industry test. It has been determined that we will work with the software developers and the key industry players to get their satisfaction with the exports functionality and, from the point of that agreement, then move to a roll-out schedule and announce a date.

Senator MARK BISHOP—Are you having large numbers of faults reported on the export testing side as yet?

Ms Peachey—We have had a number of faults and we have corrected a number of faults. To date, since 10 December we have corrected 161 incidents. We still have about 159 to rectify, 117 of which are particularly related to the industry connection side. We have gone out to industry with a release schedule and release notes. We talk about what the incidents are and the likely time within which they will be fixed and promoted to the industry test environment. That has certainly been a far more transparent way of dealing with it, particularly for the software developers. Each week we are resolving incidents to a set timetable that is published to industry.

Senator MARK BISHOP—In your forward planning is there a date for the conclusion of the export testing?

Ms Peachey—We have made the undertaking to industry that we will work with them to ensure that they consider the system to be robust. From that point they would like a minimum of three months to go live so that they can roll it out to their clients or, in the case of in-house software developers, roll it out to all of their sites around Australia. We will support them in some of the training that is associated with that.

Senator MARK BISHOP—I understand the point you are making about industry not going forward until they are satisfied that it is, to use your word, robust. From your experience, are you able to say now that the system should be sufficiently robust by April or May—or are we talking about the end of the year, or what?

Ms Peachey—I will ask the chief information officer on the technical side to comment on that. We are certainly moving towards getting a more robust system but we want to get it right. We do not want to give industry any expectation that we are not working very hard to make it a robust system.

Mr Harrison—The issues around the implementation have moved to some extent from the development of the software to the implementation of the system—in other words, moving to a more technical series of problems. We believe that most of the functionality type issues have already arisen and been dealt with. What we are dealing with now are performance issues of the system in operation. There are still a number of problems or incidents in front of us in relation to that that we are currently working through. I do not have a better crystal ball than anybody else but I would expect us to make significant progress on that over the next couple of weeks.

Senator MARK BISHOP—When you say performance issues, what do you mean?

Mr Harrison—The system is based on messages being sent by people in industry sitting in front of a computer and us processing those messages and sending them back. The performance issue I am talking about is that that has to be conducted within a reasonable amount of time. We are doing testing on that process at the moment. Some messages go back within a reasonable amount of time and some do not. As I say, we are monitoring and testing that, looking for where the difficulties might occur and fixing them as they arise.

Senator MARK BISHOP—Is the fault on the hardware side, on the software side, on the operator side, or what?

Mr Harrison—It is difficult to give you a sensible answer briefly. This is a very complex deployment and it is probably true to say that, of the list of 117 incidents that we have, all of those areas would be represented.

Senator MARK BISHOP—Is the system sufficiently large to allow the sort of volume that is being used to operate effectively?

Mr Harrison—The system has been specified and designed to handle significantly greater volumes than we expect to see in production. It has been designed and specified that way. It is true to say that it is not currently performing to that level of specification.

Senator MARK BISHOP—That is what I am told, so my question is: if your system was designed to have a use rate much more ahead of that currently being used in the trial, is the problem on the hardware side that cannot handle the input? Or is it on the software side that does not have the roots to allow it? It sounds like the latter to me.

Mr Harrison—To give you some idea, the expected daily number of messages is about 3,600. We have designed this system to handle 3,600 messages per hour. In our test environment we have achieved 2,400. We have not achieved that in the production environment as yet. As I say, it is a very complex deployment. In our investigation the first thing we need to do is make sure that the deployment within our production environment mirrors the deployment in the test environment. That is the work we are currently doing. As I say, in the test environment we are achieving 2,400 per hour, which is more than enough.

Senator MARK BISHOP—Have Qantas indicated how much they have spent on their system so far? The figure I have seen is a million dollars.

Ms Peachey—Not to me.

Mr Harrison—Not to me.

Senator MARK BISHOP—You are not aware of that? Okay. The minister had a meeting with industry reps on 27 January, I think it was.

Ms Peachey—It was 28 January.

Senator MARK BISHOP—Did Customs make a number of commitments at that meeting? In particular, did Customs offer to pay for the retraining of industry staff on the new version of the export module?

Senator Ellison—I was not at the whole of the meeting. I was there for a good part of it, but it continued afterwards. Even after the meeting had concluded I understand there were

discussions. Training of staff was raised with me and I undertook to look into it, which we are doing. As to any commitment by Customs on that score—

Ms Peachey—Certainly training was raised. The discussion first of all was around the sorts of industry training that we do, particularly with the CBFCA and AFIF. But we also train, directly, exporters without agents and we will be doing that with importers without agents. We have committed to work with both those associations and run independent sessions for refresher training. Given the lapse in time, we have had some intensive training on exports. Because the production date for exports will be potentially some months away, we have committed to working with the associations and also to running independent refresher training.

The other thing that was mentioned at the roundtable was that it is not just the running of courses and face-to-face courses. Everybody impacted by CMR has their own business to run. Releasing people from the workplace and doing refresher training is another burden that we certainly understand all industry players have.

Customs are also developing interactive tutorials so that they will be available for industry—for any individual or any individual company—to do refresher training at their own place, and it is certainly free of charge. We provide all of the reference material for all of the training for exports. The freight forwarders and the customs brokers separately trained their industry membership. In fact, there is a collaboration for imports and Customs, and the two associations are working together to provide that training.

Senator MARK BISHOP—As I understood you, Ms Peachey, you said Customs had undertaken to cover the cost of refresher training. What is refresher training?

Ms Peachey—We have already done the full training on the exports functionality, so we have already run courses in conjunction with the CBFCA and AFIF, the Australian federation of international freight forwarders, and run independent training. That has been completed. Given the lapse in time from the time we did that training to the time exports will actually go live, what we will do is another round of training and also provide interactive tutorials, some fact sheets and the like to support a refreshing of what has already been trained.

Senator MARK BISHOP—Do you have any idea of the cost of that refresher training?

Ms Peachey—Can I take that on notice? I just do not know what we have committed. Much of the material is already written, but it is about our own officers being able to be available around Australia, and I have not got those direct costs.

Senator MARK BISHOP—Would the refresher training involve thousands of people?

Ms Peachey—I will give you an indication of how many people we have trained. Since January 2003, we have had 4,417 industry participants at training courses, and we expect over 6,000 to attend courses during the 2004 calendar year. That is what we have planned for. In addition to that, we are developing these interactive tutorials, we have presented at over 50 conferences of different industry groups around Australia, we have had 73 articles published and we have released 20,000 CMR information packages and 10,000 export business packages, together with a range of fact sheets. We have had a large investment in the

development of that material, particularly for exports, and we will be using that same material in the refresher training.

Senator MARK BISHOP—Is the refresher training going to apply to the 4,000, the 6,000 or the 10,000?

Ms Peachey—For exports, 4,000—about that. Some of them will not take it up and some of them will use the interactive tutorial. We will not know who is accessing that. We will provide that to them.

Senator MARK BISHOP—Is the deadline of July for imports still current?

Ms Peachey—July 2004?

Senator MARK BISHOP—Yes.

Ms Peachey—You will recall that at the last estimates I think the minister made mention of the legislation that was in the parliament. The parliament has now agreed to a further 12-month extension, taking it through to the proclamation of the legislation, to July 2005. Imports will be finished in terms of the build, as I mentioned, and all of the testing, by about May this year. We will obviously need to go through a process of integrating the application, again with a gateway, so the issues that Mr Harrison was raising about all of the integration issues need to be gone through. We also need to work with the industry software developers about the most appropriate time to roll out that functionality and their readiness and the training associated with that. That is a longwinded answer to your question. The system itself will be built by the end of May and then the integration will take probably—

Mr Harrison—We are very conscious that the imports area is a larger beast than exports, and we are, to some extent, trialling the processes that we need to conduct imports currently. But our experience has been that that process of integration has taken about two months.

Ms Peachey—Our aim is to get the system into production as soon as possible, obviously, working with industry in terms of their time pressures as well.

Senator MARK BISHOP—Are large numbers of software developers still indicating dissatisfaction with the system or have their problems been bedded down and are they now indicating satisfaction?

Ms Peachey—I think it would be fair to say that they are not fully satisfied with the system yet. It is clear that they have seen improvements in the functionality in this next version of industry test, but they are still not happy with the response time issues that Mr Harrison was alluding to.

Senator MARK BISHOP—So we have response time and performance issues on the testing on the export side. We have yet to start the import side. We will learn some lessons from the export side, but can we anticipate the same sorts of problems on the import side when we go to test?

Mr Harrison—Hopefully not. Hopefully we will have less. If I can add to Ms Peachey's answer, we do not yet know, once the performance issue has been resolved, what other issues that might itself throw up. We hope they will be minimal too, but we have to work our way through that.

Senator MARK BISHOP—If we have access problems and performance problems, the software people would not be happy yet.

Mr Harrison—But we intend to work closely with them.

Ms Peachey—And we are.

Senator MARK BISHOP—What is the current range of time taken for transactions—best to worst?

Mr Harrison—In the last series of tests, with the end to end transaction time that we have available to us—and I can qualify the number until the cows come home—the best total has been about five minutes and the longest has been about seven hours.

Senator MARK BISHOP—Is there an equal distribution in that spread?

Mr Harrison—I should say that five minutes is a better performance than we currently get in our system in production now. There is a degradation with load. The first go through quickly.

Senator MARK BISHOP—When you put your specifications in the design, how long did you specify the transaction time should be?

Mr Harrison—That is a difficult question to answer because some components of the transaction time are not within our control. In other words, we use Internet service providers, so there are components of the transaction time for a message that disappear from view. We have not guaranteed that service.

Senator MARK BISHOP—In that case, let me limit the question to matters that are within your control.

Mr Harrison—I need to take the question on notice. There are a number of stages within the sphere of our control that have different answers to that question.

Senator MARK BISHOP—The reason I asked is just that I wanted to know what you regard as reasonable. If industry sends you an invoice or a query, is an hour a reasonable response time—or a day or five minutes?

Mr Harrison—With the tests that we have just conducted—and I have to say that these are limited tests—for the messages that were within our environment—in other words that came in through the gateway, went to the software, were turned around and went out through the gateway—the total time was just short of 30 seconds. I would suggest that that is a reasonable time, but in order to answer your question about what was specified, you would need to go through the stages of that.

Senator MARK BISHOP—That is right. Please can you take that on notice. It is a technical question. The United States has announced new security processes for US airports, including biometrics such as fingerprinting, visual recognition—VRT—and iridology. Press reports indicate that DFAT is doing its own work in some of these areas as well. What have been the results of your evaluation of the VRT for Qantas aircrew at Australian airports?

Mr Woodward—If we are now onto a series dealing with passenger processing and biometrics, we have another team that would deal with that.

Senator Ellison—You are onto biometrics now?

Senator MARK BISHOP—Yes, I am.

Senator Ellison—Before we go to that, we might just get back to you on that question of the free trade agreement. My inquiries have revealed that an interdepartmental committee meeting was held last week, there were a number of departments and agencies present, and there was agreement that agencies and departments could answer questions within their responsibility, but otherwise questions on the free trade agreement had to be referred to Trade and the appropriate estimates committee in that regard. There is another IDC meeting, I understand, this week or next week—it could be either; I am not sure—to deal with questions which have come in on the free trade agreement. In relation to rules of origin and copyright, as the minister for customs I certainly do not have responsibility for those two areas. The Attorney-General has responsibility for copyright, and the rules of origin are with the minister for industry, as I understand it. I might need correction there. Certainly, I do not have that responsibility; nor does Customs, although Customs is involved in the implementation. Having said that, we do have Mr Cornall here, the Secretary of the Attorney-General's Department, who can answer some questions on copyright and also the question as to whether the copies of the agreement have been provided to people.

Senator MARK BISHOP—We may as well go ahead and do that now, Mr Cornall, since you are here.

Mr Cornall—I was just going to add to what the minister said—that officers of the department attended the meeting last Thursday, they have copies of those parts of the agreement that are relevant to our responsibilities in the negotiations—

Senator MARK BISHOP—Officers of A-G's or officers of Customs?

Mr Cornall—Attorney-General's Department. It is their understanding that no-one outside Foreign Affairs and Trade has a copy of the whole agreement and that that at the present time is being finally edited. When that process is complete and agreed with the United States, it will be put up on the trade website. That is expected to be within a few weeks. The meeting was convened by Ashton Calvert, the Secretary of the Department of Foreign Affairs and Trade, and was chaired by Deputy Secretary Joanna Hewitt.

Senator Ellison—In relation to copyright, if there are any questions as to the substance thereof, we can take those questions on notice. The department has responsibility for that. I understand that Customs was represented at the meeting last week, but what Mr Woodward has said is quite right—that where questions are asked of agencies and departments which are not their responsibility, they are to be referred to the estimates committee or you can ask those people yourself. Attorney-General's has got copyright; we can take those on notice. In relation to rules of origin and the substance there, we can refer those questions to Foreign Affairs and Trade—indeed, to the appropriate minister. Madam Chair, I think that that clarifies the situation as to how the government has approached this. It was a very big agreement which covered all areas of government, and you could not expect one part of government to answer for the whole. It was thought appropriate that it should be done on this basis. That is how the government is approaching questions on the free trade agreement.

CHAIR—Thank you. The committee appreciates that clarification. Do you have questions to pursue in this area now, Senator Bishop?

Senator MARK BISHOP—I did not understand the point that was made by Mr Burns at the outset. I understood him to say that, in relation to rules of origin and intellectual property, ACS had provided detailed advice to DFAT to handle the negotiations and had received a report on the outcome of the negotiations. To me, Mr Burns appeared to be reading from a document of some substance on those issues. Now I hear Mr Cornall saying that they are matters for A-G's and not for the Customs Service. Is that right?

Senator Ellison—Copyright is the responsibility of the Attorney-General.

Senator MARK BISHOP—I think copyright is a subset of intellectual property.

Senator Ellison—That is part of it.

Mr Cornall—Part of it, yes.

Senator Ellison—And questions should be directed to Attorney-General's in that regard.

Senator MARK BISHOP—In that case, what was Mr Burns talking about?

Senator Ellison—As I say, as with so many issues, Customs implements the policy; it does not make the policy. For instance, with copyright right at this moment we are experiencing counterfeit goods coming through the border. Customs looks out for counterfeit goods and has a role in implementing the policy. If you want to know about the policy, you need to ask the Attorney-General.

Senator MARK BISHOP—All right. I can ask Mr Cornall?

Senator Ellison—Yes.

Senator MARK BISHOP—Could you outline the major changes that have been agreed in the FTA with the United States as they affect intellectual property?

Mr Cornall—This comes under output 1.6. When we dealt with output 1.6, we had officers here who were in a position to answer that. They had prepared for that question. Our role is not intellectual property but copyright, which is a limited part of the intellectual property question. One of the significant changes in relation to copyright was the extension of copyright by 20 years. There are other issues to do with devices to protect copying of copyright; there are issues to do with libraries having rights to go round those. They are detailed questions which we are quite happy to answer, but I will have to take them on notice because I was not personally involved in that level of detail in the negotiations.

Senator MARK BISHOP—All right. Thank you. Can we go back to security? Mr Woodward, you were going to give us the results of the evaluation conducted on the VRT by Qantas.

Ms Batman—Sorry, could you repeat that? I missed the initials you used.

Senator MARK BISHOP—The results of the evaluation conducted of the VRT for Qantas aircrew at Australian airports. Have you had access to that evaluation?

Ms Batman—It is the VRT I do not understand.

Senator MARK BISHOP—The visual recognition technology.

Ms Batman—It is not an abbreviation we have used. The project name that we have for this is SmartGate. It uses a facial recognition technology. The evaluation covered a range of aspects of what is an operational trial. There is the facial recognition software, the kiosk, the ergonomics and the usability. Overall, we had two independent international experts in biometric testing look across the evaluation and the technical results and do a report on that. I could quote a short piece from their findings, which is basically written by Dr James Wayman, from the United States:

Dr Tony Mansfield and I—

Dr Mansfield is the other evaluator—

conclude that SmartGate has met the original program objectives. The performance levels currently attained by SmartGate are remarkably good for an operational facial recognition system and we know of no other such system with documented performance at this level.

Senator MARK BISHOP—I was advised that there were scale problems with the volume of users—that, in relation to the database that you had to tap into to verify that the person matched the documentation, as the volume of users increased the incidence of incorrect responses increased significantly. Is that correct?

Ms Batman—No—in effect. There are scalability issues with this system. We have one kiosk, and it is operating at one airport for Qantas aircrew. There are clearly issues about scaling that up.

Senator MARK BISHOP—What do you mean by scaling it up?

Ms Batman—As I say, there is one of them, there are 4,500 people enrolled in it and it has done 85,000 transactions. If you wanted to take the same system and operate it at eight international airports and do several million passengers, not crew, there are certainly scalability issues that would have to be worked through. They range from ergonomic issues to usability issues. You could not get a more professional group of users than Qantas aircrew, for example. They are professional travellers. There are issues there in relation to the fact that they know how to put the passports down; they learn how to do it. There are certainly issues around scaling that up to large-scale passenger numbers that we would need to work through. There are issues that we have not yet tested in terms of having it networked across more than one site. They are issues that we would regard as scalability issues that need to be worked through and tested. The evaluation has recommended that we do that, but the system is ready to do that. It works at this one site. It says that certainly there are issues to work through, but it recommends that we do work through them.

Senator MARK BISHOP—I was told that the error factor was something in the order of 10 to 12 per cent in the trial. Is that correct or incorrect?

Ms Batman—No, that is not correct. There are two ways that you may measure error. One is that the system incorrectly rejects somebody that it should have accepted. In that case, in this system, the rejection rate of people that should have been accepted is two per cent. The other type of error is that the system falsely accepts someone that it should have rejected. That error rate is about one per cent.

Senator MARK BISHOP—You have identified these problems that have to be tested as you send the system out to the other airports. Has the decision been made to proceed with a roll out for testing?

Ms Batman—No. The government is yet to make a decision on the future of this trial.

Senator MARK BISHOP—When do we expect the response on that?

Ms Batman—It is a matter for the government to consider and decide.

Senator Ellison—It is being considered. I cannot give you a time line.

Senator MARK BISHOP—What has been the cost of the VRT so far?

Ms Batman—I do not have the current costs. I cannot even remember the date that we did the costing, but it is of the order of \$2 million to date. I will take that on notice and provide you with the correct figure as at this date.

Senator MARK BISHOP—All right. Will Australia meet the 26 October deadline set by the United States for new biometric technology to be in place for passports?

Ms Batman—That is a matter for the Department of Foreign Affairs and Trade. It is a question of whether the Australian passport meets the standard set by the US. It does not have anything to do with the processing at the Australian border.

Senator MARK BISHOP—Thank you. Does it have any implications for Customs?

Ms Batman—The US legislation?

Senator MARK BISHOP—And the implementation date of 26 October for passports.

Ms Batman—No direct implications. I guess the fact that a lot of countries are working to meet the US deadline indicates that in future there will be more passports available that will have a biometric in them, which offers the opportunity for Australia to take advantage of that. But there are no other consequences.

Senator MARK BISHOP—And that is really a DFAT issue?

Ms Batman—Yes.

Senator MARK BISHOP—What is being done to implement the new ILO convention 108 regarding biometric ID for foreign ships' crews? Is that within the purview of Customs?

Ms Batman—No, it is an immigration issue, I think, if any. I am not aware that there is an actual requirement around biometrics for ships' crews at the moment.

Senator MARK BISHOP—Has DIMIA issued a directive that, from 1 November last year, each foreign ship's crew must have a valid passport as well as an identity document, confirming status as a crew member of that ship?

Ms Batman—Yes, I believe so.

Senator MARK BISHOP—On how many occasions has Customs found a breach of that requirement since it came into effect?

Ms Batman—I am sorry, we do not know the answer to that one.

Senator MARK BISHOP—You do not keep stats on that or they are not here?

Ms Batman—I just need some assistance from my colleague.

Mr Woodward—I think the short answer is that we do not know the answer. We will attempt to get the answer if we can get it before the—

Senator Ellison—We will take it on notice.

Senator MARK BISHOP—Have any shipping companies been fined for not adhering to that new requirement as yet?

Ms Batman—That is a matter for the department of immigration.

Senator MARK BISHOP—Customs do the checking role.

Ms Batman—Yes.

Senator MARK BISHOP—What would happen if the Customs officer discovered that the ship's officers or the ship's owners were not complying with the requirement in Australian ports?

Ms Batman—The actual operation is not in my area.

Ms Grant—If I had your question correct: what do we do when we find noncompliance with the requirement for the passport—

Senator MARK BISHOP—Yes.

Ms Grant—The procedure that we are following at the instruction of the immigration department is to refer it to that department. They have the responsibility for any penalties that may be imposed.

Senator MARK BISHOP—Are you aware of how many incidents there have been since DIMIA's new requirement was put in place where crew have not had passports and proper ID?

Ms Grant—No, I do not have those stats, Senator.

Senator MARK BISHOP—Would your service have those statistics?

Ms Grant—I would have to take that on notice and see if we have recorded them. We would certainly have in our system those details if we had boarded the vessel and discovered that particular breach. Yes, we would record it.

Senator MARK BISHOP—And that would be reported up the chain to you, Ms Grant, because you are the national manager?

Ms Grant—A detail at that level would normally not come to me. It is an operational matter that is handled out in our regional offices so the regional office of Customs would deal with their counterparts in Immigration. It is not a matter of such significance that it would cross my desk in the normal course of events.

Senator MARK BISHOP—If crew members without ID were allowed ashore, would that be a DIMIA matter or a Customs matter?

Ms Grant—Customs acts as the agent of Immigration for doing the migration clearances for crew on vessels arriving in Australia so, if they did not have the relevant documents, we could not actually provide them with immigration clearance into Australia. We would need to

put procedures in place to make sure that they did not leave the vessel and come into Australia.

Senator MARK BISHOP—You are acting as agent for DIMIA and your office finds that the crew do not have the adequate documentation as required. What procedure would the officer follow?

Ms Grant—The officer would speak to the vessel's master and say, 'This particular crew member cannot leave the vessel. Please confine this crew person to the vessel.' We would then report that to Immigration and it would be handed over to Immigration for the processing and decision about whether they think that person should be issued with a visa or should not be allowed entry to Australia.

Senator MARK BISHOP—So it would not be your job to detain the person on board or to require that a security guard remain within the vicinity of the ship to prevent the person entering without the appropriate paperwork?

Ms Grant—That is not the role Customs would play. Customs does rely on the cooperation of the master of the vessel. If we considered that the master of the vessel posed a risk, of course we would put measures in place to ensure that the instruction was not disobeyed.

Senator MARK BISHOP—That could involve a security guard or—

Ms Grant—It could involve surveillance. We may use our CCTV network to watch movements on the vessel and respond to a breach if that were the case.

Senator MARK BISHOP—Has any consideration been given to the US process whereby ships with unacceptable crew are not allowed to dock or leave until all the crew are reconciled? Is that practice under consideration at all?

Ms Grant—I have not been involved in any such considerations.

Senator MARK BISHOP—That would be a DIMIA matter, not a Customs matter?

Mr Woodward—I am really not sure. I think there would be a number of agencies which would have to contribute to that as a solution. The US adopts a tougher approach than many other countries, certainly including Australia, but we probably have more information and adopt a tougher approach than many other countries. I am not sure that we are actively pursuing that, but if that information is wrong we will correct it.

Senator MARK BISHOP—Is any consideration being given to the introduction by Australia of the US 24-hour rule on freight manifests?

Mr Woodward—This is the advice 24 hours before the vessel sails?

Senator MARK BISHOP—Or docking, yes.

Mr Woodward—We have considered that. One of the pluses that we will get out of the integrated cargo systems that we were talking about earlier is not only better information generally but a far more powerful tool to actually analyse, for the purposes of intelligence targeting and profiling, information that we do have on cargo movements. We are not moving at this stage, and we do not see the need to move at this stage, to the US 24-hour approach; nor do the US believe that there is a requirement in relation to US-Australia trade because

they are quite confident that the systems we have, the people we have and the basic non-corruptibility of our people is as much of a guarantee as anything.

Senator MARK BISHOP—A lot of goods are described on freight manifests as ‘foodstuffs’ or ‘general cargo’. Are those sorts of generalised descriptions considered adequate by Customs in the context of overall security?

Mr Woodward—Are you talking about the 10 or so identifiers from the manifest which are included in the 24-hour requirement, or are you off that subject and on to a general query?

Senator MARK BISHOP—I am talking about the adequacy of the descriptors used on the manifests that are declared, not particularly relating to the 24-hour rule.

Mr Woodward—There are evolving requirements which are being picked up under the international trade modernisation legislation. We will have far more information than we have had before, and that information is becoming progressively available. I am not aware that what we can reasonably expect following the full implementation of the international trade modernisation legislation is insufficient. But remember that the ITM legislation was drafted and passed by the parliament before September 11.

Senator MARK BISHOP—So you have not had any cause to review the adequacy of those general descriptors?

Mr Woodward—We are continually looking at it. One of the difficulties we have is that the international requirements are continuing to evolve. For example, there are the new IMO requirements, which put tougher information and security planning requirements on ships and ports. The World Customs Organisation is having a close look at information requirements. There is a lot of work going on in relation to standardisation of data, and we are chairing some of the committees that are involved in it. So we are across all of that and we will react as either bilateral requirements dictate or new international requirements dictate.

Senator MARK BISHOP—Does the Customs Service have any plans to put in place radiation portal monitors to detect nuclear and radiological material being imported?

Mr Woodward—I think I ought to ask you what you mean by ‘portal’. We have radiological pagers now—we have 35 of them—and we have six of what I could describe as radiological identifiers, which are used to more precisely identify the nature of whatever it is that is detected by the larger number of pagers. But we are certainly aware that some other countries are moving down the approach, which I think you are hinting at, of mass radiological screening.

Senator MARK BISHOP—Particularly from the US.

Mr Woodward—I am aware of what the US is doing. We are more aware, from very senior scientific people in Canada, of what they are doing. So in a sense I probably know more about what Canada are doing than the US. We will be following very closely what they do. They have far more of an ability to tap into large-scale research and development funding, and they have larger R&D funding themselves. At this stage we are not pushing ahead with the sorts of mass screening devices that they have. In fact we would not do it unless we developed a business plan, and obviously it would require—as there would be a lot of money involved—an endorsement by government.

Senator MARK BISHOP—So that is not currently on the agenda.

Mr Woodward—Not at this moment but, as with a lot of things, things change quickly.

Senator MARK BISHOP—Definitely. Are any more X-ray machines planned?

Mr Woodward—Again, can I ask what sort of X-ray you mean—do you mean the large ones?

Senator MARK BISHOP—Yes. You have now got them in four ports.

Mr Woodward—We have got big ones in Sydney, Melbourne and Brisbane and a slightly smaller one in Fremantle, which is still very powerful. We are proceeding with a pallet machine in Adelaide, and we are obviously considering the implications for Darwin of the opening of the new railway line. But there are no firm decisions and in fact we have not at the moment put up anything specific to the government on that.

Senator MARK BISHOP—Is it anticipated that large amounts of freight will be coming into Australia via Darwin or leaving Australia from Darwin because of the opening of the new railway line?

Mr Woodward—My recollection of the figures—and I am sure I will be corrected—is that we were talking about something like 13,000 containers, of which something like 60 per cent were empty. If you compare that with the volumes of hundreds of thousands that you are talking about in Melbourne and Sydney—and I am not saying that it is not a problem—the scale is nothing like it is in other parts of Australia.

Senator MARK BISHOP—Have you done any risk analysis of the problems likely to arise in Darwin port?

Mr Woodward—We have undertaken a strategic assessment in relation to Darwin. It is an intelligence assessment; it is not available publicly. We are using that as a piece of background to assessment of the advice that we would give government on what, if anything, needs to be done in relation to X-rays and facilities in Darwin.

Senator MARK BISHOP—Is that a work in progress?

Mr Woodward—The strategic assessment has been done. The analysis of the implications of that is work in progress, and we do not have a proposition before ministers at the moment.

Senator MARK BISHOP—You recently issued an instruction—in mid-January, I think—that 70 per cent of ships that visit Australian ports must be inspected. Is that correct?

Mr Woodward—I think what you can recall—it may have even been at the last Senate estimates, although I may be wrong—is that we first port board about 70 per cent of vessels on first arrival into Australia. So that is what we are doing now. Obviously it varies from region to region and from port to port.

Senator MARK BISHOP—Is that a full search or just a rummage?

Mr Woodward—I am talking about first port boarding; I am not talking about searches or rummaging. We have given you an answer to a question on notice about searches and about rummaging. Those figures you have. If they have not been given to you then we will provide you with that.

Senator MARK BISHOP—I am sorry, I might be confusing you.

Mr Woodward—The first port boarding does not necessarily involve a full search of the vessel or a rummage. It would generally involve—and some experts here will be able to give us more information—a check of documentation and records. There is certain other work that is done on behalf of other agencies but it does not necessarily—although it can—involve a search or a rummage.

Senator MARK BISHOP—So 70 per cent of vessels on first port arrival—

Mr Woodward—Customs officers go on board in roughly 70 per cent of the occasions when a vessel first ports in Australia, given that they can go around to three or four different ports. Say it went to Fremantle first and then—

Senator MARK BISHOP—What is the word you use? Is it ‘boarding’?

Mr Woodward—The Customs officers board the vessel at its first port of call on roughly 70 per cent of the occasions when they first arrive in Australia.

Senator MARK BISHOP—And that first port boarding could simply be—and probably is in most cases—inspection of relevant documents and the like?

Mr Woodward—In all of those cases I think there are documentation checks, but on occasions—and I am not sure if we have the figures—there is assembly of all the crew to ensure that the people who are crew members are there and that they match the documentation.

Senator MARK BISHOP—When it was discussed at the last estimates hearings I think you said it was only an intention to have that 70 per cent of first port vessels boarded. Has that now extended operating procedure?

Mr Woodward—That is a fact at the moment; it is about 70 per cent.

Senator MARK BISHOP—So, 70 per cent of first port vessels are boarded.

Mr Woodward—That is a national figure. As I said before, it varies from port to port and from region to region.

Senator MARK BISHOP—Of that 70 per cent of first port vessels that are boarded by your officers, how many receive a full search?

Mr Woodward—We have given you the figures on full searches; I think that was just under 100—about 99 or something like that. The percentage is very small but Ms Grant has the details.

Ms Grant—Yes, Mr Woodward was quite correct—99 full ship searches were undertaken in the 12 months from 1 July 2002. I think we provided that information to you as an answer to a question.

Senator MARK BISHOP—How many ships underwent a rummage?

Ms Grant—In that same 12 months from 1 July 2002, 767 rummage searches were undertaken.

Senator MARK BISHOP—What does a rummage search involve?

Ms Grant—I would prefer not to go into the details because it is operational and it would give away our practices if anybody chose to read the record of this meeting.

Senator MARK BISHOP—Does it have a colloquial meeting?

Ms Grant—It is a light search of the vessel. To give you some idea, we may choose just to search the crew's cabins or we may just go through the bridge of the vessel. We search wherever we think the problem we are trying to investigate may lie.

Senator MARK BISHOP—Are these full searches—or, alternatively, these rummages—taken pursuant to intelligence or police advice? They are not random things that the department does, are they?

Ms Grant—No, a full search is definitely in response to the risk assessment of the vessel.

Senator MARK BISHOP—Does the same apply to rummages?

Ms Grant—Yes, a rummage is also on a risk assessed basis.

Senator MARK BISHOP—When will the figure of 70 per cent for boarding first port vessel arrivals go up to 100 per cent?

Mr Woodward—That is a question for the ministers.

Senator MARK BISHOP—Is that under consideration, Minister?

Senator Ellison—A range of things are under consideration at the moment and the question of the percentage of first port boarding is an aspect that comes within the whole border strategy. There are things in the budget that we are looking at and I do not want to go into that, of course. At the moment we believe 70 per cent is quite a reasonable figure, but of course that does not mean to say we cannot improve.

Senator MARK BISHOP—I can understand you saying that it is a reasonable figure—patently, it is a reasonable figure. Is it an adequate or sufficient figure?

Senator Ellison—It is what goes with it. The requirement for passports, for instance, is a step further and there may be other requirements that could be made of the shipping lines—you have just alluded to one yourself—where the crew may not be able to be reconciled. But in the whole gamut of border security and port security we are looking at a range of issues, and how we deal with first port boarding is one of them.

Senator MARK BISHOP—This is probably a question for you, Mr Woodward, if the decision has been made and is being implemented. How was the figure of 70 per cent determined when you put it into place from mid-January? Why wasn't it 55 per cent or 85 per cent?

Mr Woodward—The short answer is that that is just how it turned out. The figure was less than that. We had considerable concern about the risks in relation to vessels generally. First port calls were identified as one area of risk and we increased the percentage to 70 per cent. I cannot recall what the figure was but that was within our existing resources. We had no additional funding, but it probably would have been 60 per cent—anyway, it was an increase. That is how it has panned out and that is what we can manage with the resources we are able to deploy, taking into account that it is somewhat easier in Sydney and Melbourne where we have got large work forces. But many of the ports that we are talking about are very small

ports scattered along Western Australian, Queensland et cetera. I understand that the figure in 2001-02 was about 44 per cent so it has been a very significant increase.

Senator MARK BISHOP—So you did that increase of 44 per cent up to 70 per cent—and we have thousands of first port visits—from within your then existing budgets?

Mr Woodward—We had clear guidance from government that we had to do more and I took a decision as to how much of the Customs border protection resource we could afford to put into it, and I arrived at the figure.

Senator MARK BISHOP—If you wanted to make protection absolute on that score you would require, at this stage, supplementation of budget?

Mr Woodward—My assessment, as head of Customs, is that we can go very little further without funds.

Senator MARK BISHOP—Understood. In respect of the Turks that jumped ship in Newcastle recently, did the ship, the *Incetrans*, comply with the new DIMIA requirements?

Ms Grant—Could I just ask for clarification of ‘DIMIA requirements’? Do you mean in respect of passports? As I understand it—

Senator MARK BISHOP—And advanced notice of crew as well.

Ms Grant—Yes on both counts. We had the advanced notice of the crew list and the crew did have passports.

Senator MARK BISHOP—Did all the crew have passports?

Ms Grant—I am briefed to the effect that all of the crew did have passports.

Senator MARK BISHOP—Was the *Incetrans* inspected by Customs?

Mr Woodward—The full list was entered into the relevant system and run against our passenger processing. The vessel was boarded and a full muster and face-to-passport documentation check performed. No discrepancies were found and each crew member had a passport and seamans book.

Senator MARK BISHOP—Is that what you call ‘a board’—that muster and documentation?

Mr Woodward—That is, I think, fairly typical of what would happen on first port boarding.

Ms Grant—Yes, it is one element of a first port boarding.

Senator MARK BISHOP—So you did a first port boarding and the reconciliation was okay. That is fine.

Turning now to airfreight checks, can it be confirmed that inwards airfreight has a master airway bill number, a MAWB, and some have a house airway bill, a HAWB, and can you explain the difference between the two?

Ms Grant—As I understand it, the master airway bill is a consolidation and you will have house airway bills that are a subset of what is reported on the master airway bill.

Senator MARK BISHOP—Are the MAWBs cleared by container terminal operators? Who clears and inspects them?

Ms Grant—When you say ‘inspects them’, I am not quite sure I am with the question.

Senator MARK BISHOP—Who reviews them? Once they are filled out by the firm that dispatches them and has detail there on the number, who receives that in the destination port and checks it?

Mr Drury—I was listening at the back and wondering whether this question was going to get horribly mangled. These things do not go to container centres. Let me try and put a description on it. The master airway bill might come in and it might have, say, automotive components as the general descriptor of goods. Below that, the house airway bills might be assigned to, say, four automotive companies in Australia. So you have then got these separate consignments to separate consignees. Say Qantas is carrying the goods. They will break the bulk out of the container off the aircraft—which is a small aluminium container—and they will rack those goods up inside their freight shed.

So the goods have now arrived, they are racked and they are waiting for somebody from the separate consignees to come and pick them up. Before they can do that, they have to lodge their import declaration with Customs. As is the normal process, when the customs broker lodges the import declaration, the process may involve the goods requiring inspection or may require no inspection—in which case, once the duty is paid, those that do not need inspection can go. If we have a concern about the others, we will check them out. In that case, they are delayed and held at the freight shed by the licensed freight shed operator until Customs gets a look at them.

Senator MARK BISHOP—Okay. Is it a fact that both the MAWBs and the HAWBs are both cleared by Customs licensed warehouses?

Mr Drury—Cleared at those places?

Senator MARK BISHOP—Yes.

Mr Drury—Yes.

Senator MARK BISHOP—Who does that job?

Mr Drury—The process is a form of collaboration. The importer or the owner of the goods notifies his preferred customs broker. The preferred customs broker then lodges an import declaration on the customs network and the network clears those goods. There is one process back from that and that is that we have a team of people who are vigorously scanning the way bills—in other words, there is a screening process and during that screening process we may decide that some or part of these way bills need to be examined.

Senator MARK BISHOP—Okay, you have gone where I want to be. With respect to couriers such as DHL or FedEx, who basically shift bags and bags of documentation, can it be confirmed that their mailbags have one MAWB or HAWB per flight, or do they have multiple numbers allocated?

Mr Drury—Did you say mailbags?

Senator MARK BISHOP—Yes.

Mr Drury—I think you also referred to courier companies. Courier companies do not normally import mailbags, if you are talking about postal bags; they carry small packets—the bits and pieces that people would need to import, a spare part for Caterpillar tractor that has broken down or something like that.

Senator MARK BISHOP—All of those small packages or very small containers that FedEx or the like might bring into Australia by Qantas are aggregated into or inserted into one bag or one container, aren't they?

Mr Drury—If you look at a company like FedEx or UPS, they fly their own aircraft into Australia, so they have hundreds and hundreds of bags on their freighters—747s chock-a-block full of freight for hundreds and hundreds of consignees. So that is the job of UPS and FedEx and DHL.

Senator MARK BISHOP—Is an individual letter or package assigned a number? Say you have 100 packages each of document size, are they aggregated or put into one mailbag or container and given one number, or does each individual document have a number?

Mr Drury—To answer your question simply, most of those items are for different importers and, as a result, they are already separately categorised with bar codes and so on. So they are readily segregated or distinguished or separated for Customs purposes based on whoever the intended importer of the article is—whether it is a packet of papers or whether it is a box.

Senator MARK BISHOP—Say there are 100 separate packets going to 100 separate addressees but via the one importer, would they have one number allocated or 100 separate numbers?

Mr Drury—There could be 100 separate numbers. There is a distinction that we have in our legislation which relates to remailing. I am not sure if you are talking about that. Let us say you are a member of the Manuka Football Club and let us say the Manuka Football Club publishes its magazine each month—it tells you what is on at the football club and it might even include a copy of your notice for payment of fees—and it is printed or produced in, say, Hong Kong. These could come down in pallet size on a UPS freighter. There might be 10 pallet loads of this addressed to thousands of people. That is perhaps one consignment addressed to a remail company, but it has to be broken in the bulk and each of those reports or publications or whatever is eventually popped in the mail, because they are already prelabelled. We do not ask for individual documentation for every one of those reports or whatever it is.

Senator MARK BISHOP—We have got to the crux of the question. Say there are 100 or 150 documents, roughly of that size, and they all come out of LA via Qantas from FedEx. They all come in a bag of some type. Is the bag itself X-rayed or is each individual set of documents or satchel X-rayed?

Mr Drury—If it fits into the definition of high volume, low value then those items are dispersed and we look at the individual elements of it. We do that at postal centres as well where those pallets that I have referred to are broken down individually and they are all put through the X-ray.

Senator MARK BISHOP—When you say dispersed, do you mean if the addresses are dispersed?

Mr Drury—That is the normal process.

Senator MARK BISHOP—Let's assume we had a container bag or a mailbag. If the description is that it had a couple of hundred items roughly of that size and you are going through your normal X-ray procedures, would you X-ray the bag? Or would you open the bag up and then X-ray each package separately?

Mr Drury—We would tend to do the latter. We use smaller X-ray machines, so you cannot put a pallet through them. You would have to do that somewhere else. The real question would be whether we would do the lot or whether we would sample some of it. It is a while since I have seen it being done, so I would not want to be held to how we would do it today or yesterday.

Senator MARK BISHOP—Does anyone else know?

Mr Drury—Mr Jeffery just reminded me that if the bag is of a size that we can do, we will do it in one go. If we need to we can then burst the bag open and do the other stuff individually.

Senator MARK BISHOP—How often would you burst the bag open and do every item individually?

Mr Drury—That is a good question. I do not know the answer to that. I am not sure if anybody in this room does. Ms Grant might know.

Mr Jeffery—I have observed this happening a few times with pallets, where you will have a pallet of something like that and the officers will take a sample of a few and put them through. If they are looking consistent, they will not do the whole pallet. A good example is that you might get every subscription to *National Geographic* in Australia coming in on a pallet. If it is described as *National Geographic*, you would put a couple through and if there is no aberration shown, they are unlikely to break the whole lot down. But in the postal environment they get fed almost totally through an X-ray. The bags get opened and the items get fed through an X-ray machine. That is Australia Post, not FedEx or UPS.

Mr Drury—I have just been reminded that this thing is really a matter of discretion and adjustment while the job is being done. The bag will go through first. Let's say that it does not match what we think is in there, namely some of those publications. Let's say that packets or sachets show up that have something in them. The next thing you do is open the bag and empty it out and you go through them until you spot what it is that is the anomaly. That happens every day.

Senator MARK BISHOP—So the net of that is that Australia Post do X-ray every item.

Mr Drury—No, we do X-ray at postal centres, as does the quarantine service, and we share that process. About 100 per cent or close to 100 per cent of everything coming into international postal centres is X-rayed, either for our purposes or for quarantine purposes.

Senator MARK BISHOP—One hundred per cent of the bags are X-rayed, but not 100 per cent of the items.

Mr Drury—No, I have seen this endlessly.

Mr Jeffery—Not for letters.

Mr Drury—Not for letters but for packages.

Senator MARK BISHOP—Let's say that we had a whole stack of packages of that size—

Mr Jeffery—If that is postal then the bags are tipped and they all go through individually.

Senator MARK BISHOP—Right.

Mr Jeffery—If it is high volume, low value, which is a freight shed not the postal centre, then the bag goes in and inevitably we will burst the bag open and check out the anomalies that we have seen on the X-ray.

Senator MARK BISHOP—All right. Can we now turn to the issue of X-rays and the CSIRO X-ray scanning contract of \$8.4 million. When was the funding given for that?

Mr Woodward—The approval was given a couple of months ago. I cannot give you a precise date.

Senator MARK BISHOP—Is the \$8.4 million funding for that contract to be found in the current PBS?

Mr Woodward—I do not believe so. I think that is next financial year.

Senator MARK BISHOP—Approval was given two months ago. Have tenders been called as yet?

Mr Woodward—No. We are not going through a tender process. This is work which has been going on for perhaps 18 months or so between Customs and CSIRO. CSIRO have been involved in the development of what I would describe as the technological concept and the analysis of various options that are available and have linked them together in a way which they would not want us to publicise because there are patent issues involved for the CSIRO. It is pioneering. When it comes to fruition it will, as you will have read, be going through an experimental process in Brisbane airport, then re-evaluation and putting it back to government again. At this stage we are fairly confident that it will be something that countries throughout the world will want to have a look at. We have already had a degree of interest from the US and Canada in finding out more.

Senator MARK BISHOP—So the net of it is this: approval was given for a go-ahead about two months ago; the money will be allocated in next year's budget, and we are talking about something over \$8 million; the job has been given to CSIRO to do the work; and there is already significant outside interest in the outcomes. Is that right?

Mr Woodward—Yes, that is right.

Senator MARK BISHOP—Who will have ownership of the development? Is that CSIRO, or jointly between ACS and CSIRO?

Mr Woodward—There are continuing discussions in relation to ownership of the intellectual property. There are large slabs of what I would describe as the technological part of intellectual property which we believe CSIRO have got legitimate claims for, and there are

other aspects of it which we would want to pursue. Those discussions are continuing between Customs and CSIRO and we will reach an outcome which is acceptable to both.

Senator MARK BISHOP—Who will have ownership of the development—CSIRO or Customs?

Mr Woodward—I am not sure what you mean by ownership of the development. I was talking about patents on intellectual property. What do you mean by ‘development’?

Senator MARK BISHOP—I am asking who will have title to those patents?

Mr Woodward—That is intellectual property. As I say, CSIRO have already staked certain claims and we have staked certain claims, and the discussions which will lead to resolution are under way at the moment.

Senator MARK BISHOP—When do you anticipate those negotiations will be concluded?

Mr Woodward—As I say, they are under way at the moment. I understand the CSIRO have some interim patent activity that is being undertaken and that June is a critical month for resolution of that. I cannot be anymore specific than that.

Senator MARK BISHOP—Are the key targets chemicals and explosives, or otherwise?

Mr Woodward—The items for which we believe the new equipment will have greatest applicability will be organic based items, which would certainly include drugs and explosives.

Senator MARK BISHOP—You use the words ‘organic based items’. Is the real thrust of the work to be able to detect those?

Mr Woodward—The thrust of the work, in essence, has been this: a lot of work has gone on internationally in relation to mass screening of sea containers, but virtually nothing has been done in relation to air containers, those unit loading devices—I do not know whether they are steel or aluminium—that contain cargo on aircraft. About two years ago we saw that that was a major point of vulnerability. We said, ‘What can we do to improve our capability to detect items that could be of interest to us through those unit loading devices?’ We knew that we needed equipment that would be able to deal with significant throughput—in other words, we could not hold up an airport because of what we wanted to do—and that would have an ability to penetrate those devices and be able to detect the items of particular concern to us. When the work started, drugs were obviously one such item; explosives, another. So far as chemicals and biologicals are concerned, to the best of my knowledge—and there are others around who are more expert than I am; I guess you will seek their advice—we are not aware of any mass screening capability in relation to chemicals and biologicals. You mentioned before radioactivity and the scanning devices that are being used on a mass basis in the US, and we are aware of at least one port in Canada where similar devices are being used. We are keeping a watching brief on all of that.

Senator MARK BISHOP—Specifically in reference to the container X-ray facilities, is Customs satisfied that the throughput of containers is at a maximum efficient level in terms of time?

Mr Woodward—We have had some concerns. I think at the last Senate estimates you mentioned to us the concerns that had been expressed by customs brokers and others in

relation to hold-ups which had occurred in the port environment and the attribution of many of those delays to Customs. I mentioned at the time, and I do not know any further work that has been undertaken, that we had done some statistical work on it. My recollection is—and I am sure we can turn it up; I am pretty sure it is in the *Hansard*—that the work we did for a particular period showed a delay of something like 1.45 per cent. In other words, the delay that had been caused and attributable to Customs was in fact quite small. Where we continually hear of concerns from brokers—and I am sure you have heard of them as well; they were mentioned at the forum that the minister chaired—we do everything we can to increase our ability to quickly get those containers back onto the port and allow the brokers and others to get them out of the port without payment of charges. But if we need a container because we have got good reason to, and the options are that someone may have to pay another \$140 a day or whatever it is for their container, or if we believe we must keep that container for good reason, then that is what we will do.

Senator MARK BISHOP—If that situation arises, wouldn't the inspection of that container become a priority?

Mr Woodward—It is always hard to tell immediately a container is put through that it is going to be one that we are going to have an interest in. We do target, we do pick the containers that are of most interest to us and we only physically search those containers which X-rays or other intelligence would suggest that we ought to have a close look at. So to the extent that we can we are taking the concerns of industry into account. Industry are saying that there is more that we can do. We have been involved in negotiations with the stevedores to attempt to improve the turnaround time. We have not got it perfect yet—obviously you are still hearing complaints—so we are still working on it.

Senator MARK BISHOP—How many full inspections would you do down at Botany terminal involving X-ray of a container, on a daily basis?

Mr Woodward—You have got two different terms there—do you mean full or do you mean X-ray? In other words, do you mean fully examined, which is unpacking and repacking, or do you mean X-rays?

Senator MARK BISHOP—I meant X-rays.

Mr Woodward—The target is 500. In recent weeks I think we have been undershooting that by between 20 and 40.

Senator MARK BISHOP—Those 500 that you X-ray on a daily basis in a big port—

Mr Woodward—No, that is in a week.

Senator MARK BISHOP—Is that a five-day week or a seven-day week?

Mr Woodward—That is a five-day week.

Senator MARK BISHOP—So you are roughly doing 100 a day. They are X-rayed on the basis of some intelligence—they are not just random, are they?

Mr Woodward—We do not do work on a random basis. That is a word I am trying to get out of our vocabulary, but it occasionally sneaks in. I stress that we do have mechanisms whereby on a sampling basis we attempt to see how good our targeting processes actually are.

In that case what we may do—and I am not talking about X-ray facilities at the moment but other areas—is pick out on a sampling basis large slabs of work, see what comes out of it, compare what we get out of our targeting with that complete assessment and then see whether our targeting regime is as good as it should be.

Senator MARK BISHOP—Essentially you are controlling your own system.

Mr Woodward—Yes, it is a controlled methodology. So far as the CEFs are concerned, we do operate on the basis of targeting and not a random approach.

Senator MARK BISHOP—The point I am driving at is that 100 X-rays a day at a big port like Botany really is a relatively minimal number. You are doing it on the basis of some form of intelligence that warrants the X-ray. Thousands and thousands of containers come through on a daily basis, and you are only pulling out 100. The volume of complaints coming into my office, from a range of organisations, relating to delays and time turnovers does not seem to match the limited amount of inconvenience which you necessarily cause industry.

Mr Woodward—We did cover that at the last Senate estimates, and I will get some more information for you. But my recollection was that even though you get a number of complaints, when you go into the complaints, sure, there is a percentage where we are at fault. But in other cases—and I cannot give you the percentage at the moment—we are used as a convenient scapegoat. It is like at the airports when people say, ‘Customs held us up.’ But then you discover that in fact it was people waiting for their baggage at the carousel that held them up, and they were through customs in a couple of minutes. So we are there and we are convenient, but there are improvements that can take place. That is why we have taken the initiative not only to talk to brokers and forwarders to get their views but also to talk to the stevedores to attempt to sort out the problem.

Senator MARK BISHOP—What is the average time a container might be delayed prior to release due to CEF?

Mr Woodward—Most of them—and I can be corrected here—are actually back within the three-day period. I cannot tell you the percentage—and if no-one here has the answer we can get that.

Ms Grant—We do have some information here. The particular statistics I have got relate to the 2003 year. In July 2003, for example, 990 containers were handled for customs. The average time that those containers were out of the terminal was five hours. So from the wharf through the CEF and back to the wharf was five hours. In August it dropped down to 4¾ hours and in September the number was back up to 5½ hours. In each case there were 900-odd containers involved.

Senator MARK BISHOP—That is fairly minimal.

Ms Grant—I should add that those statistics related to Melbourne.

Senator MARK BISHOP—Is there any reason to suggest that those statistics aren’t reasonably typical of major ports?

Ms Grant—We were getting similar statistics for Sydney—I just do not have those ones with me this evening. From memory, in my first glance over the statistics, it was a similar story.

Senator MARK BISHOP—Four and three-quarter hours, five hours and 5½ hours—that is not the end of the world. What is the worst delay that has been brought to your attention?

Ms Grant—I recall some statistics where there had probably been a three-day turnaround. But that would have involved a customs examination—probably it was a fumigated container where we had to defumigate it before we were able to commence the examination.

Senator MARK BISHOP—How long on average does it take to X-ray a container—10 minutes?

Mr Woodward—I am sure I had that figure in my mind. I think we work on the basis of about 10 an hour but I would need to check on that.

Senator MARK BISHOP—What are the current storage charges for containers delayed due to CEF?

Mr Woodward—You are talking about stevedore charges?

Senator MARK BISHOP—Storage charges.

Mr Woodward—They are not our storage charges. We do not charge them because they are on our premises. I assume you are talking about stevedore charges, and the stevedore charges would vary. I have a figure of something like \$140 or \$145 a day in my mind, but I may be wrong and I would need to give you that on notice.

Senator MARK BISHOP—Do you have any idea of the proportion of containers in CEF that are subject to those stevedoring charges?

Mr Drury—I was looking at some figures a couple of days ago because in another couple of days we are having another round of discussion with stevedores. I think that the figure has gone up from that 1.4 per cent to about two per cent. It does not seem terribly high but the problem is, I think, that there is a huge nervousness amongst the customs brokers as to how they can plan their pick-up arrangements. In other words, they have got their fingers crossed and are hoping that it is going to come out of the process in that five-hour period that we talked about a minute ago in time for them to organise their transport to go and pick up the container. If the container is available on the third day and they have not got notice that it is available on the third day but they think that it is going to be, then against our advice they will take a punt and they will organise their truck to go down to the wharf to pick it up. A lot of the complaints that we are getting are that when they have been down there—and the truck might have been scheduled to pick it up in the morning—the container has not been returned and they have got an additional cost for having missed their pick-up time.

Sometimes that occurs because the container was not available to be transported to the CEF until the second day. That has nothing to do at us; it is all about what stage it was inside the ship, when it was put on the wharf and when the truck was available to run that conveyor belt system from the wharf side into our facility and back again. As I said, we have talks coming up this week with the stevedores, and the customs brokers are aware that we are doing our darndest to fix this. The brokers, in their correspondence with us, have pointed out that they are aware that this really is an issue between themselves and the stevedores as to whether or not they should be incurring the charges. They are invoking us as a third party to all of this to try and break the Gordian knot—and that is what we are trying to do.

Senator MARK BISHOP—Thank you. Can we now turn to the issue of the break-in to Customs. Minister, you made a statement the other day in the Senate which I think just confirmed the earlier comments you had made in late December or early January.

Senator Ellison—That is right.

Senator MARK BISHOP—The two reports—the Signet review and DSD: can copies of each of those be provided or are they regarded as confidential?

Senator Ellison—The report is to cabinet and therefore it is cabinet-in-confidence, so for that reason it is not provided. There are a number of recommendations that were made, which Customs has acted upon. Perhaps Customs is best placed to answer those questions, should you have them, but it is not the intention of the government to release these reports.

Senator MARK BISHOP—In your statement you said that the files that were on the stolen computers did not contain any information relating to national security, so those concerns that were around are no longer pertinent.

Senator Ellison—That is right.

Senator MARK BISHOP—What information was contained on the servers?

Senator Ellison—As indicated in the statement, in relation to the server that had the email files, those files were older than November 2002. I think that is the way to put it. They contained a variety of information—normal Customs information and personal information. Perhaps Customs can expand on that but there was an examination carried out in relation to that.

Mr Harrison—I will give you the full answer as to what was on the servers. There were two servers. One was a server which was called a back-up domain controller, which would not mean anything to you, but it was a server with very little on it: it had an operating system and an encrypted list of user passwords and IDs. The other server was an exchange server which had an operating system and a series of transaction logs or a file of transaction logs, and it was also discovered to contain one file which contained emails. The full answer is that that server was effectively upgraded in November 2002 to provide storage facility that was on another associated computer. In the transfer from that box to the other box, the operator at the time took a copy of the emails that were on that box before he moved it across to the other one, stored it on that computer, and forgot to delete it. It was a wise thing to copy it but perhaps an unwise thing not to delete it.

He also stored it in a place that was called a name that was very difficult to identify. Once that file was identified—it was all the information that you would contain in the in-boxes of the people who are involved in that domain in that area of the business—we then did an examination of a portion of those emails. Ms Batman might talk further about that.

Ms Batman—It took some time to get the file, which was just a back-up file, into a form that we could actually view, review and search on. We then searched it across a whole range of possible key words, things that might be of concern to national security and other things, such as ‘terrorist’, ‘secret’ and those sorts of words. We ran large searches across those. We reviewed all of the email boxes of the senior staff—the sorts of people who would have had access to more secure information. We sifted it out to various stages of looking through them.

In the end the agency security adviser had a look at very large numbers of them individually to make sure that there was no national security classified information on them.

Senator MARK BISHOP—Okay. Can we now turn to Coastwatch. Can Customs confirm or deny that the Jindalee over the horizon radar system has failed to detect asylum-seeker vessels and, if so, on how many occasions?

Mr Woodward—We have the admiral here, who will be able to help you, but can I just stress that Jindalee is not owned by us. We use information from it. It is owned and run by the ADF.

Rear Adm. Hancock—Could I please have the question again?

Senator MARK BISHOP—I was asking you to confirm that the Jindalee system has failed to detect a number of asylum seeker vessels which have entered into our areas of interest in more recent times. If the answer is yes, how frequent an occurrence is that failure?

Rear Adm. Hancock—I think the answer in simple terms is no. The Jindalee operational radar network is not optimised to detect vessels of that size. So to call it a failure I think would be unfair to the system.

Senator MARK BISHOP—When you say ‘not optimised to detect vessels of that size’, it is designed to detect—what?

Rear Adm. Hancock—Aircraft.

Senator MARK BISHOP—And only aircraft?

Rear Adm. Hancock—It has the capacity to detect large surface vessels. The types of vessels that asylum seekers would purport to reach our shores in are generally smaller than what would be a threshold for Jindalee operational radar network type detections. That is not to say it is not possible, but JORN—which is the acronym for the radar network—is by and large utilised to detect aircraft movements.

Senator MARK BISHOP—I was not aware of that. Is it a design feature of the Jindalee system to detect aircraft over our horizons and not otherwise?

Rear Adm. Hancock—The primary mode is to detect aircraft. It can be used to detect ships. I would not for a minute say that it is not used for that, and we are testing it to see what capacity it has to detect ships. But, by and large, it is for aircraft.

Senator MARK BISHOP—Can Customs confirm that coastal Surveillance Australia, the contractor, has been testing a new system called RADARSAT?

Rear Adm. Hancock—By our service provider I think you mean a company called Surveillance Australia Pty Ltd. They have formed a partnership with RADARSAT—a company that uses RADARSAT. However, in the last two years Customs and Coastwatch have been testing the RADARSAT satellite ourselves. We continue to use it in support of the civil program right now. We do not need to go to any specific service provider to get that data. We can buy it in from a number of sources, and we do.

Senator MARK BISHOP—Who manufactures RADARSAT?

Rear Adm. Hancock—A Canadian consortium, and the marketing company is a Canadian group. We purchase the product through an Australian marketer for the Canadian group.

Senator MARK BISHOP—Is the product we purchase a finished product or is it under further development or testing by its manufacturer?

Rear Adm. Hancock—It is probably true that the manufacturer is still testing a number of modes in it. The product we buy is a finished product which has been analysed by the company in Canada.

Senator MARK BISHOP—Have we contracted any work to this company to develop particular or extra surveillance modules?

Rear Adm. Hancock—Not specifically to develop extra modules on the satellite per se, but given the chance we would continue to utilise more of the satellite service to add value to our civil program.

Senator MARK BISHOP—What do you mean when you say ‘given the chance’?

Rear Adm. Hancock—It means moving the resources from within the civil program so that if, for example, we were to make a decision that it is better to not provide funds at the moment for crude aircraft sorties but rather to buy satellite services that could give a better capability, then that would be the way we would make a judicious allocation to get increased capability into the program.

Senator MARK BISHOP—Are we funding the development of any new technology in the RADARSAT system?

Rear Adm. Hancock—No, we are not.

Senator MARK BISHOP—What is the state of play on calling tenders for new surveillance contracts?

Rear Adm. Hancock—We expect that the tender, subject to further government approval, will go out before the end of this financial year.

Senator MARK BISHOP—Has the form of tender been decided by government as yet?

Mr Woodward—What do you mean by ‘form of tender’? You are not talking about legal precision.

Senator MARK BISHOP—No.

Mr Woodward—I think we discussed on the last occasion that what we want to do is to see what is around with reasonable prospect of providing the best possible coastal surveillance coverage, taking into account fixed winged and rotary winged options, which we have now, bearing in mind satellites, taking account of other developments like unmanned aerial vehicles, underwater detection devices and tethered arrays, but always against a background that Defence is there. Defence is extremely capably equipped and to the greatest extent possible we would feed off Defence. In other words, we would not be building capabilities that overlapped Defence capabilities.

Senator MARK BISHOP—You said that the tenders for the new contract would go out in June—is that correct?

Rear Adm. Hancock—Yes, subject to government approval.

Senator MARK BISHOP—What sort of value are we talking about?

Rear Adm. Hancock—If we were to take the current resources invested in the civil program, which are about \$75 million per year, you would extrapolate that over the period of the contract, which you would determine once the tender bids were evaluated. If you say that our current contract is about nine years and you thought that might be a good model for the future, you would be looking at nine by \$75 million—\$600-odd million—if we were using the same type of resource base.

Senator MARK BISHOP—If we were, yes. I want to turn to the detail of the newly leased vessel for the southern fisheries. That is a Customs responsibility, is it not?

Mr Woodward—Yes.

Senator MARK BISHOP—Who is the lessor and what are the basic terms of the lease? Is that commercial-in-confidence?

Mr Woodward—Ms Grant would be able to answer in a more detailed way. What we have is government approval for a two-year period. There is a continuation in relation to surveillance, and it will continue this year. You asked me questions about that earlier. The two years that we are talking about begin in the next financial year. There will be, in that period, a reassessment of what if anything needs to be done in the longer term. The decision that has been taken is to lease a vessel for this two-year period. We are in the process of preparing the necessary documentation to enable the lease documentation to be issued and for us to assess the responses. The decision was taken not all that long ago and there is a fair bit of work that has to be done.

Senator MARK BISHOP—In terms of the leasing of the vessel for the next two years starting in July, the process is really just starting now?

Mr Woodward—The process is really getting under way but what we have is a clear indication from ministers that the first one is to take place as soon as possible in the beginning of the next financial year. We have already started to recruit staff—highly specialised staff—and they will be armed and equipped to deal with the circumstances that arise down there. The first 15 of the additional staff have joined and the others are about to join. We will have 30 staff fully trained by the end of May. We will be recruiting more than that. That is the first 30 of the total number that we will be looking for.

Senator MARK BISHOP—And they will be officers of the ACS?

Mr Woodward—They will be Customs officers.

Senator MARK BISHOP—How many do you think you will have to recruit and train. Is 30 adequate to do one shift?

Mr Woodward—The total figure that we will be looking for is 70. The first 30 are under way and obviously that will be enough to get the first voyage under way.

Senator MARK BISHOP—Are we talking about only leasing one vessel or a number of vessels?

Mr Woodward—Frankly, I have had in my mind that if we could find one that was a perfect fit then we would go for that, but I will ask Ms Grant if she can add to that.

Ms Grant—No, there is nothing more that I can add. The budgeting has been based on leasing one vessel for the two-year period.

Senator Ellison—If it is necessary, we can lease one to engage in that initial patrol so that we can start early in the financial year and then continue with another vessel for the remainder of the two years.

Senator MARK BISHOP—I see.

Senator Ellison—That is a prospect which is being considered. The main thing is that we want to start as soon as we can after 1 July with a request for tender. That will be a delay and, of course, it will be somewhat ambitious to think that you would be able to put a tender out and get a vessel which would be the same vessel to use for the whole of the two-year period. What we are looking at, in order to start early in the new financial year, is having a one-off to begin with and then using another vessel. There is no problem—both can be armed.

Senator MARK BISHOP—In relation to the costs of the lease and the costs to date, do they just come out of past budget appropriations or will they have to be additional?

Senator Ellison—It is new money.

Senator MARK BISHOP—And that will be in this year's May figures?

Senator Ellison—Yes.

Senator MARK BISHOP—Do we have a ballpark figure yet or is that still in confidence?

Mr Woodward—The government decision was predicated on further discussions to take place between Customs and the department of finance. I am not sure whether they are finally resolved, but the Prime Minister mentioned figures which, over the two years, were slightly above and slightly below \$50 million for each of those years. So it is of the order of \$100 million. It might turn out to be less than that, but it will depend very much on the department of finance scrutiny.

Senator MARK BISHOP—So we are talking about \$100 million over two years?

Mr Woodward—Yes.

Senator MARK BISHOP—Essentially for lease and operational costs?

Mr Woodward—It would be lease costs and operational costs. I think it would also pick up our staff.

Ms Grant—Yes.

Mr Woodward—That is a pretty expensive component. There is also management of the exercise, training, development, installation of a gun on the vessel and ammunition for the gun. There is a whole host of things that would have to be covered. I am not sure that I have given everything.

Senator MARK BISHOP—What you are really saying is that nearly all of the anticipated elements of the total package are in that figure of \$100 million over two years.

Mr Woodward—Except for the initial recruitment, which—I think this is right—we had started under the previous regime. Perhaps Ms Grant can add something to that.

Ms Grant—In the current financial year, we were funded to recruit this first 30 officers that were currently training—or about to train: the other half of them. The costs associated with their training were provided this financial year. That money will not be necessary for that 30, but the training funds for the remaining 40 will come in next financial year—and the ongoing salaries for the total contingent.

Senator MARK BISHOP—How many of the officers will be trained to use the new machine gun?

Mr Woodward—I think there is a fair bit of work we have to do on that. We have been in discussion with the Defence Force. Given that the announcement was taken only relatively recently, we cannot give you a definitive answer on that. There certainly will not be 70 people capable of using the machine gun, but I just cannot be more specific than that.

Senator MARK BISHOP—Do you have to conclude discussions with the ADF?

Mr Woodward—The last I heard, the discussions were continuing. I am not sure if they still are.

Ms Grant—Yes, we are seeking assistance from the ADF. They have the expertise in this area, so we would like to draw on that expertise as we move into arming a vessel for the Southern Ocean. We have established ongoing dialogue to identify the best equipment and the best training methods.

Senator MARK BISHOP—What tasks is it expected that a heavy machine gun will carry out that are not currently capable of being carried out by officers of Customs?

Mr Woodward—I am sure there are differing views on this—different perceptions or emphases. My view of a major argument for having a machine gun is deterrence—in other words, if it was necessary, the ability to fire a machine gun burst across the bow of a vessel as a last resort to ensure that it did what was required of it.

Senator MARK BISHOP—So primarily deterrence?

Mr Woodward—Deterrence from evasive action, but warning signs and an obligation to comply and a clear indication that we are serious.

Senator MARK BISHOP—Does the phrase ‘machine gun’ have the ordinary, common understanding that we take from the movies or does it also apply to lighter cannons and the like?

Mr Woodward—What we are talking about—the approval from ministers has been quite specific—is a half-inch gun, .50 calibre.

Senator Ellison—You could call it a light cannon. It can penetrate quite substantial constructions—

Senator MARK BISHOP—That is what I am driving at.

Senator Ellison—a hell of a lot more than an M60.

Senator MARK BISHOP—Have rules of engagement been prepared for the deployment of the new machine gun yet, or is that in the future?

Mr Woodward—As I said, it is not all that long since we had approval, and work on that is continuing. It will follow the discussions we have with the ADF.

Senator MARK BISHOP—That is fine. I will turn to the cargo automation development funding. At the last estimates, in answer to question No. 72—

Senator Ellison—Before we go on and before I forget, earlier on we were talking about the costing out of Defence Force functions for coastal surveillance. Although we could not get through to the relevant Defence officer this evening, we did make further inquiries with the Customs Service budget officers and, on checking the financial details in the performance information and additional estimates, we can confirm that the number of hours to be provided by Defence is the same as per the portfolio budget statements, even though the notional Defence costing has gone down. We will chase that up with the relevant officer as soon as we can get a hold of that person—they could not get him tonight. Our preliminary inquiries with Customs officers involved in this area confirm what we said earlier about the lower costing rate. There is not a \$28 million reduction in coastal surveillance; it is a reduction in the costing out by Defence.

CHAIR—Thank you, Minister; we appreciate that.

Mr Cornall—While we are on points from earlier tonight, I now have for Senator Bishop an information sheet on the changes to intellectual property law negotiated in the free trade agreement, and that information is here to be tabled tonight.

Senator MARK BISHOP—That is available on your web site.

Mr Cornall—That is the material from the web site, yes. It has a reference to the web site.

Senator MARK BISHOP—Thank you, Mr Cornall. I was aware that that was on your web site—we were not talking about that.

Mr Cornall—I am not sure whether it is the same information. It is a fact sheet and it refers to the web site.

Senator Ellison—It may be in addition to the web site.

Mr Cornall—I am not sure whether it is the same.

Senator Ellison—We can table it, in any event.

Senator MARK BISHOP—Thank you for your assistance; we will look at that. Responding to your point, I accept what you are saying. Nonetheless, if the cost reduction from Defence is \$28 million, the notional charge to the Customs Service, that is obviously \$28 million less they require for that activity in the figures provided to them by government.

Mr Cornall—They do not pay.

Senator MARK BISHOP—Someone pays for the planes to fly around.

Mr Woodward—I see Senator Bishop's point as well. At the end of the day someone has to—

Senator Ellison—Defence does.

Senator MARK BISHOP—Someone pays for the Orions to fly around and for the patrol boats to sail around the ocean.

Mr Woodward—It is included as a notional charge in our accounts because accounting standards require it.

Senator MARK BISHOP—I understand.

Mr Cornall—It might be a change in Defence's calculation. It is possible there was an error in the earlier figure.

Senator MARK BISHOP—I am not going to pursue it. Thank you. We were talking about question No. 72 on cargo automation development funding. You said in the answer that there was no proposal to fund the provision of digital certificates. Is that proposal still under discussion or has it been dismissed along with all the other proposals—the funding of—

Mr Woodward—The funding of digital certificates has not been dismissed, no.

Senator MARK BISHOP—That is still alive?

Mr Woodward—My personal view is that it still has the most going for it. It was certainly raised as an option in the forum which the minister chaired. There seemed to me to be a fair bit of support for it, but when you get 18 people around the table it is very hard to get those 18 people to agree on anything when money allocation is involved.

Senator MARK BISHOP—In the answer to question No. 72 you said that no proposal for cargo automation development funding had been accepted and that one of the proposals was for the funding of digital certificates.

Mr Woodward—What I meant to say was that there was a whole host of individual responses that came in, virtually all of which, for various reasons, were not acceptable. Then there were discussions within that committee about what the best way to spend that money. My understanding is that out of that came a fair degree of consensus that the most equitable way was to provide a contribution towards the various forms of security devices that would be used on the system.

Senator MARK BISHOP—In fact, the funding was going to take place by way of reimbursement of costs subject to certain criteria being met.

Mr Woodward—That was the essence of it, yes.

Senator MARK BISHOP—What sorts of figures are involved in that—do have any idea?

Mr Woodward—It continually changes because I think we are still earning interest. I think I said about \$2.5 million; the last I heard was that it was about \$2.6 million.

Senator MARK BISHOP—I did not mean the amount in the trust fund; I meant the amount for reimbursement for costs associated with provision of digital certificates. That is not \$2.6 million?

Mr Woodward—The arithmetic has to be worked out based on how many people apply. That way you can work at how much each applicant will subsequently get. We know the cost of the certificates but whether it will be full reimbursement will depend very much on how many people apply, how much money we have got and simple division.

Senator MARK BISHOP—When we had the discussion last time you effectively asserted—I do not think without some degree of justification—that the money was Commonwealth money; that the money had been paid in by industry participants or bodies to the Commonwealth pursuant to a particular purpose and therefore it was Commonwealth money. Essentially you were arguing that it was at the discretion of the Commonwealth to dispense. Have you taken any legal advice on that point?

Mr Woodward—Yes, it was legal advice that we advanced. The customs brokers and, I think, the freight forwarders sought their own legal advice, which was different to our legal advice. We have had that tested with our own legal advisers and our legal advisers tell us that we are on very good ground. The fact that that particular issue as to who owns the money has not been raised in more recent times suggests that maybe they are thinking about the legal advice or thinking about tactics—I just do not know.

Senator MARK BISHOP—But in the first instance you had legal advice that it was the Commonwealth's money and that is still the advice you are receiving from your legal people.

Mr Woodward—It is still a view.

Senator MARK BISHOP—Have you been advised of any legal action seeking to protect these funds from industry?

Mr Woodward—I heard a rumour about sixth hand on one occasion that legal action might be taken—that could be six months ago.

Senator MARK BISHOP—No, I mean much more recent times.

Mr Burns—There have been exchanges of correspondence between our lawyers and a lawyer on behalf of Tradegate; it is an exploratory discussion, shall I say, at this stage. There have been a number of rumours around that industry or parts of industry may seek to injunct us in some form or another, but we have heard no more than that.

Senator MARK BISHOP—Mr Woodward, I think you said there is something like \$2.6 million in the fund. A certain amount of that is going to be used for the funding of the digital certificates. Is there any suggestion that the outstanding amount—the remaining amount—will be used for different aspects of CMR.

Mr Woodward—My intention—and Mr Burns can tell me whether he has formed a different view because he has been chairing the group—was that the entirety of the funds would be dispersed that way.

Mr Burns—The consensus at the working group that I chair, which has industry members on it, was to disperse the money in one go.

Senator MARK BISHOP—Into CMR?

Mr Burns—Into the digital certificates.

Senator MARK BISHOP—All of the money?

Mr Burns—All of the money. It would be an arithmetic calculation based on criteria of who was eligible. The working group have suggested to Customs, and we are developing, some definitions. They would be anybody who is hooked up with Customs with a digital certificate within the first three months of the operation of the ICS and a minimum of 20

transactions, so that they are bona fide operators, and then work that out in terms of an entity. Each entity would have one share of the reimbursement process and then you would simply divide the \$2.6 million by the number of entities.

Senator MARK BISHOP—So this is inching its way to a negotiated compromise.

Mr Burns—That was the outcome, the clear consensus, of the working group. I have to report to the CNCC, which is the advisory council that the CEO chairs, and we will put the final workings through them of course.

Senator MARK BISHOP—It is a slightly different proposition that the expert working group agrees to divvy up a lot to themselves and that proposition being signed off by Mr Woodward or the minister, isn't it?

Mr Woodward—This likely outcome has been discussed ad nauseam in our committee. I would be very surprised if the committee came up with a different view.

Senator MARK BISHOP—Okay. Can I turn to the accreditation scheme. There was a report in the *Fin Review* the other day that the Treasury had rejected the proposal to allow accredited operators to defer payment of the duty. The argument by the journo was that that destroyed the whole concept of accreditation. Customs has denied that publicly. Where is the proposal at?

Mr Woodward—There has been no final decision taken by the Treasurer on this matter. The Treasurer and the Treasury are aware of the importance which potential accredited clients see in this—and that we see in it, quite frankly—but there has been no final decision by the Treasurer.

Senator MARK BISHOP—So that report in the *Financial Review* that the Treasury had rejected the proposal is incorrect?

Mr Woodward—Literally it is incorrect.

Senator Ellison—I wrote to the paper telling them that.

CHAIR—Did they publish it, Minister?

Senator Ellison—I live in hope.

Senator MARK BISHOP—I have received a couple of complaints from staff at Perth airport as to issues of staffing, rostering and overtime at the airport. Are they still live issues over there?

Mr Woodward—The short answer is that we did not know. Can we take that on notice?

Senator MARK BISHOP—All right. Can you take these on notice. What is the nature of the problems with rosters at Perth airport? Are discussions under way with the CPSU on this? How many vacancies on staff are there at Perth airport? What proportion of staff work broken shifts? What is the average weekly absentee rate and the current turnover rate for staff? And are the problems with the sniffer dogs not being fully used due to staffing shortfalls?

Mr Woodward—We will take those on notice.

Senator MARK BISHOP—They are the allegations that have been made to me. If you could check them out, that would be good. Are the various sources of intelligence provided to

Customs confidential information? By that I mean the agencies and the networks that provide information.

Mr Woodward—Merely because information finds its way into our intelligence area does not by definition make it classified, but much of the information, for other reasons, is classified. For example, operational material—that is, intelligence that will lead to an operation—is classified. Our strategic assessments—and I mentioned one of them earlier—are classified.

Senator MARK BISHOP—I understand that, and I do not want to go there. It might be best if you take it on notice to provide the current sources of ACS intelligence, within your discretion.

Mr Woodward—We can give you an indication of where we get intelligence from. If there is anything that would prejudice the intelligence collection arrangements then we would have to provide a caveat for it. But I think we can provide general information.

Senator MARK BISHOP—I understand that; that is fine. Can you confirm that there is a Customs system into which all reported pieces of intelligence are logged and investigated?

Mr Woodward—We have quite a powerful intelligence system which does have as its base information records, IRs, that are put in by people throughout Customs. But we also have intelligence that is made available through other sources, such as law enforcement and national security agencies.

Senator Ellison—I think the director general, Mr Richardson, when giving evidence for ASIO, said that the exchange of intelligence with broader agencies in Australia was the best in the world. I do not think I am misquoting him there. He was before this committee this morning.

Senator MARK BISHOP—I will put the rest of those questions on notice.

CHAIR—Mr Richardson's remarks will be in the *Hansard* from this morning, Senator Bishop.

Senator MARK BISHOP—Fine, thank you, Chair. Thank you, Mr Woodward and various officers. That concludes my questioning.

CHAIR—Thank you very much, Senator Bishop. On behalf of the committee, Mr Woodward, I thank you and your staff for your assistance this afternoon and this evening. Mr Cornall, thank you to you and your officers for your and their assistance all day today. Thank you to you, Minister.

Committee adjourned at 10.43 p.m.