



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

ECONOMICS LEGISLATION COMMITTEE

ESTIMATES

(Budget Estimates)

WEDNESDAY, 2 JUNE 2004

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SENATE
ECONOMICS LEGISLATION COMMITTEE
Wednesday, 2 June 2004

Members: Senator Brandis (*Chair*), Senator Stephens (*Deputy Chair*), Senators Chapman, Murray, Watson and Webber

Senators in attendance: Senator Brandis (*Chair*), Senator Stephens (*Deputy Chair*), Senators Campbell, Collins, Conroy, Fifield, Harradine, Kirk, Lundy, Mason, Murray, O'Brien, Sherry, Watson and Webber

Committee met at 9.13 a.m.

INDUSTRY, TOURISM AND RESOURCES PORTFOLIO

Consideration resumed from 1 June 2004.

In Attendance

Senator Coonan, Minister for Revenue and Assistant Treasurer

Department of Industry, Tourism and Resources

Mr Russell Baker, Investment Manager, Minerals Team, Invest Australia

Mr Erik Beens, General Manager, ICT Infrastructure, eBusiness Division

Mr Alex Behm, Corporate Division

Mr Rick Belt, Manager, Environment Industries Section, Energy and Environment Division

Ms Vicki Brown, General Manager, International Energy Branch, Energy and Environment Division

Mr Don Brunker, General Manager, Industry Analysis Branch, Industry Policy Division

Ms Chris Butler, General Manager, Business Development, AusIndustry

Mr Peter Chesworth, General Manager, Office of Small Business

Mr Drew Clarke, Head of Division, Energy and Environment Division

Mr Peter Clarke, General Manager, Automotive and Engineering Branch, Manufacturing, Engineering and Construction Division

Ms Tania Constable, General Manager, Resources Development Branch, Resources Division

Mr Robert Crick, Head of Division, Analytical Division

Mr Peter Cummins, General Manager, AGAL

Mr Chris Dainer, Chief Finance Officer

Mr Ivan Donaldson, Executive Director, Australian Building Codes Board

Mr Garry Draffin, Chief Executive Officer, Invest Australia

Ms Cherie Ellison, Manager, Strategic Coordination and Support, Resources Division

Mr Warren Fletcher, Manager, Budget Coordination Unit, Corporate Division

Ms Robyn Foster, General Manager, Business Services Group, Corporate Division

Mr Gino Grassia, Manager, Greenhouse Section, Energy and Environment Division

Dr Michael Green, Director, Space Licensing and Safety Office, Manufacturing, Engineering and Construction Division
Mr Paul Griffin, General Manager, Business Entry Point, eBusiness Division
Ms Aneela Hakim, Assistant Manager, Budget Coordination Unit, Corporate Division
Ms Kerri Hartland, Head of Division, Innovation Division
Mr John Hartwell, Head of Division, Resources Division
Ms Rowena Hodges, Investment Manager, Agribusiness Team, Invest Australia
Mr Graeme Holt, Deputy Chief Finance Officer
Ms Wendy Honeyman, Assistant Manager, Budget Coordination Unit, Corporate Division
Mr Chris Hyman, Corporate Manager, Energy and Environment Division
Ms Beryl Janz, Acting General Manager, Ministerial and Coordination Group
Mr Barry Jones, Executive General Manager, Industry Attraction, Invest Australia
Mr Paul Kay, Acting General Manager, Offshore Resources Branch, Resources Division
Ms Melissa Kelly, Policy Officer, Automotive and Engineering Branch, Manufacturing, Engineering and Construction Division
Ms Patricia Kelly, Deputy Secretary
Mr Daniel Killaly, Budget Officer, Corporate Division
Ms Karen Kuschert, Acting General Manager, Innovation Policy Branch, Innovation Division
Mr Mike Lawson, General Manager, Aerospace and Defence Industries Branch, Manufacturing, Engineering and Construction Division
Mr Chris Lloyd, Acting General Manager, Safety, Taxation and Projects Branch, Resources Division
Mr Terry Lowndes, Head of Division, Industry Policy Division
Mr David Luchetti, Manager, R&D Tax Concession Program, AusIndustry
Mr Tim Mackey, Deputy Secretary
Mr Jurek Malzacher, General Manager, ICT Transition Team, eBusiness Division
Mr Richard Marson, Assistant Manager, Space Policy Section, Manufacturing, Engineering and Construction Division
Mr David McCarthy, General Manager, TCF and Construction Branch, Manufacturing, Engineering and Construction Division
Mr Rob McKeon, General Manager, Industry Collaboration Branch, Manufacturing, Engineering and Construction Division
Mr Ken Miley, General Manager, Trade and International Branch, Industry Policy Division
Ms Janet Murphy, Head of Division, Tourism Division
Mr Kevin Noonan, General Manager, Online Systems, eBusiness Division
Mr Philip Noonan, Head of Division, Corporate Division
Mr Kevin O'Brien, General Manager, National Energy Market Branch, Energy and Environment Division
Mr Bruce O'Meagher, General Manager, Industry Policy Branch, Industry Policy Division
Mr Mark Paterson, Secretary
Mr Steve Payne, General Manager, Minerals and Fuels Branch, Resources Division
Ms Helen Pearce, Budget Officer, Corporate Division
Mr Bill Peel, Executive General Manager, AusIndustry

Mr Craig Penniford, General Manager, Pharmaceuticals and Biotechnology Branch, Innovation Division
Mr Ken Pettifer, Head of Division, Manufacturing, Engineering and Construction Division
Mr Rick Phillips, Manager, Post-2006 Accommodation Project, Corporate Division
Ms Di Redwood, Manager, Regional Tourism Program, AusIndustry
Ms Rebecca Reimers, Investment Manager, Energy Team, Invest Australia
Mr Jeff Riethmuller, Acting General Manager, Tourism Market Access, Tourism Division
Dr Peter Robins, Director, Bureau of Tourism Research
Ms Martine Rodgers, Assistant Manager, Business Improvement Group, Corporate Division
Ms Kerry Rooney, General Manager, Business Development Group, Tourism Division
Mr Paul Ross, Manager, Biotechnology Australia, Innovation Division
Mr John Ryan, Deputy Secretary
Mr Les Rymer, General Manager, Small Business and Industry Programs, AusIndustry
Ms Samantha Silver, Manager, Markets, Office of Small Business
Mr Krishan Singh, Manager, Coordination Unit, Corporate Division
Mr Paul Sexton, General Manager, Customer Services, AusIndustry
Dr Terry Spencer, Group Manager, AGAL
Mr Rolf Taylor, Executive Officer, AGAL
Ms Lynne Thomson, Manager, Venture Capital Programs, AusIndustry
Mr Garry Wall, General Manager, Energy Futures Branch, Energy and Environment Division
Ms Sue Weston, Head of Division, Office of Small Business
Ms Margaret Wilson, Manager, Small Business Assistance Programs, AusIndustry
Ms Judi Zielke, General Manager, Innovation Programs, AusIndustry

CHAIR—I call to order this resumed hearing of the Senate Economics Legislation Committee. Today we reopen our examination of budget estimates 2004-05 for the industry, tourism and resources portfolio, for the purpose of hearing the minister's response to a question directed to him yesterday by Senator Harradine. We will then continue our examination of the Treasury portfolio. Because Senator Harradine has to go to another committee, I will defer the rest of the opening statement for the Treasury portfolio until we have dealt with this outstanding matter.

Yesterday, Senator Harradine directed a series of questions to the minister, in the course of which he sought production of a document. As I understand the position, the minister indicated his intention to refer to the portfolio minister the question of whether parts of that document should be sought to be protected by invoking a claim of commercial-in-confidence. I understand that a decision has now been made within the executive government in relation to that matter.

Senator Coonan—Minister Macfarlane has been consulted in relation to this commercial-in-confidence matter. Pursuant to procedural order No. 6, I now formally claim, as a minister, that the document is subject to commercial-in-confidence. I have a letter with me from the relevant minister, Minister Macfarlane, setting out the reasons for that. It is dated 1 June 2004. I would seek to table that letter in support of my formal claim.

CHAIR—Thank you, Senator. I understand a copy of that letter was informally provided to Senator Harradine before the hearing. Does the committee agree to receive the letter? I will arrange to have it copied so that it can be supplied to other senators. Senator Harradine, do you want to address the issue in the meantime?

Senator HARRADINE—No, I have examined the statement. It does not, in my view, meet the standards of accountability pursuant to standing order 6C on page 121 of the Senate's standing orders.

CHAIR—Which standing order are you referring to, Senator Harradine?

Senator HARRADINE—It is on page 121.

CHAIR—There isn't a standing order 6C.

Senator HARRADINE—I am sorry; I thought it was standing order 6C.

CHAIR—The operative procedural resolution is that of 30 October 2003, which is reproduced in the February 2004 edition of the Senate's standing orders.

Senator HARRADINE—Precisely. That is what I am reading from.

CHAIR—There is no standing order 6C on that page.

Senator HARRADINE—I had in the back of my mind that it was 6C, but it is standing order 6.

CHAIR—I see. Why do you say that the statement does not comply with procedural order 6?

Senator HARRADINE—There are a number of reasons, but I will wait for a short time, while copies of the letter are provided to the other members of the committee.

Senator WATSON—As a longstanding member of the Public Accounts Committee, I know that the question of commercial-in-confidence has frequently crossed our examination paths. It would appear that the minister has given the reasons for commercial-in-confidence. While I think that has to be honoured, I still would like to find a pathway to enable an assurance to be given to Senator Harradine that his concerns are being met. I therefore ask the minister to look at whether there are ways whereby she could provide an oversight or whereby an independent person with appropriate knowledge of, as well as concern for, this issue could oversee this issue, in order to provide the necessary assurance from time to time—and those would probably be the operative words. My understanding is that Senator Harradine has accepted the assurances at the moment, but he is concerned about what will happen in the future. I just put that on the table. I am not sure whether that would be satisfactory to Senator Harradine or not, but I can see a problem in trying to extract from government what is a genuine commercial-in-confidence document.

CHAIR—I am sure the minister will note that. I would rather not have this debate now, because I have not yet made a ruling, and I am not going to make a ruling until I have heard from Senator Harradine and any other senators who want to participate in the discussion.

Senator HARRADINE—What kind of ruling had you in mind?

CHAIR—I have not made a ruling yet, but the ruling I understand that you are seeking is that the document be produced. You have asked for the document to be produced. *Prima facie*, you have a right to that. But, there is an exception in relation to commercial-in-confidence documents. I do not want to have the debate in a vacuum; I want to have it with the minister's statement in front of me. What I propose to do is this: when we get the photocopies back, we will circulate them and allow senators to read them. I will then invite Senator Harradine to say anything he wants to say—and other senators to say anything they want to say. Then I will make a ruling. Here come the photocopies now.

Senator HARRADINE—I have to go.

CHAIR—If senators have had an opportunity to read the document, I will ask Senator Harradine to continue. You were about to object to this letter on some basis—what is your objection?

Senator HARRADINE—That is right. It is a blanket decision covering all moneys that are going to the National Stem Cell Centre. We have our requirements as a Senate to ascertain where public moneys are to be spent on a major issue like this. Having looked at this and having some background information, I will leave it at that and raise it and deal with it in the appropriate manner. I do not feel that any member of the Senate can accept a blanket statement such as that given by the minister. But that argument can take place at another stage. Unfortunately, I am due at another committee now.

CHAIR—I just want to do this properly, Senator Harradine. Do any other senators wish to speak to the question?

Senator CONROY—I do not know that there is a question. Senator Harradine is not pressing the issue.

Senator WATSON—Senator Harradine might like to give a response to the alternative that I offered, given the concern that, if you put it to somebody like the Auditor-General, he would probably come to the same conclusion the minister has come to. But, in the interest of finding a resolution, I did point out an alternative, Senator Harradine, and I was wondering whether that might be acceptable to you?

Senator HARRADINE—It is not for me; it is for the minister.

Senator WATSON—But if you put the request to the minister—

Senator HARRADINE—I am sorry, I am here to obtain information about moneys and what is going to be done with those at a future time. There have been constant requests for an independent evaluation, and that has not occurred.

Senator Coonan—I might intervene here to say that, given the time constraints on Senator Harradine and given the other pressures on the committee, I am sure that the minister acknowledges that the committee needs information. However, occasionally there are instances where we obviously have an obligation to maintain commercial confidentiality. To produce this sort of information in the way that Senator Harradine has sought it would be grossly unfair and would give other competitors a free kick and would create various other problems. What we might do, perhaps, to resolve the issue is this: if Senator Harradine can actually approach the minister and try to see whether the information he wants can be

provided in some way that does not require the document or any confidential information being provided in a way that is prohibitive to confidentiality, I will ask the minister if that can be done.

CHAIR—Thank you, Minister, that is very helpful.

Senator WATSON—Senator Harradine has said he is concerned about the transparency of money transactions. The thrust of my concerns comes to the actual practices, particularly in relation to cloning.

CHAIR—There are procedural and substantive issues. I am only concerned with the procedural issue.

Senator WATSON—But you might like to join in that one too.

CHAIR—The position, Senator Harradine, as I read it, is this: your questions are relevant, so *prima facie* you have a right to the production of the document. However, both the practice of the Senate and, by implication, procedural order 6 of the Senate of 30 October 2003, recognise an exception in relation to commercial-in-confidence documents. Procedural order 6 prescribes a mode by which a minister can invoke the protection of procedural order 6. That is, a claim must be made—that has been made this morning by Senator Coonan—and a document setting out the basis of the claim, including a statement of any commercial harm that may result from the disclosure of the information, must be made to the committee. That has now been done. Subject to one qualification that I will make, it seems to me, therefore, that both of the requirements of that procedural order have been satisfied, and therefore I should rule that your question in relation to the document cannot be further pressed.

The qualification is that the document that has been provided to us has the minister deeming matters to be commercial-in-confidence. I think strictly speaking that is a decision for this committee, or at least for me as the chair, to make. The minister can provide a statement as to why he considers I should so rule—in other words, it is not the minister's decision; it is the committee's decision. However, the minister has elsewhere in the letter provided reasons why the content of the document would cause commercial harm in order to support his claim that this is a commercial-in-confidence document. I am satisfied that in a procedural sense it does meet the requirements of procedural order 6 and therefore I uphold the claim.

Senator HARRADINE—This is a blanket claim.

CHAIR—It is a blanket claim, but, Senator Harradine, the way procedural order 6 is drafted actually contemplates that blanket claims may be made. It does not use the words 'blanket claims' but it does apply in a generic way.

Senator CONROY—Are you saying that before Senator Harradine says he wants to press it you are ruling he cannot press it?

CHAIR—Senator Conroy, he asked some questions yesterday which he was entitled to ask because they were relevant questions. The claim made this morning by the minister in a formal sense is responsive to questions asked yesterday. As a result of that, a statement which I consider satisfies procedural order 6 has been provided by the minister. As a result of that happening, in a formal sense my ruling is that the questions asked yesterday, that is, 'Will you

produce this document or so much of the content of the document as was not produced,' cannot be pressed.

Senator CONROY—Cannot be pressed?

CHAIR—Well, he can ask them but they need not be answered.

Senator CONROY—The committee ultimately makes that decision.

CHAIR—You could ask for a private meeting, but I have to give a ruling about whether or not a procedure open to the minister has been properly invoked, and my ruling is that it has been.

Senator Coonan—And technically it is not a blanket claim; it is a claim in respect of the redacted part of the document.

Senator HARRADINE—That is the point: which redactor? Do you mean the blacked-out document? Are we going to get a copy of the blacked-out document?

Mr Paterson—The full copy of the deed was provided, and a redacted version of the business plan was provided. The component pieces of the business plan that were not provided are what the minister has asserted are commercial-in-confidence consistent with the deed, the public release of which would do commercial harm to the centre.

CHAIR—In other words, the document in an incomplete form, that is with the commercial-in-confidence parts masked, has been provided. That is right, isn't it, Mr Paterson?

Mr Paterson—Yes, that is correct.

Senator Coonan—And I have offered, if Senator Harradine wishes, to ask the minister if there is any way in which some of the information might be provided in an acceptable way.

CHAIR—If that can be done informally that is extremely helpful. But all I am concerned to do is to decide whether or not the provisions of procedural order 6 have been properly invoked, and I have decided that they have been. So that disposes of the matter.

Senator HARRADINE—Mr Chairman, you have raised a couple of things there. First of all, I am very concerned that we are not getting a copy of the quarterly report, and not even a copy of the annual report.

CHAIR—That is a different issue.

Senator HARRADINE—No, it goes to the question of what particular programs would fall under this commercial-in-confidence and would be seriously affected by—

CHAIR—This letter and the claim made by the minister at the table only operates on the documents that you identified yesterday. It is a matter for you to frame your questions as you wish, and if—

Senator HARRADINE—With respect, Mr Chairman, if you look at the *Hansard* I raised this question about tabling the quarterly report.

Mr Paterson—Yesterday Senator Harradine raised some questions in relation to information which was to be provided to us in the quarterly report that we expected to receive from the centre yesterday, and we undertook yesterday that we would provide information to

Senator Harradine in response once we received the report. We received the report yesterday afternoon after that part of the hearing had concluded. I have informally provided to Senator Harradine this morning a copy of the responses to the questions that he raised yesterday in relation to the quarterly report. It is not a copy of the quarterly report, but we have provided to him informally, and I would—

CHAIR—You can just table it, Mr Paterson.

Mr Paterson—I table to the committee a copy of the information that I have provided to him which responds to the questions of yesterday.

CHAIR—Thank you.

Senator HARRADINE—But, Mr Chairman—

CHAIR—Senator Harradine, the issue of the information from the quarterly reports, which was not available yesterday but Mr Paterson tells us now is and it is before us, and the question of the commercial-in-confidence parts of a deed are separate issues. The quarterly reports have got nothing to do with the question of commercial-in-confidence.

Senator HARRADINE—Of course they are related. The fact is that the—

CHAIR—But Mr Paterson has given you the information. Why won't you take yes for an answer? You asked for information from Mr Paterson yesterday which was contained in quarterly reports. Mr Paterson said it was not available yesterday; he said this morning it is now available and he has given it to you.

Senator HARRADINE—He has given me a sanitised summary of some of the matters that are contained in the quarterly report. I am attempting on behalf of the taxpayers to find out where the money has gone, and why. Our constituents, I am sure, would be interested to know where that money has gone.

CHAIR—Look, Senator Harradine, you asked some questions of Mr Paterson about information in the quarterly reports. He said yesterday he could not give it to you then; he has this morning said, 'This is the information you sought', and he has produced a document.

Senator HARRADINE—It is not the information I sought in complete form.

CHAIR—It is a matter for a witness to answer a question as he understands it. Mr Paterson, did you want to say anything?

Mr Paterson—We do not yet have a copy of the *Hansard* from yesterday, but the focus of the questions as our notes reflect it was that Senator Harradine questioned us in relation to forecast research expenditure for 2003-04, which was the focus of yesterday's hearing, and the breakdown between human embryonic stem cell research and adult stem cell research. We have provided the financial breakdown of that research activity. We were asked about the projects and the research partners. We have identified the projects, the research partners, the institutions that are involved and the names of the key individuals associated with the questions yesterday. There are other elements of the quarterly report which, consistent with the business plan, are commercial-in-confidence. That is the reason that we have provided the responses to Senator Harradine's questions but not a copy of the quarterly report. If pressed

on that, I am confident that the minister would make a similar claim in relation to the quarterly report as he has done in relation to the redacted versions of the earlier business plan.

CHAIR—Senator Harradine, can I suggest a course of action because the estimates for this department are in fact finished subject to dealing with this one outstanding matter. If you are of the belief that the information provided to you is not fully responsive to the questions you asked yesterday, I think your best course is to ask more questions on notice.

Senator CONROY—With your indulgence, Chair, without wanting to prolong this, ultimately, if Senator Harradine would like to insist, he is entitled to put that the committee. You cannot actually rule him out, as much as you think you can. You actually cannot. It is up to the committee—

CHAIR—I understand that any ruling that I make is subject to the committee.

Senator CONROY—No, you just made something up. If Senator Harradine wants to press it, he is entitled to press it. The committee may then decide that it does not support Senator Harradine in pressing it. But, ultimately, you cannot say that he is no longer allowed to press it. That is not your decision.

CHAIR—No, I am not saying that. What I was saying before was that the letter that has been given to us and the claim made by the minister successfully invokes procedural order 6.

Senator CONROY—That is your view.

CHAIR—It is a procedural question on which a ruling had to be made and it was made. Senator Harradine can ask any question he likes as long as it is relevant. But not every question has to be answered. Prima facie every relevant question does have to be answered, but the standing orders and the procedural rules of the Senate admit of exceptions to that general principle.

Senator CONROY—We can agree to disagree on this. The issue is whether Senator Harradine would like to press it. If he does not want to then we can avoid the argument. I am happy to have the argument, although I think we need to go to committee to do it. But, if Senator Harradine wants to press it, he is entitled to.

CHAIR—I do not even know what you are asking now, Senator Harradine. You are saying that the information provided by Mr Paterson to you this morning is not a full response to questions you asked yesterday. Is that what you are saying?

Senator HARRADINE—Yes.

CHAIR—What do you want to do?

Senator HARRADINE—What I have to do is go to another committee.

CHAIR—I understand that—that is why I was suggesting that, as a matter of efficiency, the best thing to do would be to put any further questions on notice.

Senator WEBBER—Either that or, if Senator Harradine would like, the committee can reconvene to consider this.

Senator HARRADINE—Yes, there is the committee of the whole too—

Senator WEBBER—There is the committee of the whole or this committee can reconvene to consider this issue later—

CHAIR—You can raise the matter in the Senate if you like.

Senator WEBBER—and we can make a decision.

CHAIR—That is the end of the matter for the moment. Thank you.

Proceedings suspended from 9.39 a.m. to 9.44 a.m.

TREASURY PORTFOLIO

Consideration resumed from 1 June 2004.

In Attendance

Senator Coonan, Minister for Revenue and Assistant Treasurer

Treasury Portfolio**Department of Treasury****Australian Securities and Investments Commission (ASIC)****Outcome 1: A fair and efficient market characterised by integrity and transparency and supporting confident and informed participation of investors and consumers**

Professor Berna Collier, Commissioner

Mr Mark Drysdale, Executive Director, Public and Commercial Services

Mr Carlos Iglesias, Executive Director, Infrastructure

Mr Ian Johnston, Executive Director, Financial Services Regulation

Mr Jeffrey Lucy, Chairman

Mr Stephen Lutze, Chief Financial Officer

Ms Pam McAlister, Director, FSR Legal and Technical

Ms Jan Redfern, Executive Director, Enforcement

Mr Malcolm Rodgers, Acting Commissioner

Mr Greg Tanzer, Executive Director, Consumer Protection and International

Australian Accounting Standards Board

Mr David Boymal, Chairman

Mr Angus Thomson, Technical Director

Treasury Outcome 1**Overall Outcome: Strong, sustainable economic growth and the improved wellbeing of Australians****Outcome 1: Sound macroeconomic environment**

Mr Jason Allford, Manager, Domestic Economy Division

Mr Roger Brake, General Manager, International Finance Division

Mr Damien Dunn, Acting Principal Adviser, Domestic Economy Division

Dr David Gruen, General Manager, Macroeconomic Policy Division

Ms Karen Gilmour, Manager, Pacific and Assistance Division

Dr Jim Hagan, General Manager, Domestic Economy Division

Mr John Hawkins, Manager, Domestic Economy Division

Dr Steven Kennedy, Manager, International Economy Division

Mr Tony McDonald, Specialist Adviser (Iraq), Pacific and Assistance Division

Mr Stephen Miners, Manager, Domestic Economy Division

Dr Martin Parkinson, Executive Director

Ms Frances Perkins, General Manager, Pacific and Assistance Division

Ms Meghan Quinn, Specialist Adviser, International Economy Division

Dr Heather Smith, General Manager, International Economy Division

Mr Nick Stoney, Manager, Domestic Economy Division

Mr Andrew Thomas, Manager, International Economy Division

Mr Geoff Walton, Manager, Pacific and Assistance Division

Treasury Outcome 3**Outcome 3: Well functioning markets**

Ms Lorraine Allan, Acting Manager, Financial System Division
Mr Matthew Brine, Manager, Corporations and Financial Services Division
Ms Melissa Cranfield, Senior Adviser, Financial System Division
Mr Matthew Crooke, Senior Adviser, Financial System Division
Mr Jorge del Busto, Senior Adviser, Corporations and Financial Services Division
Mr John Hill, Manager, Competition and Consumer Policy Division
Ms Suzanne Howarth, Competition and Consumer Policy Division
Ms Veronique Ingram, General Manager, Financial System Division
Mr Gary Johnston, Manager, Financial System Division
Mr Stewart Jones, Competition and Consumer Policy Division
Mr Chris Legg, General Manager, Foreign Investment Policy Division
Mr Peter Levy, Corporations and Financial Services Division
Mr David Love, Corporations and Financial Services Division
Mr Peter McCray, Manager, Financial System Division
Mr Andre Moore, Financial System Division
Mr Jim Murphy, Executive Director
Ms Sandra Patch, Competition and Consumer Policy Division
Mr Mike Rawstron, General Manager, Corporations and Financial Services Division
Mr Mike Rosser, Manager, Corporations and Financial Services Division
Ms Louise Seeber, Competition and Consumer Policy Division
Ms Ruth Smith, Manager, Corporations and Financial Services Division
Ms Bernadette Welch, Manager, Financial System Division
Mr Damien White, Manager, Financial System Division
Ms Kerstin Wijeyewardene, Manager, Corporations and Financial Services Division
Ms Sue Vroombout, Acting General Manager, Strategy, Consumer and Group Services,
Markets Group
Mr John Wunsch, Strategy, Consumer and Group Services, Markets Group

Treasury Outcome 2**Outcome 2: Effective government spending and taxation arrangements and the****Australian Taxation Office****Australian Taxation Office**

Mr Matthew Flavel, Manager, Budget Policy Division
Mr Tony Free, Manager, Indirect Tax Division
Mr Rob Heferen, General Manager, Commonwealth-State Relations Division
Mr David Martine, General Manager, Budget Policy Division
Mr Neil Motteram, Acting General Manager, International Tax and Treaties Division
Ms Maryanne Mrakovic, General Manager, Industry, Environment and Defence Division
Mr Peter Mullins, General Manager, Business Income Division
Mr Richard Murray, Executive Director
Mr Paul Roe, Manager, Budget Policy Division
Dr George Rothman, Senior Adviser, Tax Analysis Division

Mr Trevor Thomas, General Manager, Superannuation, Retirement and Savings Division
Mr Paul Tilley, Acting General Manager, Tax Analysis Division
Mr David Tune, General Manager, Social Policy Division
Mr David Turvey, Senior Adviser, Budget Policy Division
Mr Michael Carmody, Commissioner of Taxation
Mr Paul Duffus, First Assistant Commissioner
Mr Greg Farr, Second Commissioner
Mr Kevin Fitzpatrick, First Assistant Commissioner
Mr Bill Gibson, Chief Information Officer
Ms Erin Holland, Deputy Commissioner
Mr Mark Jackson, Deputy Commissioner
Mr Mark Konza, Deputy Commissioner
Mr Neil Mann, Deputy Commissioner
Ms Donna Moody, Chief Finance Officer
Mr Shane Reardon, Deputy Commissioner
Mr Gregory Topping, Assistant Deputy Commissioner
Ms Raelene Vivian, Deputy Commissioner

Australian Securities and Investments Commission

ACTING CHAIR (Senator Watson)—We welcome our friends from ASIC. I take this opportunity to congratulate Mr Lucy; this is the first time that he has appeared before the committee in the capacity of Chairman of ASIC. In the past, he has appeared as deputy chairman, and he answered questions well. Mr Lucy, we look forward to a close association with you, and we wish you and your team well in the future.

Mr Lucy—Thank you, Senator.

ACTING CHAIR—I have a couple of questions for you, Mr Lucy.

Senator CONROY—You are exercising the chair's prerogative, are you, Senator Watson?

ACTING CHAIR—Absolutely. You will have second go, Senator Conroy. Mr Lucy, has ASIC kept abreast of market timing scandals in the US?

Mr Lucy—I believe that we have. I will ask Ian Johnston, Executive Director, Financial Services Regulation, to provide a more detailed response.

Mr Johnston—We have—

ACTING CHAIR—Before you begin, I will ask a second question because I think you might incorporate this point in your answer: what are the lessons for Australia?

Mr Johnston—In terms of keeping abreast of the matter, we certainly have noted the activities and the abuses that have taken place in the US. We have been in dialogue with the SEC in the US and we have met with them on this issue—we have been in regular communication with them. In the Australian marketplace we have looked at the experience that has taken place here. We wrote to and made inquiries of each of the major fund managers in Australia and we have visited several of them to monitor what sorts of abuses, if any, were taking place in the Australian marketplace. Our experience, as we see it just now, is similar to that in the UK and throughout Europe which is that we are not seeing the sorts of systemic

abuses that took place in the US happening in the Australian marketplace. The structure of the industry is somewhat different here and, indeed, the structure of the products is somewhat different—they have some features that militate against the sorts of practices that have taken place in the US. Market timing is not strictly illegal in the Australian law; certainly late trading activities are illegal but we have not noticed any systemic examples of abuse in either case.

ACTING CHAIR—Has ASIC issued any statement on those two topics, market timing and late trading?

Mr Johnston—We certainly notified the industry that it was a matter we were looking at. I have had several media inquiries whereby we have passed on the information that we were looking at the issue and that we had not observed any systemic abuse. We have not released a media release or any formal statement, partly because our inquiries are continuing and it is a focus we will continue to have as we monitor the managed funds industry going forward.

ACTING CHAIR—Is it possible for ASIC to issue a standard in relation to both these issues?

Mr Johnston—I do not think that is appropriate or necessary, Senator. The industry itself has a unit pricing standard which its members are supposed to meet and the evidence before us is that the vast majority of them do. But because it is not an issue that we have identified as giving examples of systemic abuse I do not believe that we need to do that.

ACTING CHAIR—From your answer I gather the industry itself has issued some statement on both these topics?

Mr Johnston—Yes, that is my understanding.

ACTING CHAIR—And what did they say?

Mr Johnston—The industry has had, through the industry body, for some time now a pricing methodology to which its members are supposed to adhere. That pricing methodology in itself militates against some of those abusive practices. There are two elements to that. One is that they use what is called a forward pricing mechanism. This means that people will go in at a particular price but they do not know what that price is at the very time that they might transact because it will not be signed off until the end of the trading day, so they cannot go in and out and try to take advantage of arbitrage positions.

The other thing that is different in the Australian industry, which most of the industry employs, is what is called a spread in their pricing, whereby you will go in at a particular price and come out at a different price on the same day—in other words, the two prices account for the fact that there are transaction costs met in allowing people to go in and out of funds. That tends not to be the experience in the US. And because the exit price will generally be different from the entry price that again militates against people going in and out very quickly and trying to arbitrage.

ACTING CHAIR—You indicated that you visited a number of funds. Have you undertaken any audit activities.

Mr Johnston—Not audit in the formal sense of the word as an auditor, but we have gone in and looked at transactions, their systems and their processes, yes.

ACTING CHAIR—Do you intend to undertake audits?

Mr Johnston—We would call them compliance visits, and we have conducted a number of those. In our normal compliance visits to managed funds, this is one of the issues that we will continue to look at.

ACTING CHAIR—I would now like to move to the practice in the UK. I understand they have recently introduced legislation to create a single finance ombudsman scheme with different divisions within that one scheme. So it provides one entry point for consumers, with the ability to consistently apply the same tests to the financial industries, and the integrated operations provide an integrated, uniform and less costly dispute resolution system. I think I pointed out yesterday that we have three different types of schemes—the Banking and Financial Services Ombudsman, the Financial Industry Complaints Scheme and the Superannuation Compliance Tribunal. Each of these has different tests, and this is a problem. Under FSR, we are trying to unify and streamline operations. There does seem to me to be an opportunity to examine the dispute resolution area to get some better disciplines and greater uniformity. As I said, each of these three systems has different procedures, structures and appeal mechanisms against decisions, particularly the Superannuation Compliance Tribunal. Have you looked at this with a view to providing a recommendation to government to try to streamline and reduce the red tape and reduce the opportunity for consumer shopping to get the best advantage?

Mr Johnston—The law here does permit a number of dispute resolution mechanisms. FSRA requires membership of a dispute resolution scheme but makes no requirement about the number of those schemes, so the various industries have set up their own schemes. It is true that in the UK there is a single financial ombudsman. We have said before we are concerned if there are too many schemes—ASIC has said that before—and we would like to see greater consistency in the thresholds and mechanisms employed by dispute resolution schemes. But I think it is too early to say whether the number of schemes is giving rise to significant problems because many of them have not been operating for any length of time.

ACTING CHAIR—How long do we have to wait until you learn from the experiences of the UK? They seem to have identified the problem and established one dispute resolution centre.

Mr Johnston—It is open to the government to legislate that there should be one scheme but the government has chosen not to do so.

ACTING CHAIR—But they have to be given some direction from the regulator as to the need, the urgency and the practicality of such an approach.

Senator SHERRY—The regulator directs the government?

ACTING CHAIR—Well, they provide advice to government.

Senator CONROY—We will be coming to that topic.

Mr Johnston—We will monitor the performance of those schemes, Senator, but as you are aware, FSRA has only been operative since 11 March.

ACTING CHAIR—Yes, but all these dispute resolution opportunities or structures have been around for quite some time.

Mr Johnston—Some of them have; some of them only arose out of the implementation of the new law. If we observe that there are serious problems emerging from the operation of those schemes, or if we believe they are not doing the job, we would certainly alert government to that.

ACTING CHAIR—What about the cost of maintaining three different structures when you can have only one?

Mr Johnston—If we observed that there were difficulties arising because of those costs we would alert government to that.

Senator Coonan—Once there is some data, Senator Watson, you can have a sensible review and look at whether or not there can be some economies of scale or some more efficient way of doing it. But often you have to let it run a bit to see whether or not some issues arise once the systems are set up, which they are.

ACTING CHAIR—Having got some advice about the UK scheme, they seem to have tackled this issue.

Senator Coonan—It is obviously something we can have a look at.

ACTING CHAIR—Professor Collier, could you report some progress in relation to the Blue Ribbon problems in Launceston, Tasmania, and its associate hire labour company, which seem to be breaching the spirit of the law perhaps, on insolvent trading and other issues?

Prof. Collier—Yes, I am happy to do that. We are currently aware of an issue involving a company called New Employ Pty Ltd, which I think is the company in which you are interested. New Employ was incorporated on 17 December 2001 and has provided labour services to a number of companies in Tasmania and Victoria, including Blue Ribbon Meat Products Pty Ltd. To our knowledge, New Employ is not actually related to Blue Ribbon Meats. We understand that it is a separate company in law and has no connection with Blue Ribbon, apart from supplying labour to it. We understand that there has been an industrial dispute in relation to New Employ workers. Indeed, I understand that that company, New Employ, is in liquidation now. We have actually spoken with the liquidator of New Employ, but the liquidator tells us that it is too early yet to determine whether any offences, such as insolvent trading et cetera, have been committed. We have alerted the liquidator to the fact that we are interested in this company and we have asked for a report under section 533 of the Corporations Act, as soon as possible. We are awaiting that at the moment.

ACTING CHAIR—Is it true that that company has not made a full payment in terms of employees' entitlements.

Prof. Collier—I am unable to answer that. However, since the company is in liquidation, I suspect that is the case. The liquidator has, however, told us that the employees are likely to receive their entitlements under GEERS, if not from the company. That is my understanding of the situation at the moment.

ACTING CHAIR—Although they may be receiving their entitlements under GEERS, if there is a breach of law I would hope that maybe you would follow that through.

Prof. Collier—We have alerted the liquidator to our interest in the company, and we will be following it up.

ACTING CHAIR—What about Blue Ribbon.

Prof. Collier—I have nothing further to report on Blue Ribbon at this stage. I not sure exactly what your interest in the company is, apart from its relationship with New Employ. We had an interest in Blue Ribbon some time ago, but that company, if I recollect, has now been wound up.

ACTING CHAIR—And have they met all their liabilities and corporate law responsibilities?

Prof. Collier—I do not think that is the case. As I said, the company went into liquidation in insolvency and therefore did not pay all the creditors out. This happened about two years ago—18 months to two years ago. If there is anything specific, I would be very happy to take a question on notice.

ACTING CHAIR—The other company I would like to have information about is Tasile—the liquidator’s handling of that, the sale of the property and whether they complied fully with corporate law in terms of their responsibilities to creditors.

Prof. Collier—Yes. We are currently following that up and, if you do not mind, I would also like to take that one on notice. We just have to make some further inquiries.

Senator SHERRY—Just on that last issue that Senator Watson raised, GEERS and employee entitlements—that scheme does not include superannuation entitlements, does it?

Prof. Collier—I am not sure. I would have to take that question on notice.

Senator SHERRY—Okay. I have two issues I would like to raise. Firstly, are you aware of the case in Hobart of a financial planner called Mr Mervyn Mitchell, Mr Johnston?

Mr Johnston—Yes, but it became an enforcement matter. Ms Redfern would have become involved after it became an enforcement matter.

Ms Redfern—I am aware of the case.

Senator SHERRY—In Hobart Court last week he was found guilty of swindling \$4.5 million. I would like to raise a couple of issues relating to this. Apparently the moneys that he swindled included superannuation moneys: are you able to give me more detail about the nature of the superannuation moneys?

Ms Redfern—I cannot at this stage give you a breakdown of the extent to which there were superannuation moneys. I can take that one on notice.

Senator SHERRY—Are you able to give me an idea? Were these moneys pre retirement moneys that the planner had taken from employees and then not put into retail superannuation products or do-it-yourself superannuation or were they post retirement rollover moneys?

Ms Redfern—I do not have that detail; I will have to take that on notice. But of the people who were the victims, as I understand it, the majority were in fact retirees.

Senator SHERRY—Can you give me some sort of idea whether superannuation moneys pre- or post-retirement were involved? According to the media, and I do not know whether this is accurate, but Godfrey Pembroke for whom Mr Mitchell worked have paid back most of the money that Mitchell had taken. Did that include lost interest earned over the period?

Ms Redfern—They paid back the amount lost with interest on that. I think there might have been two clients of Pembroke's that were unsatisfied with the settlement offer and I understand there were still discussions taking place.

Senator SHERRY—Have you been involved, not you personally, in those discussions?

Ms Redfern—No, not that I am aware.

Senator SHERRY—Was there a prima facie legal obligation on them to repay moneys?

Ms Redfern—Yes.

Senator SHERRY—Is there any claim possible under the SI(S) Act in respect to superannuation moneys because this is obviously theft and fraud? Godfrey Pembroke have paid back the money, would they then be able to claim under the SI(S) Act superannuation moneys that were stolen under the compensation mechanism?

Ms Redfern—I do not know whether it can and the extent to which it involves superannuation money. I will have to take the question on notice. My first reaction would be to say I would think it would be unlikely but I would have to take the question on notice.

Senator SHERRY—Could you let the committee know why they are legally liable to the moneys, under what provision they are legally liable, and whether there is any at least prima facie claim under the SI(S) Act? I am just interested because whether or not the firm itself, Godfrey Pembroke, are able to pick up some of their losses via the SI(S) Act—the superannuation theft and fraud provision via the levy and whether or not that is possible for them to do. I am not suggesting that they are going to do it; I am just interested to know what the possible legal position is.

Ms Redfern—I believe it is 815 at the relevant time of the Corporations Act. There is a direct responsibility on the licensed representative in relation to the acts of the representative; it was on that basis that the money was paid.

Senator SHERRY—This went on for eight years; it was a very lengthy period of time before one client discovered it by accident. Do you have any explanation as to how someone could carry out such a significant fraud for such a lengthy period of time without detection?

Ms Redfern—What appears to have happened is that over time Mr Mitchell has issued documents to the clients representing a certain position in relation to their investments. They have received payments in relation to their investments, in a way robbing Peter to pay Paul. It has gone on for quite a long period of time and over the eight-year period it has blown up to a substantial amount of money. It would not have started off that way. We have seen this happen before and the clients have not been alerted to the issue because they have been receiving regular documentation and payments.

Senator SHERRY—So stealing from new customers to put money back to cover the old?

Ms Redfern—Yes.

Senator SHERRY—But the documentation he was issuing—did he have a separate set of books effectively, of documentation, separate from the firm?

Ms Redfern—I do not know the detail of precisely how he did it but I know that was the mechanism that he used.

Senator SHERRY—There was another financial planner doing something similar, Mr Prehn in Burnie some years ago, and he has been convicted. In terms of the recent legislative regulatory changes under FSR are there any ways of trying to minimise this problem of someone issuing false documentation apparently to people who do not come from particularly knowledgeable financial backgrounds who prima facie accepted it for eight years?

Ms Redfern—I can only speak from an enforcement direction; I do not know if Mr Johnston wants to provide some more details. From an enforcement point of view, often what we see in these sorts of things is that there is a fraud. It is sometimes very hard to uncover the fraud, or to put systems in place to uncover the fraud.

Mr Johnston—There would not be any direct provisions of FSRA that would impact on that sort of activity. As Ms Redfern says, regardless of the regime that is in place people can still commit frauds and try to falsify documents. What FSRA does require, though, is that the licensee be liable for the actions of the representative so there will be compensation. There should be monitoring, of course, of the activities of the representative by the licensee.

Senator SHERRY—I assume that is related to Godfrey Pembroke paying back most of the money?

Mr Johnston—Yes.

Senator SHERRY—Have you examined their internal regulatory mechanisms in respect of their planners?

Mr Johnston—Not in respect of this matter at this stage.

Senator SHERRY—Why is that?

Mr Johnston—It is a fresh matter at the moment.

Senator SHERRY—You will be but you haven't yet?

Mr Johnston—We have not done so at this stage.

Senator SHERRY—Do you intend to?

Mr Johnston—We are looking at the whole of the financial planning community, and on a risk basis we will look at some entities ahead of others. These are the sorts of matters that raise our interest as far as having a basis of risk—

Senator SHERRY—My question specifically goes to Godfrey Pembroke. You will be having a look at them, won't you? There is a \$4½ million fraud.

Mr Johnston—I am not trying to avoid the question. It is simply that we have not yet identified a target date to look at Godfrey Pembroke. But it would be likely that we would.

Senator SHERRY—I am just surprised. The guy has been found guilty with very substantial publicity in Tasmania—yet again another financial planner. I am surprised you have not been in to look at the mechanisms of Godfrey Pembroke.

Mr Johnston—As I say, Senator, it is a fresh matter and it is the sort of matter that raises on a risk profile for various planners—

Senator SHERRY—I know it is fresh in terms of a conviction—the conviction was last week. But presumably you must have had knowledge of this for some time.

Mr Johnston—Indeed.

Ms Redfern—The matter came to our attention last year. We secured the conviction within the year.

Senator SHERRY—So you haven't been in to see Godfrey Pembroke yet?

Mr Johnston—We have looked at Godfrey Pembroke in respect of a number of matters but not specifically in relation to the impact of this matter at this time.

Senator SHERRY—Have you looked at their internal auditing control mechanisms in respect of financial planners that they employ?

Mr Johnston—I would have to take on notice just how detailed our look was and exactly what we looked at.

Senator SHERRY—Have you got anyone in Hobart at the moment?

Mr Johnston—Yes, we have.

Senator SHERRY—Who is that?

Mr Johnston—We have a number of people in our Tasmanian office.

Senator SHERRY—Have any other financial planners been charged in Tasmania at the moment? I say charged, not convicted.

Ms Redfern—I would have to take that on notice.

ACTING CHAIR—What about EPAS?

Senator SHERRY—I am talking about Tasmania. And if you could let me know the numbers of financial planners who have been charged around the country.

Mr Johnston—One of the things that we have under our attention right now is the relationship between areas that are away from the centre of compliance of an institution or a licensee. One of our key areas of focus is the behaviour of advisers in places such as Far North Queensland and some of the more remote areas in Tasmania et cetera.

Senator SHERRY—Why are you interested in Far North Queensland and remote Tasmania in terms of planners?

Mr Johnston—It is geographical—our experience tells us that the further away the adviser is from the centre of compliance the greater the risk of non-compliance.

Senator SHERRY—Have you done a study on this?

Mr Johnston—It is our experience, Senator.

Senator SHERRY—I want to go now to a Queensland matter, but not quite North Queensland. ASIC put out a press release on 20 May relating to EPAS superannuation fund and the conviction of a second person, a Mr Terrance Robert James, who was sentenced to three years imprisonment. Unfortunately with the EPAS superannuation fund, six years on there has not been restitution of moneys. Are you able to indicate any actions that have been taken that may lead to the restitution of the moneys?

Ms Redfern—This question falls within my directorate. We commenced proceedings in, I think, April 2000, to seek recovery of moneys from EPAS, a number of directors and,

ultimately, insurers of those directors. Those proceedings are currently before the court and have not yet been determined. But they are before the court for directions and a hearing date shortly.

Senator SHERRY—So they are insured?

Ms Redfern—There is insurance.

Senator SHERRY—Is it all the directors or just the two that have so far been convicted?

Ms Redfern—I will have to take that on notice. There were certainly the two, but I think there were a number of other directors that were also joined in the proceedings—I just cannot recall the details.

Senator SHERRY—These two directors have been convicted. Are there ongoing legal actions against other directors for breach of duties as a director, or are these the only two against whom there has been action?

Ms Redfern—These are the only two against whom there has been criminal action. The proceedings that we have commenced involve a number of issues, including breach of duties as directors.

Senator SHERRY—You have said criminal action—

Ms Redfern—Yes.

Senator SHERRY—They have both been convicted?

Ms Redfern—Yes.

Senator SHERRY—Does this action activate the compensation mechanism under the SI(S) Act for theft and fraud? My understanding is that this is not theft and fraud. It is criminal activity but it is not theft and fraud.

Ms Redfern—There are a number of issues in relation to that, but the approach that has been taken is that our proceedings are section 50 proceedings to recover compensation on behalf of people who have lost money. I think it is probably premature to consider that until those proceedings have been finalised.

Senator SHERRY—My concern is that this has now gone on for six years. There are literally thousands of members who lost money—admittedly very small amounts of money in many cases, but they have still lost money. In the first instance are you relying on the legal action against the directors and covering the losses through the insurance?

Ms Redfern—Yes. What we are relying on is our action against the directors and any resources they may have, including access to any insurance policy.

Senator SHERRY—I hope it is, but let us assume the case is not successful. Is there any potential for compensation under the SI(S) Act, the theft and fraud compensation provisions?

Ms Redfern—It is not something that we have considered at this stage.

Senator SHERRY—The current actions against the directors are for compensation. Do you have an indicative timetable when this matter would be concluded?

Ms Redfern—The matter is due to go before the court in July for some directions about a hearing date, so I just do not know. I would have to take the question on notice about the timetable in the Queensland Supreme Court.

Senator SHERRY—What is the norm in these sorts of cases—a year, two years?

Ms Redfern—Cases where there is quite a lot of complex evidence, as there is in this case, can take a number of years. This case has taken a number of years.

Senator SHERRY—It has taken six years so far, and it could take another 18 months to two years.

Ms Redfern—We commenced proceedings in about April 2000.

Senator SHERRY—I know that is when proceedings were commenced but the accounts for the members were frozen in August 1998.

Ms Redfern—We received complaints in 1999, commenced proceedings in 2000 and commenced prosecution—

Senator SHERRY—I remember another superannuation theft and fraud case where you had a significant number of very active, very articulate people and a lot of media cover. It seems to me that we have thousands of people here who, by the nature of the industry, have not had as much publicity and there just does not seem to be the same sort of urgency to get people's money back.

Ms Redfern—I do not know what case you are referring to.

Senator SHERRY—Commercial Nominees.

Ms Redfern—Oh, the Commercial Nominees case. It was an application—

Senator SHERRY—Most of them got their money back—90 per cent of it. It is over. Did not Commercial Nominees start after this case started?

Ms Redfern—It was about the same time.

Senator SHERRY—Why isn't this case settled then?

Ms Redfern—We did not commence any proceedings in relation to Commercial Nominees other than winding up various schemes—

Senator SHERRY—Why has not this scheme been wound up?

Ms Redfern—I think the application was made by APRA as part of being an approved trustee.

Senator SHERRY—You are relying on suing directors, collecting insurance moneys to get compensation; you are not relying on the SI(S) provisions for theft and fraud. You have not considered that? It seems to me it might be a quicker way for the members to get their money back.

Ms Redfern—The issue about whether it is theft and fraud is fraught. The case that we have pursued is actually based on negligence, not theft and fraud. This is a case where we actually took on action on behalf of a number of people who have lost money under

section 50. I think we took a very positive role to actually take on an action to pursue the wrongdoers as opposed to pursuing a fund.

Senator SHERRY—This is a fund with, I think, 10,000 or 15,000 members who cannot get their money and there have been very significant negative returns over a number of years. Some of them would be dead by now—they would have to be; the odds are that some would have died. Surely there has to be some sort of quicker conclusion so that people can at least know where they stand in terms of getting their money back.

Ms Redfern—We understand these issues. I guess from our point of view we have committed considerable resources to taking on a case to recover these moneys on behalf of people who have lost their superannuation moneys. These cases are not always concluded quickly. It is based on negligence issues about how the fund was run. We have joined the insurance company in the proceeding and we have also sued the auditors.

Senator SHERRY—That was going to be my next question.

Ms Redfern—We have sued the auditors as well.

Senator SHERRY—Who were the auditors, can you recall?

Ms Redfern—I cannot recall. I will take the question on notice.

Senator SHERRY—Is it just the one auditor, the one company?

Ms Redfern—Yes.

Senator SHERRY—Turning to the FSR licensing, do eligible rollover funds have the same requirements under FSR as other superannuation funds?

Mr Johnston—Yes, they do.

Senator SHERRY—I am told they do not. Do they have the same licensing requirements?

Mr Johnston—If the fund is being offered by an entity that is dealing in the financial product, in this case a superannuation fund, they have the same licensing requirements. There might be some provisions in relation to the operation of the fund that are different as they apply to ERFs compared to other types of financial products, but the offeror, if it is dealing in a financial product, will require a licence.

Senator SHERRY—What about if they are not giving advice to members of the ERF?

Mr Johnston—Then they will generally contract out their advice provisions to another licensee.

ACTING CHAIR—Have you finished, Senator Sherry?

Senator SHERRY—I have finished.

Senator FIFIELD—Mr Lucy, could you give us a brief update on the implementation of the Financial Services Reform Act that has been one of the major things on your plate recently—how it is bedding down on licensing matters and whether there are any particular issues or problems.

Mr Lucy—I will start from a commission perspective. As you rightly say, this has been a very significant undertaking for ASIC. The commission is very satisfied with the manner in

which it was handled and, more particularly, not just with the manner in which it was handled internally but also with the very significant levels of consultation that took place out in the marketplace. For example, during the transition period there were some 302 presentations to industry and a further 315 activities undertaken with meetings with organisations, stakeholder groups and, indeed, individual companies. The commission believes that the phase undertaken up to 11 March was very well handled, but I will invite Ian Johnston to provide a more detailed response.

Mr Johnston—We licensed just short of 4,000 applicants for Australian financial services licences under the new regime. There had been, I think, some predictions that perhaps we would not be able to get to them all in time and get people through the door. We in fact did that. There was only a very small number—fewer than 10—who did not have their licences granted by the due date and the due time, but those were people who lodged extremely late in the process. We in fact were still issuing licences late into the evening on the last day, and people who had applied right up to the last day were able to get a licence if their application merited that. So we were able to deal with people as they came through.

The transition is going well in that we have also conducted 250 or so of what we call verification visits. That is where we go out to licensees and check whether what they said in their licence application is actually in place—whether they have the compliance and risk management programs that they said they had and whether they have the professional indemnity insurance provisions that they said they had. So we are verifying that what people said in their applications is actually in place. It appears that the people have lodged good applications and actually do have those things in place. There are fewer than five per cent of the entities that we have looked at about which we have significant concerns. In the vast majority of cases, we have been able to be satisfied as to their operation. In some cases we have made some suggestions as to how they can improve their operations, but there is only a small number about which we have had significant concerns. We have been happy with the way it has gone thus far.

Senator FIFIELD—You issued 4,000 licences. Is that about as many as you expected? Has there been a shake-out? Do you have a handle on how many did not apply because they simply thought they would not qualify?

Mr Johnston—It is a smaller number than we had anticipated. There are a few reasons for that. One was that, yes, there was some structural change that took place in the industry but it was not significant. A small number departed who were advisers who would have to be licensed, for the first time perhaps, at the risk insurance end of the market— but we believe only a very small number of those have left. Some superannuation trustees have made other arrangements and we did not issue as many trustee licences as we expected, and we did not issue quite as many licences to accountants as we had expected. But overall the industry has a similar profile to that before the regime and we trust that we will see higher standards as a result of this.

Senator FIFIELD—This next question is probably to you, Mr Johnston. Obviously ASIC with the FSR legislation is taking increasingly seriously its role of protecting consumers and ensuring full disclosure by superannuation funds of their fees to members and prospective members as an important part of a ASIC's consumer protection role. You would agree,

obviously, that super fund members and prospective members are entitled to know the full administration costs of the superannuation funds they are in and that they are also entitled to know the full administration fees. Obviously, where fees do not cover the full costs of administration, alternative means of cost recovery are appropriate and acceptable as long as they are also disclosed. That would be fair to say?

Mr Johnston—Yes.

Senator FIFIELD—And you would be concerned if a fund was not disclosing their full fees to consumers and if all forms of cost recovery were not publicly identified?

Mr Johnston—It is a requirement for all fees and charges to be disclosed.

Senator FIFIELD—If a fund was claiming to have fees that seemed unusually low by industry standards and there did not appear to be other forms of cost recovery stated, that is something that would raise a question?

Mr Johnston—Yes, we certainly want to ensure that all funds, be they superannuation funds or other funds, are meeting their obligations under the law to disclose all fees and charges.

Senator FIFIELD—Obviously you would be aware of ASIC's policy statement 168?

Mr Johnston—Yes.

Senator FIFIELD—I particularly direct you to paragraph 58 of that statement.

Mr Johnston—You will now test my knowledge.

Senator FIFIELD—For your benefit and for the benefit of the committee, it says:

We believe that the need for clear, concise and effective disclosure is most relevant in relation to the disclosure of fees and charges and, in the case of investment-based products, the disclosure of returns. Information about fees, charges and investment returns is a key consideration for consumers when making decisions about financial products ...

You would certainly be aware of your own statements in the ASIC media release of 10 March which says:

ASIC sees disclosure under the new law as a consumer-centric regime, focussing on the consumer's information needs ...

Mr Johnston—Those are my words.

Senator FIFIELD—Do you recall making that statement? I just want to be clear. This sort of disclosure is not optional: it is not merely a hope of ASIC; it is law; to fail to do so is to be in breach of the law?

Mr Johnston—The Financial Services Reform Act requires all fees and charges to be disclosed. We understand that more detailed regulations are under consideration by Treasury at the moment as to the form of that disclosure and how the disclosure will be made in dollar terms. I understand that those regulations will be released soon. The other work ASIC has done in that regard is to produce a fee template, which we have asked that the industry adopt, so as to have a consistent way of setting out fees and charges by funds. But it is a requirement that all fees and charges be disclosed.

Senator FIFIELD—Are you aware of, or have you seen a survey of nine industry funds, what are colloquially known as union funds, by Chant West—a report entitled *Industry fund fees—time to dispel the myths?*

Mr Johnston—I am aware of the report, yes.

Senator FIFIELD—Have you seen the report?

Mr Johnston—No, I have not seen a full copy of the report.

Senator FIFIELD—Are you aware that the report highlights underdisclosure of fees by one industry fund by as much as 2.6 times?

Mr Johnston—I do not have detailed knowledge of the report. Some of my staff may, but I do not have a detailed knowledge of the Chant West report.

Senator FIFIELD—In that case, would it benefit the committee if I tabled a copy of that report?

ACTING CHAIR—The committee has agreed that the report be tabled.

Senator FIFIELD—Mr Johnston, would it be a cause of concern for you if an industry fund had underdisclosed fees by as much as 2.6 times?

Mr Johnston—If any fund has underdisclosed its fees, that is a concern for us, yes.

Senator FIFIELD—Are you aware of the report's findings in relation to those funds that offset member protection costs against investment income?

Mr Johnston—No, Senator. I have not read the report. I am not aware of the details of it.

Senator FIFIELD—The Chant West report finds that the disclosure in most funds on that issue is limited to a brief mention under comments on member protection and, in some cases, is not quantified at all. Again, is that something that would be of concern to you?

Mr Johnston—I am going to repeat my answer that, if there are any funds that are not disclosing their fees and charges as the law requires, that is of concern to us.

Senator FIFIELD—Are you aware of the report's findings in relation to funds that do not pass on the tax benefits of the deductability of administration costs?

Mr Johnston—I have to give the same answer—I have not read the report.

Senator FIFIELD—I will inform you that the report finds that not one fund of the nine industry funds surveyed discloses this clearly and, in most cases, there is no disclosure at all. Again, this would be something that—

Senator CONROY—Exactly why we need the FSRA, mate.

Mr Johnston—No disclosure of what, Senator?

Senator CONROY—Exactly why we need dollar disclosure.

Senator FIFIELD—They do not disclose that they do not pass on the tax benefits of the deductability of administration costs.

Senator CONROY—Exactly why we need FSR, Mitch. You are dead right.

Mr Johnston—I would need to look at the FSR requirements on that.

Senator FIFIELD—So, these things being the case, these funds would be acting contrary to ASIC's statements on the primacy of consumer interests and contrary to the FSR Act.

Mr Johnston—If it is the case that they are not disclosing their fees and charges as required by the act, that would be of concern. I cannot comment on a report that I have not read, because I do not know how accurate the reporting is or whether they have made the correct legal determination.

Senator CONROY—'When was the survey taken?' is probably an important question at this point, if Senator Fifield could let us know.

Senator FIFIELD—It covered the years 2003, 2002 and 2001.

Senator CONROY—What was the final implementation date for FSR?

Mr Johnston—It was 11 March this year.

ACTING CHAIR—Can we just clarify one point? You said it would be 'of concern' if it was true. Would it not be an offence?

Senator CONROY—It can only be an offence if there is a law to offend against.

Mr Johnston—If there is not disclosure of fees and charges by a superannuation fund as required by FSRA, that would be an offence, but I have not read the report—

ACTING CHAIR—And prior to FSR?

Mr Johnston—Prior to FSR the requirements were different, depending on the type of superannuation fund. The SI(S) requirements were quite different from the Corporations Act requirements, so it would depend on under what legislation the fund was covered. That is why, not having read the report, I do not have details of the funds.

Senator FIFIELD—I will refer you to some comments by your deputy, Pam McAllister, in the *Financial Review* on 26 May. She said:

We would take the view that those items identified in the Chant West report really should be disclosed.

Under the FSR regime, what you are required to disclose to customers is the cost of the product. That includes not only the direct fees that are being charged, but also any indirect costs that they are effectively bearing.

Clearly, under the FSR legislation, looking forward, these issues would be covered. Looking back, what would the situation be?

Mr Johnston—Looking back, the answer is 'it depends'. But Ms McAllister's comments are certainly consistent with mine, that, under FSRA, it is required that those things be disclosed.

Senator FIFIELD—Would the Chant West report be sufficient to cause ASIC to look back to see if there was adequate disclosure in those earlier years?

Mr Johnston—I have not read the report, Senator. I would have to read the report to form that view.

Senator CONROY—If there had not been a two-year phase-in period for FSR, would you have been able to act on these issues earlier?

Mr Johnston—If the full requirements were there as at 2002 rather than 2004, the position may have been different.

Senator CONROY—Who decided to have a two-year phase-in period?

Mr Johnston—That was in the legislation.

Senator CONROY—That would have been legislation that the Treasurer approved?

Mr Johnston—It was in the FSR legislation.

Senator CONROY—He is in charge, ultimately—over the top of Joe Hockey.

Mr Johnston—It was in the legislation.

Senator CONROY—So the Treasurer would have approved that? I am sure he got some excellent advice from his department about the implementation of a two-year phase-in period, but it might have caught these things that Senator Fifield is concerned about.

Mr Johnston—The parliament passed the legislation.

Senator CONROY—Senator Fifield, you are not criticising yourself, are you?

Senator FIFIELD—Never. Would ASIC intend to examine the Chant West report?

Mr Johnston—I imagine that some of my staff in fact have read the Chant West report, but I have not read it.

Senator FIFIELD—Would you regard a union or industry fund which was advertising fees of \$1 a week on the radio at the moment as misleading?

Mr Johnston—If the fees were other than \$1 a week, it may be misleading. It would depend on the accuracy of the statement.

Senator FIFIELD—So if a firm says, ‘Our fees are \$59 a year,’ that would not sound unreasonably low?

Mr Johnston—There are some funds that are more expensive than others. I do not know, without looking at individual funds, whether that would be an accurate statement.

Senator FIFIELD—Are radio and newspaper advertisements routinely monitored by ASIC?

Mr Johnston—It is part of the intelligence mix that we gather, yes.

Senator FIFIELD—If something stands out as being out of the ordinary, without an obvious explanation, would ASIC inquire into it?

Mr Johnston—We might. It would depend on the significance of the claim, the significance of the matter, the significance of the fund et cetera.

Senator FIFIELD—So you can undertake to the committee that the Chant West report will be looked at and that, as a matter of course, ASIC will examine radio and newspaper advertisements by industry funds that state fees that seem unusually low, without any obvious explanation?

Mr Johnston—We would certainly take note of them.

Senator FIFIELD—I mean those without a relevant explanation or obvious other form of cost recovery.

Senator CONROY—They are low because they are cheaper.

Mr Johnston—We will read the Chant West report. I believe that some of my staff have done so already. We do, as a matter of course, take note of claims that are made in the marketplace for all financial products. Unfortunately, we are not able to follow through, examining or investigating every instance.

Senator CONROY—Have you been underfunded by the Treasurer's office for the last five years so that you have been unable to act on these issues?

Mr Johnston—No, it is just a matter of fact that one cannot investigate every single matter that comes before the agency.

Senator CONROY—I will take that up with the Treasurer for you.

Mr Johnston—We would certainly be very interested in any funds of any type that are understating their expenses, their fees and their charges.

Senator CONROY—It must have been very frustrating for you to be so underfunded by the Treasurer's office.

Mr Johnston—I did not say we were.

Senator CONROY—As Senator Fifield knows, I have long been a supporter of FSR, for this very reason: to ensure that consumers are adequately informed of what their costs and charges are right across the sector. If you were going to pursue any funds, whether they were industry or other, on the issues that Senator Fifield described, I would hope that you would be covering the whole industry prior to the introduction of FSR. If you were going to pursue anything along the lines of Senator Fifield's questioning, I would encourage you to start with any master trust whatsoever that you can find advertised anywhere and add that to the list of things you are going to do.

Mr Johnston—I think, as the senator is aware, we investigate without fear or favour.

Senator CONROY—I know that. But I would not want you to be just pointed in one direction by Senator Fifield.

Senator FIFIELD—You will follow where the evidence takes you, Mr Johnston, I am sure.

Senator CONROY—Definitely. I want to talk about the property spruiker issue. During the last round of estimates in February, we discussed the issue of property spruikers. For the uninitiated, I am referring to spivs like Henry Kaye. They promise to make people rich, but in many cases after paying for so-called wealth creation seminars many people end up in more debt. Property spruikers prey on people's insecurities about their financial future. We were talking to ASIC about those property spruikers at the last estimates, as I am sure you remember, Mr Johnston. The reason I was asking about it was because of an article that had appeared in the *Financial Review* which talked about a report. Do you remember that discussion?

Mr Johnston—I do, Senator.

Senator CONROY—We had quite a long conversation. I have a copy of the relevant *Hansard* here. I was actually asking Mr Kell a question at the time. I said:

In November Mr Kell advised the committee that there is a working group looking at regulatory property spruikers. The issue I would like to raise today relates to an ASIC report on property investor promotions. This report has not been released by ASIC, I do not think. On 18 July 2003 the *Financial Review* said that ASIC was preparing:

... to release a report on property investor promotions, following a crackdown on rogue practices in the industry—which has included three months of undercover surveillance.

I asked Mr Lucy if he had had a wig and a moustache on and had been out there in the undercover operations. Eventually it was all referred off to you for discussion. I asked how many pages there were in the report and you said that the report was not produced and that it had been decided to wrap the work up into the work of the working party. Do you remember that evidence?

Mr Johnston—Yes, I do.

Senator CONROY—Can you advise me what you meant when you said the report was not produced?

Prof. Collier—Senator, I am happy to take the question on this because I remember the discussion at the time.

Senator CONROY—I am actually asking Mr Johnston to explain what he said.

Mr Johnston—I am happy to explain what I said.

Senator CONROY—I am not trying to stop you joining in, but I am actually asking Mr Johnston a specific question about his testimony to the Senate committee.

Mr Johnston—The report was not produced publicly.

Senator CONROY—Not publicly?

Mr Johnston—I think the question was about the production of the report, and that was the case—we did not produce the report publicly but we wrapped the work up into other work, which is what we did.

Senator CONROY—So a report was produced but it was not produced publicly?

Mr Johnston—There was a paper—I think we may have had this discussion also—that we produced to the commission and the determination was made that we would not produce a report as such.

Senator CONROY—I think Professor Collier said it was about eight pages, from her recollection.

Prof. Collier—As I recall, it was a fairly short paper which was produced for the commission.

Senator CONROY—One of the two of you said it was about eight pages?

Prof. Collier—I think I said it was about eight pages because I could not recall the length of the paper at the time. But I recall it was relatively short. It may have been longer.

Senator CONROY—So when you said, Mr Johnston, that the report was not produced and that the work was wrapped up into the work of the working party, what you actually meant was that the report was produced but it was not released into the public domain?

Mr Johnston—No report was released; that is certainly true. The interpretation that I had was that I thought you were meaning the production of a report that people could see. We certainly did not produce that.

Senator CONROY—We had a lengthy conversation about that. I actually got to the stage of asking, ‘How many pages?’ We were having a discussion about these things. I can take you back through your evidence.

Mr Johnston—There was a paper which went to the commission and the determination made by the commission was that we would wrap the work up into other work that we were doing and it would help to form the basis of our input into the work done by the committee. I think that is an accurate summation, Senator.

Senator CONROY—The transcript of our discussion then reads as follows:

Senator CONROY—So the commission knocked it off?

Mr Johnston—No, it did not knock it off. The commission determined that we should—

Senator CONROY—That is what I am saying. The commission determined not to produce a report.

Mr Johnston—Yes. It determined that we should take enforcement action where we found breaches of the law, which was appropriate, but that this needed to form part of a bigger piece of work ...

Senator CONROY—Was there a draft report prepared?

Mr Johnston—There was certainly a paper prepared for the commission. I cannot recall whether it had the status or label of a draft report or just a recommendation.

Senator CONROY—Given that it says ‘included three months of undercover surveillance’, when did you start looking into this area?

Mr Johnston—At the beginning of last year ...

Senator CONROY—So six months after you commenced—because this report was from 18 July—you had produced no draft report.

Mr Johnston—Senator, we certainly produced outcomes, because we took enforcement action. But we took a view that anything else that we would do would go to law reform, observations on whether there were any deficiencies in the law and who ought regulate it and, because the working party was then under way and that working party was not under way when we commenced the work, we thought the better place to pursue that work was in the working party, so that we will give our views as part of the work in there.

Senator CONROY—There was no report at all; no consolidated piece of work that was on your desk or anybody else’s desk at all?

Mr Johnston—Yes, there would have been. There certainly would have been a report to me on what the findings were. That would have then formed the basis of the recommendation.

Senator CONROY—How many pages was that report?

Mr Johnston—I do not know.

Senator CONROY—Was it one page, 100 pages?

Mr Johnston—It would have been more than one page. It would have been far less than 100 pages, but I do not know.

And we went on and on like that, at some considerable length, but I did ask a number of very specific questions.

Mr Johnston—That is an accurate summation.

Senator CONROY—I am reading *Hansard* to you, so I hope it is. You said:

... I have not attached any great significance to it because we did not form the view that it should become a piece of work that we released when there was other work that was going on that should be completed.

As you can see, I asked a whole string of questions about the report. Your recollection was right. We did have a long conversation about this. So when you said the report was not produced, you meant that a report was produced but not released.

Mr Johnston—Yes.

Senator CONROY—I want to make this absolutely clear.

Prof. Collier—It was a report to the commission by an officer of the commission.

Senator CONROY—No. The eight pages that went up to you were a report to the commission. That is not what I am talking about. We all agree that happened.

Prof. Collier—I am sorry. I thought we were talking about the same paper.

Mr Johnston—I thought we were talking about the same paper also.

Senator CONROY—You have come with a number of pieces of paper, Mr Johnston. Could you advise the committee why the report was not produced—or publicly released, to use your words?

Mr Johnston—That is a matter for the commission.

Prof. Collier—I am happy to take questions on this and to perhaps comment on your question. Work was done last year. I recall that being done. A paper was brought to the commission. We looked at the paper. We thought there were flaws in the work that had been done.

Senator CONROY—This is in the eight-page document you received?

Prof. Collier—As I said, I think it was about eight pages. I recall saying to you last time that I thought it was about eight pages. I cannot recall the exact length of the paper. I do not have a copy of it with me here. I do recall that there was considerable discussion around the table and that we felt that there was more work to be done, that there was possible input by other directorates and that it was reasonable to perhaps take this further and do further work. We are participating in a joint working party at the moment—of the Ministerial Council on Consumer Affairs. In fact, we have done further work in this area, with a view to equipping our staff members to participate in the working party and to establish the commission's own position depending on the outcomes of the working party discussion paper and final report. There is nothing sinister about the failure to release the working paper—the report—which was produced to the commission. It is quite common for work to be done, for it to be taken to

commission and for commission to think, 'It needs further work,' or, 'We're going to do something else with it.'

Senator CONROY—During the last round of estimates, Commissioner Collier, you said:

I vaguely recall seeing a paper which came to the commission. Mr Johnston said that the commission decided not to take it ahead. I recall the paper being observations. It was about eight pages long. It was quite a short commentary, which went no further.

Prof. Collier—That particular paper went no further. We did further work. In fact, that paper sparked the commission to do additional work, not necessarily based upon that paper but with the input of other directorates.

Senator CONROY—Commissioner, have you ever seen an ASIC reported dated May 2003 entitled '*Get rich quick' wealth creation seminars?*

Prof. Collier—I do not recall the paper. I may have seen it. I do not recall it.

Senator CONROY—Might it have been the source document for your eight-page summary?

Prof. Collier—I truly cannot recall.

Senator CONROY—Would you like a copy?

Prof. Collier—Yes.

Senator CONROY—Good. We will table it so you can have a copy. I have here something that says, Confidential draft: *Wealth creation. 'Get rich quick' wealth creation seminars? A report on compliance and consumer risks.* It has the commission's name on it and it is dated May 2003.

ACTING CHAIR—Just a moment. That is a confidential document.

Senator CONROY—I have said I am not pursuing the tabling of it, at this stage, but we will come to that. You are not familiar with that at all, Professor?

Prof. Collier—We receive many reports to the commission. If I saw the paper, I might recall it.

Senator CONROY—Have you ever seen that, Mr Johnston?

Mr Johnston—Yes. Without having seen the document, I think that would be the document about which we have been speaking.

Senator CONROY—It is more than eight pages.

Mr Johnston—It may be that the recollection of Commissioner Collier as to how many pages were there was incorrect, but I believe that is the document about which we have been speaking.

Senator CONROY—I will count the pages, if you like. There are 17 pages. It sounds like a bit more than Professor Collier's—

Mr Lucy—I am not sure where this is going. At the end of the day, firstly, we are not able to have a look at the paper that you are referring to and, secondly, we do not know whether or

not that is in the same format as the one that was provided to the commission. It may have been a different typeface. How do we know how many pages there were?

Senator CONROY—I think Mr Johnston has indicated he is familiar with the document I am referring to.

Mr Lucy—Exactly.

Mr Johnston—I did say that without having seen it, but that sounds like the document that was produced for the report.

Senator CONROY—Would you like me to read it to you? I am going to be going through extracts from it, so I can read you the whole thing, if you like, or we can just move on.

ACTING CHAIR—I think we might proceed with some caution, witnesses, because my understanding is that it is a document in confidence. There is some—

Senator CONROY—They are denying that it might be their document.

ACTING CHAIR—That is the problem.

Mr Johnston—I am certainly not denying it. I do not believe that ASIC is denying that that is the document. I have not seen it yet, but it sounds as though that is the report that was produced to the commission. The fact that the commission determined to not take it further in that form was appropriate if it was wrapped up into other work.

ACTING CHAIR—It might be helpful, Senator Conroy, if you showed the relevant document to Mr Johnston. Then he might be able to help.

Senator CONROY—Thank you very much for your advice, Acting Chair, but I will keep going with my questions, if that is okay.

ACTING CHAIR—If you want a good response—

Senator CONROY—I am sure I will battle through with Mr Johnston; he is very cooperative.

Senator Coonan—I think we should note first of all that the status of the document has not been established. We do not know whether it contains matters in confidence or quite what its character is. Subject to the questions that Senator Conroy wants to lead, I may have something to say about it, but let us see where we get to.

Senator CONROY—Commissioner Collier, did the eight-page summary paper that you saw refer to the fact that ASIC attended the seminars of eight different spruikers of get-rich-quick schemes?

Prof. Collier—It may have. As I said, I recall a paper coming somewhat later than May 2003 to the commission. As I also said, the paper which came to the commission was flawed. It required input from other directorates—such as consumer protection, and enforcement. Hence, notwithstanding the fact that some worthy work had been done, we thought that it required further rounding by the rest of the directorates.

Mr Lucy—Isn't it the case that that is actually a draft report?

Senator CONROY—I do not know. Mr Johnston is the one who seems to be confused about reports, not me. I am—

Mr Lucy—I beg your pardon. I thought you mentioned that it was headed ‘draft report’.

Senator CONROY—It says ‘confidential draft’, yes.

Mr Lucy—So it is a draft report.

Senator CONROY—I am not suggesting it is the document. I am just trying to establish whether it is the document that went to Professor Collier.

Mr Lucy—We would not have a clue; we do not know what is in it. All you are referring to is a cover sheet.

Senator CONROY—You are right. I have just a cover sheet, Mr Lucy. You have got me. I will keep going with my questions. Commissioner Collier, I would like you to tell me about the summary report that you received—and the thing that went to you has been described as a summary rather than the actual report, and the problem is that there is no report, according to Mr Johnston, but there was a summary of something that went to you. Regarding the summary report—if you will excuse me describing, for the purposes of the discussion, what Mr Johnston put up to the commission as a summary report, so he can clarify—you considered, did it refer to the fact that, of the eight seminars which ASIC attended, the spruikers grossed well in excess of \$60 million in fees?

Prof. Collier—I cannot recall.

Mr Lucy—I wonder whether or not these questions might be best taken on notice, because Senator Conroy is obviously looking for some specific detail.

Senator CONROY—You are certainly on notice. There is no question about that.

ACTING CHAIR—That is up to the commission. If you wish to take questions on notice, that is your prerogative.

Mr Lucy—I think that would be the most appropriate thing to do. Then we would be able to ensure that we gave a full response and that we knew accurately what we were dealing with.

Senator CONROY—Unfortunately, I am not necessarily going to give you what I have in front of me, Mr Lucy—there’s a news flash for you—but you are going to answer questions about this report and about your conduct and that of your officers at the last estimates. We will keep going. What I asked was: did the summary report that you considered refer to the fact that, of the eight seminars which ASIC attended, the spruikers grossed well in excess of \$60 million in fees—and is that right, Mr Johnston: was it eight seminars that ASIC attended?

Mr Johnston—That is my recollection.

Senator CONROY—Does it ring a bell that the spruikers grossed well in excess of \$60 million in fees, Mr Johnston?

Mr Johnston—It rings a bell as being what we said in the report, yes.

Senator CONROY—That is the figure that is quoted in the report, that is right. Commissioner Collier, if you knew that these property spruikers were raking in \$60 million from just eight seminars, how do you justify flicking it?

Professor Collier—We have not flicked anything. I am somewhat at a loss, if you think that we do not take wealth creation schemes seriously as an issue. We do take them seriously as an issue. We are participating in the MCCA working party. We have actually done further work in this area since that draft report—or draft paper—was produced, with the input of other directorates including consumer protection and enforcement. We have had discussions around the commission as to where further to take this. We are aware of the constitutional limitations on what we can do in relation to property spruikers. In fact, we have taken the Henry Kaye matter considerably further since the time that I recall that paper being produced by the commission, which I think was some time after May last year.

Senator CONROY—Mr Johnston is quoted in the *Australian Financial Review* in July 2003 as saying in relation to property investor promotions:

“We are concerned about the proliferation of these schemes and concerned that mischief is being done ...

Do you recall that, Mr Johnston?

Mr Johnston—Yes.

Senator CONROY—ASIC’s May 2003 report, the one that did not see the light of day, says:

These get rich quick schemes recklessly overstate benefits and use psychological manipulation to draw people in.

Is this one of the issues that you are concerned about?

Mr Johnston—As I recall, we issued some consumer warnings about people being attracted to get rich quick schemes and property spruiking schemes. One of the things we identified in our consumer alerts was the manipulation of people that takes place in these seminars—the fact that it is a pressured environment and that sometimes ridicule and humiliation is used against people who do not cooperate or who want to opt out. My recollection is also that we issued some consumer alerts about that through the consumer protection directorate. So yes, we had strong concerns about that behaviour.

Senator CONROY—So ASIC’s May 2003 report, the one that has never seen the light of day, says that some of the spruikers were charging \$4,997 per person and others up to \$20,000. Is that another issue that you were concerned about?

Mr Johnston—Yes.

Senator CONROY—ASIC’s May 2003 report also states:

... ‘get rich quick’ wealth creation seminars use advertising and marketing that stands apart as offensive and unethical.

Mr Johnston or Professor Collier, in light of all of these issues that were raised in the ASIC report, why did you want to pass it off to a working party of the states?

Professor Collier—I am happy to take that question.

Senator CONROY—These are fairly serious issues being quoted in the report, which Mr Johnston worked on.

Professor Collier—As I indicated, we have not ‘passed off’ any work. We have actually undertaken further work since that draft paper was done—with input from other directors and from consumer protection and from enforcement. The current state working party, however, is looking for a legislative solution and a regulatory solution to the problems of property spruikers, and we are participating in that because we anticipate that it will come up with a recommendation, a structure or a solution that will address these issues. As you are aware, there are considerable constitutional limitations on how we can actually tackle property spruikers or so-called wealth creation experts if they are giving advice on property matters only. So we are taking a multipronged approach: we are participating in the joint working party; we are taking action where we can; we have undertaken further work; and we will take enforcement action where appropriate, to test the limits of our jurisdiction.

Senator CONROY—It has been 12 months since the original report in May 2003.

Mr Johnston—The other point that I would make is that we stand by the comments that were made in the draft report. We have made no secret of our consent.

Senator CONROY—But you do not stand by them enough to publish them?

Mr Johnston—We have published it in another form. We appreciate—

Senator CONROY—Professor Collier has described the report as flawed. You are standing by a flawed report?

Mr Johnston—It is a draft report.

Senator CONROY—It is either flawed or it is not.

Mr Johnston—The sense in which it was believed to be flawed was that there was further work that needed to be done.

Senator CONROY—Professor Collier has gone a bit further than that when she described it earlier. I am happy to read the *Hansard* back. It was within the last 10 minutes. She described it as having much more problems than just being flawed. She has been quite cogent about what the flaws were.

Mr Johnston—We have issued media releases and consumer alerts about those very subjects to say that consumers need to be aware of those things. We have warned people off those types of schemes and, where we can, we take enforcement action. One of the outcomes I recall from the commission meeting was the commission directing that we say what enforcement action we could take. ASIC has done that.

Prof. Collier—Senator, when I said ‘flawed’, what I meant was that it required much further input from other directorates such as enforcement and consumer protection. As I said, I recall the discussion. I do not recall it word for word, but I do recall that I thought there could have been quite a lot of input from other directorates such as CP and enforcement. That subsequently happened.

Senator CONROY—As I said, it has been 12 months since this report was compiled. The working party is yet to come up with one recommendation. Is that right?

Prof. Collier—It is my understanding that a discussion paper will be produced shortly.

Mr Lucy—But we do not control that agenda. We do not control the output.

Senator CONROY—That is my point. It is a question of what you did. What you did was to refer it off to somebody else to deal with.

Mr Lucy—That was one of the things we did.

Mr Johnston—Where we can take enforcement action, we have sought to take enforcement action against people. Where our jurisdiction is limited, there is nothing that we can do about that.

Senator CONROY—This original ASIC report dated May 2003 says: ‘Of the eight seminars attended by ASIC ...’ You did not attend them all, did you?

Mr Johnston—I did not attend any.

Senator CONROY—ASIC did not attend them all?

Mr Johnston—I cannot recall that.

Senator CONROY—They attracted as many as 80,000 people.

Mr Johnston—My recollection is that it was talking about the series of seminars represented through the industry.

Senator CONROY—There were 80,000 people who attended these.

Mr Johnston—Extrapolating the numbers that we were given by the conductors of the seminars, if they were accurate that is the figure that is accurate also.

Senator CONROY—Were you concerned about the number of people who could be ripped off in light of the regulatory gap?

Mr Johnston—Yes, and that is why we issued consumer alerts and we have constantly in the media warned people about these types of schemes.

Senator CONROY—Did ASIC advise the Parliamentary Secretary to the Treasury, or any minister or their officers, of ASIC’s findings in relation to the wealth creation seminars in light of up to 80,000 Australians getting ripped off, with \$60 million in fees being syphoned out of people’s pockets?

Mr Lucy—We will have to take that on notice.

Senator CONROY—What? You do not know whether you did?

Mr Lucy—I cannot recall specifically. We have a number of discussions with the parliamentary secretary. Whether that particular matter was raised—

Senator CONROY—I said minister or ministers’ officers, any of the above. You do not remember talking to them about it at all? You were in the national newspapers about it, Mr Johnston. I have quoted from them extensively.

Mr Lucy—You asked a specific question that required a specific response.

Senator Coonan—Senator Conroy, I know the matter is on the agenda before the Ministerial Council and the problems of sorting out jurisdictions and getting a better national overview or response or collaboration on how to deal with these matters. While it is not my ministerial council, I am sure it did not come out of thin air and no doubt we acted on advice

from the various agencies. I can ask the parliamentary secretary how it got on the agenda if that helps you.

Senator CONROY—Did you do any work on calculating the size of the get-rich-quick industry?

Mr Johnston—My recollection is that in the paper we made some calculations but I cannot recall what those were.

Senator CONROY—So far this morning we have discussed this original ASIC report—if I can describe it like that—dated May 2003.

Mr Johnston—A draft report, Senator.

Senator CONROY—I call it the original but that it is just my terminology. I will accept your description but I will stick with mine. I would like to discuss a second ASIC report. The second report is dated June 2003. It was an internal ASIC report referred to on its cover as a ‘technical review’ of the main report. The technical review report says that:

It is recommended that ASIC seeks some direction from the Minister about the extent to which ASIC should publicly foreground a single preferred position or whether it is better left to ASIC to identify the full range of options and facilitate some wider consideration of the matter perhaps through the MCCA.

Did ASIC seek advice from the parliamentary secretary?

Mr Johnston—Senator, I do not recall—

Senator CONROY—In relation to ASIC’s position on property spruikers and get rich quick schemes?

Mr Johnston—I do not have a recollection of the document you are referring to.

Prof. Collier—We will have to take it on notice as well because nobody on this side of the table can recall that.

Senator CONROY—It would have to be one of you who did it—Mr Lucy or you, Professor, or Mr Johnston. It is not like you are going to find other officers. I presume that you guys are the ones—

Mr Lucy—It might have been the chairman at the time.

Senator CONROY—You were the deputy chair for some of this period.

Mr Lucy—Yes, I was.

Senator CONROY—In terms of who actually deals with the minister’s officers—

Mr Lucy—Frequently it is the chairman that speaks to the parliamentary secretary.

Prof. Collier—Another point to make is that I do not recall seeing that document. It may have been an internal document which never went to the commission.

Senator CONROY—The question I am asking you is: did ASIC seek the minister or parliamentary secretary’s direction as recommended in the technical review report?

Mr Lucy—And we have responded that we will take it on notice. Without seeing the paper it is extraordinarily difficult to make any appropriate response.

Senator CONROY—I am sure that Mr Johnston can get you a copy. He just has to click his fingers and someone will bring it over or email it to you within 10 minutes. I am sure it is not going to be hard for Mr Johnston to find it.

ACTING CHAIR—Would you like the committee to adjourn while you—

Senator Coonan—The provenance of the document that Senator Conroy is working from has not been established. He is talking about recommendations and the witnesses do not know by whom.

Senator CONROY—I have not said that I have got the document. I am asking questions about a document; I have not said that I have got it yet. I am saying that I am sure Mr Johnston could get it pretty quickly for you if you are very concerned about it, Mr Lucy.

Senator Coonan—In all fairness, you are talking about a recommendation without identifying who has recommended what.

Mr Lucy—To whom.

Senator Coonan—It is very difficult in a vacuum for the witnesses to grapple with it. They are certainly doing their best and there is no intention to withhold any information, I am sure, but it would be helpful if you could just be a bit more precise about the question.

Senator CONROY—Who prepared the document I am referring to, Mr Johnston—the *Technical review report by regulatory operations: 'Get rich quick' wealth creation seminars?* It is a report on compliance—

Mr Johnston—I do not recall the document.

Senator CONROY—It is authored by Deborah Latimer, Special Counsel, Legal and Technical Operations, Financial Services Directorate, dated 3 June 2003. Ring a bell yet?

Mr Johnston—No, it does not.

Senator CONROY—So you have never seen it?

Mr Johnston—I am not saying that; I am saying that I do not recollect it.

Proceedings suspended from 11.09 a.m. to 11.22 a.m.

ACTING CHAIR—For the purpose of those people who are following this on the broadcast or in the *Hansard*, it may help if either Senator Conroy or the witnesses could assist the committee to establish the nature and status of this document—that is, to establish whether it is an intermediate working document. Its status is causing me as acting chair some confusion, and I think it would be helpful if there could be some understanding—without the document being tabled—of whether it is an intermediate internal document or a final document. If somebody could give us a little bit more information, it would help everybody's understanding.

Senator CONROY—I would refer you to the Senate *Hansard* from last time. I attempted, at some considerable length, to establish the facts about documents and reports but just did not seem to get anywhere. I am happy for you to seek clarification from the officers about what reports went to whom and what reports were prepared. Please feel free to continue to

press them on that question, because I was remarkably unsuccessful at getting the truth last time.

Mr Lucy—Could I respond in two areas. Firstly, Senator Conroy is referring us to a draft document that was apparently submitted to the commission. There is a concern, clearly—

Senator CONROY—I have not actually said that is the case.

Mr Lucy—that this is a confidential document provided to the commission and that there is the potential for the contents of that confidential document to be aired in a public forum, such as this. Clearly, I have a great deal of anxiety as to the status of that document and as to the extent that material that comes before the commission is potentially brought forward into public hearings such as this. We have referred to the fact that we are familiar with that first document, the May document, and I think we have described our response to that in some detail.

The second document is the one dated June 2003. At this point, no person at this table can recall that particular document. We have stated that we will take questions on notice so that we can provide a response. Further than that, there is nothing we can do.

ACTING CHAIR—Minister, can you give the committee some guidance?

Senator CONROY—What guidance?

Mr Lucy—I am suggesting that, because the first document is a confidential document, we have anxiety about the fact that it is being discussed in a public forum. We do not know which version that document is—it is a draft document. We do not even know whether or not it is actually the version that finished up with the commission, because we do not have it in front of us.

Senator CONROY—I do not believe it to be. I am guessing, but I do not think it is the document that went to you.

Mr Lucy—How can we possibly provide any comment on a draft confidential document when we do not even know if it is the one that came before the commission?

Senator CONROY—I actually started off by asking Mr Johnston about the report.

Mr Lucy—But he might have been referring to another version.

Senator CONROY—Mr Lucy, it is you and Professor Collier who are trying to assert that it is the report that went to the commission; I am not. I do not believe it is. But the only person who can truthfully tell us that is Mr Johnston.

Mr Lucy—He needs to see what the document is before he—

Senator CONROY—No, he does not. He knows exactly what document it is. Mr Johnston did a summary of this document. You have acknowledged it. I have read it and you have accepted the quotes that I have read from it.

Mr Lucy—Extracts from it.

Senator CONROY—Yes, extracts.

Mr Lucy—Some extracts of a 17-page document.

Senator CONROY—Yes. We have previously established—though I accept that Professor Collier may have got it wrong—that it was an eight-page summary that went to the commission. I am not asserting that the document I am quoting from is the one that went to the commission. If you have a guilty conscience, feel free to fess up, but I do not think it is.

Senator Coonan—In that case, Senator Conroy, you are entitled to ask any questions you like, but you cannot get the witnesses to agree to a document that they have not seen, where they have no opportunity to put any of their comments in context. You can ask them what they did. You can ask them any question you like about what they did, within the committee's purview, but in my view it is simply unfair and it does not establish anything—it does not help whatever you are trying to establish—if the provenance of the document is not established.

Senator CONROY—Thanks for your opinion, Senator Coonan. It is always valued. But Mr Johnston can clear all this up just by telling the committee truthfully what has gone on.

Mr Johnston—All I have done so far is agree that some of the comments that you have read from the document are within my recollection. That does not establish—

Senator CONROY—Where do you recollect them from?

Mr Johnston—that the draft of the document that you have is the document that went to the commission or indeed—

Senator CONROY—I have never claimed that it went to the commission.

Mr Johnston—that it was the final form of the document. It is a draft and it could be the first, second, third or fourth draft of that document, yet you have asked me specific questions about some of the comments and statements made in the document and where—

Senator CONROY—How many pages were in the report that went to the commission?

Mr Johnston—You have asked me specific questions about some of the statements made within the document, and where I have a recollection of those I have confirmed that they accord with my recollection.

Senator CONROY—How many pages?

Mr Johnston—We do not know how many pages.

Mr Lucy—We have responded to that on notice. We are not able to tell you that exactly now.

Senator CONROY—I would like to have some confidence that I will get some answers. This debacle started in February. I am no nearer to getting to the truth of what happened and it is now five months later. I am no nearer to the truth about this report—no nearer.

Mr Johnston—We have outlined that the specific matters contained in the report are matters about which ASIC has been concerned and has publicly said so. We have confirmed that, where there is enforcement action that we are able to take within our jurisdiction, we have done that; and we have confirmed that there is further work that needs to be done and we have been doing further work on it.

Senator CONROY—ASIC were quoted in the newspapers as intending to release a report. Somebody gagged you. I want to know who.

Mr Johnston—No-one gagged us.

Senator CONROY—Somebody gagged ASIC from producing this report, and I want to know who.

Mr Lucy—You should direct that question to me.

Senator CONROY—In February I could not even establish that there was a report. In February the commission went out of its way to try to obfuscate about the existence of a report. We were told that a summary of eight pages went to the commission. I now have a 17-page report with a title ‘Draft report’—

Mr Lucy—‘Draft confidential report’.

Senator CONROY—What it says is ‘a report on compliance and consumer risks’. I have a report in my hand that is your document.

Mr Lucy—We do not know that.

Senator CONROY—One that your commission refused to even acknowledge existed in February. It is not the report, in my view. It could be.

Mr Lucy—We did not refuse to acknowledge it in February; we did acknowledge it.

Senator CONROY—You can clear this up very simply, Mr Johnston, by telling us how many pages it was.

Mr Johnston—I do not know how many pages.

Senator CONROY—It will take you 10 seconds to get your staff to find out. We are not leaving: we are going to be here today and tomorrow until we get to the bottom of this. I want to know when you sent the report and how many pages it had—that does not include content. These are questions I am rightfully able to ask.

Mr Johnston—We would have to take that on notice.

Senator CONROY—We will be here until you are able to ask your staff to come back with an answer. Mr Larcos is very useful in these things. He has been sitting here the whole time. He could go away and get this information while we sit here for the rest of the day. I will keep going for the rest of the day until we get these answers. We are not going to let you get away with saying, ‘I’ll take it on notice and report back in six months time’. We want to know before you leave—and you will not leave until we get these answers—whether or not you spoke with the minister. You admitted that you had some discussions and then you were able to say, ‘You want more specific details, so I have to take that on notice.’ No, that is not going to work. Mr Lucy, you are going to fess up whether or not ASIC consulted the minister as recommended in this other technical report, and we are not leaving until you do. You have plenty of officers on the phone. The miracles of computers, telephones and mobile phones can assist you to answer this. It is not like in the old days when there was no modern communication.

Senator Coonan—Senator Conroy—

Senator CONROY—I am not finished, Senator Coonan. You can jump in when I am finished. We are going to get to the bottom of this before we leave or we are going to have a very long two days in Canberra.

Senator Coonan—If you would just let me have a go for a moment, I wanted to say that rather than make a speech would you be good enough to specify what you are asking for, and I will see what we can do about producing it for you. Why go on like this? Let us just see whether we can establish what it is you want to know and, if it is within the knowledge of the officers and if it is not confidential, it will be produced.

Senator CONROY—Seeing as you are so concerned about the copy I have, let Mr Johnston produce the report entitled '*Get rich quick*' wealth creation seminars: a report on compliance and consumer risks, May 2003. It should not be hard to find that one. It has 'confidential draft wealth creation' on the top. Feel free to produce that to the committee. If it happens to be the same report that went to the commission—and I do not think it is—come back and say, 'No, that is the one that went forward'. How about we produce that for a start? Then we will try and have another conversation about whether that report exists. Mr Johnston, is it possible for you to get a copy for the committee?

Senator Coonan—Which report exists?

Mr Johnston—It is a question of whether or not we can produce a copy of the report that was tabled to the commission.

Senator CONROY—That is not what I am asking for; I am asking for you to produce this one. I then said, if this one happens to be the same one that went to the commission, tell us. I do not think it is; I think you have produced roughly an eight-page summary.

Mr Lucy—We need to know which version that is. Let us assume that there were five versions of the draft. How do we know which one it is?

Senator CONROY—I would like you to give me the final version.

Mr Lucy—But that may not be the same as the one you have.

Senator CONROY—Does that mean I cannot have it?

Mr Lucy—But you want to see that one.

Senator CONROY—I want to know why you decided not to seriously chase the spivs in this industry.

Mr Lucy—But we did. Our record shows that we undertook a very significant level of—

Senator CONROY—This is blossoming across the country. I have acknowledged publicly your work on Henry Kaye.

Mr Lucy—How can you reconcile that with your earlier statement?

Senator CONROY—Unfortunately, this is blossoming, and now we are getting international spivs coming to our shores. There are lots of them because you guys do not want to do anything about it. You have referred it off to a committee. I want to know why you were gagged. I want to know why, as promised publicly in a newspaper, a report—

Mr Lucy—We will not accept the term 'gagged'.

Senator CONROY—You can not accept it all you want.

Mr Lucy—We will not.

Senator CONROY—ASIC publicly stated that they were going to produce a report. No report was produced. It is a matter of fact. Somebody stopped the report: either it was you or it came from the minister's office. It is very simple: somebody made a decision not to do what you told the Australian public you were going to do, which was to produce a report on these spivs. It is really straightforward. Then, when I started asking questions on it back in February, mysteriously no-one could remember the existence of any reports—'No, there wasn't a report produced.' Feel free to go back and reread Mr Johnston's testimony to the committee. It is a very serious issue. Dissembling went on and continues to go on.

Senator BRANDIS—What was it? I have just come back to the chair. I am trying to catch—

Senator CONROY—And you have not got a clue what is going on, so shut up and listen.

Senator BRANDIS—Just a moment. Senator Conroy, do not speak to me like that. Do not speak to me or any chairman of a Senate committee like that.

Senator CONROY—You are going red with embarrassment.

Senator BRANDIS—Senator Conroy, I am trying to catch up with what the point here is. I have listened to your diatribe against Mr Lucy.

Senator CONROY—Sorry, are you going to be passing judgments on comments?

CHAIR—Come to your question.

Senator CONROY—You have already been humiliated once this morning.

CHAIR—Come to your question, Senator Conroy.

Senator CONROY—You cannot make it up as you go.

CHAIR—I will not tolerate your discourtesy to witnesses—

Senator CONROY—I do not care what you will tolerate.

CHAIR—nor to me.

Senator CONROY—You are an idiot.

CHAIR—Ask your question.

Senator CONROY—You are an idiot, and Harry Evans—

CHAIR—Ask your question.

Senator CONROY—says you are an idiot, okay.

CHAIR—Ask your question, Senator Conroy.

Senator CONROY—So just sit there and stop interrupting.

CHAIR—Ask your question, Senator Conroy.

Senator CONROY—Just sit there and do not interrupt.

CHAIR—Ask your question, or I will suspend the proceedings.

Senator CONROY—Feel free.

CHAIR—Ask your question.

Senator CONROY—Will you produce the report titled *'Get rich quick' wealth creation seminars: a report on compliance and consumer risk* that was on your desk, which you acknowledge exists?

Mr Johnston—Is your question to me?

Senator CONROY—Yes.

Mr Johnston—Is the question whether I will produce the report to this committee?

Senator CONROY—Yes.

Mr Johnston—I will need to take advice on that. I do not know whether it is appropriate to produce a confidential report made to the ASIC commission to the committee.

Senator CONROY—I have said to you: if it is the confidential report, tell us it is. Just say the report is the one that went to the commission.

Mr Johnston—I do not know what document you have.

Senator Coonan—Mr Chairman, the point seems to be that Senator Conroy is asking questions based on a document we do not know the provenance of. We do not know what version it might be of a potential document—we know it is confidential because that has been established. We do not know whether it is a working document. I have said to Senator Conroy that he can ask questions about what the officers did, what they said and what they know; he is not entitled to ask them if they agree with statements in the document unless they can see it or at least know the provenance of the document. That is the gravamen of the problem for us, and it now seems to be the case that Mr Johnston has said that he does not know whether he could produce it even if he had it.

CHAIR—As you know, I have just come back into the chair. Senator Conroy is entitled to ask any relevant question he wants.

Senator CONROY—Thank you.

CHAIR—However—

Senator CONROY—Not the ones you tell me I can ask.

CHAIR—there are overriding issues of fairness to witnesses.

Senator CONROY—Oh my God! Do we have to get Harry up here to humiliate you again?

CHAIR—There is also the practice which this committee has always observed of respecting the confidentiality of investigations by agencies such as ASIC. I am not sure whether anything Senator Conroy has put trenches on the second of those principles.

Senator CONROY—Not even close.

CHAIR—If he wants to put a proposition to a witness and ask the witness to comment on the proposition, then I am not sure that the provenance of the proposition particularly matters but—

Senator Coonan—Except that he is attributing it to a document and asking if they agree.

CHAIR—I think the best course, Senator Coonan, is for me to listen carefully to each of Senator Conroy's questions and I hear, Mr Johnston, your answer before that you are going to have to take advice before you can properly respond to the last question, which of course you are perfectly at liberty to do.

Senator CONROY—As I said, I appreciate Senator Coonan's opinion but you are not actually allowed to define the questions I can ask.

Senator Coonan—I am just trying to be helpful—I really am.

Senator CONROY—No, you are not. By telling me what I can and cannot ask the witnesses—

CHAIR—Do not editorialise. Just ask your questions

Senator CONROY—The only person who editorialises at length, Senator Brandis, is you.

CHAIR—If there is an objection to your questions, they will be taken by the minister or if I think they are out of order they will be taken by me or any other Senator.

Senator CONROY—We do not want to embarrass you again.

CHAIR—Just go on.

Senator CONROY—There are pages of documents being circulated by the Clerk to deal with you, Senator Brandis.

CHAIR—The Clerk does not chair these committees, Senator Conroy—

Senator CONROY—There are pages now having to be circulated because of you.

CHAIR—I do.

Senator CONROY—Would you like to see them all, if you have not seen them all.

CHAIR—The Clerk does not chair this committee, I do. Senator Conroy, ask your questions.

Senator CONROY—But you are required to conform to the rules of the Senate—

CHAIR—Correct.

Senator CONROY—which you clearly do not understand because we have to keep getting clarifications.

CHAIR—Senator Conroy, we can be here till the cows come home but, if you want to get somewhere with the estimates process, just ask your questions.

Senator CONROY—I have asked Mr Johnston if he can give us a copy of the report that was prepared. I have not actually asked for a copy of the report prepared for the commission. I am after the report that was prepared by you because you do not compile them yourselves. You do not sit there typing away. What I am asking for is the one that was supplied to you, Mr Johnston.

Mr Johnston—I need to take advice, because I do not know whether it is appropriate for me to provide to the committee a confidential report that is a report within ASIC. I would have to take advice on it.

CHAIR—Mr Johnston, your answer is you are going to take advice.

Mr Johnston—Yes.

CHAIR—Next question, Senator Conroy.

Senator CONROY—I think Mr Johnston can answer his own questions. He does not actually need your editorialising along the way, Senator Brandis.

CHAIR—Senator Conroy, next question, please.

Senator WATSON—I have an issue that I would like to raise. If we are talking about an intermediate, internal working document then I think we are raising a real precedent because it has reached no finality. Not everybody may have had an opportunity to have an input into it. It may be just a document of interesting observations or serious observations. Until that can be established, I would have concerns about creating a precedent. I cannot recall other instances of having internal working, intermediate documents tabled before this committee.

Senator CONROY—It is very simple to establish one.

Mr Lucy—I think that is an important point. Indeed, we have responded to that very issue to say that the draft document that was presented to the commission was not accepted by the commission because it was flawed to the extent that it had a perspective that was not the full agency perspective. That is why the commission asked for further work to be done.

Prof. Collier—I make this observation, which might help Senator Conroy. I remember a paper coming to the commission. I thought it was about eight pages. As I said last time at Senate estimates: I may be wrong because I do not recall the exact length. What I do remember was discussing it with the consumer protection people at the time, in particular with the then executive director, before the meeting. I remember asking him if he had had any input into it and he said, 'No'. I remember at the time making a number of comments on a paper which came to the commission and thinking that this has not had any input from consumer protection or enforcement, that it needs more rounding out and it needs more work.

We have done considerable work in this area since. Wealth creation was considered at the last commission meeting, for example. As I said before, we have taken enforcement action. We are contributing to an external process which is looking for a resolution of this matter. We have embarked upon a strategy of taking what enforcement action we can beyond the Henry Kayes of this world, depending on what is available and what sorts of cases come up. I really do not think there is much more that we can add.

Senator CONROY—Mr Lucy, when do you think you will be able to get us the information on whether you spoke with the minister's or parliamentary secretary's office about that?

Mr Lucy—Within 24 hours, unless it was the previous chairman, Dave Knott, and it would then depend upon my ability to contact David.

Senator CONROY—As you saw with the Department of Defence, we are prepared to keep going for a day and a half to get the truth. I am prepared to keep going for a day and a half here and hold you here and not release you until we have that information. I think it is very important information. So the sooner you can get it, the sooner we will all be able to go home. I will not be releasing you—

Mr Lucy—It might be beyond my control.

CHAIR—Senator Conroy, it is not a matter for you to release a witness. Next question, please.

Senator CONROY—Thanks for your editorial, Senator Brandis. I always appreciate it. I am glad you are so keen to stop everybody else editorialising, but you feel free from the chair.

CHAIR—I am going to make any ruling that I think is appropriate to protect the witnesses.

Senator CONROY—You are not going to make any ruling that you think is appropriate. It was embarrassing enough for you this morning, Senator Brandis.

CHAIR—Senator Conroy, ask your next question, please.

Senator CONROY—Would you like me to read out all of the letters from the Clerk of the Senate explaining what an idiot you are? Would you like me to do that?

CHAIR—Senator Conroy, ask your next question, please.

Senator CONROY—I am not surprised you managed for a few hours in embarrassment.

CHAIR—We might take the call away from you, Senator Conroy, while you calm down and give the call to Senator Watson.

Senator CONROY—You are the one doing the talking.

Senator WATSON—We have to be very careful that we do not impugn the integrity or honesty of any of the witnesses during our hearings. I think we are getting very close to that, Chair, and I just caution—

CHAIR—Is this a point of order?

Senator CONROY—I do not mind if he takes a point of order, but I wish the Chair would chair the meeting correctly.

Senator WATSON—I just caution about challenging the integrity or honesty of people at the table without due cause or without substance.

CHAIR—I understand your point.

Senator WATSON—It is just an observation. I am more concerned about the protection of witnesses' integrity.

CHAIR—We will take that on board. I have not heard Senator Conroy do that. It may be that before I came into the room he did, but I am sure he heard what you had to say. Do you have any questions, Senator Watson?

Senator WATSON—No.

Senator CONROY—Did the commission decide not to advise the minister or the parliamentary secretary about the issues relating to the property spruikers and wealth creation seminars?

Mr Lucy—I thought that was exactly the point you raised a few minutes ago. We will take that on notice and come back to you.

Senator CONROY—What I asked was if the commission made a decision. Two of the three commissioners who were on the commission at the time are sitting in front of us. Did the commission take a decision not to?

Mr Lucy—I cannot recall.

Senator CONROY—What about you, Professor Collier?

Senator Coonan—Could you clarify what advice we are talking about here?

Senator CONROY—Not to advise the minister or the parliamentary secretary about the issues relating to property spruikers and wealth creation seminars.

Senator Coonan—Yes, but not to advise them about what issues?

Senator CONROY—About the issues that they were aware of following the submission?

Senator Coonan—But which issues?

Senator CONROY—I have been through them. I have talked about the 80,000 Australians who have been attending these seminars and getting ripped-off by these spivs. I have talked about the \$60 million in fees that they have been ripping off Australians.

Senator Coonan—Yes, but a minister does not get advised about issues. You are advised about something.

Senator CONROY—A minister does not get advised about issues?

CHAIR—Are you saying, Minister, that you are not quite sure from Senator Conroy's question what he was specifically is trying to direct you to?

Senator CONROY—Don't put words in the minister's mouth to help her.

Senator Coonan—He is asking the witnesses did they decide not to advise about the issues. How could they answer that?

CHAIR—Senator Conroy, this is the problem. If you ask a question in a way that is so broad that the person you are looking to for a response does not quite understand what you are trying to get at, you cannot blame the witnesses for not giving you a responsive answer.

Senator CONROY—It is Senator Coonan who is confused. I actually got an answer from Mr Lucy straightaway. Professor Collier was actually thinking about an answer.

CHAIR—Just try and be as specific as you can.

Senator CONROY—Thank you for your advice, Chair, but I will ask my questions the way I want to ask my questions.

CHAIR—I just do not want to waste time, Senator Conroy. If you ask a question which does not allow for a sensible response—

Senator CONROY—Then you will let me ask it because you cannot rule it out of order.

CHAIR—There is a process issue here.

Senator CONROY—No, there is not. You have a duty to rule if it is relevant.

CHAIR—We want the proceedings to proceed efficiently and I want you to get all the answers you are entitled to. The minister has said that it is not apparent to her from the way in which you are framing your questions what you are actually getting at. I am simply counselling you to be a little bit more precise. That is all.

Senator CONROY—Thank you for your counsel, but when I want counselling I will hire a lawyer who know something about the law, unlike you.

CHAIR—Away you go, Senator Conroy. Move to your next question.

Senator CONROY—Can we just clarify, to save you flapping your lips regularly, you get to rule on whether my questions are relevant; you do not get to make a value judgment about whether you think they are precise or specific enough.

CHAIR—I get to rule whether your questions are proper questions.

Senator CONROY—What is a proper question? Just to save time for the whole committee, what is a proper question, Chair?

CHAIR—You ask the questions—and if I do not say anything, it is a proper question.

Senator CONROY—That is just priceless. Can we see some advice from the clerk about that view you have expressed from the chair.

CHAIR—You can seek advice from anyone you like.

Senator CONROY—Could you ask the clerk for some advice on what you have just informed the committee?

CHAIR—Absolutely. Senator, if you want me to, of course I will.

Senator CONROY—Yes, please. I would like a fourth letter from the clerk just to humiliate you.

CHAIR—Go to your next question, Senator Conroy—and if the witness does not understand the question because of the way in which it has been put, do not get stuck into the witnesses.

Senator CONROY—I did not. Mr Lucy gave me an answer and Professor Collier was thinking about it.

CHAIR—Move to your next question, please.

Senator CONROY—Professor Collier, you were thinking about the question before Senator Coonan interrupted and Senator Brandis had another embarrassing fit. Did the commission take any decision along those lines?

Prof. Collier—All I can recall is that we decided to do further work on this issue.

Senator CONROY—Who is Deborah Latimer, special counsel, legal and technical operations, financial services directorate?

Mr Johnston—She was at that time a special counsel, legal and technical operations in the financial services directorate.

Senator CONROY—So she worked for ASIC?

Mr Johnston—Yes, but she has since left ASIC.

Senator CONROY—But she was an employee of ASIC?

Mr Johnston—Yes.

Senator CONROY—Have you had a chance, since I first mentioned this report, to vaguely remember the report? Does it ring any bells at all?

Mr Johnston—No, it does not.

Senator CONROY—Would it normally come across your desk? I accept that you cannot remember absolutely everything, is it the sort of thing that would have come across your desk or would it have gone through a different section?

Mr Lucy—It is pretty hard to answer a question as to whether or not a document that he cannot recall might have come across his desk.

Senator CONROY—What I asked him was whether or not a document like this on this issue he would expect to have come across his desk.

Mr Lucy—Like what?

Senator CONROY—I have not said I have a document.

Mr Lucy—Precisely.

Senator CONROY—I have just read a title.

Mr Lucy—So we are wondering about whether or not a document—and we do not know what it looks like or what it is—might have come across his desk.

Senator CONROY—I am asking whether or not a document on the issue of get-rich-quick wealth creation seminars, a technical review of the report, would as a rule come across your desk? I am not trying to be tricky. He says he cannot remember, and I am just trying to establish whether he would have expected it to.

Mr Johnston—I cannot answer specifically in respect of that document, as I have said. From time to time, internal review documents will come across my desk but at other times they will not, because there will be review documents that are prepared within my directorate as various parts of the directorate prepare a piece of work that would then come to me in ultimate form.

Senator CONROY—But it is a report on something that you had prepared?

Mr Johnston—I do not know the status of the document.

Senator CONROY—It is a report that reviews an area—

CHAIR—Senator Conroy, are you asking the witnesses—

Senator CONROY—Oh, my God.

CHAIR—No, you just have to help me because—

Senator CONROY—I do not want to help you; you have nothing to do with this. Can you leave me alone to ask the questions.

CHAIR—Senator Conroy, are you asking the witnesses about whether a document that you have crossed their desk?

Senator CONROY—No, that is not what I asked.

CHAIR—Okay.

Senator CONROY—Thank you. How about you let me ask the questions? If they have a question to clarify they will do it and they do not need your help.

Mr Johnston—As you asked the question, at some times such documents would come across my desk and other times they would not.

Senator CONROY—You prepared the report that went to the commission?

Mr Johnston—I am not sure I have acknowledged that I prepared the report.

Senator CONROY—It came from your directorate.

Mr Johnston—A report that went to commission would have been authorised by me but is unlikely to have been prepared by me.

Senator CONROY—It is an orphan, is it?

Mr Johnston—No, it would be unlikely to have been prepared by me but it would have been authorised by me.

Senator CONROY—It would have gone forward under your name?

Mr Johnston—It would have gone forward under my authorisation, at least.

Senator CONROY—So it is an orphan, then? Just because they under authorisation it does not mean—

Senator Coonan—It authorises—

Mr Lucy—Authorised is not prepared.

Senator CONROY—I am not suggesting they are, but if it is authorised you take responsibility for it. Can we clarify that?

Mr Johnston—I authorised that the paper go to the commission.

Senator CONROY—And do you take responsibility for it?

Mr Johnston—I authorised that the paper go to the commission. A paper goes to the commission from my directorate which I authorised to take place.

Senator CONROY—These get-rich-quick wealth creation seminars, which previously you have been happy to embrace, prepared by your section, went forward.

Mr Johnston—A report did, yes.

Senator CONROY—Another part of your—

CHAIR—Senator Conroy, let Mr Johnston answer before you interrupt him. Sorry, Mr Johnston, what were you in the course of saying?

Mr Johnston—A report on that issue went to commission, which I would have authorised.

Senator CONROY—Thank you. So if another section of ASIC prepared a review or a technical review or an opinion on it, would you expect that that would also, as a courtesy if nothing else, come across your desk?

Mr Johnston—Without knowing the specific document you have referred to, if it was prepared by—

Senator CONROY—No, I am asking about in general—anyone.

Mr Johnston—Yes, but I think I need to clarify—

Senator CONROY—If anyone else in ASIC prepared a report—

Mr Johnston—I think I need to clarify it for you. If it was prepared by Deborah Latimer, she was within my area of responsibility within ASIC.

Senator CONROY—Oh, she was within your area?

Mr Johnston—Yes.

Mr Lucy—He had already said that.

Senator CONROY—It is all right, I missed that. So it is a technical review by Deborah Latimer, who is within your section, on this area. Would she have burnt it? Who is her direct line of report? Where would it have gone? If Miss Latimer prepared a report, where would it go?

Mr Johnston—Within my directorate there are three subdirectorates. The main work on wealth creation was done in what we call our regulatory operations directorate. A commentary may well have been done on that work by the legal and technical subdirectorates, and that matter may then simply have been agreed between the two subdirectorates. It may or may not have come across my desk.

Senator CONROY—That is what I am trying to establish: would it necessarily come across your desk?

Mr Johnston—That is my answer: no, not necessarily.

Senator CONROY—It didn't hurt. Now, the technical review report says that there is an argument that advice about real estate is financial product advice under the Corporations Act and is therefore regulated by ASIC. The same report also recommends that ASIC obtains advice as to whether advice about real estate is financial product advice. Has ASIC obtained legal advice, as recommended by the technical report?

Mr Johnston—ASIC has done further work and obtained further advice on the jurisdictional issues regarding property—

Senator CONROY—That is legal advice to us laypersons when you say jurisdiction?

Mr Johnston—Yes.

Senator CONROY—Did the legal advice say whether advice about real estate is financial product advice?

Mr Johnston—The advice said that generally it will not be financial product advice and is not within the domain of ASIC.

Senator CONROY—Can you guarantee that the eight surveyed spruikers, whose seminars your officers attended, are all out of business?

Mr Johnston—No, I cannot because I cannot recall who they were. Nor would I be able to recall their individual circumstances.

Senator CONROY—I have two reports and I suspect there is a third report, which is the summary as I have described it. We have got a situation where three reports on property spruikers have been produced by ASIC, though if you want to tell me that one of them is actually the same I am relaxed about that. The first report is dated May 2003, the second report—the technical review—is dated June 2003 and the third report, which I describe as a summary, went forward. I am happy for you to correct the record at any stage to tell me the truth about this, Mr Johnston—about how many reports existed—any time you like.

Senator Coonan—Chair, there is an imputation against the truthfulness of the witness here that is entirely unfair.

CHAIR—Are you impugning the honesty of the witness, Senator Conroy?

Senator CONROY—Absolutely not. I am offering Mr Johnston the opportunity to correct me if I am wrong.

Senator Coonan—You said ‘tell the truth’.

Senator CONROY—To tell the truth about how many reports there are.

Mr Lucy—The witnesses have been telling the truth.

CHAIR—I think that is very unfair, Senator Conroy. Honestly, you can ask the most searching questions you like—

Senator CONROY—I accept your admonishment.

CHAIR—you can be as aggressive as you want but I will not put up with discourtesy and I certainly will not put up with you impugning the integrity of honourable people.

Senator CONROY—You do not put up with much in life. You need to get out more. In relation to the summary report in February, Mr Johnston advised the committee that the commission:

... determined that we should take enforcement action where we found breaches of the law, which was appropriate, but that this needed to form part of a bigger piece of work, which is still going on and which is wrapped up into our input to the working party.

Could you advise the committee what stage the working party is at? I understand there was a meeting in March.

Mr Johnston—I am not directly involved in the working party.

Mr Lucy—Commissioner Collier would be better placed to answer that.

Prof. Collier—My understanding is that the working party has subsequently met and a discussion paper will be released shortly. I do not have the exact date.

Senator CONROY—Could you advise me how long the working committee has been considering this issue?

Prof. Collier—I do not know. I could take that on notice, though.

Senator CONROY—Could you advise me of the status of the paper that was anticipated to be provided to the July 2003 SCOCA meeting?

Prof. Collier—I am sorry; I will have to take that on notice as well.

Senator CONROY—As I asked earlier, have any property spruikers gone out of business because of the MCCA process?

Prof. Collier—I am afraid I do not know the answer to that question. Even if I take it on notice I am not sure I could answer it.

Senator CONROY—They have not actually done anything in terms of any changes to the law so I presume the answer is no.

CHAIR—The answer is she does not know. That is the answer. She does not know.

Senator CONROY—You beat the minister to it. I think you have to work out whether you are going to chair the meeting or let the minister defend the witnesses.

CHAIR—I am not going to allow you to say that a witness said something when she said something quite different.

Senator CONROY—That is the minister's job.

Senator Coonan—Senator Conroy, I was about to say that there is a matter of causation there. It is a pretty long bow to suggest that a committee process leads to somebody going out of business.

CHAIR—Be that as it may, the witness does not know the answer to the question.

Senator CONROY—Hopefully it does. That is my point.

Senator Coonan—There are a few other steps in between.

Mr Johnston—What we can say is that some of the property spruikers have gone out of business because of action that ASIC took rather than the other process.

Senator CONROY—I was asking whether the eight that you are familiar with, because your officers attended the seminars, were out of business or not.

Mr Johnston—We took action against several of them but I cannot recall how many or how many of them are still in business or out of business.

Senator CONROY—But the working party has produced no outcomes at this stage, after 12 months.

Prof. Collier—I will just check my notes. My understanding is that the working party commenced in August 2003 so it is less than 12 months. However, it is my understanding that a discussion paper will be produced shortly.

Senator CONROY—But ASIC identified serious concerns. I do not find them earlier than May 2003. The preparatory work that went into this report was prior to May 2003 so ASIC

has been aware of this issue since then. ASIC's response is to refer it to another party to deal with.

Mr Lucy—The ministerial committee, which consists of representatives of all states and territories and the federal government.

Senator CONROY—In 1999 ASIC made a recommendation that a nationally consistent approach was needed in relation to property investment regulation. Do you still take this position or have you changed your mind?

Mr Lucy—No, that is still ASIC's view.

Senator CONROY—During the last estimates hearing Mr Kell advised the committee that the regulatory structure needs work, and Mr Johnston advised the committee that some of the spruikers had structured their operations to avoid ASIC's limited jurisdiction. In contrast, Mr Cameron is quoted in a recent article on property spruikers as saying that consumers 'should watch out for themselves'. Mr Cameron said Australians had paid a price for the 'tendency for us to relax in the placental warmth of the embrace of the state'. In your view, were the consumers who gave \$60 million of their life savings to property spruikers relaxing in the placental warmth of the embrace of the state or were they simply being ripped off?

Mr Lucy—We are concerned when any consumer is put at risk and their money is lost.

Senator CONROY—So they should just watch out for themselves?

Senator Coonan—No, that does not follow.

Mr Lucy—That is clearly inconsistent with our approach. We have been extremely active in warning people, as far as those sorts of property investments are concerned, and we have given it an extremely high profile and priority.

Senator CONROY—In light of the fact that overseas property spruikers, such as American spruiker Robert Allen, are now targeting Australians, do you think that this indicates that our laws are lax in this area and are now being targeted by conmen from overseas?

Mr Lucy—I am not sure that any party from overseas is going to be any more or less effective than any of the parties in Australia. The view of ASIC on this is quite clear. We have actively participated, as far as the ministerial committee looking at this issue is concerned. As far as matters within our own province are concerned, we have, again, been very active both in a consumer protection sense and in an enforcement sense, when we have jurisdiction.

Prof. Collier—We also engage in dialogue with the ACCC on this and, indeed, cooperated with them in relation to the Henry Kaye matter.

Senator CONROY—Are you familiar with Robert Allen? Has he come across your radar screen yet?

Mr Johnston—I am familiar with the name.

Senator CONROY—Are there other international spivs whom you are aware of?

Mr Johnston—There are others of whom we are aware. But going back to an earlier question that we were asked, we are aware also of the limitations of our jurisdiction.

Senator CONROY—Shall I view the commission as a ‘placental warmth of the embrace of the state’? Is that what you are, Mr Lucy and Professor Collier?

Mr Lucy—We do not see ourselves in that manner.

Senator Coonan—It sounds very nice, though.

Senator CONROY—Senator Coonan, do you view yourself as that?

Senator Coonan—It sounds wonderful—‘placental warmth’. I like it.

Senator CONROY—But you do not embrace it?

Senator Coonan—Definitely not.

Senator CONROY—What does CPD stand for?

Prof. Collier—Consumer Protection Directorate.

Senator CONROY—Is that under Mr Johnston?

Mr Lucy—No, it is under Greg Tanzer, who is not with us today. Greg Tanzer took over from Peter Kell.

Senator CONROY—The ASIC report entitled ‘Technical Review’ states, ‘It is recommended that this review paper be referred to the CPD.’

Prof. Collier—‘Consumer Protection Directorate.’

Senator CONROY—Thank you. Do we know whether that happened?

Mr Johnston—The Consumer Protection Directorate has had input into the subsequent work that was done, yes.

Senator CONROY—So they may have seen it?

Mr Johnston—I do not know because I have not seen the report.

Mr Lucy—Almost certainly.

Mr Johnston—You asked, ‘Have they seen it?’ Are you referring to the technical review or the draft confidential report?

Senator CONROY—The technical review says, ‘It is recommended that this review be referred to the CPD.’

Mr Johnston—I have no knowledge because I do not recall the document.

Senator CONROY—I appreciate that. It is just a pity that Mr Tanzer is not here. We could have cleared up whether the document exists and whether it went across your desk, Mr Johnston. But I will eagerly await a long afternoon while you find out.

Prof. Collier—One of the issues which we have raised is the fact that a paper which came to the commission, out of Mr Johnston’s directorate, required input from consumer protection and enforcement and other directorates. Clearly, I do not know if consumer protection saw this technical paper you have referred to, but it is possible that they did not.

Senator CONROY—I said it was possible.

Prof. Collier—That is why the commission has taken the decision to require more work to be done in this area subsequent to the paper which came to the commission at the end of last year.

Senator CONROY—Did you have a discussion with the minister or the minister's office about the need for national regulation in this area?

Prof. Collier—Me personally or the commission?

Senator CONROY—The commission or you?

Prof. Collier—The fact that there is a ministerial council is something which may have arisen in discussions. To be truthful, I cannot recall.

Senator CONROY—Can you find out for us?

Prof. Collier—I think Mr Lucy has said we will take that on notice.

Mr Lucy—Again, one of the difficulties with that is that Peter Kell was the executive director of consumer protection. I expect that the timing of it would have been under his stewardship and, again—

Senator CONROY—Who looked after consumer then? Did you look after this?

Mr Johnston—I am sorry, I came in part way through the question.

Senator CONROY—I was just going back to my question about whether or not yourself, Mr Lucy or Professor Collier had a conversation with the minister or parliamentary secretary about reinforcing the need, after you had seen this flawed report, as you describe it. I am not asking when; I am just asking did you raise it?

Mr Lucy—I think we have already responded by saying we will take it on notice.

Senator CONROY—I said we are happy to wait until you are able to check your records.

Mr Lucy—Yes, but again I think I mentioned to you that it may not have been either Professor Collier or I, it might have been the former chairman.

Senator CONROY—I am acknowledging Mr Knott is no longer with us and Mr Kell has now been fitted up for it, because he is not here either and Mr Tanzer is not here so we cannot ask anyone those questions. Ultimately, the question I am asking is to the commission. Do you remember if you had a conversation with Parliamentary Secretary Campbell or the Treasurer?

Mr Lucy—I have had a number and on many, many issues. You are asking about a particular issue and obviously requiring—

Senator CONROY—It is an important—

CHAIR—Let him finish his answer.

Mr Lucy—a very accurate answer and so I need to take it on notice.

Senator CONROY—No, what I am putting to you—

Mr Lucy—I could generalise but you are not looking for a general answer; you are looking for a specific answer.

Senator CONROY—I am actually asking whether you raised this. I am not asking for when or whatever. What I am saying is there is this big national issue. It has been in all the newspapers—your officers are in the newspapers talking about it. I would be shocked if the commission had not actually engaged in discussions with the parliamentary secretary at least or possibly the Treasurer or his office. I would be shocked if you did not. I am surprised that you are being so coy.

CHAIR—He is not being coy; he said he would take it on notice.

Senator CONROY—What I am saying is that I am happy to wait while Mr Lucy or Professor Collier check their records and come back to us.

Mr Lucy—The difficulty with that is that it may require the former chairman and I do not even know if he is in the country.

Senator CONROY—No—

CHAIR—Senator Conroy, I am sure Mr Lucy will, as all witnesses would, take steps to inform the committee of the answer to your question as swiftly as they can. Mr Lucy said he might need to speak to the former chairman. Surely you understand that.

Senator CONROY—We could always pass a resolution in the Senate to ask you to come back and give us the answers.

CHAIR—Mr Lucy said he would take the question on notice—

Senator CONROY—Senator Brandis cannot protect you there.

CHAIR—He said he would take the question on notice so it is taken on notice. Next question, please.

Senator CONROY—What I am asking is whether or not we are going to get them before you leave Canberra. I have said I am happy to not release you and we can wait while you check up as much as is possible.

Mr Lucy—I am not supported by the fact that Mr Knott may be overseas and I have no idea. I may be here for some weeks.

Senator CONROY—I have accepted the constraint of Mr Knott, and even Mr Kell. What I am saying is can you check your records?

CHAIR—Senator Conroy, can I just tell you that the committee has already set a date by which questions taken on notice are to be responded to and that is 16 July. Mr Lucy, having taken that question on notice, the committee has already announced what its requirement is—that is, we must have answer by 16 July.

Senator CONROY—Through you, Mr Chair, could I check the record of the committee then—and this is not a reflection on ASIC. Could I find out what the date for the return of questions was previously for the last response to questions and when the committee received them?

CHAIR—That will be done; it is being checked now.

Senator CONROY—Thank you. Unfortunately, there is a filter between you and us—the minister's office—so these things turn up the day before estimates in general. That was no

reflection on you. They are often supplied by the agencies in time to meet the deadlines but they do not reach us, sometimes at all, or a long period after the deadline or after the next round of estimates. But we can call you back and Senator Brandis does not have the numbers on the floor of the Senate so he cannot stop us, as much as he might want to interfere in the process that we are going through today.

CHAIR—Next question please Senator Conroy.

Senator CONROY—Mr Lucy you said that the cost of regulating the property investment industry would be around a third of ASIC's budget, I think, is that a fair representation of what you said previously?

Mr Lucy—I said that on an ABC question and that was to do with the broad area of real estate.

Senator CONROY—That is what I wanted to ask you about. Was that the cost of regulating property spruikers or regulating the entire property industry including real estate agents?

Mr Lucy—The latter, the full spectrum.

Senator CONROY—Are you able to be a bit more definitive in terms of property spruikers?

Mr Lucy—No.

Senator CONROY—It would not be a third if it were just property spruikers?

Mr Lucy—Obviously it would not be. I guess the key area that we have looked at is whether or not real estate might be regulated as other financial products might be regulated. But that again, of course, is a matter for the ministerial council and ultimately the government and the parliament.

Senator CONROY—Denise Brailey, are you familiar with Ms Brailey?

Mr Lucy—Yes, Western Australia.

Senator CONROY—When did you first receive complaints about Henry Kaye?

Mr Lucy—I will have to take that on notice.

Senator CONROY—How many complaints did you receive about Henry Kaye?

Mr Lucy—Similarly on notice.

Senator CONROY—Did you receive any complaints about Mr Kaye giving tax advice and if so when?

Mr Lucy—On notice.

Senator CONROY—How did you respond to those complainants at the time? Can we have a copy of the correspondence?

Ms Redfern—There are two issues. Do you mean complaints prior to us taking action, correspondence, or post action?

Senator CONROY—Yes, I understand you got some complaints in 2001.

Ms Redfern—The second issue was the issue that Mr Johnston raised—the issue about confidentiality in relation to complaints.

Senator CONROY—I understand, if we can get a flavour rather than specifics. I wanted to move onto the Fares brothers. They are not an ongoing investigation are they?

Mr Lucy—No they are not so we can talk about them.

Senator CONROY—Good I am glad, that will make life easier. They recently pleaded guilty to money laundering. Court documents show that ASIC failed to find any evidence of insider trading. Is that right?

Ms Redfern—That is true.

Senator CONROY—In spite of the fact that Michael Fares worked in the company secretarial division of the NAB and that the brothers derivatives exposure was put together while NAB was engaged in buying AMP shares. In ASIC's view did the Fares brothers just get lucky?

Ms Redfern—When you say money laundering you mean the AUSTRAC offences?

Senator CONROY—That is what they pleaded guilty to.

Ms Redfern—I agree that the circumstances of the profit that was made by the Fares brothers certainly seemed suspicious, warranted an investigation, and that is exactly what we did.

Senator CONROY—So it was a coincidence in the end?

Ms Redfern—All I can say is part of the prosecution is establishing that there is possession of inside information. It is vital to an insider trading prosecution and we could not establish that.

Senator CONROY—So all of these things ultimately that looked suspicious from the outside were just a coincidence.

Ms Redfern—You can be dissatisfied about the suspicions and there were certainly circumstances and that is why we investigated, but we did not have evidence to warrant referring the matter to the Director of Public Prosecutions.

Senator CONROY—I do appreciate that there are some difficulties in terms of these cases. We do not have a high success rate. In the US the SEC takes the view that insider trading cases are proven by a 'mosaic of circumstantial evidence which when considered as a whole leads to the inference that the insider possessed insider information'. It seems that in the US they do not actually need a smoking gun for a conviction; circumstantial evidence is enough.

Ms Redfern—My understanding—and I cannot say that I know a great deal but I have had a number of discussions with my colleagues in the area of circumstantial evidence—is that it appears to be enough, although you have got to remember that they are not criminal prosecutions that the SEC carries out.

Senator CONROY—The circumstantial evidence in this particular case does appear compelling. The Fares brothers had a \$29.9 million exposure on one stock alone, AMP. One

of the brothers worked for the NAB, which was acquiring a stake in AMP. Throughout July and August they built up the position. On 28 August NAB made a raid. On 29 August the brothers sold out and made a cool \$9.8 million. Does ASIC need a smoking gun for a conviction?

Ms Redfern—Again, two issues arise out of what you have just said. These were contracts for differences, so they were not required to cover the whole of the purchase price of the shares, and they did in fact pay for them. We did find evidence during our investigation that would have been taken as exculpatory in the sense that there was a strategy that had been developed long before this, as coincidental as it may seem, and from ASIC's point of view that makes it a criminal prosecution—and indeed it was the DPP's point of view—and it is a very serious issue. We refer matters to the DPP on a regular basis. The insider trading cases where you have got direct evidence and not circumstantial evidence are very difficult to prosecute in themselves.

Senator CONROY—CMC Group, the Fares brothers' brokers, had four main concerns, which is why they put the funds in a disputed funds account and alerted ASIC to their concerns. Their concerns were that the brothers' positions were very large compared with their stated trading history; there was no stop loss audit to prevent big losses if the AMP share price went down instead of up; the exposure almost entirely related to one stock; and CMC Group were unsure whether the Fares brothers had sufficient funds to answer margin calls if AMP shares went into reverse. Do these concerns add to the circumstantial evidence that existed in relation to this case?

Ms Redfern—These were all of the issues that we looked at at the time. They were issues that led us to commence an investigation. We undertook further investigations, the detail of which I cannot go into. On the basis of that investigation we formed a view that we could not establish a key element of the offence of insider trading—that is, possession of insider information.

Senator CONROY—The other brother worked at AXA and they also traded some AXA shares. Is it possible that the brothers took a stake in both companies and decided to wait and see what information came their way? I am not saying they did this—

Ms Redfern—In relation to AXA—

Senator CONROY—I am just asking whether ASIC considered this as a possibility.

Ms Redfern—I do know that it was a very full and comprehensive investigation and I am sure that the officers would have considered all of those issues.

Senator CONROY—Do Australia's insider trading laws need to be reviewed in the light of this case?

Ms Redfern—I think that the issue of possession of inside information is a difficult issue. It is a necessary element of proof. I do not know how you can get around that with any amendments to the legislation apart from changing onus of proof or something of that nature.

Senator CONROY—Is the burden of proof too high?

Ms Redfern—It is a criminal case. It has got to be beyond reasonable doubt unless we form a different view about insider trading cases. It is a criminal remedy.

Senator CONROY—I appreciate the point you made about the ASIC investigation but I am going to ask you some questions and, hopefully, we will not tread in too many areas where we should not. It is not an ongoing investigation so we can go a little further than we normally do, which is nowhere if it is an ongoing case. I would like to discuss the investigation. Michael Fares was employed at the NAB in the company secretarial division at the time of the share purchases. Is that right?

Ms Redfern—I do not believe that he was in the secretarial division. I am happy to take that question on notice.

Senator CONROY—As part of your investigation did you raise issues with the NAB? You went and talked to them?

Ms Redfern—The NAB certainly cooperated with us as part of our investigation. They were certainly a part of our investigation and assisted us. We did things like, as you would imagine, took images of computers, we spoke to staff and we did speak to the NAB about a number of issues.

Senator CONROY—I appreciate you were not sure, but what were Michael Fares' exact duties at the NAB?

Ms Redfern—I would have to take that on notice.

Senator CONROY—Did he have any contacts in the Corporate and Institutional Banking Division, which would have had information about the book build at AMP?

Ms Redfern—What do you mean by contacts—friends?

Senator CONROY—Friends. This is an issue about Chinese walls.

Ms Redfern—Again, I would have to take that on notice. But as part of our investigation that is obviously what we focussed on, whether there was communication between those in the investment area and someone in another area.

Senator CONROY—That is what I am trying to—

Ms Redfern—From recollection, it was not actually in the secretariat area, but again—

Mr Lucy—Senator, I think I can help. I think that he was in the taxation division.

Ms Redfern—Yes, that is right.

Senator CONROY—Where was the physical proximity of the Corporate and Institutional Banking Division with regard to taxation or secretariat?

Ms Redfern—I would have to take that on notice.

Senator CONROY—Are they on the same floor?

Ms Redfern—I do not know.

Senator CONROY—Does anyone know?

Ms Redfern—It is something that the team would have considered as part of its investigation, yes.

Senator CONROY—If you could take that on notice.

Ms Redfern—Yes.

Senator CONROY—I presume you asked NAB about its Chinese walls?

Ms Redfern—It was certainly part of the investigation. The issue of the passing of information was crucial to the case.

Senator CONROY—Did you ask NAB which divisions within NAB had access to the AMP information?

Ms Redfern—Again, that was part of the investigation.

Senator CONROY—Are you able to tell us, if you take it on notice?

Ms Redfern—I do not know. I would have to take that on notice.

Senator CONROY—Did ASIC discuss with NAB whether the Corporate and Institutional Banking Division had appropriate Chinese walls in place for this particular transaction?

Ms Redfern—Again, I would have to take that on notice, whether that was an issue that was raised as part of the investigation or after the investigation.

Senator CONROY—Did ASIC discuss with NAB whether the CIB Division needed taxation advice as to the effect of the AMP transaction?

Ms Redfern—I would have to take that on notice.

Senator CONROY—Did ASIC ask NAB about people being rotated through the CIB Division, tax and the company secretarial division?

Ms Redfern—Again, I would have to take that on notice. Senator Conroy, I guess what you are asking for is really a comprehensive review of exactly what we did.

Senator CONROY—I guess.

Ms Redfern—Like, all the steps that we took in investigating the matter.

Senator CONROY—I just want to be confident that you ticked off on these things, that is all.

Ms Redfern—Yes. I am very confident that we did.

Senator CONROY—I am not suggesting you did not.

Ms Redfern—We had a lot of resources on it. We focused on the issue.

Senator CONROY—I am sure that will be the case. I am just trying to get it out there, so that I can review it.

Ms Redfern—Yes.

Senator CONROY—And if there are any other issues that ASIC raised with NAB, if you could let us know what they were.

Ms Redfern—I will take that on notice.

Senator CONROY—It has been reported that the brothers made a transfer of \$2.2 million from a joint NAB account to the CMC Group—that was their broker, as I said. What systems or controls did the NAB have on their staff and their trading activities?

Ms Redfern—I would have to take that on notice.

Senator CONROY—It is just that we have seen recently that there has been a bit of a question mark around NAB's culture of compliance, so I was just wondering how you found it as well.

Ms Redfern—Yes. I can say that when we investigated the matter they were extremely helpful in giving us access to absolutely everything we needed, including witnesses, desktops, papers.

Senator CONROY—Given that the Fares brothers were both salaried employees, do you know how the Fares brothers raised the initial \$2.3 million which they gave to their broker, CMC, to invest?

Ms Redfern—We do have the detail that they sold property. I guess the reservation I have here is that some of this is confidential information pertaining to them. I can tell you that we did make inquiries in relation to those issues about how they had raised the money.

Senator CONROY—Do you know where they got the \$67 million—the amount which Michael Fares said was their estimated combined network? Did you look into that?

Ms Redfern—I am sure we did look into it but I personally do not know. I would have some reservations in relation to somebody—

Senator CONROY—I appreciate that there are some confidentiality issues. Perhaps you could give us as much information as is prudent.

Ms Redfern—Yes.

Senator CONROY—Did ASIC have any concerns about the original \$2.3 million provided to the broker and where it came from?

Ms Redfern—No.

Senator CONROY—The Fares brothers were trading in contracts of a difference. CFDs are not an ordinary investment; they are not traded on the stock exchange; they are an off-market agreement between the client and the CFD provider to settle. There are only two CFD providers in Australia. In ASIC's view, why were the Fares brothers investing in CFDs?

Ms Redfern—It is very hard to answer why they made a choice to do that.

Senator CONROY—You did not form a view?

Ms Redfern—They had a view about the AMP stock; they had a view that they could invest in this way. It provides an opportunity to invest in relation to shares where you do not have to purchase the whole of the stock. Why they did it I do not know.

Senator CONROY—Do you think they were trying to avoid regulatory scrutiny by investing in these products as opposed to garden variety securities such as shares?

Ms Redfern—I could not guess what their motive was, but it was available.

Senator CONROY—You are a very experienced person in this area. I am sure you could guess.

Ms Redfern—I guess all I can say is that it was available to them. They obviously had an interest in the AMP stock and they chose to do it in this way.

Senator CONROY—The Fares brothers' total exposure was \$29.9 million on AMP. That is a big bet. In my view you would not be putting that amount of money on a horse unless it was a sure thing.

Ms Redfern—I have seen in some of the futures areas—and in the way this is like an options contract—

Senator CONROY—These are not futures traders.

Ms Redfern—Yes, but this is like an options contract. I have seen some very big exposures that someone like me would find extraordinary, but some people operate in this world.

Senator CONROY—In ASIC's view why would two office workers expose themselves to \$29.9 million if it was not a sure bet? Even the broker was concerned about their exposure. ASIC are not? Did it pass the smell test?

Ms Redfern—That is why we investigated. There were a number of things that did not add up. We investigated comprehensively. There were a number of issues raised that were exculpatory and, in addition, we could not establish the essential element of an offence of insider trading—the possession of inside information. We cannot run prosecutions or refer matters to the DPP that are not good cases and will not succeed. We just cannot do that.

Senator CONROY—Some newspaper articles said that the brothers raised \$200,000 on their credit cards. Did this indicate to ASIC that they knew what they were doing?

Ms Redfern—I do not know.

Senator CONROY—That is a fairly desperate way—an 18 per cent interest rates on \$200,000!

Senator Coonan—Senator Conroy, we do have a financial literacy task force that is going to help people who get into this—

Senator CONROY—I think we should get the Fares brothers to start giving some lectures! You were concerned about insider trading but you just did not have the evidence in the end?

Ms Redfern—Yes.

Senator CONROY—I understand that CFD issuers are licensed under the FSR act. Does ASIC also monitor trading in CFDs?

Ms Redfern—I think I will have to pass that question to Mr Johnston.

Mr Johnston—I might even consult Mr Rodgers on that.

Senator CONROY—Mr Rodgers—come on down! You thought you had escaped!

Mr Rodgers—The short answer to that question is, no, we do not monitor trading. A number of market players, including the Stock Exchange, have raised with us some concerns about the interrelationship between these activities in contracts for differences and trading that takes place on market—for example, on the futures market or on the options market. We are currently looking at that issue and hope to engage in some dialogue with the industry to see

whether there is a problem. *Prima facie*, I think we say that if there is substantial trading in financial instruments, if trading in similar interests takes place on a market, there is transparency about the level and nature of that trading. If contracts for differences are to play a more important part than they have done historically in the financial market landscape then there is a good case for increased transparency of activity.

CHAIR—Senator Conroy, a little earlier you asked the secretariat to inquire as to the dates on which questions taken on notice at the additional estimates in February were received. The answers were due on 2 April. As I understand the note that has been given to me, all but one of the answers was received on 15 April and circulated that day, and an additional answer was received on 10 May.

Proceedings suspended from 12.31 p.m. to 1.33 p.m.

Senator CONROY—How are you going, Mr Lucy, have you checked any records?

Mr Lucy—We have made a number of enquiries and I can advise that both Professor Collier and I do recall having discussions with the former parliamentary secretary, Senator Campbell, and that we do recall the general nature of those discussions and that did include the general issue of property spruiking. I have endeavoured to speak to the former chairman, David Knott, and have been unsuccessful. I have left a voicemail message. As I have indicated, I simply do not know whether or not he is in the country. I have absolutely no idea when he is likely to come back to me.

Senator CONROY—We are in the hands of Mr Knott if he returns your phone call, understood.

Mr Lucy—Secondly, in relation to the matters on notice, we have sought legal advice as to how we should deal with confidential responses and confidential material. I expect that we will receive that advice in the short term, but realistically it certainly will not be today. I expect it is probably going to be at least 24 hours, because again it depends upon the extent to which our people need to receive external advice that may or may not confirm their advice. I could also advise the Senate that the questions that have been referred to us on notice we will make every effort to respond by the end of next week.

Senator CONROY—As I said, I was not reflecting on ASIC in that particular instance.

Mr Lucy—I appreciate we have a normal timetable but what I am endeavouring to do is to indicate a willingness to move shorter within that timetable and respond in a prompt manner.

CHAIR—Mr Lucy, in relation to the second of those three things, that is the material in respect of which you have sought legal advice, you are just going to take that on notice and when you receive that advice you will make a decision, and if you decide to maintain an objection to the production or the response that is sought of you on the basis of that advice, you will set that out in your written answer. If Senator Conroy or others are not satisfied with that, then they can take whatever course is open to them.

Mr Lucy—That is how I would imagine it, Mr Chairman.

CHAIR—That is fine. Senator Conroy.

Senator CONROY—Thank you very much for that, Mr Lucy. What issues were you getting legal advice on?

Mr Lucy—I think it was primarily to do with the confidential material that had been before the commission and the extent that we make available extracts or copies of that confidential information.

Senator CONROY—You understand that no matter what your legal advice says we can still ask and press—to use the parliamentary phrase—

Mr Lucy—I cannot pre-empt what our advice will be.

Senator CONROY—No, but the point is that the Senate and the parliament can ask for information no matter what your legal advice says.

Mr Lucy—But it may be that it is not in a public forum such as this, that the questions are not available in the public arena as this morning's questions have been.

Senator CONROY—Sure, understood. We could perhaps go into a closed hearing if that would make you more comfortable.

Senator Coonan—It is all entirely speculative at the moment.

Senator CONROY—No, I do not think there is anything—

CHAIR—I think the issue, Mr Lucy, is this that the standing orders and the resolutions of the Senate set out certain broad rules, but the practice of the Senate and, indeed, of these committees also has acknowledged certain exceptions to those rules as well, which are set out at some length in *Odgers Australian Senate Practice*, for example the rule about not inquiring of you about current investigations where that might prejudice the investigation. That has been the practice of this committee forever. You will not actually find a rule in the Senate standing orders that prohibits such questions. So there is this, if you like, grey area as to what are the various categories of exceptions to the general principle that any relevant question may be asked and must be answered.

Mr Lucy—Thank you, Senator.

CHAIR—Sorry, Senator Conroy.

Senator CONROY—That is quite all right, I always appreciate you editorialising, demonstrating that you have read *Odgers*, but still do not yet understand it, but the parliament is entitled to press irrespective of your legal advice. You do not necessarily have to comply but we are entitled to say we do not care what your legal advice is, we want the information, but I am not planning on pursuing the matter now. We will be happy to hear. You have indicated that you did speak with former parliamentary secretary Ian Campbell I think you said.

Mr Lucy—That is correct.

Senator CONROY—Given that you have reiterated today your support for a national regulatory model, I would assume that was drawn to the parliamentary secretary's attention?

Mr Lucy—Yes, that was part of the general discussion.

Senator CONROY—In terms of releasing the report, releasing a report, or releasing an ASIC position after all the work that had been done, and a fair bit of work has been done. I have not actually criticised the fact that you have not done any work, you have done a fair bit of work, but in terms of drawing that together and producing a public report, why didn't you produce a public report?

Mr Lucy—At this stage, Professor Collier and I do not have a categoric recollection about the report and whether or not we discussed that report with Senator Campbell, but we do have a very clear understanding that we received at no stage any pressure not to release any report. We have a very clear recollection that there was no pressure, but we do not have a clear recollection without referring to the two that might be in our offices.

Senator CONROY—The government have consistently said they do not want a national regulatory regime: is that accurate?

Mr Lucy—That is a matter for the government to respond to.

Senator CONROY—No, they have said publicly—

CHAIR—That is also a question of policy I think.

Senator CONROY—No, I am asking him to confirm that is what the government's policy is.

CHAIR—He does not expound the government's policy. Senator Coonan might, but—

Senator CONROY—No, I am asking him whether he is aware of what the government's policy is.

Mr Lucy—To the best of my knowledge the government is looking at this issue, which is the reason why they have convened the ministerial committee with the states and territories to take this issue further.

Senator CONROY—It is just that I have seen a fair number of reports now quoting Senator Campbell and the placental warm embrace is an article in the *Financial Review* with Mr Cameron, again, pining on some of these areas and that does not seem to be their position, that they support national regulation of industry.

Senator Coonan—I think with respect, Senator Conroy, the Chairman is right. It is a matter of government policy as to what one might do about it in a legislative or other sense. But the issue is before the committee, the ministerial council. I do not think anyone has said on behalf of the government—Mr Cameron may have—but I do not think anyone—

Senator CONROY—I will read it to you, Senator Coonan, just to save you the time.

Senator Coonan—But what I am saying is that I do not think anybody has said that we do not support a better streamlining, a better collaborative approach to how to deal with this problem, given that there are a lot of jurisdictions, and as we well know it can be difficult to get federal government, opposition and government in each state to agree on a position on this.

Senator CONROY—I have actually managed to on this issue but I can introduce you to a few people if you like. But let me inform you of Mr Cameron's views. It is an article by John Garnaut in the *Sydney Morning Herald* on 24 May this year. I appreciate I am sure you do not

spend your time reading all these articles from someone else's portfolio, but let me read it to you:

Both the ACCC and the Australian Securities and Investments Commission, the two key regulators under Mr Cameron's control, have said they would like to see a national property investment regulatory regime.

But Mr Cameron said consumers and investors needed to watch out for their own welfare rather than expect the Federal Government to regulate their safety.

He said property investments had been a state responsibility since colonial days and 'there is no way of unscrambling Humpty Dumpty'. The states would need to forgo funding if Canberra was to reconsider, he said.

That sounds definitive.

Senator Coonan—I do not think it is necessarily inconsistent with the collaborative approach.

Senator CONROY—No, I am talking about a national regulatory regime.

Senator Coonan—A national regulatory approach.

Senator CONROY—Which is what he was asked about.

Senator Coonan—It is a different MINCO, but my understanding is that our government is very much wishing to achieve the best possible outcome and a collaborative approach may be it. I do not know. I am not privy to the deliberations of the ministerial council, but I do not know that it is directly inconsistent. Mr Cameron has a certain rhetorical flourish in his expressions that do not necessarily mean that the government is not absolutely committed to taking these kinds of steps.

Senator CONROY—He has indicated that they would have to forgo funding if Canberra was to reconsider.

Senator Coonan—I am sorry?

Senator CONROY—He has indicated that the states would need to forgo funding if Canberra was to reconsider. That implies the position is 'no'. I am not trying to verbal him. That is just the logical conclusion when someone says, 'no, we are not going to reconsider this unless X'; that means there is a position.

Senator COONAN—It might be a bit Delphic, but my understanding is that the MINCO has this matter fairly and squarely on their agenda.

Senator CONROY—Let me keep going, because I know you are enjoying hearing Mr Cameron's thoughts as always.

Senator Coonan—We all like the placenta warmth.

Senator CONROY—We have talked about this one already:

Mr Cameron said Australians had paid a price for the 'tendency for us to relax in the placental warmth of the embrace of the state'.

He said his *lassiez-faire* philosophy made him an unusual choice as the Government's key consumer policy maker and he had probably been a 'disappointment' to his masters.

Are you one of those masters that would be disappointed in him?

Senator Coonan—I am certainly not disappointed.

Senator CONROY—I am just wondering who he is referring to when he says that his masters are disappointed. No ideas?

Senator Coonan—Well, not me.

Senator CONROY—Not the Prime Minister or the Treasurer. Senator Fifield?

Senator FIFIELD—I am no-one's master.

Senator CONROY—No insight?

Senator Coonan—I think he is discharging his duties with particular distinction, Senator Conroy.

Senator CONROY—He seems to think that he is copping a bit of flak behind the scenes.

Senator Coonan—That is a subjective matter for him, I suppose.

Senator CONROY—It says:

He said his *lassiez-faire* philosophy made him an unusual choice as the Government's key consumer policy maker and he had probably been a 'disappointment' to his masters.

Senator Coonan—Well, certainly not to me, and in fact I am working very closely with him on fees and charges, Senator Conroy, and proper disclosure—

Senator CONROY—You were just a bit player in it, is what I hear.

Senator Coonan—Sorry?

Senator CONROY—A bit player, I keep hearing. He is in charge of it.

Senator Coonan—I missed it.

Senator CONROY—I keep hearing you are a bit player. You just pop up now and then on the issue.

Senator Coonan—On fees and charges, that is his portfolio; I am only involved tangentially because of superannuation.

Senator CONROY—Even Senator Watson laughed at that one.

Senator Coonan—That sounds bitty.

Senator CONROY—Mr Lucy, are you aware of that article? Have you seen that before?

Mr Lucy—I had read the article, yes.

Senator CONROY—So you would be aware that the government's position is not to reconsider national regulation.

Mr Lucy—My view of what the government is doing or it is not doing is not the point.

Senator CONROY—Okay, what is the government policy? Did Mr Campbell make you aware of the government policy in your discussion?

Mr Lucy—We are aware of the government policy, we are aware of the laws as they exist currently.

Senator CONROY—The government could have a policy to change the laws. The point I am trying to get to is whether or not you were—

Mr Lucy—My expectation is that the government would be waiting on this report coming from MINCO, seeing the attitude of the states and territories and deciding whether or not they wish to take it further.

Senator CONROY—Did you have more than one conversation with Mr Campbell? I appreciate we are going back in time a little bit.

Mr Lucy—Almost certainly. Lots of discussions with him in relation to this particular issue. I expect that we had more than one discussion.

Senator CONROY—Okay, great, thank you. Senator Coonan, perhaps you will be able to help us here even though it is not directly your portfolio. Treasury is drafting a single fee model for disclosure of fees and charges as IFSA and ASFA have been able to agree on a model. Has ASIC had input into that model?

Senator Coonan—ASIC produced a template and my understanding is that the template has been incorporated into the Treasury draft.

Senator CONROY—Are you able to expand a little bit? We have not seen it yet.

Senator Coonan—Not really. The matter is under consideration at the moment.

Senator CONROY—ASIC created that template some time ago. Has ASIC been involved in the discussions, Mr Lucy?

Mr Lucy—I think that ASIC's advice has been sought from time to time and we have provided advice.

Senator CONROY—You are the key financial sector consumer affairs regulator—

Mr Lucy—Yes.

Senator CONROY—And this is a key issue, so I am hoping it is bit more than time to time, I am hoping you have got someone in every meeting battling on behalf of the consumers.

Mr Lucy—We have been engaged but, as you rightly suggest, the carriage of this is with the Treasury.

Senator CONROY—Senator Coonan, have you hijacked this?

Senator Coonan—No, I am only a bit player.

Senator CONROY—I hear that, I know I have heard that, but nobody confirmed it. Has the bit player stolen it?

Senator Coonan—I do not think the bit player could hijack a process like that.

Senator CONROY—In any case, is the Treasurer involved?

Senator Coonan—I am not sure, I do not think so.

Senator CONROY—You are being bashful, Senator Coonan; you must know.

Senator Coonan—No, I do not think the Treasurer has been involved in developing the template.

Senator CONROY—Is there a working committee, Mr Lucy?

Mr Lucy—I am not sure.

Senator CONROY—Working party, Mr Johnston?

Mr Johnston—As the chairman said, our input has been sought from time to time by Treasury.

Senator CONROY—You are not actually on the working party that is working on it?

Mr Johnston—Treasury has carriage of the matter, and we have had our advice sought and we have given input from time to time.

Senator CONROY—Is there a working party that you are aware of?

Senator Coonan—Yes, there is. There are some people in Treasury who have been working on resolving the impasse between the IFSA, ASFA view of the world and trying to come up with an appropriate model that people can feel comfortable with.

Senator CONROY—Have you got someone from your office on that one?

Senator Coonan—My office is involved, yes.

Senator CONROY—Do you think it would be a good idea for ASIC, the major regulator and consumer protection agency in financial services, to be part of the committee?

Senator Coonan—They are consulted, but this is really down to an issue of some fine-tuning. I can say that all of the good work that ASIC has done has been well and truly put to good use in developing their template, which has been incorporated into the current model.

Senator CONROY—You do not see the need for ASIC to be on this committee determining this way?

Senator Coonan—Not just to resolve this last issue, but they have been involved and consulted pretty much in the entire development of the response on disclosure fees and charges.

Senator CONROY—I know I have seen reports that, despite being a bit player, you have been trying to crack heads to get a resolution. Have you had any success? I am barracking for you to succeed, but have you had any success?

Senator Coonan—My view is that it is coming much closer to something that I hope everyone can live with, including you, Senators Murray and Sherry and every other senator with a legitimate interest. It is an important matter. It has been difficult for parties to crunch some of these issues and there are legitimate differences of opinion on whether projection models are going to be misleading or helpful and how you can reduce all of these matters to a dollar disclosure, for instance. We are working through those issues, and our clear objective is to get an outcome that everybody can live with, bearing in mind that there has to be compromises to get it.

Senator CONROY—Sure. Any idea when this will be publicly released?

Senator Coonan—I am hoping that it will be pretty soon, within the next week or so.

ACTING CHAIR—Are you giving consideration to maybe having two indicators, or two figures?

Senator Coonan—Yes, that is being considered.

ACTING CHAIR—Because I think that may be slightly more accurate in terms of comparing like with like.

Senator Coonan—Senator Watson, that was initially my view, but I think we might even have been able to refine it from that particular point. But it was precisely my view that a single figure might be difficult and almost impossible to achieve in terms of comparability.

ACTING CHAIR—And meaningless.

Senator Coonan—But we are trying our best to get the best possible outcome and as soon as we possibly can it will obviously be out there for everyone to have a look at.

Senator CONROY—We eagerly await. On 24 May, ASIC released a media release which warned Australian financial service licensees to check that the training that they are providing to their representatives complies with ASIC policy statement 146, licensing training of financial product advisers.

Mr Johnston—Yes, that is right, Senator.

Senator CONROY—The release also said that ASIC is examining a case where people did training thinking it was compliant with ASIC standards, but it was not on ASIC's training register. Could you provide some details in relation to this case?

Mr Johnston—I cannot provide the specific details in relation to the entity, because I do not have that to hand. But our concern was that, as stated there, an entity had, we believe, held out that its training was 146 compliant, when in fact you cannot be unless you are on the ASIC register. So really the warning was to people who were either taking up the training themselves or who were sending their representatives or staff for training to actually check that anyone offering such a course was on the ASIC register.

Senator CONROY—I appreciate you may not know all the details, but was this provider giving training to financial planners?

Mr Johnston—I believe so.

Senator CONROY—As you know, we have talked about PS146 a lot over a long period and initially ASIC were going to be the organisation that ticked off training. Is that a fair way to describe it?

Mr Johnston—We set up the policy and we determined that we would actually contract out the assessment as to whether or not the training would meet the requirements.

Senator CONROY—There was a change. There was a first position and then there was a change.

Mr Johnston—The policy evolved.

Senator CONROY—Yes, the policy evolved, and the evolution was to this contracting out process?

Mr Johnston—Yes.

Senator CONROY—But what was the original position?

Mr Johnston—I cannot recall it because the work on that policy actually predated me.

Senator CONROY—I find that hard to believe.

Mr Johnston—It did.

Senator CONROY—My recollection is that ASIC were going to be responsible for the supervision to make sure that the training packages—Mr Rodgers, please feel free.

Mr Rodgers—I can perhaps help Mr Johnston out here.

Mr Johnston—Mr Rodgers predated me.

Mr Rodgers—I do indeed predate Mr Johnston. The original setting in the policy was that ASIC would be responsible for the assessment of courses that it put on the register. When we first began to implement the policy, we used a committee which for a brief time I chaired and which brought in some expertise. Not very long into that process we thought that that was not the most sensible use of our resources and there were some problems in the operation of that external reference committee. At that stage I think we took the view that it was more sensible for that part of the role, not the policy setting but the actual administration, to be contracted out to someone who was in the profession of assessing training courses. So, as Mr Johnston says, it is really evolutionary and does not represent, in my view anyway, a significant change in policy direction.

Senator CONROY—As I am sure Mr Johnston would recollect from my conversations both publicly and privately, I think it would be more appropriate for you to be doing to vetting but, as you say, it evolved. There were concerns. I and others had concerns that this would lead to a watering down of the training standards that would be applied. We had confidence that ASIC would actually do a good job in making sure people complied, and we are a little worried at this contracting out process. Are you aware that some education providers have advertised that people can comply with PS146 by doing a one-week course?

Mr Johnston—I am not aware of that specific representation.

Senator CONROY—Would that concern you if that were the case?

Mr Johnston—It would depend on the level of training, whether it was one of the tier 1 or tier 2 courses and in relation to what products et cetera it was being offered. So the answer is that it would depend on what was being offered.

Senator CONROY—It sounds a bit rushed though, wouldn't you think?

Mr Johnston—It may.

Senator CONROY—What would be the average? Mr Rodgers may have a better feel for this because he actually did some vetting so I am not trying to dodge away from you, Mr Johnston. What would be an average period of time for a person to be trained to the level of PS146?

Mr Rodgers—I am not sure that I can add to Mr Johnston's comments. That policy was intended to make sure that a person was trained to do the job they actually did, so it was

tiered. That was in recognition that someone who is going to be solely responsible for producing a full financial plan may need to do training, particularly if it is tertiary based training, over a period of a year or more. For some other activities the training could be quite scaled down. One of the points of evolution of the policy was to say that if a person's job did not involve preparing financial plans then they should be able to do training that enabled them reliably to do their job and not somebody else's job. It was always scaled, and there were always quite short courses, in my recollection—I am not sure about durations—that qualified people for some parts of PS146.

Senator CONROY—Would it concern you, Mr Johnston, if it were a tier 1 training module saying they could do it in a week?

Mr Johnston—Building on Mr Rodgers' answer, it depends on—

Senator CONROY—I am talking tier 1, the top.

Mr Johnston—Tier 1 would intrinsically sound more complex than a tier 2 course but it would depend on the circumstances.

Senator CONROY—I appreciate your caution, but if you were to discover that tier 1 courses were being completed in a week you would be interested in having a chat with those providers.

Mr Johnston—Interested is the right word.

Senator CONROY—I will see if I can track some down for you, because they are advertising publicly that it can be done—which is a bit red hot. I know Senator Watson kicked off using the chairman's prerogative to ask you a couple of questions in this area, but I want to talk to you about something we discussed in February. I asked about ASIC's decision to write to over 70 fund managers in Australia seeking information on abusive trading practices, particularly the late trading and market timing issues. At that point Mr Johnston said that it was too early to give us an outline of the issues but he would be able to do so next time he appeared. I appreciate you may do a bit of overlap—I am not sure if it was Mr Lucy or Mr Johnston who answered, it seems so long ago now. Could you advise the committee of the outcome of the project?

Mr Johnston—As I stated earlier, we have formed a view that there is not any systemic abuse that is taking place in the Australian marketplace—which is good news for Australian investors. We looked carefully at the responses that we received in the first mail-out. Our process in this has been to ask questions, try to identify any risk indicators that we would see, follow-up with requests for further information where we thought appropriate and then test the responses that we received, with some being tested immediately and others being tested over time as we roll out a compliance campaign across the industry. All of the findings we have so far indicate that there is no systemic abuse. We did come across some individual examples, not so much of late trading but of market timing. We sent a team in to have a look specifically at those examples and we have been satisfied that the institution where that occurred had in fact intervened and had dealt with them appropriately by cancelling the investments of the people who were trying to engage in market timing.

Senator CONROY—So your intervention caused that cancellation or the internal organisation had picked it up?

Mr Johnston—No, the organisation had already taken that step, but we had become aware of the incidents having taken place, so we went and had a look at what had happened.

Senator CONROY—How did you become aware?

Mr Johnston—That was in the responses that we received.

Senator CONROY—So they wrote back to you and said, ‘We caught a few of our people doing it’?

Mr Johnston—They had identified that there were some investors who were attempting to do it. That was an entity that did not have the forward pricing model. It had a historic pricing model, which leaves itself more open to that type of activity. For example, when we did the follow-up work, we looked at entities which had a historical pricing, unit pricing, model and had a closer look at that.

Senator CONROY—What percentage would be on historic?

Mr Johnston—It would be very small. I could not give you a percentage here, but it was quite small.

Senator CONROY—You wrote to 70 companies?

Mr Johnston—Yes.

Senator CONROY—Did everyone respond?

Mr Johnston—Yes.

Senator CONROY—You then identified a small number, mainly historical?

Mr Johnston—Yes, that is right, of incidents at which we had to look more closely.

Senator CONROY—How many incidents were identified and how many did you then proceed to look at?

Mr Johnston—We looked at all that we identified. It was a small number. I cannot remember the number. It would have been in the magnitude of five, six or seven entities.

Senator CONROY—Are you taking further action with any companies in relation to this issue?

Mr Johnston—We are making further inquiries with some entities. I am not at liberty to say whom.

Senator CONROY—No, I have not asked for any names.

Mr Johnston—There are some entities at which we are looking more closely, but our view would still be that we are not seeing the abuse that took place in the US position.

Senator CONROY—I am hoping to chat about that with people next week over in the US at the SEC. So I will mention that we have been chatting, Mr Johnston.

Mr Johnston—That is fine. We have been liaising with the SEC through this process.

Senator CONROY—I think you mentioned this morning that market timing is not illegal in Australia but it is in the United States.

Mr Johnston—It may not be illegal in the United States in all instances. It depends on the circumstances surrounding the market timing. But market timing per se, which is going in and out of funds quickly and arbitraging, is not illegal per se.

Senator CONROY—But it may be in the US? I will find out next week. I will ask the question.

Mr Johnston—Market timing per se is not illegal in the US either, but there were some circumstances around the market timing examples that caused entities to be in breach of—

Senator CONROY—What sorts of circumstances put them in breach?

Mr Johnston—In many of those funds, the fund managers had made statements that they would not allow market timing to take place, they would not allow arbitraging to take place, and that they had systems to detect it. Where it did take place and take place at a significant level, that was then found to be a breach simply because they had said that it would not happen, that they would address it.

Senator CONROY—They were pinged for perjury?

Mr Johnston—I do not think perjury was the offence, but they were certainly pinged for a misstatement. The other circumstances would be where there was information that was released to people to allow them to engage in market timing. So selective release of information would then be the offence rather than—

Senator CONROY—We capture that under our continuous disclosure law.

Mr Johnston—And it is one of the things that we have been looking at in this exercise.

Senator CONROY—You are probably aware of a comment in the *Financial Review* that everyone is in the same boat as MLC in terms of unit price calculations. ASIC will be aware that unit pricing concerns have been raised in relation to MLC, Tower, Tindall and others. How widespread is the problem of unit pricing systems?

Mr Johnston—The examples that you have mentioned are cases where ASIC has taken action. We are right now kicking off a project jointly with APRA to try to get a better idea of whether there are widespread problems and how widespread they are. So we will be looking at the unit pricing processes and systems that are in place, and how those are managed and applied within a range of institutions.

Senator CONROY—Are you satisfied with the industry base standard on pricing in Australia?

Mr Johnston—We have noted the standard, and it has a degree of tolerance that it allows in respect of mispricing. We will form a view after we have done the work as to whether that degree of tolerance—

Senator CONROY—What is tolerance a euphemism for?

Mr Johnston—Tolerance is not a euphemism. Tolerance is the term that is used, I think, whereby it allows a certain percentage of mispricing or errors to take place, or the price to be

out by a certain amount. So I think that is the right word. Some entities in fact price within the tolerance rather than go to the extent of it.

Senator CONROY—Would you prefer there to be a thinner tolerance—everyone stay inside it, mandatory to stay inside it?

Mr Johnston—Ideally it would be zero. But I think that, when you look at the fact that we are dealing with unitised products and you are dealing with hundreds of thousands or millions of units in issue, it is probably unrealistic to expect an error would never take place in a unit price.

Senator CONROY—We did have a discussion about an IFSA circular I think last time.

Mr Johnston—Yes, we did.

Senator CONROY—Dated April 2004, entitled ‘Investor Confidence and Market Integrity’. Do you have any comments on the circular?

Mr Johnston—Was it April 2004?

Senator CONROY—Or was it earlier?

Mr Johnston—I think it would have to be earlier, because I think we had the discussion in February. There may have been another circular in April, but I think we had this discussion in February.

Senator CONROY—You could be right. Have you seen the IFSA circular ‘Investor Confidence and Market Integrity’ dated April 2004?

Mr Johnston—Yes, I have seen that one also.

Senator CONROY—I am happy to table it, if I can, and get a copy.

ACTING CHAIR (Senator Watson)—Is it the wish of the committee that this document as named be tabled? There being no objection, it is so ordered.

Senator CONROY—Did you have any views on the circular? Do you have a copy?

Mr Johnston—Are we talking about the January one or the April one?

Senator CONROY—I am tabling the April one, but we were talking about the January one, I think.

Mr Johnston—I must admit I cannot remember specifically what is in it.

Senator CONROY—I have one coming, so it is okay.

Mr Johnston—Senator, are you talking about unit pricing or market timing? It is probably on unit pricing.

Senator CONROY—Unfortunately, I have just given it away to be photocopied. I will have it back in a moment. Just while we are waiting, I want to go back to the disclosure of fees issue. Why was APRA interpreting the FSR Act, which is administered by ASIC?

Mr Johnston—I am sorry, I do not think I understand the question.

Senator CONROY—I understand there has been some discussion between APRA and ASIC about fees and disclosure of fees.

Mr Johnston—You will have to be more specific, I am sorry.

Senator CONROY—To do with calculators on web sites.

Mr Johnston—We may have had discussions with APRA about that. Unless you are more specific, I am not quite sure—

Senator CONROY—Did APRA tell super funds to take super calculators down off web sites?

Mr Johnston—I am not sure whether APRA told them to do that. I believe they did issue some sort of alert, but I do not have the details of that.

Senator CONROY—In their view because it breached advice provisions of FSR?

Mr Johnston—ASIC did issue a circular to clarify the position under FSR.

Senator CONROY—But I am asking what APRA did.

Mr Johnston—I cannot answer for APRA.

Senator CONROY—I am asking whether it is factual that APRA did this.

Mr Johnston—I do not know whether APRA told superannuation trustees to take the calculators down. I do not know whether they told them that.

Senator CONROY—I understand some funds did take them down.

Mr Johnston—Yes, I understand that also. I just do not know whether APRA told them to. I do not have that knowledge.

Senator CONROY—You mentioned you have put out a circular. Someone must have mentioned to you this was happening. What did the people who contacted you say?

Mr Johnston—We knew that it was an issue in the industry from our discussions within industry, that there was a concern and a view about whether or not calculators were allowable. So we issued a circular to clarify the circumstances in which we thought calculators could be used and in fact be useful for consumers.

Senator CONROY—My understanding is APRA directed that some super calculators be taken down off web sites because they believed it breached advice provisions of FSR. Some funds took them down and some did not, and others spent tens of thousands of dollars on legal advice. I am just trying to understand how you became aware of the issue.

Mr Johnston—I first became aware of the issue in discussions with ASFA, whereby they had indicated to me that this was an issue within the industry.

Senator CONROY—So did you speak with APRA?

Mr Johnston—I did not. Some of my officers may have. But I do not have direct knowledge of their telling trustees to take them down.

Senator CONROY—I appreciate that. Did you get a report back from your officers with at least some explanation from APRA about why they believed there was a breach of the—

Mr Johnston—No, I did not. I had engaged with the issue because it was raised by the industry. We had formed a view that, in relation to the many things that we are trying to help

clarify understanding of in FSRA, this was one of the issues that was out there with which we would need to engage, so we did.

Senator CONROY—Did it surprise you that APRA seemed to have a view or were involved in discussions?

Mr Johnston—I would expect APRA to have a view about superannuation matters, and there are a number of issues where—

Senator CONROY—But they were claiming a breach of FSR.

Mr Johnston—Yes. I was unaware of that.

Senator CONROY—Not SIS.

Mr Johnston—I can answer only as I have.

Senator CONROY—I am happy for you to take on notice whether discussions took place with APRA and, if so, what the outcomes of those discussions were. You said that you then issued a circular, so there must have been an outcome from discussions.

Mr Johnston—I said that we had issued a circular.

Senator CONROY—Yes, that is what I am saying: you issued a circular—

Mr Johnston—But not necessarily as a result of discussions with APRA. As I say, we issued a circular because it was an issue within the industry that we thought needed to be addressed. We were receiving inquiries from ASFA and possibly—

Senator CONROY—I am sure the funds would have contacted you and said, ‘APRA have told us we have to take these things down.’

Mr Johnston—They may have, but I have no direct knowledge of that.

Senator CONROY—I am asking you to take on notice to find out whether that is the case.

Mr Johnston—Yes, I can.

Senator CONROY—The logical thing to have done is, firstly, say, ‘Why didn’t APRA phone us before they did this?’ and, secondly, pick up the phone to APRA and ask, ‘What are you doing?’

Mr Johnston—Those discussions may well have taken place. I am happy to take that on notice.

Senator CONROY—Yes. I am asking you whether you can confirm those discussions and, if so, what the outcomes of those discussions were. Have APRA been put back in their box? Do they understand that you run the show when it comes to this one?

Mr Johnston—Happy to report back.

Senator CONROY—Okay, great. We have the April 2004 circular in front of us. Have you seen it?

Mr Johnston—It appears to be seven pages long, so I am not sure—

Senator CONROY—Do its contents accord with your findings?

Mr Johnston—I cannot answer that.

Senator CONROY—I thought you had said you were aware of it?

Mr Johnston—I was aware of it, and I had seen the media release, but I have not read the circular, which appears to be seven pages long.

Senator CONROY—Perhaps you could take on notice to give us your opinion about whether it accurately represents your understanding and you agree with the contents.

Mr Johnston—I am happy to do that.

Senator CONROY—I am not asking you to endorse them if you disagree with them. I am just asking whether you are aware of it and you think it is a fair representation.

Mr Johnston—I am happy to do that.

Senator CONROY—On 22 January 2004, ASIC announced an investigation into whether there had been any contraventions of the Corporations Act by employees of NAB involved in the forex options trading. Could you update the committee as to the investigations in relation to the NAB and the forex options trading?

Mr Lucy—That is a matter of an ongoing investigation; therefore, we are not able to provide any further detail.

Senator CONROY—But it is ongoing?

Mr Lucy—Correct.

Senator CONROY—Can you advise whether your investigations relate to continuous disclosure issues with the NAB?

Ms Redfern—Yes, I can report on that. Our investigations in relation to those issues are finalised. We have not taken any action in relation to the issue.

Senator CONROY—Finalised and no further action?

Ms Redfern—Yes.

Senator CONROY—So the matter is closed?

Ms Redfern—Yes.

Senator CONROY—Thank you. Mr Lucy, during the last round of estimates you advised us that you were optimistic that the Swiss authorities would provide information which ASIC had requested. How have we gone?

Mr Lucy—I remain optimistic, Senator.

Senator CONROY—Are you known as a born optimist?

Mr Lucy—Not always.

Senator CONROY—That was back in February. It is now June. Have we heard from them at all?

Mr Lucy—Yes. But, again, that is a matter of an ongoing investigation.

Senator CONROY—I understand. I am not seeking to find out what the information is. I am just asking whether it is going to arrive. You remain optimistic that they will supply us with the information?

Mr Lucy—I believe at the time I did point out that any material that we may or may not get will be subject to appeal. Therefore, it will be a matter of whether or not the parties take the opportunity of appealing. If they do, then it will be up to the Swiss courts.

Senator CONROY—You have had a couple of good wins on information seeking to be not available to you from Mr Kennedy. I am talking about just the wins that you have had, so do not go into the ongoing part. But what were the cases and what were the results?

Mr Lucy—I might ask Jan Redfern to provide further detail, but essentially I must say that we do not actually see them as wins. We see them as important clarifications.

Senator CONROY—I am trying to give you a free kick here.

Mr Lucy—I understand and thank you for your efforts, but it is important that you do understand that we do not approach them on a win-lose basis. But perhaps Jan could provide further explanation.

Ms Redfern—There were two challenges by Mr Kennedy in relation to documents that were seized. One related to legal professional privilege documentation. We succeeded on that challenge earlier this year. I think it was after February, the last Senate estimates. We succeeded in relation to that. There are appeals pending in relation to that issue, so we have not as yet had formal access to the documents. An important decision for us related to computer imaging of material, which was the more recent decision, which we also succeeded on.

Senator CONROY—I am not familiar with that one. What is the computer imaging issue?

Ms Redfern—When we execute a warrant, as we did in this case, and we have done it on a number of occasions, not only do we go in and seize documents that are relevant, that fall within the warrant, but we will get access to computers. If we do not have the time to search all of the information on the computers, we image the hard drive, then take it back to our office and then do further searching. That is a common practice that we have had now for a number of years, particularly with the advent of computers. There was a challenge in relation to that aspect of being able to image the hard drive and get access to material in that way, and we ultimately succeeded in that challenge. Again, that is something that is being appealed.

Senator CONROY—Are there any other court challenges that are still to be determined?

Ms Redfern—In relation to Mr Kennedy?

Senator CONROY—I am trying to avoid naming any names.

Ms Redfern—In relation to that investigation?

Senator CONROY—Yes.

Ms Redfern—No.

Senator CONROY—So, Mr Lucy, we are optimistic still. If I ask you in November, will you still be optimistic?

Mr Lucy—Hopefully you will not need to ask me.

Senator CONROY—That would be nice. If you were still waiting in November, would your optimism still be as fulsome?

Mr Lucy—It is a very hypothetical question. We are watching things closely. The dialogue continues, and there is no reason for me to be otherwise than where I was in February—that is, that I remain positive.

Senator CONROY—Is there any aspect of the investigation about which you can just give us a general ‘It is going well’? Is there anything at all that you can say within the bounds of—

Mr Lucy—I do not think so. It is receiving a lot of attention, we are applying ourselves diligently to it and matters are proceeding.

Senator CONROY—Any charges in the near future?

Mr Lucy—I would prefer not to make any comment in response to that.

Senator CONROY—Senator Murray, did you not want to—

Senator MURRAY—I have been otherwise engaged.

Senator CONROY—I know you are very interested in this case.

Senator MURRAY—I think you have been extremely diligent.

Senator CONROY—I know you have opined on it.

Senator MURRAY—I am more interested in a spin-off from this investigation for future cases of this kind. I have noted recently, Mr Lucy, that the European Union and the Swiss government have been in negotiation for greater access of the Swiss to European Union benefits, if we can call them that, and in return there will be greater access of European Union governments to the Swiss banking system, as I understand it. That is one the aspects which is being discussed because of the ongoing concern that the secrecy provisions of the Swiss law act as an impediment to proper law enforcement from other countries. If that is so, is ASIC keeping or have ASIC asked the government to keep a watching brief on that? Will there be an opportunity, because of our close relationships with some of the members of the European Union, to go through the backdoor, as it were, into the Swiss system where we have cases where people may have assets and issues tied up with more than one country, such as Switzerland and Great Britain?

Mr Lucy—I can advise that, yes, we are keeping a very close watch on that. This is also an agenda item for IOSCO, for countries generally, including Switzerland, as to their willingness to provide information as requested under various scenarios. So, yes, it is one which we are watching very closely.

Senator MURRAY—Do we have somebody from ASIC or somebody from the government who is a kind of permanent delegated representative in those kinds of discussions and forums?

Mr Lucy—I will take it on notice, only because I think that it is more likely to be the Attorney-General’s Department. They are the ones that are involved in mutual assistance requests, so I believe that it is more likely that they will be involved, as it were, on a dedicated basis. From an ASIC perspective, as a regulator we are watching it very closely. But we do not have anybody committed to it the way you have described.

Senator MURRAY—Just so the committee can understand how you deal with these things, in the formal sense you would ask Treasury or the Attorney-General's Department to mind something or to keep you informed of something. Is that how it works?

Mr Lucy—Yes. It is also on the agenda of the Australian Crime Commission.

Senator MURRAY—On which ASIC sits.

Mr Lucy—Exactly.

Senator MURRAY—Who is the delegate there?

Mr Lucy—I am.

Senator MURRAY—Do you have the capacity to delegate that authority to somebody else?

Mr Lucy—No, I do not.

Senator MURRAY—Do you attend?

Mr Lucy—Yes, I do.

Senator MURRAY—That is all I have on that, but I do have a question to Mr Johnston. I did not want to stop Senator Conroy's flow, but I want to return briefly to the FSRA. What one might call euphemistically teething problems are now emerging as people apply and use the law and comply with the law. Is ASIC getting feedback from the compliant community, financial planners and others, and do you have an encapsulation of what the prime teething problems are to date?

Mr Johnston—We are engaged in a strong dialogue with the regulated community. Generally people believe that the licensing processes work very well. I know, because I move around the industry, that the view is that FSRA has in fact been good for their business. That is a pretty strong view that emerges.

Senator MURRAY—Why?

Mr Johnston—Most people say that they now understand their business a lot better because of the licensing process and the fact that they have to go through document processes that were previously undocumented and record in a way that they have never previously recorded how their systems and various compliance processes work. The small licensees have tended to say quite strongly that they believe the FSRA has in fact been good for their business because they now understand it much better.

There has been a reasonably strong endorsement of our approach and the way that we have facilitated through the transition period and now post-transition. The sorts of areas that emerge as problems, though, tend to be at the disclosure end. A number of entities believe that the disclosure requirements are overly burdensome. One of the issues often raised is a view that too much paper needs to be produced and provided to the client in an advice situation.

Senator MURRAY—Is that a consequence of the law or the way the lawyers have read the law?

Mr Johnston—I think it is more the latter. We have been concerned that some of the compliance processes as far as disclosure goes have been overengineered. I was hearing

horrific stories of statements of advice, for example, running to 80 and 90 pages. ASIC has no interest in statements of advice being that long. We do not believe the law requires them to be that long. It is not our intent or expectation that documents of that size be produced, and we are, where we can, trying to issue guidance and assistance in helping people understand how they can reduce those documents. We are working with the industry body on those sorts of matters. We have also prepared some relief that should help. That is the biggest gripe that I hear—that people think that the disclosure requirements are too tough and produce too much paper. But we do believe that the teething problems that you mentioned are part of the settling down process, and I think that we will be able to work through that.

Senator MURRAY—The chair has advised me that this issue we are just discussing was raised in an opening statement. But I in fact wanted to come to the specific issue you have just mentioned because I have wondered whether there is a means by which early relief could be sought—and I refer to overlegalistic interpretations, if I can put it that way. Is it possible for ASIC to do a sample audit of a number of these people, have a look at the actual statements of advice and disclosures that are being used, and articulate criticisms of their being overelaborate, overlegalistic, overburdensome so that there is an immediate signal to the market as a whole, using precise actual examples, of the need for them in fact to listen a little more to you and a little less perhaps to the overcautious amongst the legal fraternity?

Mr Johnston—Yes, we are doing that in a slightly different form, but only slightly different. We went to the industry body and said: ‘Give us real examples, not a mock-up, of these statements of advice. Give us examples of what the industry believes are good, clear, concise and effective statements of advice, those that are perhaps a bit longer and some of the horrendous ones that they refer to as being 80 and 90 pages long.’ We have now received that from them, and we are working through to get our interpretation of those documents, and then we are going to go back to the industry body and discuss with them our views so that they will get specifically that message with real examples of real statements of advice.

Senator MURRAY—Will those views be made public?

Mr Johnston—Yes, they certainly will.

Senator MURRAY—I was very impressed with Mr Pound’s activities, I think it was, on the annual financials of companies, what they should have been disclosing and what they were not with respect to accounting standards, and a print-out of those who were and were not conforming. I think ASIC have done a similarly good job with financial instruments used for raising money—what is the name of that damn thing?

Mr Johnston—Sorry, Senator?

Senator MURRAY—The document you use when you want to raise money?

Mr Johnston—Prospectus.

Senator MURRAY—They have done a similarly good exercise with prospectuses. I would hope to see something of that sort done rapidly in this area.

Mr Johnston—We are working on that right now.

Senator MURRAY—Just in wrapping up, I had one quick example given to me—it might be one of a myriad, but it did show a problem to me—and that is where you have a continuing

transaction and yet the financial planner concerned felt he was unable to deal with the client. It was recounted to me as follows—and stop me if you have heard it before. A client wanted to know whether they should exercise a share option; so they bought the shares and now an option had arisen to exercise a right. The value of it was \$200—I do not know who the client was, but you can imagine a small investor somewhere—and they said to the financial planner, ‘What do you think?’ He or she said, ‘I don’t think you should ask me because, if you have to ask me, I have to give you this 90-page statement of advice. You have got to go off and talk to a stockbroker.’

Mr Johnston—I am happy to stop you there because I am aware of those sorts of issues. What we have tried to do is help the industry to understand that what is a statement of advice is not the same document in every circumstance. So it might be that the first interaction with a client where perhaps a comprehensive financial plan is prepared might well be a somewhat meaty document because it records all of their needs—it records their risk tolerance, it deals with an investment strategy and then the implementation of that strategy through specific recommendations. One would imagine that could be a sizeable document. But then something that flows out of that advice might not be advice in the first place—it might simply be giving effect to earlier advice that was given—or if it actually did become financial product advice again another statement of advice could be issued, but it may be only one or two pages long, and that can still be a statement of advice, because in the example that you give or in an example like that that is a relatively quick, simple piece of advice that can be given; and shortened, relatively simple advice should be in the shortened, relatively simple document.

Senator MURRAY—But you as a bureaucrat or I as a politician do not think much of one or two pages because we deal with lots. But for somebody who is wanting a \$200 deal, on which you might get a commission of a few dollars, you are not going to write two pages.

Mr Johnston—No, it can be a one-pager. It needs to be a record of the fact that I have given this advice and you can incorporate by reference the material that was in the earlier statement of advice—and we will be saying something publicly about that shortly—and simply produce a very short-form document of one or two pages that says, ‘Here is my advice to you.’ There are also of course the other provisions of the law that kick in about where the advice needs to be given urgently or whether it is further market related advice. There are some helpful provisions of the law there. But generally in that situation we are trying to convey the message that a statement of advice is not always the same document.

Senator MURRAY—Do you have a hotline operating effectively for these early days? For instance, if this person—and I am recounting this to you third-hand, so I will not have all the details accurately—rang up and said, ‘Do I need to give this,’ they would have answered as you have just answered?

Mr Johnston—We still take info line calls, and those are logged. Where we can engage specifically with a matter, we do. Where we think it is something like this, whereby this is going to have an impact for a lot of people, we then capture it in a question and answer which goes onto our web site. We publish those questions and answers because, clearly, if we were taking 3,000 calls from 3,000 different advisers, that would be somewhat overburdensome for us. So we try to encapsulate them in a Q and A form and put that on the web site, or, where we think they are big enough issues, we issue an information release covering those issues. But

we are in discussion with the industry bodies on all of these issues. For some time now I have been giving out messages on the particular example that you have just referred to, and it would appear that the messages do not always get through from the industry bodies down to the individual level; hence, we put them up on our web site as Q and As.

ACTING CHAIR—On the same topic, Mr Johnston, given the principles based approach of FSR on this issue, was it not surprising the lawyers went to town and advised clients about dotting all the i's and crossing all the t's, and that is why we have such voluminous documents?

Mr Johnston—Yes. If there is principles based legislation, then clearly there will be more grey areas than if there is prescriptive or black-letter law. We try to help to fill the vacuum through our policy statements and other guidance. But we also expect the industry to play some of the role in filling the vacuum with industry standards, codes of conduct and codes of practice. But, yes, principles based legislation will always lead to questions of interpretation.

Senator FIFIELD—Mr Lucy, you would be aware of the ongoing gangland violence in Melbourne and the difficulties the Victorian authorities are having in catching those responsible.

Senator CONROY—Is this a confession?

Senator FIFIELD—You may also be aware that at the weekend the Treasurer offered to make available the resources of the Commonwealth to assist. The obvious avenues for the Commonwealth are the Australian Crime Commission, the Taxation Office and possibly ASIC. I am just wondering what scope you think there may be, wearing your Crime Commission and ASIC hats, to assist if such a request were made.

Mr Lucy—I think I should respond wearing only my ASIC hat. I do not have the authority to speak on behalf of the Crime Commission. The working relationship between ASIC and the Crime Commission is very good. We have a regular dialogue. We have people within our agency who are essentially committed to dealing with issues that typically might be exchanged between us and the Crime Commission. There are opportunities for us to second people, staff members, to the Crime Commission, and, similarly, there are opportunities for the commission to refer particular matters to ASIC. All of those activities occur. To the extent that the Australian Taxation Office is involved, that is obviously a matter between the Crime Commission and the Australian Taxation Office.

Senator CONROY—Are you not fully cooperating? Are you not offering your help now?

Mr Lucy—I thought I said that we were.

Senator CONROY—That is what I thought. I am sure you have been available the whole time.

Mr Lucy—Yes.

Senator CONROY—I want to briefly talk about the Potts report in relation to direct offshore foreign insurers. Is that for Mr Johnston?

Mr Lucy—Probably Mr Johnston would be best—

Mr Johnston—Probably again.

Senator CONROY—The short straw. You have to unwind that empire of yours, Mr Johnston.

Mr Johnston—Yes.

Senator CONROY—In ASIC's submission to the Potts review dated December 2003 it was stated that ASIC's UFI campaign report is due to be published before the end of December or early next year. What has happened to this report?

Mr Johnston—I would have to take that on notice. I must admit I cannot recall that one.

Senator CONROY—Has it been completed yet?

Mr Johnston—I will need to take it on notice. I am sorry, I am having trouble recollecting that.

Senator CONROY—So the minister would not have received it yet?

Mr Johnston—I would think not.

Senator MURRAY—Mr Rodgers seems to know.

Mr Rodgers—I do not think I do know. I do not think I know any more than Mr Johnston. My only point, Senator Conroy, is that I am not sure that we said we would provide a report to the minister. I think we said we would report on the work that we had done, by which we would ordinarily mean I think some kind of public summary of the work that we have done.

Senator CONROY—I was just reading from your submission to the Potts review in December 2003, where it is said a 'campaign report is due to be published before the end of December or early next year'. It is now June, so I was just asking.

Mr Johnston—I will need to check that.

Mr Rodgers—We will take that on notice.

Senator CONROY—You are going to have to stop saying these things publicly about these reports, Mr Johnston. They are causing chaos.

Mr Johnston—Yes, they are.

Senator CONROY—Any idea when it will be released?

Mr Johnston—No. I will have to check that.

Senator CONROY—Did Mr Potts see this report?

Mr Johnston—Certainly we had good engagement with Mr Potts when he was doing the work and we provided the submission to which you are referring and possibly some other information to him.

Mr Rodgers—I can confirm that we supplied some information. During the course of the work that we had done, we had compiled some information about both discretionary mutual funds and unauthorised offshore insurers. I think I made the point to Gary Potts that that information was not complete, but I think we shared what information, particularly statistical information, we had with Mr Potts during his inquiry.

Senator CONROY—Your submission raised a number of concerns about UFIs or DOFIs, including non-payment of claims, the inadequacy of disclosure to insureds about their cover

and the absence of a complaints resolution process for consumers dealing with these entities. On the basis of your work in this area, you have recommended that DOFIs should be subject to prudential regulations by APRA as general insurers.

Mr Johnston—Yes, that was I think at least in part our recommendation.

Senator CONROY—Are you concerned that the Potts proposal for DOFIs endorsed by the government falls well short of what you recommended?

Mr Rodgers—I am not sure that it does. As I understand the recommendation in the Potts report, it is that, if an offshore insurer is selling insurance in Australia, either they should be directly regulated by APRA or APRA should satisfy itself that the regime that they are subject to in their home jurisdiction is sufficiently equivalent to APRA's regime for that to be a safe course. My recollection is that that is entirely consistent with the proposition that we put to Mr Potts.

Senator CONROY—So you think there are no implications for consumers from the Potts report; they are going to be okay?

Mr Rodgers—Some of the activity of offshore based insurers is actually regulated by us. They need a licence and so on. There are the usual enforcement difficulties where you are dealing with someone not in this jurisdiction who is providing a service in the jurisdiction. I think we had expressed some concern that for fully domestic insurance there was ASIC regulation and there was APRA regulation. We were concerned about the absence of any prudential regulation. Although we would do what we were best able to do to enforce and administer the laws we were responsible for, we were concerned there was the potential for there being two types of insurance available in Australia—insurance that was subject to the full Australian regime, both the prudential regime and the consumer protection regime, and then insurance that was subject to only the consumer protection regime. If I have correctly described what I understand to be the recommendation in the Potts report, and if it were to be adopted by the government, it does look as though it deals with one of the major concerns that we had flagged last year.

Senator CONROY—Did ASIC find any cases where consumers had lost money through DOFIs?

Mr Rodgers—Again, I think that goes back to the work of the report, so I am not sure that I can answer that. I think we had a number of complaints. To the best of my recollection, there were a number of complaints and there were a number of failures to perform, often associated, as I recall, with insurance being offered out of largely unregulated jurisdictions.

Senator CONROY—So you are aware of some people having lost money?

Mr Johnston—I think the reason why we are having a little trouble is we are talking about insurance products. If you equate having paid a premium to losing money, then some people would have paid premiums and not got the cover that they had bought.

Senator CONROY—Presumably when they did not get the cover that they bought they then had to incur an expense for the item that was insured if they had to replace it.

Mr Johnston—If they have had to purchase other insurance. You are talking about in the case of loss—

Senator CONROY—Usually you will find out that you are not really covered, even though you thought you were, when the event happens.

Mr Johnston—In the event of a claim being made.

Senator CONROY—Yes, and therefore I do define losing money as greater than just the premiums.

Ms Redfern—In the cases that we have run, and we have run a few, the sort of issue is that people understand the nature of the product they have and that it is not backed by APRA. In those cases that we have had, we have injunctioned the selling of the product immediately and also corrective notices have been sent out. So I think in the cases that we are aware of we have been able to go in pretty quickly to make sure that consumers are aware of the nature of the product so that they can then make alternative arrangements. We have found that quite a lot of the products that have this problem are insurance that was hard to get in Australia at a cheaper rate. So what consumers have had to do is perhaps pay some more money to get some insurance.

Senator CONROY—I just got the impression that Potts has set up a two-tiered structure, Mr Rodgers. Australian based entities pay their taxes, comply with FSR and are subject to complaints resolution schemes; DOFIs will not.

Mr Rodgers—I am not sure I understand what the question is.

Senator CONROY—DOFIs are not doing those things. It is possible the abuses that you have outlined in your submission on these issues still might happen, yet you are saying you think Potts's recommendations meet your concerns.

Mr Rodgers—The recommendation in the Potts report, as I understand it, deals with the prudential side of it. That will certainly assist ASIC in the sense that the laws that we administer already apply to this activity. The problem for us is one of identifying where that activity is taking place and taking effective action.

Senator CONROY—Isn't the purpose of the Potts report to try to stamp this out?

Mr Rodgers—I do not understand it to be to stamp it out. Some insurers operate out of jurisdictions that are arguably as well regulated as the insurance business in Australia. I understood the direction of the Potts report to be to say, where APRA is prepared to make the call that that is the case, they can sell those products in Australia without being subject directly to APRA's supervision. That is the same supervisory structure that applies to bank branches, for example. APRA does not purport to directly supervise a branch of a US bank, say, operating in Australia, and it does so on the basis that the supervision that that bank is subject to in the US makes it safe enough for the Australian environment.

Senator CONROY—I am conscious that you have a plane to catch, so thanks very much.

Mr Lucy—Thank you.

CHAIR—I thank all the witnesses from ASIC for their cooperation today.

[2.50 p.m.]

Australian Accounting Standards Board

ACTING CHAIR—I welcome the Chairman of the Australian Accounting Standards Board and his technical director, Mr Angus Thomson. You have been here before. You understand the rules.

Mr Boymal—Yes, we do.

Senator MURRAY—I am most of all interested in an opening statement as to where we are with the international accounting standards harmonisation.

Mr Boymal—The position at the moment is that up until February-March there was some disquiet amongst some companies and business organisations about our going international on the basis that the international accounting standards had not quite bedded down. What I mean by ‘bedded down’ is that the International Accounting Standards Board, David Tweedie’s London based board, had guaranteed that a stable platform of international standards would be in place by 31 March 2004. As we got close to 31 March 2004 we had a number of issues. Whereas it was thought that the international standards would be well and truly in place, it looked as though they were going to be put in place at the very last moment, at the last gasp of 31 March 2004. So there was the question: will they finish in time?

In addition, the IASB had flagged that there were some pending changes. The pending changes were being proposed because the European Union, which was also committed to 2005 internationalisation, was having difficulty with some standards and was insisting upon changes. You do not just change accounting standards; you have to put the changes out on exposure and go through a due process.

Senator MURRAY—By the union, you mean the parliament, the commission or the—

Mr Boymal—It was the commission who—

Senator CONROY—The French government were vetoing it.

Mr Boymal—Yes, indeed, that is quite right, but it was whether or not the commission would build these standards into law and endorse them. So we had the two problems: whether they would finish and, even if they were going to finish, they were flagging further changes. Our business world was showing quite some disquiet about that. As to whether the international standards would be finished, at the very last moment they did produce their standards by 31 March. In actual fact, they published them in hard copy book form on 19 May, which was just a few days back. So that part of it ended up being okay, and David Tweedie, the Chairman of the IASB, who was in Australia at about that time, gave assurances that that would be the case, and that was the case.

The second issue, which was further changes in order to placate the European Commission, is still in issue because there are two potential changes out on exposure intended to be effective for 2005. So the Financial Reporting Council, for the purpose of calming down the local disquiet, directed the Australian Accounting Standards Board that the standards that we should use to go international in 2005—

Senator CONROY—Could I interrupt and just ask: on what legal basis did they direct you to adopt a particular standard?

Mr Boymal—They have no legal—

Senator CONROY—There is no legal basis at all.

Mr Boymal—I think it is correct to say they have no legal basis to direct on a particular standard. The ASIC Act is quite specific on that.

Senator CONROY—It is quite clear on this.

Mr Boymal—But they directed that the suite of international standards that we in Australia should use to go international ought to be the suite of standards in place at 31 March 2004. They were not dealing with the detail of the standards; they were dealing with an across-the-board effective date.

Senator CONROY—But for IAS 39 they have said you have to use one over the other, as in the one that was finally promulgated.

Senator MURRAY—Before we get to the detail, would you mind just giving me the wrap-up? I am very interested in the detail, but I want to get the overall picture before we get into the detail.

Mr Boymal—By their directing that it be the 31 March 2004 suite of standards, and that is the set that has now been published in book form, the disquiet calmed down. There has really been little or no complaint, disquiet, suggestions for deferral and the like since that decision was made. All indications are that companies are now really getting on with the exercise. The remaining thing to be done is that the AASB has to Australianise those international standards, put them in a form where they are delegated legislation and disallowable instruments in the Australian context. The law specifies that it is the Australian Accounting Standards Board that promulgates standards. So we take those international standards and what I call Australianise them for that purpose. We had undertaken that that job would be done by 30 June and that we would actually gazette all the standards in July.

Senator MURRAY—July 2004?

Mr Boymal—2004. Our advice is we must have them gazetted all together, because it causes a legal glitch if one standard that is gazetted refers to another standard that is not yet gazetted. So it is a sort of big bang, done all at the one time in July. At this point in time we are quite confident that we will have them all finished by 30 June. In fact, they are very largely finished now. As we complete the standards, we put them up on our web site as pending standards. We have, I think, three standards to go, and they are well under way.

Senator MURRAY—How many are up?

Mr Boymal—It is around the 40 mark.

Mr Thomson—Thirty-five to 40.

Mr Boymal—So basically we are quite confident that it will all be finished by 30 June. But, as all of them are already sitting on the web site, already companies are quite aware of what they contain.

Senator MURRAY—Let me understand the overall picture before Senator Conroy gets into some detailed questioning. The IASB's side of things was completed in the sense that they produced all the standards they were required to by 31 March?

Mr Boymal—Yes.

Senator MURRAY—Those standards have not yet been formally accepted within the European Union system, so they remain IASB standards without application yet to the European Union. With respect to Australia, those standards are now being Australianised, as you put it. They will be gazetted either in June or in July 2004. The government will then produce regulations which put those into law and which are disallowable. Once those regulations are through the parliamentary process, they become legal instruments in Australia. Is that a correct summation of what is happening?

Mr Boymal—Not absolutely correct. In relation to the very last part that you referred to, my understanding is that at the point of time that we gazette those standards they do become Australian law. They are disallowable instruments and, if they are or any one of them is disallowed by parliament, they would cease to become Australian law at that point of time. But it is the actual gazettal process which in the first instance makes them law. That is just simply the manner in which disallowable instruments become law in Australia.

Senator MURRAY—Their application at law is for the financial year 2004-05?

Mr Boymal—No. We call it going international in 2005, but in fact it is to be applied for the first financial period beginning after 1 January 2005. To translate that into our normal language—

Senator MURRAY—It is 2005-06 then?

Mr Boymal—That is year ended 30 June 2006.

Senator MURRAY—Or anybody with a financial year that commences after 1 January—

Mr Boymal—Yes, or year ended 31 December 2005.

Senator MURRAY—I have asked you for that wrap-up deliberately. It pretty well accords with what I thought was the situation. I recently had a meeting with some senior and representative businesspeople who still had the idea that the IASB standards would not be applied in Australia because the European Union have not finalised them. My view is, whilst it is highly desirable for the European Union to finalise them, the Australian decision is distinct from that.

Mr Boymal—That is absolutely accurate. Might I also add, though, about the position in Europe that all but two of the international standards—

Senator CONROY—I think there is just one slight point where Senator Murray did not have it absolutely spot on. There are the two outstanding standards which are not the final standards.

Senator MURRAY—That is 39 and?

Senator CONROY—And 32.

Mr Boymal—They are 39 and 32. All the rest have in fact been endorsed by Europe. So it is not that the whole suite of standards are in doubt for Europe for 2005.

Senator MURRAY—But in Australia 39 and 32 are within that package you are talking about?

Mr Boymal—Absolutely right.

Senator MURRAY—Yes, that is what I thought.

Senator CONROY—They have not been endorsed by Europe; all the others have been endorsed by Europe.

Mr Boymal—But it is not the whole suite of standards in relation to which there is a problem in Europe. It is only the two.

Senator MURRAY—That is very helpful. Thank you.

Senator CONROY—Thank you for that, Mr Boymal. That also helped clarify a number of issues for me. As we have discussed previously, the FRC directed the AASB to draw a line and say that the international standards that should be used for 2005 are those that were in place as at 31 March.

Mr Boymal—Yes.

Senator CONROY—But in truth there is likely to be an updated version before 2005, isn't there?

Mr Boymal—Yes.

Senator CONROY—What technical competence do the FRC have to tell you to use that one rather than the final one? That is that choice between two standards. It is not a generic adopt the lot; that is actually a choice of standard.

Mr Boymal—Yes, you are right. I suppose one could say that is a choice between two standards. In relation to what technical advice they received, they did receive advice from me—

Senator CONROY—I know you do attend as a vibrant participant, a robust participant.

Mr Boymal—I would not say 'a vibrant participant', but I do attend as an observer.

Mr Thomson—My understanding, though, is that, notwithstanding that they said it was the standards at 31 March 2004 to provide certainty, it is within the discretion of the AASB to use the—

Senator CONROY—The AASB can make that decision themselves.

Mr Thomson—But also it is within their discretion to use the forthcoming version of 39 if they so wish to.

Senator CONROY—You could change your mind—

Mr Boymal—Yes.

Senator CONROY—If you thought it was the appropriate thing to do. My concern is that you are continuing to be monstered by a government controlled body driven by people who are not technically competent to make these decisions, and they keep telling you what to do

and are then masquerading behind a rubbish argument about ‘We are not directing standards.’ But that is an issue for you guys to decide upon for yourselves. I am actually here to tell you what standard to adopt, unlike the FRC.

Mr Boymal—I think, in fairness to the FRC on this particular one, there were not a great number of choices available. One choice was to defer the project.

Senator CONROY—I just want you to make the choice, that is all, Mr Boymal.

Mr Boymal—Yes, fine. All can I say is that the FRC did seek my advice, and drawing that 31 March line in the sand was agreed by me as the best way—

Senator CONROY—It may be a commonsense thing to do, but again it just comes down to this complete misunderstanding of their powers, of the FRC, to direct that you adopt one standard over another. But they have been in breach of the law now for the best part of two years, driven by Mr Lucy, Senator Ian Campbell and the Stock Exchange. But we have now visited that many times. I will move on.

Mr Boymal—Yes, we have.

Senator MURRAY—Before you do, in the event that you conflicted in your views as to the FRC’s actions and you thought one version of the accounting standard was preferable to another version, would you be prepared to go public on that, because that would influence the parliament’s decision as to whether or not to disallow?

Mr Boymal—I feel that I would be obliged to in fact because, as Senator Conroy indicated, the ASIC Act is very clear that the FRC can give the Australian Accounting Standards Board broad policy directives but specifically cannot, and the act says this in so many words, direct the AASB in relation to the technical content of any particular standard.

Senator CONROY—We know that. Senator Murray and I debated this at some considerable length on the floor of parliament in 1998.

Senator MURRAY—I want to reinforce your understanding deliberately on the record. In this room Senator Conroy, on behalf of his party, and I, on behalf of my party, would have to make the judgment on any disallowance motion. Neither of us are competent or equipped to assess the full technical consequences of any accounting standard. That is exactly why the AASB exists. If we could do it ourselves, we would not need you. Therefore, in any dispute process we will need an expression of view where there is disagreement between the two bodies.

Mr Boymal—And rest assured, Senator, that if there were disagreement between the Financial Reporting Council and the AASB in relation to whose decision it should be I would certainly make the AASB’s views known very loudly. I would reiterate what I said before, though, that in a directive to adopt an entire suite of standards—in other words, irrespective of what they might contain—it is an arguable point as to whether that is a directive relating to the technical content or a broad policy directive. So there is something of a grey area relating to that. But, if it were a clear-cut instruction from them that the standards should contain this, that and the other, I would object on the basis that that was not their prerogative under the law.

Senator MURRAY—Speaking with the full weight of the Senate, I would say to you that it would be your duty to acquaint the Senate, in a circumstance where it might otherwise not be well informed, of your views.

Mr Boymal—Yes, indeed. I would be inclined to agree with that.

Senator MURRAY—Thank you, sir.

ACTING CHAIR—Mr Boymal, what impact will the adoption of these international standards have on the bottom line of corporations in Australia compared with following the earlier Australian standards? In particular, will certain sections of corporations, be they in the extractive industries, manufacturing or tourism, be affected more significantly than others as a result of these? I would imagine there would be some impact on the bottom line—that is, profit.

Mr Boymal—There will be an impact on the bottom line. It will vary quite considerably from company to company.

ACTING CHAIR—And industry to industry.

Mr Boymal—And industry to industry, yes.

ACTING CHAIR—Could you outline which industries are likely to be impacted most severely compared with others?

Mr Boymal—One of the major changes is in relation to the accounting for intangible assets. The rules are written not in relation to industries but in relation to the contents of balance sheets, and quite a number of revaluations of intangible assets which previously have been permitted in Australia will be required to be reversed. The industries that typically have large intangible assets are the media industry, industries that have government licences—and they could be any sort of licence that has been accreting in value. Again, media, as well as having newspaper mastheads, have broadband and distribution licences. So the media industry will be quite significantly affected.

There are also other industries that have amongst their assets large amounts for brand names. That is across the board. The brewing industry carry large brand names. We all know those famous brand names. So you can say that there are some industries affected more than others because they are industries that regard their brands as being one of their high-value assets. In terms of the tourism industry and the like, there will be very little effect, to my knowledge.

ACTING CHAIR—So it is mainly confined to the category intangibles?

Mr Thomson—The other major ones would be probably financial institutions, in particular insurers, and among insurers I would say in particular life insurers, mainly because of the impact of the financial instrument standard.

ACTING CHAIR—Sorry, I am having trouble. Life insurance?

Mr Thomson—The insurance industry will be affected because the rules will change, in particular for life insurers.

ACTING CHAIR—In what way will that impact on their bottom line?

Mr Thomson—Much of the business that life insurers sell would not fit neatly into the definition of an insurance contract. It is more in the nature of investment type business, and that would be accounted for as a financial instrument. So I would say in summary of the bottom line that it is more likely that they will have a more volatile profit going forward than they have had in the past.

ACTING CHAIR—The concept of volatility perhaps is a little worrying in adopting a standard of that nature.

Mr Boymal—Yes, I would agree with that, and financial analysts are going to have to come to an understanding that greater volatility of the bottom line is not necessarily a bad thing but is in fact simply reporting what has happened. This is where a deal of the argument arises. If in fact values have changed, is it right not to be reporting that because one wants stability of the bottom line or is it more relevant to be reporting that values have changed as a matter of fact? The move in accounting is rather more towards report it as it has happened. The analysts need to understand that what we are doing is reporting what the facts are and, if that causes profits to be reported with higher peaks and lower troughs, so be it. They need to come to that understanding.

ACTING CHAIR—In terms of the market capitalisation of those companies, given the sensitivity of the market to changes in reported profit, there are going to be great movements in market capitalisation and therefore in the world.

Mr Boymal—I think that is challengeable because, if the analysts do understand what has happened, there should not be movement in the overall market capitalisation because the reported profits are more volatile. What you say is, if you like, the first inkling in all of this, but I think the point is that does not necessarily happen if the market is well informed.

ACTING CHAIR—But the markets are never well informed. That has been very helpful. What about the extractive industries? How will evaluation impact on them?

Mr Thomson—There is an element of uncertainty about the extractive industries' accounting. The IASB is putting in place a standard that will grandfather existing national practices, but that standard probably will not arrive until later this year. That would therefore entrench our existing reporting, except that there is likely to be a higher level or a more rigorous level of impairment testing. So in particular the smaller entities in the extractive industries are more likely to have to write off their exploration and evaluation costs than to capitalise them. There is a practice at the moment of capitalising many of those costs, and I think going forward it is far less likely that you will be able to capitalise them and more likely that they will be recognised immediately as expenses, which would have the effect of bringing losses forward.

ACTING CHAIR—What impact will it have on those organisations that have, say, very high IT expenditures and have capitalised them and then release that as an expense over a period of years? What impact will that have on the standards?

Mr Thomson—That is a related area, and under the intangible assets standard there is a section in there on R&D. Our existing standard permits or requires when you meet certain criteria capitalisation of both research and development costs. The international standard requires research costs to be written off but permits development costs to be capitalised if they

meet certain criteria. The practice, though, in this country is probably mainly to write off research costs anyway. So I doubt that that change from our existing standard to the international one will result in any practical change in R&D expenditures.

ACTING CHAIR—Are any other segments of industry likely to be affected other than the ones that I have named?

Mr Boymal—The banking industry, because there will be more stringent rules on hedging transactions and a requirement to market to market a lot more of their derivative instruments than they do now. The banking industry is, I believe, well prepared for this. But we have shown concern for the banking industry, because that is one industry that will need to put new computerised systems in place in order to accomplish this. Therefore, that is one industry we are not so much perhaps concerned with their bottom line effect but concerned with the lead time for them to be properly prepared to simply be able to record under the new standards.

Senator Coonan—Senator Watson, that is one of the reasons, for instance, why stages 3 and 4 of TOFA, the taxation of financial arrangements, reforms as part of the business tax system are held up: because it affects the tax timing of gains and losses. So that we do not introduce it and they have one lot of standards, they are happy to wait, for instance, and work in with the new standards so that there is some saving in compliance costs.

ACTING CHAIR—That was going to be my next question. You have partly answered it.

Senator CONROY—We were talking about what changes have been made by the IASB since the 31 March cut-off date. We were talking about IAS 39 and this issue of drawing a line in the sand. Have they made changes already?

Mr Boymal—No, they have not. There are two proposed changes. They are both out on exposure at the moment. They have only just come out on exposure, so we do not expect that the changes will be made until September-October this year at the very earliest.

Senator CONROY—Are they significant changes, in your view?

Mr Boymal—No, I do not think they are significant. They are of nuisance value more than being financially significant. In relation to the one on IAS 39, which is the financial instrument standard, there is an existing provision in that standard which enables all financial assets and liabilities to be fair valued. We call it the fair value option. Prudential regulators, or at least some of the prudential regulators, in Europe have said that that goes too far. It must be remembered, though, that in Europe accounting in particular for insurance is very much historical cost based, whereas in Australia it is very much market value based. We therefore need that fair value option in order to produce an output very similar to what our current insurance accounting is. But Europe, on the other hand, is rather apprehensive about its potential misuse.

So the first exposure draft deals with limiting that fair value option to a specified number of instances rather than an across-the-board situation. I actually do not think that ultimately that will have a great deal of effect upon us and in particular our insurance industry, because that is the industry most concerned about it. I do not think it will have a significant effect other than the fact that it introduces an element of uncertainty at the moment into what the accounting should be.

The second one deals with another standard altogether. It is in the business combination standard, and it deals with a specific set of circumstances where there are either dual listed companies or companies or a number of companies that have stapled securities. Both of those do exist in Australia, but they are very few and far between. So these changes will affect the companies that are dual listed or the companies that have stapled securities but will not affect any others. So, again, my view is that this second change is of very limited application in this country.

Senator CONROY—What is the current status of the dispute between the French government and the IASB over IAS 39?

Mr Boymal—To be honest, it is rather hard to know exactly what the status is. My understanding is that, in order for any one of these international standards to be, let us say, finally approved by the European Commission, it goes through a stringent process of review by technical experts. In relation to IAS 39, the technical experts, the accounting experts, have already recommended that the standard be endorsed.

Senator CONROY—The French government are still threatening not to allow it to come into play.

Mr Boymal—Yes, they are.

Senator CONROY—They are seeking a significant change, aren't they?

Mr Boymal—No, the change that they are proposing is a limitation to the fair value option that I referred to before.

Senator CONROY—So they have given up on their other changes?

Mr Boymal—I believe that they have, yes. So it is really one issue, and the process of endorsement in Europe of this one standard is being held up at the very highest level—that is the European Commission level—because the technical experts have already recommended, 'Go ahead; endorse it.' At that very highest level, there is input from the prudential regulators and there are also the political connotations.

It appears as though this particular point has entered the political arena, and the French President has intervened on behalf of France. So it is at a very high level. We really do not know whether the European Commission, spurred on by France, will ultimately not endorse that standard or insist upon further changes or whether the International Accounting Standards Board will basically just hold tight and say, 'Europe, if you are going to go international, here are the standards—end of argument.' So it has basically stalled at this very highest level. Because it is in the political arena, it is actually very hard to know what might happen next.

Senator CONROY—When do you anticipate that 39 will be finalised?

Mr Boymal—This final amendment is out on exposure. We have objected strongly in our response to the exposure, and Australian companies have objected. The International Accounting Standards Board has to deal with the responses and weigh that up against these political considerations. That will be finalised September-October—

Senator CONROY—Surely there are not political considerations in the setting of accounting standards?

Mr Boymal—It is surprising, isn't it! In this European context there certainly appear to be at present. To answer your question, as I said before, completed September-October is what we expect.

Senator CONROY—If Australian companies are compliant with the international standards as at 31 March but not the final version, will they still be able to say they are compliant with international standards?

Mr Boymal—That is the key question. They will be able to say that they comply with the international standards in place at 31 March. You laugh, but that would be a factual statement. The question is: is that an acceptable factual statement if the international standards have moved on? It is a dilemma that we still have to come to grips with, and our first approach is to ask the International Accounting Standards Board, and I have asked a number of times now in a very formal way, to make these amendments effective for 2006 but with an ability to early adopt to enable European companies to adopt them early if the European regulators require it. If that is the outcome, then we would unreservedly be able to say that Australian companies were in compliance with the latest effective set of international standards.

We do not know whether the International Accounting Standards Board will make it effective for 2006 with an ability to early adopt 2005. That is what we are virtually appealing for them to do. We will await the outcome of that decision making before we decide whether there is anything else that we can do. If need be, and if there is any problem with the compliance with international standards, we could take up that change for 2006 with the ability to early adopt, thus enabling Australian companies to be 100 per cent compliant with the international standards if they early adopted that standard. But in the first instance we believe that this needs to be resolved by the International Accounting Standards Board and would need to be dealt with by us only if they did not resolve it for us.

Senator MURRAY—How many standards did you say there are altogether? Was it 40?

Mr Boymal—It is around 40.

Senator MURRAY—So you have 40 standards. Two are in dispute. That is right?

Mr Boymal—In relation to Europe, yes.

Senator MURRAY—So there is agreement on 38 standards. From 1 January 2005 how many countries will Australia have the same standards as—that is, those 38?

Mr Boymal—Those 38 will all be adopted throughout the European Union, so Australia will have those—

Senator MURRAY—So it is the 25 countries of the European Union?

Mr Boymal—Yes.

Senator MURRAY—What other countries?

Mr Boymal—We are not totally aware—

Senator MURRAY—New Zealand?

Mr Boymal—No, because New Zealand has decided to go international in 2007.

Senator MURRAY—Just so I can get it clear, on 1 January 2005, out of the 200-odd countries in the world, Australia will have exactly the same accounting standards for 38 accounting standards as 25 other countries?

Mr Boymal—That is so, yes.

Senator MURRAY—Who of course are a vastly greater proportion of the world's economy than 25 of 200.

Mr Boymal—Yes. Might I add that there are many other countries—and David Tweedie often quotes the number of 90, 93 or something like that—which in some manner or other claim to be using the international standards. The issue relating to those many countries, though, is whether they have embraced the standards in their entirety. Many countries use the international standards as a basis, but if there is one that they do not like they leave it out. So, when I say I do not know exactly how many other than the 25 countries of the EU, it is because there are so many countries which are purporting to use international standards but dropping something off because they do not like it; yet they would be claiming in a broad sense to be using international standards, but it is not a 100 per cent claim.

Senator CONROY—Have any other countries adopted a deadline like 31 March to deal with transition issues or are we unique?

Mr Boymal—I believe we are unique, and we must be unique because, to the best of our knowledge, it is only Australia and the EU who are committed to a 2005 change to the international standards, and this is a particular 2005 problem. The only other ones who could possibly do that are the EU, but they are dealing with it, you might say, at the political level rather than at the technical level.

Senator CONROY—So FRC took a world-leading position by directing this?

Mr Boymal—You could say that. But I think, again, to be fair to them, Senator—

Senator CONROY—They are well qualified, you are right, to make those decisions!

Mr Boymal—I was not going to say that. The International Accounting Standards Board did undertake to produce by 31 March 2004 its stable platform of standards for use in 2005. So that is a pretty sensible date to choose, in fact.

Senator CONROY—When do you expect the Australian versions of the international standards to be introduced into parliament?

Mr Boymal—I expect to be finally making them at the July meeting of the Australian Accounting Standards Board. That I think is set for 15 July. They actually get gazetted that day or the following day, and then they go through the process of their being disallowable instruments.

Senator CONROY—So you are on track to meet this sort of deadline?

Mr Boymal—Yes, we are.

Senator CONROY—Yesterday my office received an email from the AASB—they have been keeping in touch with me—stating that there will be a \$44 annual charge to access supporting materials relating to international standards.

Mr Boymal—Yes.

Senator CONROY—These are materials for which the International Accounting Standards Committee Foundation has copyright?

Mr Boymal—Yes.

Senator CONROY—How was this \$44 fee negotiated, and how will it work exactly?

Mr Boymal—The \$44 fee was not negotiated. That is a fee that we determined we would charge.

Senator CONROY—So whom are you charging?

Mr Boymal—We are charging people who wish to gain through our web site—

Senator CONROY—So if I want them you are going to charge me? If I, as a member of parliament, want to understand how this accounting standard works, you are going to charge me money?

Mr Boymal—We might give you a complimentary copy.

Senator CONROY—I am going to put them on my web site.

Mr Boymal—You probably would be in breach of the International Accounting Standards Board's copyright.

Senator CONROY—They can feel free to sue me.

Mr Boymal—That would be entirely up to you.

Senator CONROY—We will table them in parliament.

Mr Boymal—There may be a way that you could do that.

Senator CONROY—So I will pay my \$44—I would not want you to be accused of giving me a freebie—and I will table them in parliament.

Mr Boymal—I am sure you can table them in parliament. But if you were able to circumvent the royalty obligations that the International Accounting Standards Board imposes, frankly, I think that would be a great thing because this royalty problem is an issue. I might say, though, that the \$44 was a price set by us because there is a fair amount of administration involved in arranging—

Senator CONROY—Is this cost recovery for you, in that this is what the IASB are charging you for them?

Mr Boymal—No, they are charging us considerably less than that.

Senator CONROY—So you are making a profit on Australian parliamentary legislation?

Mr Boymal—No. For a start, we should be very clear that the accounting standards themselves are freely available on our web site. There is no charge.

Senator CONROY—No, we are not talking about the standards. We are talking about what we all acknowledge is the information necessary to be able to interpret them.

Mr Boymal—There are two documents to which the royalties to IASB apply. The first is the basis for conclusions.

Senator CONROY—Do you think David will have me arrested when I go to London after I have tabled them?

Mr Boymal—He might do.

Senator CONROY—Australia are giving Scotland a bit of a pummelling in the rugby at the moment, but I am sure he would not let that sort of prejudice influence his decision.

Mr Boymal—The first document is the basis for conclusions, and we do not think one needs to read those in order to apply the standards. If one is an academic who is studying—

Senator CONROY—I was going to come to the issue of whether you are going to charge students to understand how to make the law work.

Senator Coonan—Just excuse me, Senator Conroy.

Senator CONROY—It is quite all right.

Mr Boymal—Senator Coonan, that refers to the standards themselves. The standards themselves are freely available, and we have a royalty waiver from the IASB. But there are two other pieces of information to which that does not apply.

Senator Coonan—Why not?

Mr Boymal—Simply because the International Accounting Standards Board has not agreed to their being freely available.

Senator CONROY—They will not give them to us.

Mr Boymal—They will not give them to us.

Senator Coonan—But once they associate with Australian standards we can do what we like with them, I would have thought.

Senator CONROY—Yes. But Mr Boymal is attempting to charge people for them.

Senator Coonan—It is clearly arguable that once they are in effect Australian standards we can—

Senator MURRAY—Shall I suggest something horrifying?

Senator CONROY—Please, Senator Murray; you have always been a subversive.

Senator MURRAY—If you want to give students free access, we could incorporate the documents. Then they could look them up on the parliamentary web site. But God forbid we should do that to *Hansard*.

Senator Coonan—I am sure we will find a way.

Mr Boymal—We have tried very hard to convince the International Accounting Standards Board that they should make these other two documents, the basis for conclusions and the application guidance, freely available. They, to this point in time, have not budged on that. The amount of royalty they will receive from Australia is not great, but their view is that if they give relief then they need to give worldwide relief.

Senator CONROY—The marvels of the Internet.

Mr Boymal—If we can devise a way of circumventing that, that would be a good thing. I know this is going to be recorded in *Hansard*.

Senator CONROY—I know your heart is with us on this, Mr Boymal.

Mr Boymal—My heart is with you.

Senator CONROY—But I did not know you were going to display it on your sleeve. So you are making a profit out of charging for these?

Mr Boymal—We are recovering the administration costs involved.

Senator CONROY—You did say it was cost plus, though.

Mr Boymal—It is royalty plus.

Senator CONROY—Minister, I know you are looking equally as concerned about this. Do you support this charge being in place?

Senator Coonan—Can I put it this way, Senator Conroy: I would like to see all efforts made to see how the additional information to which the waiver does not apply can be extended and I would be very supportive of any efforts that could achieve that outcome.

Senator MURRAY—Especially if it is a legal instrument. It is very unusual for a charge to be levied then.

Senator Coonan—I agree with that.

Senator CONROY—This is like charging for an explanatory memorandum. This is what it is. It is in effect an explanatory memorandum to a piece of legislation, and we are going to start charging people.

Senator Coonan—My position on it is that I am very supportive of any efforts we can make to make them available free of charge.

Senator CONROY—I think we have got the go-ahead, Senator Murray.

Senator MURRAY—So we will not have to incorporate it.

Senator CONROY—I would like to touch on your response to the HIH Royal Commission. Justice Owen proposed that you alter the Urgent Issues Group or create a separate group to issue binding rulings on the interpretation and application of accounting standards. You have rejected his recommendation, stating that the International Financial Reporting Interpretations Committee is the only body that can issue binding interpretations on IASB. Minister, didn't the Treasurer state on the *7.30 Report* that we would be adopting all of Justice Owen's recommendations?

Senator Coonan—I am sure he said that for the ones that we can. But, clearly, when you go through them—I forget how many there were—

Senator CONROY—Mr Boymal is defying the Treasurer.

Senator Coonan—No, he is not defying the Treasurer at all; he is looking at ways where otherwise there might be impediments to being able to do it. But the thrust of the Treasurer's response was that where we could we would, Senator Conroy.

Senator CONROY—I can read you his transcript. I keep it close to my heart.

Senator Coonan—I actually have a little checklist. We are not far from it, Senator Conroy. You have to give a bit of credit where credit is due.

Senator CONROY—Here is one where we have just said no, and Mr Boymal is in open defiance of the Treasurer.

Senator Coonan—I think sometimes there can be an impediment when you have a look at the detail.

Mr Boymal—The whole question of interpretations of accounting standards remains an open question. In the first instance, the International Accounting Standards Board has an interpretative arm and it would be most beneficial if the International Accounting Standards Board were to do all of the interpretations. But the indications are that it will not have the resources to interpret the standards for the whole of the world, unless there are very common questions coming from a number of different locations.

Senator CONROY—It does sound frightening.

Mr Boymal—It does sound frightening. As was indicated in evidence given by the ASIC group, when you have principles based law—and you could replace that with principles based accounting standards—there is a greater need for interpretation. So we are facing that greater need. But, in the first instance, if the IASB can do the interpretations, that will be best. We have to see how they perform, to begin with, to determine the extent to which local interpretations will continue to remain to be necessary. If there is a need for local interpretations, we will need an effective structure to do those interpretations. But, until we see the extent of the ongoing need, I think it would be ill advised right at the moment for us to change the structure or organisation of our interpretative arm.

The point is that I am not just ignoring the direction of the Treasurer; it is just that it is not the appropriate time right at the moment to make changes to our interpretative arm until we see what comes out of the international structure. Once that has bedded down, we should in fact be reviewing the manner in which we go about doing local interpretations to the extent that they might still be necessary. So really it is not a matter of saying, ‘That is just not on.’ It is a matter of timing.

Senator CONROY—As I said, I keep this close to my heart. Let me read you the transcript from the *7.30 Report*. Kerry O’Brien asked the Treasurer a question, and the Treasurer said:

Every finding of the royal commissioner has been accepted and will be implemented.

... ..

And I give this assurance—every single one of the royal commissioner’s findings will be acted upon ...

... ..

We accept every recommendation that the royal commissioner has made and we will implement every single one of them ...

Mr Boymal—That is fine, but I would still say so far as the Urgent Issues Group is concerned—

Senator CONROY—You still say no.

Mr Boymal—No, I am not saying no. I am saying that, because we have entered this scenario of international standards, we must see how the international interpretations arise first before we look to restructuring our own group. So it is timing only.

Senator MURRAY—Kerry O'Brien should have asked 'when'.

Mr Boymal—Exactly.

Senator CONROY—We will let him know, Mr Boymal, that you think he is a pretty sloppy questioner.

Mr Boymal—Thank you, Senator.

Senator CONROY—And then we will get you on the show to talk to him about it. He is very positive about comments like that. Does the AASB have representation on IFRIC, the interpretations committee?

Mr Boymal—IFRIC is what I was calling the international interpretative arm. There is an Australian on IFRIC. The way in which the International Accounting Standards Board works, it is not AASB representation, it is simply an Australian national who is there.

Senator CONROY—Who is it?

Mr Boymal—At the moment it is an accountant called Wayne Lonergan.

Senator CONROY—I have met Mr Lonergan. Justice Owen's recommendation No. 7 proposes that accounting bodies encourage their members to consult independent parties or the UIG when there is a disagreement with company management about the application of standards. The AASB has said there is no role for the UIG on that issue. It has been reported that professional groups support the Financial Reporting Panel taking on this role of offering guidance. What does the AASB think of that suggestion?

Mr Boymal—I believe that the UIG should be able to handle or resolve disputes or disagreements. In fact, whenever an interpretation is called for it has to be because there is a level of uncertainty and there are a number of different views in relation to an issue. Often those views are between the company and its auditor, for example, or the company and ASIC. But they do not come to us as disputes with the individuals being identified. They come to us in what you might call a more generic or anonymous manner. But the truth is that they come to us only because there is a dispute somewhere or other along the line.

Senator CONROY—Will this encourage forum shopping, opinion shopping?

Mr Boymal—Will what encourage that?

Senator CONROY—This sort of proposal.

Mr Boymal—I think the idea of just going to an adviser or buying an opinion from an adviser is a little like buying a view from a barrister: you often get the answer that you want. So I do not think the idea of buying the advice is a satisfactory process. I acknowledge the point that ASIC makes, and that is when they have a regulatory dispute, which is always an after-the-event situation, they would like to resolve that issue without going to the court, if they can. Because it is always after the event and it is in place of going to the court, they do not believe that the interpretative arm of the AASB is an appropriate organisation. They

believe that it has to be set up in a panel manner in order to satisfy legal requirements to replace a court decision.

So I think the ASIC idea of a Financial Reporting Panel is different altogether to disagreements at the beginning of the accounting process compared to disagreements at the end of the accounting process. So I think the Urgent Issues Group, or whatever its replacement might be, does have an important part to play in resolving early differences, if we could put it that way, between companies and their auditors in particular.

Senator CONROY—Good luck.

Mr Boymal—Thank you.

Senator CONROY—We will work out exactly how quickly we can table them for you.

Mr Boymal—Thank you very much.

Proceedings suspended from 3.53 p.m. to 4.11 p.m.

ACTING CHAIR (Senator Stephens)—Dr Parkinson, I understand you want to make a brief statement.

Dr Parkinson—Thank you. Last night we had an interesting discussion about the dynamics of the oil market. We see today that there has been an increase in oil prices of something in the region of \$US2 a barrel. Given the importance of the issue, we thought it was probably worth while putting a few facts on the table, on the public record, so that people understand what are some of the dynamics of the market that we face at the moment. So, with senators' agreement, Dr Smith will make a few pertinent—

Senator CONROY—Did you not put the facts on the table last night?

Dr Parkinson—Dr Smith will make a few pertinent observations about the structure of the oil market at the moment.

Dr Smith—We thought it was useful to have a broader discussion of how we see the global oil market, because it is quite delicately poised. There are a number of unique factors which make it pretty difficult to predict where oil prices are going. One of those factors of course is a very strong demand from the Chinese and US economies—an unprecedented demand from China over recent years.

The second issue is that there is very little restocking of inventories going on at the moment within OECD economies just by virtue of a high oil price. The third issue is that probably since the mid-1990s there has been very little investment in new capacity in the oil sector. As a result, there are also low rates of return within energy industries. So there is not a lot of investment going into the oil sector. So those three factors are very important in thinking about the types of issues we were discussing last night about what drives oil markets.

In particular, when we were talking about what drives the risk premium in the oil market, at the moment it is a confluence of factors and I think it is more about what could go wrong rather than what is currently going wrong. The major risk out there is the risk of a supply disruption. When we spoke about the geopolitical risks surrounding oil prices, that still is focused on the Middle East. Iraq may be part of that, but predominantly it is centred around Saudi Arabia.

There are two factors which I think are worth noting about Saudi Arabia. The first is that it has the largest share of proven oil reserves in the world. It has about 25 per cent of global proven oil reserves. The second is that Saudi Arabia is usually known as the swing producer. It is the country which has capacity available, in the event of a severe disruption, to put supply on the market. At this stage, Saudi Arabia has about two million barrels per day of spare capacity. This is one of the lowest levels for many decades and represents about three per cent of global demand at the time. There is little prospect of any other country—Iraq or any other major oil producer—coming anywhere near Saudi Arabia in terms of its proven oil reserves or in its capacity to contribute spare capacity to the markets.

So, when we think about the global oil market, what we are concerned about in the geopolitical risk context is the potential for a supply disruption, and Saudi Arabia plays a key role in that. At the moment, while obviously prices are high, they are not as high as what they have been in real terms in the past. But, should we see a major disruption through terrorism or some other event, we would expect to see a different scenario.

ACTING CHAIR—Thank you very much, Dr Smith.

Senator CONROY—Mr Murray is still not with us?

Dr Parkinson—Mr Murray will be attending and he looks forward to taking up the issues that I passed to him.

Senator CONROY—There will be no Christmas card for you! We were talking about some of the infrastructure issues. I asked: ‘Through what mechanism is the transparent cost-benefit analysis of infrastructure alternatives undertaken at the Commonwealth level?’ I think you doxed him in again. I cannot remember quite where I had got to.

Dr Parkinson—I think we pulled stumps at that point.

Senator CONROY—On page 320 of Budget Paper No. 1, I would like to go to box 2, which looks at the growth in infrastructure investments in recent years, particularly by the private sector under public-private partnerships. Are you the best person to ask about PPPs, or is Mr Murray? Is it more his bailiwick?

Dr Parkinson—It is probably better addressed to either him or our markets group colleagues.

Senator CONROY—Okay, I will move on.

Dr Parkinson—It depends on the issue.

Senator CONROY—I would rather move on. No doubt he will then say I should have asked you.

ACTING CHAIR—You can always put them on notice, Senator.

Senator CONROY—Policy issues to do with PPPs: does Treasury support an increasing role for private finance in the development of public infrastructure? I am happy for the question to be deferred to him.

Dr Parkinson—I think it is one that is best addressed to one of our other colleagues. It is not a policy issue that falls to me, as such, or to our group.

Senator CONROY—There is no sign of Dr Henry winging his way back from Queensland?

Dr Parkinson—As we discussed yesterday, he is on the way back from Queensland at the moment.

Senator CONROY—He is on his way back?

Dr Parkinson—That is my understanding. I do not know what his estimated time of arrival is, but I am aware he is meant to be coming back this afternoon.

Senator CONROY—You might not have absolutely handy Dr Henry's speech to the conference of Business Economists in November 2003. We have discussed it previously in estimates.

Dr Parkinson—The ABE 2003?

Senator CONROY—Yes. It is November 2003. As I said, I was hoping Dr Henry would be with us for these questions.

Dr Parkinson—You said we discussed it in the—

Senator CONROY—Probably Dr Henry discussed it. I will quote from the speech. It says: ... since public infrastructure assets, by definition, produce a flow of future services, there is a question of who should pay for them: present taxpayers financing capital spending or future taxpayers repaying public debt?

The *Australian* on 20 May 2004 reported the Treasury secretary as saying—and I think it is an implicit criticism—that an intergenerational fund is 'akin to asking people to pay tax now for the benefits of future generations, rather than asking future generations to pay'. Putting aside that nobody is suggesting that current taxpayers pay higher taxes, isn't this how we currently finance infrastructure development at the Commonwealth level: current taxpayers paying for future services?

Dr Parkinson—In the sense that the Commonwealth is paying the capital cost of infrastructure?

Senator CONROY—Is the Treasury secretary arguing that the government's approach to infrastructure finance whereby current taxpayers pay for future services is the wrong approach? Is that what he is arguing? I appreciate this is difficult, Dr Parkinson; you did not give the speech.

Dr Parkinson—And I do not have the speeches in front of me and I would like to see exactly what was said.

Senator CONROY—I am not trying to sandbag you like that. As I say, I was hoping Dr Henry would be here.

Dr Parkinson—I am happy to take the question on notice.

Senator CONROY—I am sure you are happy to, but I am hoping to get an understanding of the issue. Will Dr Henry be present tomorrow?

Dr Parkinson—I do not know what Dr Henry's timetable is for tomorrow.

Senator CONROY—Budget estimates are scheduled eight months in advance, and it is the major—

Dr Parkinson—Actually budget estimates may well be scheduled, but the Treasury is not scheduled eight months in advance.

Senator CONROY—No, but the secretary to the Treasury would be aware of when budget estimates were on. They are the major estimates of the year.

Dr Parkinson—And it is a two-week period that is blocked out.

Senator CONROY—Yes, and Treasury covers, at best, three days of that two weeks, and usually knows in advance.

Dr Parkinson—And you would like us to forecast which three days we will be asked to appear?

Senator CONROY—You are usually here on the same—I know it moves every now and then, but it has been fairly consistent for the last few years. I know that because I have been coming to them, as I am sure you remember, but I have had to miss a few days in recent times. I am happy to ask Dr Henry these questions direct if he is available.

Dr Parkinson—I am happy to ask Dr Henry whether he is available to come.

Senator CONROY—I may not be here because of my other commitments with a different estimates committee, but I am sure someone else can take the issues up with him.

Dr Parkinson—As I said, Senator, if you want to put them on notice, we will endeavour to provide you with an answer.

Senator CONROY—The *Australian* on 20 May reported the Treasury secretary as saying that an intergenerational fund is ‘akin to asking people to pay tax now for the benefits of future generations, rather than asking future generations to pay’. Could you give me an interpretation of that?

Dr Parkinson—To the extent that you wish to accumulate more funds than what you are already planning on accumulating, you are increasing the tax burden from what it otherwise would be. So, in other words, you are accumulating funds today by taxing people today, with the benefits to come later. To the extent the Commonwealth is already paying for infrastructure, that is in the current outlays.

Senator CONROY—But isn’t that how we finance infrastructure now?

Dr Parkinson—If you are asking if we are proposing to add an intergenerational fund over and above the situation that you confront at the moment—and drawing on the distinction we made last night between ex ante and ex post—if you are planning on an ex ante fund, you are planning on raising the tax to GDP ratio today above what it is otherwise.

Senator CONROY—I am not planning on doing that.

Dr Parkinson—You asked me how this would work. I am just trying to answer it within the parameters that you have put to me.

Senator CONROY—But isn’t this how we finance infrastructure now?

Dr Parkinson—It is how we finance human capital accumulation now.

Senator CONROY—In terms of current infrastructure funding, don't today's taxpayers pay for tomorrow's services?

Dr Parkinson—To the extent that taxpayers today are footing the full cost of building an asset that will be used over a number of years, that is correct.

Senator CONROY—Thank you.

Dr Parkinson—That is the same case as investing in education, if you believe education increases human capital.

Senator CONROY—Is Treasury of the view that the current infrastructure financing practices are appropriate?

Dr Parkinson—I think there are a whole variety of issues around infrastructure that are inappropriate that go to the issues—

Senator CONROY—I asked you about whether you thought the current—

Dr Parkinson—No, I do not think you can separate the financing arrangements from the broader issues that you might want to discuss around infrastructure. As I said earlier, that is an issue you might wish to address to Mr Murray.

Senator CONROY—What aspects are inappropriate?

Dr Parkinson—An obvious challenge is to ask, as the secretary has said today, whether you end up with inappropriate levels of infrastructure or, more likely, inappropriate types of infrastructure.

Senator CONROY—Are you aware of what he was referring to when he said 'inappropriate types'? What is an inappropriate type of infrastructure?

Dr Parkinson—If you have the wrong decision making process and you end up building a road in the wrong place, it is a bit hard to dig it up and move it.

Senator CONROY—Are any roads in the wrong place at the moment, Dr Parkinson, that you are aware of?

Dr Parkinson—That is a matter for others to judge, Senator, not me.

Senator CONROY—How would you avoid making those wrong decisions?

Dr Parkinson—I think that is something that governments at all levels would need to sit down and think about carefully.

Senator CONROY—Like to have it both ways: be able to bag it and then not have to justify it. That is good. Is there a current mechanism you are aware of to avoid these mistakes?

Dr Parkinson—I am not familiar with how infrastructure decisions in terms of the type and the quantum are being made at the state level or across the Commonwealth-state divide.

Senator CONROY—So Dr Henry feels free to just make generic criticisms but does not want to look in his own backyard?

Dr Parkinson—As I said to you earlier, Senator, I am not responsible for issues surrounding infrastructure.

Senator CONROY—You drew the state governments in when I did not ask you about them; I appreciated that. Do you know anything about the Commonwealth's proposals?

Dr Parkinson—In what sense?

Senator CONROY—In the sense of how they avoid making these mistakes with infrastructure projects.

Dr Parkinson—Am I asked to comment on—

Senator CONROY—No, I asked whether you were aware what the mechanism was at the Commonwealth level.

Dr Parkinson—No, actually I am not.

Senator CONROY—Is Dr Henry?

Dr Parkinson—That is a question you will have to address to Dr Henry.

Senator CONROY—Yes, back to that conundrum. Would Mr Murray be able to help me here? I know you did sort of refer me off to him on similar questions to these last night.

Dr Parkinson—I would assume Mr Murray would be in a better position than I would be.

Senator CONROY—Which outcome is Mr Murray under? Outcome 2. That is what I thought.

Dr Parkinson—Senator, when you ask about mechanisms, what exactly is it you are asking?

Senator CONROY—I do not know. I am asking: what are the mechanisms?

Dr Parkinson—Do you mean other than cabinet consideration?

Senator CONROY—I do not know. That is why I was asking you. Is there a committee? Is there an infrastructure council? I was seeking to find information—government decision making and allocation mechanisms, cost benefit analyses, the sorts of things talked about last night; something other than a map of marginal seats on the cabinet table and a pin. Do marginal seats have too many roads, do you think?

Dr Parkinson—Sorry?

Senator CONROY—Those roads that have been built in the wrong places, are they in marginal seats? I was asking about the allocation mechanisms, cost benefit analyses.

Dr Parkinson—I am just wondering which questions you would like me to answer.

Senator CONROY—I was taking your grin as being you knew that I knew you were not going to answer that question, so I was moving on to a different one, Dr Parkinson. So back to the question about the allocation mechanism, and you were consulting with the minister.

Senator Coonan—Maybe, Senator Conroy, you could be helped by the transport portfolio. If you look at something like AusLink, which was announced in the budget, you will see that the transport portfolio is probably a better and a more fertile field to ask questions about how decisions are made on allocation. From a policy perspective in this portfolio, we really look at it through expenditure review. So it is not as detailed as looking at allocation to specific projects.

Senator CONROY—I will try to be specific, if I can narrow it down for you.

Dr Parkinson—When I was saying that I was not aware, it really depends on the sort of question that you are asking.

Senator CONROY—Okay. Let me ask the question. Is there a mechanism for the government or Treasury to take a view on the relative merits of transport as against communications infrastructure, for example?

Dr Parkinson—In the sense of putting all infrastructure issues together and assessing how much to split a particular pool? Is that the question?

Senator CONROY—Yes. As I said, you like to ask your own questions and answer them, but that one is close enough.

Dr Parkinson—I defer to you, Senator.

Senator CONROY—No, answer the question you asked yourself, please.

Senator FIFIELD—It is the only clear question so far, Senator Conroy; so it is not a bad idea.

Senator CONROY—Senator Fifield, I did not realise you had slipped back in.

Dr Parkinson—These are the decisions that cabinet makes. Cabinet makes them on advice. Departments provide advice about the merits of proposals.

Senator CONROY—So there is no other mechanism, apart from the cabinet, that you are aware of?

Dr Parkinson—Senator, I am not trying to be cute, but I am really trying to ask: can you give me an example of the mechanism you have in mind? Are you asking: is there a central mechanism that says, ‘This is how much we will spend on roads and this is how much we will spend on communications and something else’? No. Part of the reason for that is that there are split responsibilities between the Commonwealth and the states. The Commonwealth has certain responsibilities—

Senator CONROY—I am talking about only the Commonwealth. We do not need to drag the states in.

Dr Parkinson—No, Senator, that is—

Senator CONROY—Is there an infrastructure coordination unit somewhere in the bureaucracy?

Dr Parkinson—Senator, can I finish my response?

Senator CONROY—Sorry.

Dr Parkinson—A particular issue here is that the Commonwealth funds a lot of infrastructure. The Commonwealth actually is not where that infrastructure investment is carried out. It is carried out at the state level, and these are sort of split responsibilities between the Commonwealth and the states. As to the question, ‘Is there an infrastructure unit?’ I would imagine you would have to look at the individual portfolios that have responsibility for infrastructure issues—to wit: transport, communications and a few others.

Senator CONROY—There is not a central unit that you are aware of?

Dr Parkinson—I am unaware of a central coordinating arrangement for infrastructure. Mr Murray may know of such a beast, but I am not aware of it.

Senator CONROY—Is there any attempt made to establish the relative returns on these investments? Do you guys look at any of these?

Dr Parkinson—Does the macroeconomic group of the Treasury? No.

Senator CONROY—Would Mr Murray be able to help me?

Dr Parkinson—I have no idea whether Mr Murray would be able to help you or not. Maybe it is worth while just giving a few examples of some of the key infrastructure issues around at the moment: Westlink M7 Motorway, Cross City Tunnel in Sydney, Spencer Street Station redevelopment. Spencer Street is a PPP.

Senator CONROY—I was going to say I did not know there were any Commonwealth funds in that.

Dr Parkinson—I presume there is some state—

Senator CONROY—I am hoping you are telling me about only the Commonwealth's funds.

Dr Parkinson—No, actually I am not telling you about anyone's funds. I am giving you some examples: the Mitcham-Frankston Freeway, duplication of the Gateway Bridge, Lane Cove tunnel. It highlights that these things are a mix of responsibilities across state and federal levels of government.

Senator CONROY—The secretary is opining consistently. He refers to cost-benefit analysis in his recent speech.

Dr Parkinson—If the secretary is out there saying we should be making sure that we do not put our infrastructure in the wrong place, I endorse him entirely. A major issue here is that in a federal system where you have flows of resources, flows of people across artificial boundaries, which are the state jurisdictions, you do have the potential to end up putting infrastructure in the wrong place.

Senator CONROY—You may or may not be aware that in Victoria there has been an infrastructure planning council, which gave advice on the priorities.

Dr Parkinson—Until you mentioned this last night, I was not aware of it. Can I just clarify: is that still something that operates within the boundaries of Victoria?

Senator CONROY—I am not sure whether it is current at the moment. I knew some people on it, which is why I was aware of it. I am not sure whether it is still active. But it actually put together some considered thinking on the issues you are talking about, and the secretary is saying, 'What do we need and where do we need it?'

Dr Parkinson—I would assume the department of transport does that in respect of the Commonwealth's responsibilities for road transport, the department of communications does it in respect of the Commonwealth's responsibilities there. Individual line agencies that have responsibilities for infrastructure issues or types of infrastructure, and particularly—

Senator CONROY—You know what the roads department are like. They will just build roads anywhere you can lay down a bit of concrete. That does not necessarily mean it passes the sort of test the secretary is referring to.

Dr Parkinson—That is why you want a mechanism that says that the distribution of infrastructure is entirely appropriate. Think of it this way: we have a long-term migratory pattern of people moving to the coasts. We know they are not all moving to the coasts of the states that they live in. Is Tasmania investing in appropriate amounts of infrastructure for geriatric support systems to take account of people migrating to Tasmania from Victoria? I do not know. These are serious issues. If you make mistakes about infrastructure, then you cannot easily undo them. It is quite likely that, unless you have an appropriate mechanism, you end up with the wrong sorts of infrastructure being put in the wrong places. The secretary made that point quite explicit, and I agree with him entirely. What I do not understand is whether you are asking me to go further and say, ‘And the Commonwealth has particular mechanisms,’ or, ‘The states have particular mechanisms.’

Senator CONROY—Should you build roads in areas with declining populations? Is that what you are suggesting?

Dr Parkinson—You would undoubtedly build roads. The question is what quantum, what quality and what type.

Senator CONROY—In declining population areas?

Dr Parkinson—It would depend on the relative merits of putting a road there as against putting a road anywhere else.

Senator CONROY—You are making the argument that it is more appropriate to build a road in growing areas like up and down the various coasts.

Dr Parkinson—But it depends on the stock of infrastructure in that area already. If it is growing because infrastructure is there, why put more infrastructure in if it is not necessary? If an area is declining and it is declining because it lacks adequate infrastructure, surely the answer to that is not to walk away from putting appropriate levels of infrastructure there.

Senator CONROY—I just get the sense from what both the secretary and you are saying that there needs to be a coordinated process to avoid misallocation.

Dr Parkinson—My view is that in a federal system you have serious challenges about ensuring the appropriate level of infrastructure investment is distributed to the appropriate parts of the country; so geographic distribution and distribution of type.

Senator CONROY—I think it is a fairly reasonable proposition, isn't it—not an extraordinary proposition?

Dr Parkinson—Not an extraordinary proposition. My sense is that we are actually in violent agreement here, and I am wondering what the issue is.

Senator CONROY—You are too suspicious, Dr Parkinson. I am just shooting the breeze.

Dr Parkinson—It could be learned behaviour, Senator.

Senator CONROY—I am just shooting the breeze about infrastructure. Do you think we have an appropriate level of infrastructure investment at the moment?

Dr Parkinson—Are you asking from a macroeconomic perspective?

Senator CONROY—Yes.

Dr Parkinson—I think that is a very hard question to answer. I think it is a very legitimate question to ask. People make sweeping observations about the decline of public expenditure on infrastructure. That reflects a number of factors, such as the privatisation of particular activities—for example, electricity—that used to be in the public sector. It reflects the greater use of public-private partnerships. It reflects at times more appropriate pricing of infrastructure, and hence more efficient allocation and use of infrastructure. So I think it is very difficult to make a completely sweeping generalisation.

Almost certainly there will be times where we have inadequate or excess amounts of infrastructure in particular places and of particular types. In fact, think about the sorts of situations that state governments have been confronted with when they have tried to, say, close hospitals as population centres have moved. A few years ago in New South Wales there was political opposition to the state government's attempts to open a new hospital out west and the government ran into political problems when it was trying to close existing hospitals. So that is a prime example of where the fixed nature of infrastructure means that you face real problems as the population distribution or the type of infrastructure need change.

Senator CONROY—Are there infrastructure projects where the benefits outweigh the costs but they are not built for a range of other reasons?

Dr Parkinson—You are asking me a theoretical question and I am not aware of individual projects.

Senator CONROY—You are agreeing with the Secretary to the Treasury. He is opining about the need—

Dr Parkinson—There may well be cases, but you are asking me a theoretical question and I cannot give you an answer that there are specific instances.

Senator CONROY—Okay, thanks.

Dr Parkinson—Thank you.

Senator CONROY—Just shooting the breeze.

[4.45 p.m.]

ACTING CHAIR—We are moving now to Outcome 3: Well functioning markets. I welcome the officers to the table. Mr Murphy, would you like to make an opening statement?

Mr Murphy—Yes. Thank you, Acting Chair. This afternoon Senator Murray asked a question about bank secrecy and what work was taking place within the government. In the G20, and also now there is an OECD committee, work is being undertaken in terms of working with Switzerland and other countries on trying to improve bank secrecy laws and offshore tax and tax avoidance laws. Treasury is a member of that working party. There is a meeting dealing with that issue this week in Berlin. Its origins arise from a number of strong statements the Treasurer has made in international forums on the need for the lifting of bank secrecy laws. I thought Senator Murray would be interested to know that considerable work is being undertaken in that area at present.

ACTING CHAIR—Thank you very much, Mr Murphy.

Senator CONROY—I think Senator Murray is on his way. We have sent him a message. You may want to repeat that when he gets here.

Mr Murphy—It is on the record.

Senator CONROY—I will not be able to repeat it to him when he gets here. I want to talk about the Dawson report. No-one here knows anything about plasma TVs?

Mr Murphy—Sorry? I did not catch that, Senator.

Senator CONROY—No-one knows anything about plasma TVs in the Press Club? A different section?

Mr Murphy—I am sorry; I still did not catch it, Senator.

Senator CONROY—Plasma TVs at the Press Club.

Senator Coonan—There were allegedly three plasma TVs during the Treasurer's address to the Press Club after the budget.

Mr Murphy—Yes, that issue. No.

Senator CONROY—That is the happiest I have ever seen a man at estimates.

Mr Murphy—I have been out of the country for five days, so perhaps it is a current issue.

Senator CONROY—It is now more than 12 months since the government released the Dawson report on the Trade Practices Act. Can we gather from yesterday's media that a bill implementing the government's legislative response will be introduced within the next few weeks?

Mr Murphy—Subject to consultation with the states, I would expect that will be the case. It is still a matter for the government as to when it wishes to introduce a bill, but hopefully—

Senator CONROY—Minister?

Senator Coonan—I think it is quite close. I just do not know how close.

Senator CONROY—I will not press you on that one. Has a draft bill been circulated to the states and territories, as required by the Conduct Code Agreement?

Mr Murphy—Yes.

Senator CONROY—Will that bill also contain the government's response to the Senate economics committee's report that was tabled in March this year?

Mr Murphy—No.

Senator CONROY—Will a response to that be forthcoming?

Mr Murphy—Yes.

Senator CONROY—Any idea when?

Mr Murphy—Hopefully when the government finalises its consideration of the Senate committee report. A lot of work has gone into that, and I would expect that the government would be keen to table a response to the Senate committee's report before the winter sittings end.

Senator CONROY—Does the bill address the need to amend section 46, a need acknowledged by my learned colleague Senator Brandis, who is not here right now?

Mr Murphy—The Dawson report recommended there was no need for an effects test, and that was their recommendation on section 46. The government announced that it was adopting the recommendations of the Dawson report. So there is no need to amend section 46. In addition to that, as you are well aware, the Senate committee report recommended certain changes to section 46. That will be addressed in the response to the Senate committee.

Senator CONROY—So there is no suggestion that even Senator Brandis's proposed amendments will be included in this bill?

Mr Murphy—As you would be aware, under the trade practices agreement, the competition agreement with the states, there are very lengthy and quite detailed consultation processes on how you can change the legislation. It is just a matter of sequencing the timing of these things. By that I mean the Dawson report was handed down I think in April last year. It has been quite a big job to process the Dawson report, consult with everyone and get that in a shape so that there is a bill—get the drafting done. That was prepared and finalised.

The Senate committee report came down in March. It is very difficult to try to flow one into the other when you have all these time period requirements on consultation with the states. So you can see where I am coming from. The bill deals with the Dawson report. The government's proposed response or the response to the Senate committee will deal with the Senate committee report. What you would expect to happen would be a merger of the two streams as soon as possible. But we cannot do that immediately, given that the states have to be given 35 days within which to respond to any proposed changes to the Trade Practices Act. If we were to try to run any changes to section 46—I am not saying there are—we would soon run out of sitting time. So that is why we are trying to complete the two tasks.

Senator CONROY—I would like to discuss the issue of criminal sanctions for cartel activity. The Treasurer established a working party of officials to look at this issue in October last year, I think.

Mr Murphy—Yes.

Senator CONROY—Has the Treasurer received the working party's report?

Mr Murphy—Yes, the report has been finalised. Again, that is quite a technical issue and raises significant issues for amendment of the act. The report was of an interdepartmental committee. It took some time, especially on the criminal sanctions aspects. But the report is with the government.

Senator CONROY—Do you have any idea when it will be released?

Mr Murphy—That is a bit further back, but we would be hoping that that would be released in the near future. That is the best I can do on that.

Senator CONROY—Is it the government's intention to introduce criminal sanctions for cartel behaviour at the same time as it delivers the rest of its legislative response to the Dawson report?

Mr Murphy—As you would be aware, with the Dawson report, there were arguments for and against with that one on cartels. We have made sure we have had a very good examination of that. On the plus side, most OECD countries have criminal sanctions for hard-core cartels, as they are described.

Senator CONROY—Are there any soft-core cartels?

Mr Murphy—That is what I mean: it is hard-core cartels. You might say that, Senator, but that is an issue. The danger with it is you do not want everything to be seen as cartel activity, which you could do under a number of provisions in the Trade Practices Act. So you have to exercise some judgments in the way you introduce this concept, if you wish to.

We have a report with the government. I cannot say what is in the report, but I think it would be another thing where, if the government were so minded to introduce criminal sanctions for cartel behaviour, we would again be trying to merge that with the other work on Dawson, if possible. But, again, we run into with the states all the consultation requirements, which are quite appropriate but take time.

Senator CONROY—Will the bill address the Dawson proposal to introduce a notification procedure for collective bargaining?

Mr Murphy—It will, yes, but we cannot really detail that at the moment. It is in the bill.

Senator CONROY—Will the procedure permit collective boycotts by small businesses dealing with a big business?

Mr Murphy—I cannot really discuss the bill because it is not in the public domain. It is with the states.

Senator CONROY—Minister?

Senator Coonan—Once again, it is in the bill. The policy purpose of the bill is to respond to the Dawson review in the way that the government has decided. Beyond that, I cannot really comment.

Senator CONROY—Has there been a policy decision to allow collective boycotts by small businesses dealing with—

Senator Coonan—I do not really feel I am in a position where I can describe what policy decisions have been taken that are reflected in the bill. It is very close—I can tell you that—so all will be revealed very shortly.

Senator CONROY—You would be aware that last week the ACCC announced that it would improve the transparency of the way it handles mergers.

Mr Murphy—Yes.

Senator CONROY—Was this discussed with Treasury officials or the minister or their staff?

Mr Murphy—We have general discussions with the ACCC on its administration. I have not discussed it with the ACCC, but I would see it more as an improvement in the administration of the act. So that is largely a matter for the ACCC.

Senator CONROY—Are you aware of whether they spoke to the Treasurer's office or any of his staff?

Mr Murphy—I am not aware of that. They may have, but I am not aware of that. I think it is a very positive thing and it maybe reflects the fact that Graeme Samuel is seeking to be more transparent in the way the ACCC operates. There was considerable criticism in the Dawson report about the lack of transparency with the ACCC and the way it handled mergers. So we feel it is a very positive step.

Senator CONROY—Will the government take the ACCC's announcement into account in deciding how to deal with Dawson's proposals on mergers? I guess it is not possible, given the process you have described.

Mr Murphy—I think there is a bit of misunderstanding about what the ACCC has announced. There was always an informal process. The ACCC is not walking away from that informal process; it is just seeking to give more structure to it. Dawson recommended that there be an alternative route to going to the ACCC to adjudicate. Basically they are saying, 'The companies can go direct to the tribunal.'

Senator CONROY—Why would you bother going to the monkey if you have to go to the organ-grinder eventually?

Mr Murphy—It is a matter for companies, but I think giving them an alternative route is a good thing. It puts pressure on the ACCC to ensure that it carries out its merger processes in a speedy and timely fashion—and that was sort of the criticism: that it did not. The criticism also was that it did not give the reasons for what position it took.

Dawson recommended a separate route where you say, 'I will just chance my arm. I will go to court. You, the ACCC, adduce your evidence; I will adduce my evidence; and we will just throw it before the tribunal.' That, I think, is a good thing. So my understanding of what Samuel is saying is, 'We will keep this informal process, but I am going to put down some guidelines. I am going to make this have greater transparency.' That is a good thing.

Senator CONROY—An informal process, by definition, is not really transparent. It is informal.

Mr Murphy—It can be.

Senator CONROY—I am just trying to understand how these three legs now, if you like—

Mr Murphy—No, it is an informal process. I think there is a bit of concern that possibly some companies—when you have an informal process, when does it stop? What are the formal steps involved in the process? If we say we have an informal process that can be a chat. And when does it end? The ACCC has been criticised for these informal processes taking too long and not coming out with clear decisions or reasoning as to why they got to a decision. I think Samuel is protecting the position of the ACCC by saying, 'Yes, there is an informal process but here are some guidelines; here are some rules that both parties—the companies and us—are going to adhere to.' I think that gives more certainty to the company and more certainty to the ACCC as to what is going on. As you could expect with informal

discussions, they can be as long as your arm—just continue on and never really home in on the key issues.

Senator CONROY—I want to talk about competition policy and payments. Is that you again, Mr Murphy?

Mr Murphy—Payments to the states? Yes.

Senator CONROY—Regarding national competition policy, has the Commonwealth government delivered on all its obligations under the competition principles agreement?

Mr Murphy—Yes, my understanding is that it has.

Senator CONROY—Why has the NCC felt it necessary to state in its latest assessment of jurisdictions' implementation of national competition policy commitments that the Commonwealth's performance was well below average and not commensurate with its leadership role?

Mr Murphy—The NCC is an independent body. It comes to that opinion and that is its stated opinion.

Senator CONROY—That is how you dismiss that?

Mr Murphy—No, I am not dismissing it.

Senator CONROY—In your view, you said yes, you have met all your requirements.

Mr Murphy—No, I did not say—we started off with payments. When we talk about payments we mean payments by the Commonwealth to the states.

Senator CONROY—The question I asked was: has the Commonwealth government delivered on all its obligations under the competition principles agreement? And you said, 'Yes.'

Mr Murphy—It has, yes—to the states. I am sorry—I think it is a misunderstanding. No, I am not dismissive of the fact that the NCC is critical of the Commonwealth's performance in certain areas of competition policy.

Senator CONROY—What is the government going to do to address these criticisms?

Mr Murphy—That is a matter for the government.

Senator CONROY—Minister?

Senator Coonan—I am terribly sorry; I was momentarily distracted.

Senator CONROY—No worries. The National Competition Council felt it necessary to state in its latest assessment of the implementation by jurisdictions of national competition policy commitments that the Commonwealth's performance was well below average and not commensurate with its leadership role. I asked Mr Murphy what the government was going to do to address these criticisms and he said that that is the government's job.

Senator Coonan—That would be a matter, I suppose, as to whether or not you accept that that is a fair reflection of what the Commonwealth has done and how it should be regarded. But I am sure that we take very seriously any suggestion that the Commonwealth has not played its part in implementing competition policy. I know it is something the Treasurer

regards as an important component of what he does, so no doubt the government will be considering the report.

Senator CONROY—Has the government made allocation in the budget for NCP payments to the states after 2005-06?

Mr Murphy—No. We need to strike a new deal with the states towards the end of 2005. We have a process being undertaken whereby the Productivity Commission is examining: where does the future agenda lie for microeconomic reform in competition policy? That is to report back in time for a COAG meeting—I think it is mid-year—where the Commonwealth and the states will work on a new construct for competition policy into the future. My understanding is—I will check with the budget people—that there is no contingency in the budget for payments to the states in relation to the out years. From the Commonwealth's point of view, we would be very keen to have another agreement with the states—one that deals with payments—because it is very important to continue to push for competition policy reform. We know it is hard in some instances but it is a very good policy agenda.

Senator CONROY—The Commonwealth is currently delaying national competition reforms in the areas of shipping, drugs, poisons and road transport, to name just a few. When will the government move on these issues?

Mr Murphy—That covers a number of issues and, as you would expect in just saying those things, there are various reports and inquiries going on in each one of those areas. For instance, shipping is the part 10 liner thing under the Trade Practices Act, and there is a review going on there. There are reviews on pharmaceuticals in various areas of government. What we would be doing would be to feed into those separate reviews the NCC's views on the matter.

Senator CONROY—They seem fairly grumpy.

Mr Murphy—They look at it through the prism of competition being a terribly important thing and—

Senator CONROY—Don't you?

Mr Murphy—I do, but there may be other policy considerations that need to be taken into account. We think the NCC is independent and that it gives good guidance to the Australian government in relation to competition but, as you would be aware from the public debates, not everyone sees it in the same way as the NCC sees it.

Senator CONROY—The Commonwealth has an obligation to review anticompetitive legislation. We do not seem to be having much of that going on—it is falling below the mark according to the NCP?

Mr Murphy—No, we have done a fair bit of work on that. I think I would take issue on that one. You would see that through the reports that are put out—the NCC reports on all the Commonwealth legislation. That has been a major task, which has been going on for about 10 years, to review all the Commonwealth legislation for anticompetitive things. I think you have to put the NCC's comments in perspective in that they will be critical of, say, probably the last five or 10 per cent when 90 per cent has already been achieved. That is their bailiwick; they want 100 per cent adherence to competition principles. To be fair to the Australian

government, we have done a hell of a lot of work on reviewing legislation for competition principles adherence.

Senator CONROY—Can we talk about the Potts report?

Mr Murphy—I know a bit about it but I have got—

Senator CONROY—You have the expert.

Mr Murphy—Yes.

Senator CONROY—I want to talk about discretionary mutual funds. Are you familiar with the HIH royal commission recommendation No. 42, which says:

I recommend the Commonwealth government amend the Insurance Act to extend prudential regulation to all discretionary insurance like products to the extent that it is possible to do so within constitutional limits.

Mr Murphy—Yes.

Senator CONROY—I think you were in the other room when I was quoting the Treasurer's commitment to implement every single one of these reforms.

Mr Murphy—He has. He has just made a press release which demonstrates that to implement all those recommendations takes a fair bit of work. A number of recommendations are outside Treasury's province—for example, APRA and ASIC have to do certain things and the states have to do certain things. The Potts report was again a down payment by the government to implement and to take seriously the royal commission's report. We are pretty pleased that we have this report out, and also the Davis report is out.

Senator CONROY—Does Treasury believe the Potts report's recommendation on DMFs is consistent with the recommendation in the royal commission report?

Mr Murphy—I would say it is. The problem with these discretionary mutual funds is they have been operating as insurance products but they are not. The key one in this ilk was UMP/Amil is an example of this type of arrangement where it was a discretionary fund and it was not a true insurance product. We pulled those types of funds in under APRA. This recommendation here is again bringing them under APRA where it is desirable.

Senator CONROY—Does the Potts proposal extend prudential regulation to all discretionary insurance products?

Mr Murphy—Yes.

Mr Johnston—There are some DMFs that come under state jurisdiction, they are not covered, and there are some—

Senator CONROY—All under Commonwealth are covered?

Mr Johnston—There are some discretionary mutual funds which are not carrying contingent liabilities, and so they will not be required to come the APRA umbrella.

Senator CONROY—Why is that?

Mr Johnston—If they have gone to a legitimate insurer, for example, to take out public liability cover, then they may be exempt by APRA. They will apply to APRA and they may be made exempt by APRA.

Senator CONROY—That is a no, then.

Mr Johnston—That is a no, but it is a good no.

Senator CONROY—We have got a good no. What is a bad no?

Mr Johnston—A bad no is if there were some out there that were still carrying public liabilities which might eventually, by default, fall to the Commonwealth or state governments.

Senator CONROY—You would be aware of the substantial regulation and compliance duties placed on all insurance companies. You have got the FSR, prudential margins, accounting standards, reporting requirements, disaster recovery plans et cetera. Can you explain why DMFs should be permitted to avoid such regulation?

Mr Johnston—I would almost have to repeat the answer.

Senator CONROY—You think that one point allows you to be exempt from all of those? There are a lot more things you have got to do.

Ms Ingram—They are actually not necessarily exempt from, say, the financial services licensing regime and some of the disclosure requirements. I note that Mr Potts recommended that those that do retain risk should have additional obligations, so he has made recommendations about consumer protection—additional protection that is not there. I suppose he was focused on the substance of outcomes. You could say they are not prudentially regulated directly, but because they are not retaining risk and the risk is with the insurer why put them to that expense when they are filling a gap in the market?

Senator CONROY—Does Treasury agree that another medical defence organisation style collapse is possible, given the lack of even basic prudential regulation of DMFs?

Mr Murphy—No. Anyone providing medical insurance is required to be regulated.

Ms Ingram—This does not actually cover medical defence organisations. They are covered by the new legislation, and in fact they are fully covered by prudential regulation.

Senator Coonan—Regulatory requirements.

Senator CONROY—Do you think they have been captured?

Ms Ingram—They have been captured. This report has nothing to with that.

Senator Coonan—And capital adequacy.

Ms Ingram—They are a different animal actually.

Mr Murphy—This is a niche market, a very small part of it.

Senator CONROY—It causes a lot of heartache for the minister.

Mr Murphy—No, but this is less than half of one per cent.

Senator Coonan—These ones are fine. There is only about 2½ per cent of the market.

Senator CONROY—UMP, though, caused you a lot of heartache, Minister.

Senator Coonan—Yes, but it was not in this lot.

Mr Murphy—No, but it was that type of arrangement, and that is why the government has come in and that is all fixed; it is regulated. They have to be registered with APRA. They cannot not be.

Senator Coonan—And provide contracts.

Senator CONROY—Does Treasury agree that part of the attractiveness of DMFs in the past has been that they avoid a range of taxes—in particular, stamp duties and fire service levies?

Mr Murphy—It may be the case; I would have to check on that.

Ms Ingram—It is an aspect of their attractiveness.

Mr Crooke—We understand that is the case, because it is not offered as a contract of insurance currently.

Senator CONROY—They are exempt from those things?

Mr Crooke—Yes.

Senator CONROY—And is the new legislation going to make them pay tax?

Senator Coonan—Certainly the medical indemnity providers have to.

Senator CONROY—Are all DMFs now going to pay?

Ms Ingram—The new legislation will deem them effectively to be contracts of insurance. It is state law that taxes them, so they would be subject to state taxes.

Senator CONROY—Even though they have been deemed—if we can use that phrase—to do that?

Ms Ingram—Yes, they are required to come within the insurance contracts regime, so they would automatically be taxed.

Senator CONROY—In Treasury's view, most of the DMFs now are going to be paying tax?

Ms Ingram—Those that retain risk will be. Either they have to rearrange themselves or the contracts that they issue will have to be subject to state taxes.

Senator CONROY—The point Mr Murphy was making was that I am only talking about a very small area. Are those ones that I am talking about going to be paying tax?

Mr Johnston—Which ones are you talking about?

Senator CONROY—I am drawing on Mr Murphy's categorisation of my questions. Some of the DMFs will continue to carry risks themselves. If they do that they will be deemed under APRA. They will have to offer contracts of insurance and they will be paying taxes. Others which are not carrying contingent liabilities will have gone out into the marketplace and purchased insurance cover from another provider and will therefore be paying tax. So one way or another—

Senator CONROY—I am talking about things like state stamp duties and fire service levies. Other than maybe this tiny segment, are they all going to be paying that? Are you completely confident?

Ms Ingram—Yes, other than those which do not retain risk.

Senator CONROY—Is the government's approach consistent with overseas practice? Can Treasury confirm that DMFs are prohibited in the USA?

Mr Murphy—I think they are prohibited, but they are allowed in the UK.

Senator CONROY—Are you creating something for these remaining ones so others can move into the market because they are exempt from these taxes? Markets are like that—they sort of tend to flock to tax breaks. You do not predict it at the beginning, but they flock to tax breaks.

Ms Ingram—They are already exempt in the market now.

Senator CONROY—Yes, but you are dragging them in and leaving a few out.

Mr Murphy—One of the recommendations of the report is that information be collected by APRA on the operations of these things. If the government saw that this was an expanding market, you might choose then to regulate more. But at the present time it is such a niche market, providing a service which people probably cannot get elsewhere, that you pick up the ones you think you should and just leave the rats and mice. If, because of this advantage of not paying state taxes—

Senator CONROY—If the rats get too big we will poison them.

Mr Murphy—And that was the idea—to monitor this with proper collection of data.

Ms Ingram—You could say that DMFs which do not retain risk are serving a real purpose and need. We do not see them as evil as such and if more come into the market and are serving a need and do not retain risk the tax issue is another question altogether. As you know, the royal commissioner made some comments about taxation and said that it was inappropriate in terms of insurance contracts. This is consistent with that.

Senator CONROY—He was sufficiently conned by the insurance industry to stick that recommendation in, you are right. It is a tribute to the lobbying of the ICA; they convinced him. I will move on to DOFIs. Last week, as we know, the Treasurer released the results of the Potts review. In essence, the review states that DOFIs marketing insurance in Australia will be:

... exempt from prudential regulation in Australia if they are domiciled in a country APRA considers to have comparable prudential regulation, subject to a market significance threshold to prevent established authorised insurers moving offshore. DOFIs not meeting this test would be able to market insurance in Australia as an authorised insurer, through a branch or subsidiary.

Does the government intend that the legislation would give APRA some guidance about what a comparable prudential regime is and what factors it would include?

Ms Ingram—The exact nature of that is yet to be determined.

Senator CONROY—Is Treasury part of a working group with APRA on that issue?

Ms Ingram—There will be extensive consultation not only with the regulators APRA and ASIC but also with relevant interest groups.

Senator CONROY—Do you have any thoughts on what the factors would be?

Ms Ingram—We have not turned our minds to that yet.

Mr Murphy—It would be the normal standard prudential regulation. If you deal with these regulators, APRA is not going to give its endorsement to some company operating at a jurisdiction—

Senator CONROY—I could only get them to endorse three last night: the US, the UK and Canada.

Mr Murphy—They are going to be very circumspect.

Senator CONROY—I am just wondering if you had any thought.

Mr Murphy—You have these international committees of regulators and all this type of stuff. We would be very much guided by APRA on that. They are not going to put their name to something and risk their credibility.

Ms Ingram—There is an international standard being worked on. I would assume that APRA would very much focus on the outcomes of prudential regulation rather than whether it was exactly the same, because of course each jurisdiction has their own particular infrastructure. But it is very much looking at the outcome.

Mr Johnston—The jurisdictions that you mentioned then would account for the bulk of the insurance that has been written offshore anyway.

Senator CONROY—But they are not really the reasons we need to act.

Mr Johnston—No.

Senator CONROY—We are not actually seeking to capture them for that very reason—it is the other ones we are seeking to capture. Is this going to be a unilateral prudential recognition regime or will it be mutual?

Mr Murphy—I do not know how to sort this out. This is a discussion paper. APRA seems to think that the review has got it right. It is then a matter of designing the regulation and giving APRA the adequate powers and discretion to be able to reach the policy conclusions Ms Ingram has made.

Senator CONROY—Is anybody else going to reciprocate and allow our insurance companies to be unauthorised in their countries?

Mr Murphy—That gets more into access to markets arrangements. We are working all the time with countries on that—access for financial services and that type of thing.

Senator CONROY—So it is not part of this discussion; it is unilateral in that sense?

Mr Murphy—Yes, but I think it would come up. It is tit-for-tat type arrangements in some of these things.

Senator CONROY—The recommendation also contains a rider in the form of a market significance test: established insurers who move offshore will not be eligible for the exemption from provincial regulation. I understand that this provision is there to address the potential for regulatory arbitrage. Does this reflect a lack of faith in APRA in making the judgment? I struggled with them to understand why this is necessary. If they were only going to be moving to regimes that we approve of, why would we stop them?

Mr Murphy—The market significance threshold is to ensure that you are dealing with things that are really worth worrying about. That is my understanding of it.

Senator CONROY—If they are comparable regulatory regimes, there is no incentive for a company to shift jurisdictions.

Mr Crooke—The thinking behind this recommendation was that there might be incentives other than regulatory ones and, since this solution is aimed at what was hoped to be a fairly small problem in just part of the market, perhaps that should not be allowed to grow simply by virtue of this accommodation.

Senator CONROY—So if a subsidiary company is set up back in Canada for a Canadian insurer that is registered here and starts selling all its products for whatever these other reasons are, it would be able to do it. But if the parent company or the Australian company that was owned in Canada went back to Canada, they would not be exempt.

Mr Crooke—That is my understanding of that suggestion.

Mr Murphy—You are trying to tailor the regulation to where it is needed and not introduce prohibitions or regulatory—

Senator CONROY—But you are; you are putting a prohibition in place. That is what I am trying to understand. I do not understand why—unless you want give an account of your entire philosophy, Mr Murphy; Treasury's philosophy, I should say. I am trying to be pejorative when I say 'you'.

Mr Murphy—You start from a point of view that you want a vibrant insurance market. These direct offshore foreign insurers provide the service which is probably not being provided by the Australian domestic market. You want to ensure that, to the greatest extent possible, there is a level playing field between domestic insurers and foreign insurers. These recommendations are built on those general principles and what you are trying to do is enable these companies to operate in Australia, where they are already being regulated in their home jurisdiction—and we are the host—and so you kick them through the door. You know that if you seek to regulate these foreign insurers in some way that they can always set up a branch structure in Australia anyway. The word that Mr Crooke uses is 'accommodation', and I think that is right. We are trying to introduce an appropriate level of regulation and appropriate intensity without scaring the horses, so they pull out. They are actually providing—this is our understanding of the market—the service which, at the moment, domestic insurers are not.

Senator CONROY—Mr Crooke suggested that there may be other reasons why they may do it. We have got faith in APRA. We are reasserting our faith in APRA to make the correct judgments, therefore, we must be doing this to affect the behaviour of the companies that are currently here. What are the incentives that may make them move offshore, given the comparable prudential regulation? What sort of things are we concerned about?

Mr Murphy—What you do not want to do is bring in a regime where you discriminate against the domestic insurers in favour of the foreign insurers.

Senator CONROY—How would we be discriminating by doing what we are doing?

Mr Murphy—Well, *prima facie* you are.

Senator CONROY—How?

Mr Murphy—Because insurers operating in Australia have to provide all this information and be under the jurisdiction of APRA, whereas with the foreign insurers, if they are regulated appropriately in their home jurisdiction, you are exempting them.

Senator CONROY—So we are just trying to make sure that they do the paperwork?

Mr Murphy—No, more than that. It is the regulatory burden you are placing on companies and we do not want to reach a situation where we look after the exception to the rule so the main part providers of the market for insurance in Australia say, ‘well, we will get out of Australia.’ They may as well move up here and fall within this exception.

Senator CONROY—So a comparable prudentially regulated regime would have a lesser compliance burden?

Mr Murphy—No, it will not have a lesser compliance burden but it may be an attractive position to take.

Senator CONROY—I am asking you in what way is it more attractive, and you identified paperwork.

Mr Murphy—No, I do not even think I said the word ‘paperwork’.

Ms Ingram—There are tax issues as well.

Senator CONROY—I am asking. Tell me what the situation is.

Mr Johnston—There are cost issues. You could have different labour costs in different jurisdictions but there are also tax issues. One of the issues that the Australian insurance industry complains about on a regular basis is the level of state taxation.

Mr Murphy—Yes. It is a good point.

Senator CONROY—So you have got a situation where we will lock current players in but any new entrant that wants to be regulated overseas can take these tax advantages, as you describe them.

Mr Murphy—Yes.

Senator CONROY—It sounds like a recipe for someone to start setting up lots of subsidiaries in the new jurisdictions that are going to be approved and sell their business through there. It will not actually achieve the same end. Companies are pretty flexible about this. If they are going to be driven offshore because of tax

Ms Ingram—They can do that now.

Senator CONROY—That is what I am saying; they can do that now. So why do we need the test then? If they can do it now, why do we need this test?

Mr Murphy—Because we are regulating them now. Because HIH has said to us, you should step in here and have a look at this. So what we are doing is designing a regulatory regime whereby you are enabling this small end of the market to continue, subject to rules and conditions imposed by this government, and the mechanism through which these rules are imposed and operated on it is APRA. It is sort of trying to be fair to both insurers in Australia, and as Mr Johnston said—and that is part of the HIH report—there are complaints about the

taxes imposed by state governments on insurance companies, and that has been a very sensitive issue with the insurance industry—and they say people do not take out insurance because of the additional tax burdens.

Senator CONROY—Yes, I believe in the Easter bunny as well. I will move on. ASIC made a submission to the Potts inquiry stating that:

DOFIs carrying on a financial services business in Australia should be authorised by APRA under the Insurance Act.

The government, or Treasury, or whoever, Mr Potts, has rejected this.

Mr Murphy—But they have to have a financial services licence if they are conducting a financial service.

Mr Crooke—I think it is the same outcome.

Senator CONROY—No, ASIC are saying it should be authorised by APRA and ultimately Mr Potts, the government or the Treasury said no.

Mr Crooke—My understanding is that they would agree with the outcome, which brings this activity within the prudential net for the first time.

Mr Murphy—I am not sure of ASIC's position. I thought they were very happy with this.

Senator CONROY—Their review asked for something different, that is all.

Mr Johnston—The practical outcome is not all that dissimilar.

Mr Murphy—Yes. They put in a submission. That is why we have these reviews—because you get submissions from everyone, then you seek to take account of everyone's views and come up with the best result.

Senator CONROY—Mr Potts concedes that, under its recognition proposal, Australian creditors could be placed at a disadvantage compared to creditors in the insurer's home jurisdiction in the event of a wind-up. This is a small risk that Australian policyholders would need to accept. Does Treasury think that disclosure can address this issue?

Mr Murphy—The size of the market is so small. There is a trade-off there between enabling the market to continue and ensuring that there is equal treatment of both parties, whether they are in the host or the home jurisdiction. Things like that happen. It is a risk, but we think it is a very small risk.

Ms Ingram—The fact that they are prudentially regulated in an equivalent jurisdiction means that the likelihood, hopefully, of failure is very small. That is one of the main advantages.

Senator CONROY—Hopefully!

Ms Ingram—As you know, companies do fail.

Senator CONROY—We do not want that! I just want to move onto the financial sector levies. I would like to ask about the changes that will be implemented flowing from the report of the Review of Financial Sector Levies that was released last month. The review proposes and the government, I understand, has accepted that there be two elements to financial

levies—one based on the cost of supervision for an entity and another based on the potential system impact of the entity. Would you briefly outline the rationale for that.

Mr White—We put out the report with the senator's press release, which basically went through the rationale for that. Part of it was because we went and consulted with industry and a number of industry players raised the idea that not just cost should be involved in the setting of levies but also there should be this thing about the risk on a systemic basis and about vertical equity between people. We took that into consideration and decided that it was a good idea. So the major part will still be cost based, but a small part—between 10 per cent and 30 per cent—of APRA's total budget will be based on this systemic/vertical equity levy.

Senator CONROY—What impact does Treasury expect this new regime to have on large and small entities—for example, how much will large ADIs pay compared to now?

Mr White—We have not done any detailed work on that yet.

Senator CONROY—You must have done some work.

Mr White—We did do some work and we put it in at the end of the report, in attachment D. The biggest entities, we accept, will pay quite a bit more than they currently do. We said words to the effect that about half of their levies might be made up of this new systemic component. Because it is still based on a sectoral model where banks, insurers and superannuation funds are done differently, it could be different between sectors. We will also have to review the actual maximum levies that are going to be charged for sectors as well. So all of those things will be taken into account. We are going to go back and consult with industry again in the next few months about the possible options and what this might mean for them. But it does say that we expect a substantial increase in levies for at least the largest players.

Senator CONROY—Under the new framework, will the fees paid by small institutions fall in absolute terms or will they rise because APRA's budget has increased?

Mr White—The part where the smallest entities were dealt with was the one area where the government disagreed with the recommendations of the report as outlined in the press release. It has now said that changes in the framework of the levies review will not result in increases in the amounts paid by the smallest institutions.

Senator CONROY—Under the new framework it is stated that the levy based on the potential system impact will make up between 10 per cent and 30 per cent of APRA's funding, which I think you mentioned. How will the government determine the contribution made by this element of the levy within this range? Do we have any further thinking on that?

Mr White—We did a little bit of thinking in the process. Some of APRA's activities can be seen as aimed essentially at systemic type issues, and so as part of the consultation process we will go through and explain what parts of APRA's budget we think would be appropriate to go into that. That is our starting point thinking at the moment, but it could progress.

Senator CONROY—Can Treasury confirm that the statutory upper limit for the cost based component of the levy will rise to \$1.5 million in 2004-05?

Mr White—No, it will not. In the press release it said that these things will take place from 2005-06. So it will not be until that year.

Senator CONROY—The press release said 2004-05.

Mr White—No.

Senator CONROY—I understand that there has been a change. I was just interested in when it was.

Mr White—On the front page of the press release it says that they will be implemented for 2005-06, and that is supposed to be the answer. It requires legislative change, which is not going to make it in time for that.

Senator CONROY—Have you any thoughts on when the bill will be introduced?

Mr White—It was scheduled to be introduced in the winter sittings.

Senator CONROY—It requires legislative change?

Mr White—It does require legislative change. At the back of the report there were a list of things that would require legislative change to the levy act.

Senator CONROY—I have one more bank of questions to do with maximum priority. Does that ring a bell?

Mr Murphy—Yes.

Senator CONROY—What work has Treasury done to implement the government's commitment to introduce maximum priority?

Mr Murphy—Are you interested in redundancy payments, GEERS and those types of issues?

Senator CONROY—The government made a commitment in 2001 that maximum priority will place certain employee entitlements—wages, holiday and sick leave—at the front of the queue of creditors when a business became insolvent.

Mr Rawstron—Along with the department of small business, we have been undertaking consultations.

Senator CONROY—For three years?

Mr Rawstron—Not for three years, but we have consulted on two separate occasions with different stakeholders about the implications of introducing a maximum priority for employee entitlements into the Corporations Law.

Senator CONROY—I thought it was a government announcement. When are they going to do it?

Mr Rawstron—The first step is to actually talk to the stakeholders and to evaluate how you would go about introducing such a policy measure, what the implications are of that measure and the options for looking at that measure. At the moment we are waiting upon the outcome of the parliamentary joint committee on insolvency to see whether there is any commentary on maximum employee.

Senator CONROY—So you are not doing anything at the moment?

Mr Rawstron—Work has been taking place in the department of small business looking in the context of the GEER scheme. We are waiting with them for the outcome of the PJC report on insolvency.

Senator CONROY—When was the last time Treasury did anything?

Mr Brine—We have been monitoring the submissions that have been received by the PJC. Obviously its terms of reference include an examination of the rights of creditors and the treatment of employee entitlements.

Senator CONROY—I am on the committee.

Mr Brine—They have received a number of representations about this issue.

Senator CONROY—I know what I am doing. I am just wondering what you are doing.

Mr Brine—We have been analysing the results of those consultations, particularly any adverse implications of the proposal and how we would manage those. We have been reporting to ministers on those issues. We expect the government will make a decision on the proposal in light of these consultations and the PJC review.

Senator CONROY—In this term of government, do you think?

Mr Brine—I think that will depend largely on when the review is released.

Senator CONROY—I am hoping it will be soon. I think the committee has almost finalised its draft. When were the last consultations? Humour me: when was the first and then when was the last?

Mr Brine—Treasury received a series of submissions in late 2002. I am not sure of the date on the PJC.

Senator CONROY—I am sorry, but I am not going to let you count the work that we generated in the parliament as the Treasury.

Mr Rawstron—The first round of consultations occurred in late 2002 and there was a second round of consultations in 2003.

Senator CONROY—So it was late 2002 for the first round of consultations and then you received some submissions?

Mr Rawstron—That is right.

Senator CONROY—Then you have gone back to them in 2003?

Mr Rawstron—I could not give you the exact date; from memory—

Senator CONROY—I am prepared to take a month.

Mr Rawstron—I think from memory it was the first half of 2003, but I can take that question on notice and give you a more accurate answer.

Senator Coonan—In the meantime of course we have got our GEERS going so it is not as if we have been sitting on our hands. And no other government since Federation has established such a comprehensive scheme to assist employees in the unfortunate situation.

Senator CONROY—Thank goodness for Stan Howard; he has saved the workers of the country.

Senator Coonan—It is a very good scheme.

Senator CONROY—At some stage in early 2003 was the last time you talked to anyone about it?

Mr Rawstron—I would not say early 2003. I said the first half of 2003 and then it was a matter of considering—

Senator CONROY—It is about 12 months ago now, given we are now in the second half of 2004.

Mr Brine—Perhaps I should note that our insolvency expert has been working with the PJC supporting those.

Senator CONROY—It is our fault, we stole him—is that it? We took your lunch!

Mr Brine—I think Treasury sees the PJC review is an important review and I think that is demonstrated by the fact that our senior staff—

Senator CONROY—Even Mr Murphy could not keep a straight face but you did very well.

Mr Murphy—No, that is not so. I must commend Mr Brine's approach.

Senator CONROY—I commend his straight face.

Mr Brine—support that and we look forward to seeing what the recommendation is.

Mr Murphy—We take a lot of notice and the reports of the various Senate committees are always factored into the work that—

Senator CONROY—You have rejected every recommendation I have made in eight years.

Mr Murphy—No, that is not right. It is a very proper process.

Senator CONROY—I promise you, Mr Murphy, that I do not take it personally. Has the Treasury prepared any cabinet material for the implementation of maximum priority in three years since the announcement was made?

Senator Coonan—I can only talk about the time I have been involved, but GEERS is up and running and addresses most of the issues. We await with bated breath how the PJC is actually going to suggest some practical ways to do it.

Senator CONROY—I have got renewed enthusiasm and vigour for the committee that I have been on for the last six years.

Mr Murphy—It is a complex little issue and it is a very important issue for the people who are made redundant. I think that is reflected in the fact that the government set up GEERS, and various people have tried and we have asked for submissions on how we can improve it and how we can formalise it. And really, to be fair, no-one can come up with a better approach.

Senator CONROY—It is nearly three years since the government promised it and we have not had a single cabinet submission.

Mr Murphy—We have not said that.

Senator CONROY—I asked: has Treasury prepared any cabinet material for the implementation of maximum priority?

Mr Murphy—We cannot answer that, but we have not said there have not been any cabinet submissions.

Senator CONROY—On what date did that cabinet submission material get prepared? I am not asking you what is in the advice; I am asking you what date?

Mr Murphy—No, I am not prepared to discuss that but I am just saying that there has been a lot of work done on this issue—

Senator CONROY—I am entitled to ask about a date. It does not go to policy advice; it is a factual question, Mr Murphy.

Mr Murphy—A factual question—well, there have been submissions.

Senator CONROY—There have been submissions?

Mr Murphy—I cannot recollect. I know there has been a lot of work done about it.

Senator CONROY—What date?

Mr Murphy—I would not know.

Senator CONROY—You could say a time by just saying there had been and then I will leave you alone.

Senator Coonan—The timing of cabinet submissions is not something that the officials are really at liberty to comment on.

Senator CONROY—The fact that whether or not one has been prepared is a question I am entitled to ask.

Senator Coonan—I do not think so. What goes to cabinet is not a matter for the committee.

Senator CONROY—I am not asking what. I am asking whether anything has gone forward. I am not asking for the content.

Senator Coonan—We just talked about GEERS.

Mr Murphy—With GEERS there has been considerable work done in a number of agencies on this issue.

Senator CONROY—GEERS is not what I am asking about; I am asking about all the things that were identified by the government in maximum priority.

Mr Murphy—On maximum priority a lot of work has been done in the last couple of years on how one could implement the government's commitment to ensure that employees made redundant are treated fairly. A lot of work has been done.

Senator CONROY—I am not questioning that. I am asking whether there has been so much work done that we have generated a cabinet sub out of it.

Mr Murphy—If you have been around long enough you will know that we do not do work for no reason. The decision makers are cabinet. Is that enough?

Senator CONROY—Thanks for the politics 101.

Mr Murphy—Well, that is it. I cannot say when the date is.

Senator CONROY—With regard to consultations, what were business's main concerns about maximum priority for employee entitlements?

Mr Murphy—Business's main concerns were that it would increase the cost of lending. That was the main concern.

Senator CONROY—I have heard that myself. I just wanted to make sure that what you are hearing and what I am hearing are the same thing.

Mr Murphy—That is the main one. It is very hard to quantify it when business says things like that.

Senator CONROY—Did you have any consultations with the trade union movement about this?

Mr Murphy—Yes, I think so.

Senator CONROY—Were they supportive of the proposal?

Mr Rawstron—I understand that they had some concerns about the implications of that proposal as against the existing GEERS.

Mr Murphy—The insolvency laws are quite settled and complex.

Senator Coonan—It also involves third parties.

Mr Murphy—It involves third parties, and you are dealing with rights of creditors. You have to be careful before you intervene to change the arrangements.

Senator CONROY—I understand that it is a very complex issue. Is it more complex than a raft of other things that Treasury works on that do not take three years?

Mr Murphy—We are not the only ones working on it.

Senator CONROY—Are you close to an announcement on it?

Senator Coonan—It is certainly not my portfolio area, but my understanding is that very extensive work has been done on it and a great deal of—

Senator CONROY—I will even take it as an election policy announcement.

Senator Coonan—You might take it, but I am not giving it.

Senator CONROY—You are too hard on me, Minister.

Mr Murphy—The point should be made as well that the parliamentary joint committee has not yet tabled its report, so the ball is in your court.

Senator CONROY—I have never known the cabinet to hang on Senator Chapman's reports.

Senator Coonan—Senator Conroy, that is an invitation for the PJC to hurry up. What is holding up the PJC?

Senator CONROY—I promise you I am fired up, Mr Murphy. In fact I will invite you to the next meeting so that we can chat about it, if you are not careful.

Mr Murphy—That is all right. If you can give me the answers, I will be very happy to attend.

Senator CONROY—I will be hoping that you will give me the answers; that is why we pay you.

Mr Murphy—Me too.

Senator CONROY—Is it Treasury's view that the maximum priority could lead to higher interest rates for some businesses? Do you agree with that concern?

Mr Murphy—That is very hard to say.

Senator CONROY—They are asserting it strongly, so I am asking for your opinion. Are they gilding the lily?

Mr Murphy—It is a while since we have spoken directly to business on this, but I know that certain areas of business say that and certain areas of business say that it will have negligible effect. It is hard to get a consistent story on that and it is hard to quantify it.

Senator CONROY—Would large businesses with the longest serving work forces who therefore would have greater entitlements be more or less affected by maximum priority?

Mr Murphy—With longer serving work forces they would probably have better arrangements and better capacity to pay.

Senator Coonan—I think that small business would perhaps be more greatly impacted. This is just my totally untutored opinion, but certainly I think they would have less capacity to meet it.

Mr Murphy—The flaw in the whole thing is that if you just got people to take their leave you would not have these outstanding liabilities, but small business argue that they run on such a tight margin that people do not take their leave entitlements. You would not even have this problem if we had a culture whereby people took what was entitled to them as they accrued it.

Senator CONROY—When was GEERS introduced—when was it up and running by? Was it before or after the policy announcement to do with maximum priority?

Mr Murphy—The government made a commitment to do something in February 2002. They also made a statement in the 2001 election. I am just trying to check, I am not sure.

Senator CONROY—When did Stan stuff up at wherever it was?

Senator Coonan—That has absolutely no relevance to the GEERS scheme, Senator Conroy.

Senator CONROY—That is right, because you paid them in full. I thought it was around that time.

Mr Murphy—We can get you a date. GEERS was established by another department, that is why it does not really come quickly to us.

Senator CONROY—Sure, I appreciate that. My understanding was that it was up and running at the time the government made its commitment in relation to maximum priorities. I could be wrong and I am happy to be corrected.

Mr Murphy—GEERS was set up, and the government has taken this very seriously and it sees it as a sensitive issue.

Senator CONROY—That suggests to me that the GEERS issue is completely separate because it was already done?

Mr Murphy—Yes, but it covers the same area and my understanding of it is whether you replace GEERS with a more formal arrangement. That is my understanding of it. In terms of public policy, it is an outstanding issue which needs to be worked on.

Senator CONROY—Let me read you an extract from the 2001 policy document, ‘Choice and reward in a changing workplace’—it is the government’s document so Senator Coonan should be familiar with it. It reads:

To secure the entitlements of all Australian workers, the Coalition will give unpaid employee entitlements (wages, annual and long service leave and pay in lieu of notice) priority over secured creditors (such as banks and finance companies) when a business becomes insolvent. The Coalition will balance the impact on business against the importance of employers complying with their legal and moral obligation to pay the entitlements of their employees. An exemption for small business from this proposal will be considered to eliminate any impact on small business lending.

That was a 2001 policy document.

Mr Murphy—There is a commitment to do it, we have GEERS, we have a PJC hearing going on. As a matter of public policy there should be something there; we all agree on that.

Senator CONROY—Minister, are we close? I just read your policy commitment to the Australian public which won support at the last election.

Senator Coonan—What I would say is that, as you would know, a lot of witnesses to the PJC were highly critical of this proposal, and that has been certainly identified, together with the difficulty and complexity in the consultations, as I understand it. So whilst one always tries to implement anything you say you will do, if there is some—

Senator CONROY—Is this a non-core promise?

Senator Coonan—If there are some serious reasons where it would be difficult to do so, I am sure an announcement would be made in due course if there was any reason for it not to proceed. That is a premature and unsupported conclusion. We want to see what you say in your committee and I think that would be very valuable.

Senator CONROY—I am touched.

Mr Murphy—The other thing is that there are other actions in this area. You would see with the Mitsubishi plant closure—

Senator CONROY—Senator Brandis, you are a member of the Corps committee, aren’t you?

Mr Murphy—the state government is involved, the federal government is backing them up.

Senator CONROY—Corporations and financial services?

CHAIR—Yes.

Senator CONROY—I thought you were. The minister is hanging off our every word on insolvency.

CHAIR—Senator Conroy, I have just walked into the room, I am trying to catch up with the dialogue—

Senator CONROY—I am trying to get you up to speed.

CHAIR—Just keep going.

Senator CONROY—I want you to know that you are loved by someone. I promise you I will be phoning Senator Chapman as soon as I get out of this hearing to tell him that you are hanging off our words.

Mr Murphy—Yes, good.

Senator CONROY—The good news is that is all the questions I have on that issue.

ACTING CHAIR (Senator Stephens)—Mr Murphy, Senator Murray has been overtaken by other events and has indicated that he will not be attending this evening. I wanted to let you know that we will alert him to the *Hansard* record of your comments.

Mr Murphy—If he wants any information about that he could contact the Treasurer's office. I think they would be very happy to give him more information about that issue.

ACTING CHAIR—In terms of output 3.1.3, Competition and consumer policy advice, we have some questions about product safety.

Senator KIRK—I have some questions in relation to the consumer safety unit. Are the relevant officers here?

Mr Murphy—Yes.

Senator KIRK—Could you could provide the committee with information on staff numbers and levels for the period of 1996 through to 2004.

Ms Vroombout—We do not have those numbers to hand, but we can take the question on notice and provide them to you. The point I would make, though, is that the consumer safety issues span a number of units within the Treasury, not just the consumer safety unit. We also have a consumer information unit, and there is a lot of interplay between those two units. Where we have consumer education campaigns on safety issues, they get run through the consumer information unit. We also have a unit that deals with policy issues associated with consumer safety issues. So just looking at that one unit does not provide a full picture of resources devoted to those sorts of issues.

Senator KIRK—How many units are there altogether?

Ms Vroombout—There are three, but it is only portions of the other two that would deal with consumer safety issues.

Senator KIRK—So they are the consumer safety unit—

Ms Vroombout—Consumer information unit and consumer policy framework unit.

Senator KIRK—You say you cannot provide us with the figures going back to 1996, but you must be able to give us an idea as to what the current figures are, at least the most recent ones for 2003-04.

Mr Wunsch—Our estimate for 2003-04 is 10 ASL on average for the year and that is supplemented by the other people.

Senator KIRK—I am sorry, that is supplemented by the other—

Mr Wunsch—It includes elements of those other units.

Senator KIRK—So the 10 ASL is across all three units or just your unit?

Mr Wunsch—That is about the figure in Treasury at the moment.

Ms Vroombout—I guess the other point to make is that staff levels can vary significantly over the year as we lose people, and we gain people through recruitment processes.

Senator KIRK—What sort of staff movement have you had in the last 12 months?

Mr Murphy—Just the normal as people come and go. It usually—

Senator KIRK—How does that impact upon the figure of 10 ASL?

Mr Murphy—It is always around that figure. We would have that many people working on that. The other thing to take account of is that if there is priority we redeploy the resources from the rest of the group. The group is quite substantial, so we have got the capacity to redeploy people to meet emerging priorities.

Senator KIRK—How many persons would be employed exclusively within the consumer safety unit?

Mr Wunsch—You mean over the year on average?

Senator KIRK—Yes, over the year, and how it compares with the previous six-odd years—I would like you to take this on notice if necessary. I am just trying to get an idea of what movement there has been in this area over the last couple of years.

Mr Wunsch—I think I can answer that by saying we had eight people in the unit till about March this year. We have lost a couple of people, but we have got some contractors coming in, and we are aiming to maintain it at about that level.

Senator KIRK—You say that you lost a few people—so are you down to five or six?

Mr Wunsch—We have contractors that come and go to support. We have six full-time staff at the moment, but we have a contractor coming back in the next couple of weeks and another one that we hope to get for the next couple of weeks as well, so that will bring us back to our normal average.

Senator KIRK—You say that you cannot give me the exact figures and you need to take it on notice. There are six full-time staff now. How would you describe the numbers in, say, the last four to five years? Has there been a decreasing number or an increasing number?

Mr Murphy—It has been around the same size, hasn't it?

Mr Wunsch—Yes. For the time I have been in Treasury it has been around that number.

Senator KIRK—So when I get the exact figures that you have taken on notice, I will see that the number has been fairly stable at around six?

Mr Wunsch—It is about that—around eight would be the average.

Ms Vroombout—It is probably closer to eight, which we would say is our more normal staffing pattern for the unit.

Senator KIRK—So there has not been a large decrease in the numbers?

Mr Murphy—It is one thing to talk about staff numbers but it is the output that matters, the role of the Commonwealth in consumer safety and its interaction with the state governments, which also provide resources to those areas. So I think that, realistically, if you want staffing numbers—and we would be happy to give them to you—I think you have to see the functions and responsibilities of Treasury in relation to consumer safety, plus you have to see the results that are achieved with the staffing to get the proper picture. It is not just a matter of numbers.

Senator KIRK—Sure. I would like to move now to your product. Can you advise the committee what product safety policy work the units have been involved in in the last 12 months?

Mr Murphy—We have had education strategies and awareness materials aimed at child safety with regard to baby walkers, cots, blind cords and all nursery products. We have had this debate recently about baby bath seats. Those are the types of things.

Mr Wunsch—Consumer safety is doing the new tobacco labelling warning proposals. A fair amount of our resources have been devoted to that in recent months.

Ms Vroombout—There have been issues to do with updating our sunglasses standard and we have been working on vehicle jack safety issues. There have been a range of initiatives that the unit has looked at.

Senator KIRK—Are you able to provide the committee with a list of those policy papers that you have prepared?

Ms Vroombout—I am not sure that we would call them policy papers.

Senator KIRK—What would you describe them as?

Ms Vroombout—A lot of them have ended up in regulations—that is, in the revised safety standards under the Trade Practices Act. What we could provide you with is a list of the various activities that the unit has been involved with.

Senator KIRK—That would be good.

Ms Vroombout—What time period were you interested in?

Senator KIRK—Just recently—the last 12-month period would be okay.

Ms Vroombout—I guess the other issue, which Mr Hill can talk about, is the broader product safety framework and the policy work that has been going on in that area.

Mr Hill—One piece of work that you may well be interested in is something that was announced by the Parliamentary Secretary to the Treasurer just a fortnight ago—I think on 25 May. It is a paper that we are doing in conjunction with the states and territories. It is under

the ministerial council framework and it is looking at reform of Australia's product safety system. That work is in draft at the moment. It was circulated to the states and territories only days ago. We are looking to get feedback on that paper very quickly and I think it is fair to say that we are very confident that we will have that publicly released by the end of June. That will definitely be an interesting document to look over.

Senator KIRK—You say that you have circulated it to the states. How much time have you given them to provide their comments if you are hoping to have the final product out by the end of June? That surely does not give them much time.

Mr Hill—We are seeking their indulgence in that area. We have actually been working on that paper with the states themselves. That was commissioned in November last year in the SCOCA—the Standing Committee on Community Affairs. We formed a reference group to prepare that paper and that included a number of jurisdictions. That paper has been in development for some six months or so with that subset of states and territories. We discussed the paper last Friday in Melbourne at a SCOCA meeting. There was, I think, agreement that this was something that we needed to expedite.

Senator KIRK—So there has been ongoing discussion and consultation with the states during the process?

Mr Hill—Yes. Our hope would be that we can get the paper into the public domain very quickly and the states agree with us on that. We are looking to engage in a consultation process that will take us through to the ministerial council meeting in August, where ministers might be able to reflect in more detail on some of the issues that are coming through in the consultation process.

Senator KIRK—The paper that you are describing to us, has that been run past the minister or the parliamentary secretaries yet?

Mr Hill—I have briefed on a number of occasions the parliamentary secretary on the process for the development of the paper.

Senator KIRK—So they have been briefed. Have they endorsed the work thus far, the things that are contained therein?

Mr Hill—The paper has been drafted specifically as a public consultation exercise. It does not necessarily reflect the views, and we made this quite clear to the states on Friday, of any particular jurisdiction. We were very encouraged by the support we received from the parliamentary secretary to the Treasurer, in presenting the paper and getting it out there as an issues document. He will be looking to reflect on those issues further as we approach that August discussion with the ministers.

Senator KIRK—They have his endorsement thus far, yet you have not finalised the position?

Mr Hill—Yes. I think he made that clear in his press release on 25 May.

Ms Vroombout—I think the thing to say is that the discussion document does not make any particular recommendation. It identifies a range of options available in the area, but does not recommend any particular option, so it is up for public consultation on the range of options that are in the paper.

Senator KIRK—I understand. That is the policy work. What proactive work has the department or unit been involved in, in relation to product safety? I am thinking of such things as monitoring international developments, examining coroners' reports, that sort of proactive work.

Mr Wunsch—We do that as part of our everyday work virtually. For example, we have access to the national coronial database, and we have participated in the development of that over the last four years, and we do research on that. A number of my staff has direct access to that, research access, so we use that frequently. We do have access to the US Product Safety Commission's database and, of course, you would appreciate that often the product markets are fairly similar and we find that entry data on that database is very useful for priority setting and that sort of thing. We monitor what the US Consumer Product Safety Commission is doing across the range of consumer product safety, child safety in particular, from time to time. We also monitor a lot of those state injury collection systems. As you would appreciate, Senator, Queensland operates one. Victoria operates one. We are fairly well networked with coroner's offices. They let us know if there are any issues that they think we should be looking at. We rely on market intelligence, which is a combination of the states, the ACCC and ourselves to identify priorities, that sort of thing. We monitor children's products in the market, to the extent we can, and that helps to turn our products. We have 27 mandatory standards at the moment, which we would be happy to give you a list of if you needed them. They require monitoring and upgrading to make sure that they are up to date with market developments. The most recent examples of those are: we introduced a baby walker standard in 2002, and a bunk bed standard in late 2002. More recently we upgraded the children's toy safety standard, which relates to small parts for children up to 36 months. There are those sorts of examples.

Senator KIRK—From what you are telling me, there is an awful lot of monitoring going on and information exchange between yourselves and the United States.

Mr Wunsch—That is correct. We meet, for example, on a regular face-to-face basis at least twice a year and my counterparts in the states have a telephone hook-up on a monthly basis. In fact, we had it this afternoon at 2 o'clock.

Senator KIRK—You said that there are 27 standards currently.

Mr Wunsch—Yes.

Senator KIRK—How do you go about making the decision that there needs to be a mandatory standard? Does it follow from the monitoring and the information exchange that you have described?

Mr Wunsch—Yes, historically that is correct. It is usually based on a combination of factors: injury data, consumer complaints to some extent, proactive market intelligence where the states have inspectors out there in the marketplace—so does the ACC for that matter—reports from competitors, a range of mechanisms to inform listeners about what the priorities ought to be. We have links with research organisations who are examining that data themselves and giving us reports on what the priorities ought to be, monitoring overseas initiatives and developments. It is a combination of all those things.

Senator KIRK—From what you are saying, most of the information that comes across your table is that which has been discovered or investigated by other bodies and you are really just collecting the data. Do you do very much proactive work yourself?

Mr Wunsch—To some extent. However, when you look at those 27 standards you will see that they are in key child safety areas. We have standards where there have not been deaths but you try to prevent injuries, even what some people would regard as relatively minor injuries. For example, our standard on exercise cycles was to prevent finger and hand injuries where child had accessed the moving parts of exercise cycles.

Senator KIRK—Are there any mandatory standards on baby bath seats, cradles?

Mr Wunsch—We have been looking at that over the last few months. We have access to coroners' reports and recommendations, as you would appreciate. We monitor what they did in the US and they took the line of a voluntary standard plus consumer awareness campaign. That is still the case, as I understand it. We were looking at that option but we also have a draft regulation impact statement looking at the justification for regulation in that area.

Senator KIRK—I understand that Mr Cameron put out a press release on 26 May saying that there is going to be a consumer campaign alerting parents to remain with the child when bathing at all times, including when a bath seat and support is utilised, and that there was a suggestion that there is a mandatory standard being developed, which is what you have alluded to. How long is it going to take until there is one that has been developed? What has been the process of consideration of this mandatory standard?

Mr Wunsch—Taking account of that unfortunate death in New South Wales, we have been consulting with our counterparts in the states. New South Wales has already decided to go down the regulatory path. We will have to ensure that what we do is consistent with that so we have a nationally uniform consistent approach. We need to consult with suppliers because a national standard has broader implications than a New South Wales standard. My expectation is that we can justify at least a warning standard—a standard requires warnings. The other issue is should the standard also have some specifications about stability or otherwise. That is under investigation at the moment. We did make an undertaking to the parliamentary secretary that we would fast track that process to the extent we could and I think he indicated that we might be able to complete that process in about two months.

Senator KIRK—In how long?

Mr Wunsch—In about two months.

Ms Vroombout—That would be the release of a draft regulation impact statement in two months which would then be consulted on. So it may be some further time down the track before we actually had a mandatory standard in place because we would have to go through that consultation process.

Senator KIRK—How long does that consultation process normally take?

Mr Wunsch—It can vary. I think in this case it seems that the industry or suppliers are relatively supportive of a mandatory standard in any event and they say they are largely complying with what New South Wales has proposed to come into effect in a few months

time. We do not anticipate any market resistance to it, we just have to make sure that it is an appropriate outcome for the market.

Senator KIRK—So it is going to be at least another, what, six months, realistically, or longer? Twelve months?

Mr Wunsch—Provided there is agreement among the stakeholders we would be aiming to do it as soon as we could. It could be as short as three or four months.

Ms Vroombout—I would say that if there is agreement on all sides then it would be less than six months.

Senator KIRK—That is baby bath seats. What about other baby products such as baby walkers, portable cots and prams?

Ms Vroombout—There is a mandatory standard already on baby walkers and on cots, but not on portable cots.

Mr Wunsch—There is none on portable cots. Household cots are covered by a mandatory standard, and so are baby walkers and bunk beds. I have a list of all those things in front of me, if you would like it. We also have a mandatory standard on child restraints in motor vehicles; toys for children under three, as I mentioned; children's nightclothes, addressing the flammability issue; and flotation toys and swimming aids. At a broader level we certainly have a mandatory standard on disposable cigarette lighters to make sure they are child resistant; on beanbags to address the choking hazard from the pellets; on exercise cycles, as I mentioned; on bicycle helmets; on bicycles themselves; and on children's sunglasses. There are mandatory standards in all those areas. You will see that a lot of those 27 standards address infant and child products.

Senator KIRK—If you could provide the committee with that list it would be helpful. Has there been any proposal or investigation as to whether or not there ought to be a mandatory standard in relation to portable cots?

Mr Wunsch—There has been over the years. The general conclusion reached was that those on the market were safe, or relatively safe, that the suppliers were meeting the Australian standard on a voluntary basis and that it was therefore a bit difficult to justify regulating in that area.

Ms Vroombout—The other point to make is that, while there are no mandatory standards for many of these products, there are voluntary standards produced by Standards Australia and, as John says, for many of these products there is a high level of compliance with those voluntary standards.

Senator KIRK—Have you received any advice or opinions from product or child safety experts about the need for mandatory safety standards with regard to bath seats, cradles and portable cots?

Mr Wunsch—Not directly.

Senator KIRK—You have not sought formal advice—is that what you are saying?

Mr Wunsch—There has been advice to various states, and that is shared with us. New South Wales has its own product safety committee, which recommended the mandatory

standard that they are moving towards. We share all that information and take it into account. That has put us in the position we are in at the moment, where we were working towards a likely standard in that area when this media attention began last week.

Senator KIRK—Once you have the advice, do you then pass it on to the parliamentary secretary? Where does the advice go once you have received it?

Mr Wunsch—We brief him as required and fairly regularly. On this matter, yes, he had been briefed on where we are with baby bath seats, and I think he included that in his media release last week.

Senator KIRK—In his media release he speaks of the consumer campaign alerting parents to remain with the child when bathing et cetera. Where is the money for that consumer campaign coming from?

Ms Vroombout—There is a consumer information program within the Treasury portfolio which is funded for \$500,000 a year, expiring in the middle of next year. There is funding in that program to support the baby bath seat campaign.

Senator KIRK—How much of that \$500,000 will be devoted to this campaign?

Ms Vroombout—We have not done a specific costing on the baby bath seat campaign yet, but I can give you an example. Last year there was a blind cord safety campaign that ran to around \$40,000.

Senator KIRK—When is the campaign going to begin, if you have not done any costing or budgeting for it? When are you proposing to start the campaign and when are you proposing to—

Ms Vroombout—We have provided advice to the parliamentary secretary on the scope of the campaign, and we have yet to receive his views on it.

Senator KIRK—You are still waiting to hear from the parliamentary secretary?

Ms Vroombout—Yes. That was provided at the end of last week.

Senator KIRK—It really now is in his court.

Ms Vroombout—We would anticipate kicking that off fairly quickly, somewhere around July we would hope, for the release of that campaign.

Senator KIRK—What happens in the meantime? This is quite a hot issue, isn't it? There has been a death.

Ms Vroombout—There are already a range of child safety publications that are produced by the Consumer Information Unit within Treasury, including a child safety booklet which covers issues such as baby bath seats. So there is already material out in the marketplace on those issues. The campaign would just be reinforcing and emphasising the messages that are already out there.

Senator KIRK—The very fact that you are having a consumer campaign suggests that there is not a great deal of knowledge out there in the community and that is the reason why you need to spread the word, so to speak. But you say that probably will not happen until July, or thereabouts.

Ms Vroombout—That is correct.

Senator KIRK—I just have a couple more questions. I wondered whether or not you have investigated establishing a mandatory reporting system so that manufacturers and retailers are actually required to report complaints or problems with any consumer products. Have you looked into that?

Mr Wunsch—That proposal was in our discussion paper back in 2000, and it did not get a lot of support at the time, I should say.

Senator KIRK—Support from retailers and manufacturers?

Mr Wunsch—Yes, I guess business. There was some support from consumer groups. Again, the US, as you appreciate, has a system like that. It is very resource intensive. I understand they devote something like 30 per cent of their entire staff to that sort of function—analysing, assessing and responding to these early reporting mechanisms.

Senator KIRK—So if that were to be introduced here in your department, then you would be looking at the same sort of percentage of staff being allocated to this function?

Mr Wunsch—It is hard to answer. Basically, if a system like that did come in, I guess it would be a shared state and Commonwealth assessment activity.

Senator KIRK—Are you saying the regulation would be shared between the states and the Commonwealth?

Mr Wunsch—Possibly but, again, that proposal has been under review since that time. It has not been filed away and forgotten about. It is still an active issue.

Senator KIRK—You say it is ‘active’. If it is still active, what is happening with it? It was 2000, and it is four years later. What active work are you doing to progress this?

Mr Wunsch—Policy issues like that are kept under review. It has been kept under review on an on-going basis. It is a bit difficult to add to that, other than to say—

Senator KIRK—So not much?

Mr Wunsch—There will be a review paper coming out shortly.

Senator KIRK—Another review paper on the same matter?

Ms Vroombout—No. The review paper we spoke of earlier that Mr Hill mentioned.

Mr Hill—I can say that that is an issue that we have explored a little in that issues paper, and that will be given attention during the review process as an issue.

Senator KIRK—In that review paper, is there any consideration of how much an early warning system would cost?

Mr Hill—No.

Senator KIRK—So you did not canvass the issue of cost at all?

Mr Hill—We have canvassed issues in early warning rather than the details of implementing those early warning systems.

Senator KIRK—So there is nothing in the paper that would perhaps lead to a recommendation that there be an early warning system?

Mr Hill—The recommendations might well be leading to decisions taken in relation to those systems, but it is not laying out the process by which costings can very quickly be determined. Implementing the recommendations that might ultimately come from a review will need to be discussed between the Commonwealth and the states and territories, and this is one of the areas.

Senator KIRK—It is going to be a fair way down the track, if at all.

Mr Hill—I do not think it will be years away. That is just my personal view.

Senator KIRK—So it is not years away?

Mr Hill—I cannot imagine it is years away. We have got a fast track process here. We have got MCCA ministers looking at this issue of reviewing the framework in August this year. That is pretty soon.

Senator KIRK—The reform of the regulation of product safety—is that what is contained in the paper you are referring to, Mr Hill?

Mr Hill—We have looked at a number of issues in the reform process; that is correct.

Senator KIRK—And that is one of them?

Mr Hill—Yes.

Senator KIRK—So we are really looking at August before we see anything in the public domain?

Mr Hill—No. I would be hopeful that we will have something in the public domain—and we are relying heavily on the cooperation of our state and territory partners here—by the end of June, which is only three weeks away. That will be a discussion of these issues, so that we can have the debate about reforming the Australian safety framework and we can have informed decision making on that basis.

Senator KIRK—Could you provide the committee with a copy of whatever becomes available in June, when it is available?

Mr Hill—Absolutely.

Senator KIRK—Thank you. That is all the questions I have, Madam Chair.

Senator STEPHENS—I have one more issue before we break. Mr Wunsch, you mentioned the cigarette advertising campaign. I do not know if you are aware but opposition senators are being barraged with email messages about this issue at the moment, so I just want to ask you a few questions about that whole process. You did say that you are actually running the consultative process on the new labelling.

Mr Wunsch—Yes, my unit is doing that.

Senator STEPHENS—I have in front of me the article from the *Financial Review* of 26 May, which provides some information about what is going on. I understand that the regulatory impact statement was issued last week. Is that correct?

Mr Wunsch—A revised RIS was issued on Wednesday of last week. That is correct.

Senator STEPHENS—Can you tell me the difference between what was in that draft RIS and what was actually in the earlier proposal?

Mr Wunsch—Basically, there was a proposal that there be a lead time of 18 months, where I think the original had either 12 months or 12 to 15 months. We had submissions going to the technical and scheduling requirements of industry which were fairly persuasive, so we have suggested that an 18-month lead time will be necessary to introduce the new warnings. That was one change. A middle option was introduced in that revised RIS which was not there before. The first RIS said status quo option or go to these new graphic warnings. We did include a second option, which was revising the text messages, so that was a less substantive change from the current. So that is in there. Plus the revised RIS has a segment which outlined the sorts of comments, criticisms and support that were received for the first one and we made some attempt to respond to some of those issues.

Senator STEPHENS—You said that there were submissions that caused you to actually revise the RIS. Can you tell me how many submissions you received?

Mr Wunsch—About 87 submissions.

Senator STEPHENS—Did you say 87?

Mr Wunsch—Yes, 87. That included private individual submissions. We got some emails from private individuals which were just two-liners—whether we counted those or not; good question.

Senator STEPHENS—Are those submissions public? Can people respond to the issues raised in other submissions?

Mr Wunsch—They are not public because we did not say up-front that we would make them public. We thought in fairness that people thought they were presenting their views in a private capacity, so we respected that. But we did analyse all received submissions and we assessed them, and I believe the revised RIS is a genuine response to all comments received.

Senator STEPHENS—In this article, there is criticism that the new proposal leaves out the detailed warning that was intended to replace the current information about tar levels. I understand the new message will be along the lines:

... “smoking exposes you to more than 40 harmful chemicals. These chemicals restrict blood flow and damage the body’s immune cells and immune system”.

Where did this new form of words come from?

Mr Wunsch—From the department of health via consultation with health authorities. It was really about the fact that there was a genuine belief that the current warnings about tar, nicotine and carbon monoxide levels could be misleading to some consumers because it was felt that it may lead people to think, for example, that smoking more of the low-tar cigarettes was better for you than just a few of the heavier ones. That has been shown to be not correct, because with every cigarette you have you are exposed to a myriad dangerous chemicals; therefore, the best health advice was to replace those warnings with a qualitative warning about the hazards of cigarette smoke itself. That was the background to that.

Ms Vroombout—There have also been developments in the kinds of testing machines that are used to measure the tar, nicotine and other levels. The more recent research shows that

those machines do not necessarily give you an accurate reading of how much of those chemicals a person's body actually absorbs so, again, there was a view that perhaps it was misleading to have those levels when the machines were not accurately measuring what a human body might absorb in terms of those chemicals.

Senator STEPHENS—What did the ACCC advise on this issue? Did they provide advice about this as well?

Mr Wunsch—Not that I am aware of. This proposal to replace them was essentially a health initiative.

Senator STEPHENS—I understand that there are going to be rotating messages; is that right?

Mr Wunsch—Yes.

Senator STEPHENS—There were several messages tested and you have now got 14 different ones.

Mr Wunsch—Yes. We have two sets—set A and set B—with seven in each set. That is correct.

Senator STEPHENS—In terms of the assessment, is there a targeted level of reduction in smoking that is part of this process?

Mr Wunsch—The regulation is primarily about informing consumers about the health risks of smoking and upgrading those warnings because of the influx of additional research information and research results that health organisations around the world have put together in more recent years. It is likely that it will have an impact on reducing the smoking population, and of course that was taken into account in the cost benefit analysis.

Ms Vroombout—The cost benefit analysis on reasonable assumptions took the view that there may be around a three per cent reduction in smoking as a result of the new warning labels.

Senator STEPHENS—Is it possible for the committee to have a copy of the cost benefit analysis?

Mr Wunsch—Certainly.

Ms Vroombout—It is in the public domain. It is on the Treasury web site so we can provide you with a copy if you would like.

Senator STEPHENS—No, that is fine, I can find it there. Can you tell me whether or not any of the messages specifically target young people, particularly young women?

Mr Wunsch—I have not got them in front of me. Those messages were developed through focus groups and consumer consultation. That was run by the Department of Health and Ageing.

Ms Vroombout—I think it would probably be fair to say they are more generic and they do not target any particular audience. A couple of the messages depict babies and young children and the effects on children of passive smoking and pregnant mothers smoking. But otherwise they are generic in terms of the kinds of health risks that smoking poses.

Senator STEPHENS—Was there any consideration in the consumer testing and the focus groups about multilingual messages?

Mr Wunsch—I was not part of that process. We could take that on notice and find out from Health.

CHAIR—That concludes the examination of outcome 3. Senator Stephens, is it right that we have completed outcome 1 as well?

Senator STEPHENS—Yes, we have completed those.

Proceedings suspended from 6.36 p.m. to 8.03 p.m.

CHAIR—I welcome to the table officers of the Treasury concerned with outcome 2. Senator Sherry has a program issue, so I will ask him to take the call first.

Senator SHERRY—Thanks, Chair. I am working on the assumption that we will not be finishing tax tonight.

Mr Murray—Our outcome 2 is split into two parts. Output 2.1 is the fiscal side and output 2.2 is the revenue side. We are here representing the fiscal side, so we can cover all the budget issues, Commonwealth-state issues, social policy and industry policy. But if you wanted to start on tax then we would have to bring in the—

Senator SHERRY—No, I do not want to start on it. I just wanted to give you notice of an issue, because one of the issues I wanted to get to we would not get to until, at the earliest, tomorrow afternoon, after we have dealt with the ACCC tomorrow morning. I thought I would do you the courtesy of raising it tonight so that people would be aware that I was going to raise the issue.

It relates to assumptions made on the temporary residents superannuation measure and evidence given at the estimates on 21 February 2002 and the actual Economics Legislation Committee, which had a hearing on the Income Tax (Superannuation Payments Withholding Tax) Bill 2002. During those two hearings there was a range of evidence about assumptions made—I will not go into the detail now—and I wanted to revisit and get an update on those assumptions. Mr Gallagher was obviously one of the witnesses but there were some other witnesses from Treasury whose names I cannot recall who also gave evidence on this matter. I thought I would just give you notice now so that when we come back to it—whether it is tomorrow afternoon or tomorrow night, hopefully not Friday—you know that I want to raise issues in that area.

Mr Murray—Thank you, Senator. That is on the revenue side, so we will make sure that people are aware of that. I suspect they are all in the room adjacent and they have probably just watched you on television.

Senator SHERRY—Thanks, that is all.

CHAIR—Senator O'Brien, did you have something?

Senator O'BRIEN—Yes, I have some questions but I am not sure, given your statements to Senator Sherry, whether this is the place to ask them. If not, I would appreciate it if they were taken on notice. I understand that GST does not apply to exports, except tourism exports. Is that right?

Mr Murray—Again, that is a revenue issue. We are quite happy to answer the questions on revenue from our revenue people, but we ourselves at the table at the moment cannot answer those questions, because we cover the fiscal and the budget side of this outcome.

Senator O'BRIEN—Okay. I am not sure I will be here tomorrow so I might have to put these questions on notice.

Senator CONROY—But those tax officers are here, aren't they?

Mr Murray—Yes, they are.

Senator O'BRIEN—I refer to my question in the Senate, No. 2576, which appeared on the *Notice Paper* on 1 March and remains unanswered. According to statements by Ministers Hockey and Ellison on 18 September last, Senator Coonan wrote to the states and territories seeking their agreement to changes to duty free concessions. I wanted to confirm that that is what had happened.

Senator Coonan—Yes, that is right.

Senator O'BRIEN—Is it possible to see a copy of the letters sent to the states and territories?

Senator Coonan—I will just consider that, Senator O'Brien, but I must say, off the top of my head, I cannot see any reason why not.

Senator O'BRIEN—Can you explain to the committee the linkage between the federal government and state and territory governments on this issue?

Senator Coonan—There is advice to the effect that, potentially, anything you do that affects the GST base, even if it is done to a customs schedule, has a potential to affect the GST revenue. For that reason, even though perhaps on a strict interpretation consultation may not have been required, in the spirit of the agreement it is my practice to normally both notify and consult the states, and that was done.

Senator O'BRIEN—Have responses been received?

Senator Coonan—Yes. To the best of my recollection, a couple of states have agreed. Some other states have agreed on the basis that they wish it to be revenue neutral. The figures that are in question are based on a lot of assumptions that are not solid, so we are currently negotiating on the basis that there might be certain adjustments in some other administrative areas because it is a bit of a swings and roundabouts, because I have under consideration and in the course of development some other changes where it will be revenue positive to the states. So that is the current state of our negotiations. We are just considering whether or not everyone is currently comfortable.

Senator O'BRIEN—I presume some modelling or analysis has been performed by Treasury to determine the cost to the Commonwealth of the proposed changes.

Senator Coonan—As I just said, there are a lot of assumptions built in that there would be some behaviour changes, but basically the whole measure is really about administrative efficiency whereby, without putting too fine a point on it, you release Customs to do what they are there to do and they are not there policing duty free entries. It is a sensible set of arrangements and I am very hopeful that we will have agreement shortly.

Senator O'BRIEN—And this modelling was done by Treasury?

Senator Coonan—Well, they were the figures given to me, and it was based on assumptions as to take-up—you know, just that you change behaviour if people obviously know that they can go down the green line instead of the red line.

Senator O'BRIEN—Is that documented and can it be provided to the committee?

Senator Coonan—I will just see what might be able to be provided.

Senator O'BRIEN—Could you advise the committee of the appropriation made for this measure for the coming financial year and the following three out years?

Senator Coonan—I am afraid I cannot off the top of my head, but if it can be re-agitated with the relevant officials we will get that information for you.

Senator O'BRIEN—Presumably Treasury would not do anything in connection with the impact on visitor numbers of the change in excise, or is that built into the modelling?

Senator Coonan—I do not know that they did much on visitor numbers. It is more an administrative efficiency, but some numbers were referred to, I think, in the tourism white paper.

Senator O'BRIEN—Question No. 2579 of the same day remains unanswered.

Senator Coonan—I will check that, Senator.

Senator O'BRIEN—Do you think there might be an answer in the pipeline?

Senator Coonan—I really do not want to mislead you. I would hope so.

Senator O'BRIEN—So do I.

Senator Coonan—I would intend so, anyway. So I will have a look and see.

Senator O'BRIEN—I am happy for you to do that rather than go through questions now, on the basis that I guess I will get to ask you again in about 10 days if it is not.

Senator Coonan—All right.

Senator O'BRIEN—Thank you very much, Chair. I do not have any further questions.

Senator CONROY—I want to talk about plasma TVs, Mr Murray. I am sure you are aware that there were three plasma TVs at the Press Club.

Mr Murray—Yes, I was aware. I was at the Press Club lunch.

Senator CONROY—So you saw them?

Mr Murray—Yes.

Senator CONROY—Who ordered them?

Mr Murray—My understanding is that they were arranged by the Treasurer's office.

Senator CONROY—Did the Treasurer's office check? Did they phone up Treasury to see if it was part of an approved purchase order or anything like that?

Mr Murray—I have no idea, Senator.

Senator CONROY—Who paid for them?

Mr Murray—My understanding is that this was arranged with the National Press Club, and they will invoice the Treasurer's office. This is similar to the arrangement last year.

Senator CONROY—So you are not paying for them?

Mr Murray—There is a bit of a debate about whether we pay for them or not. You could argue that they are part of the whole communications of the budget—

Senator CONROY—Treasury did not order them?

Mr Murray—No, we did not order them.

Senator CONROY—The Treasurer's office ordered them.

Mr Murray—Yes, that is my understanding. We have had a quick look through our records and we did not pay for it last year. It is a similar arrangement to last year, so I presume that we will not pay for it this year either, but you could argue that we should pay for it because it is another part of the communications of the budget.

Senator CONROY—You could also argue that you should not pay for them. You did not order them.

Mr Murray—You could argue that as well.

Senator CONROY—So the Treasurer's office, just on a whim, decided to order them and you have got to pick up the tab for everything. Is that the way it works?

Mr Murray—I have got no idea, Senator.

Senator CONROY—If you end up paying for them—three plasma TVs that you say are a part of Treasury's ongoing communications. Is that what you are seriously trying to get the committee to—

Mr Murray—I have not said anything like that, Senator. I said you could mount an argument that, just like the budget papers and the glossy publications that went out, which we pay for—

Senator CONROY—Plasma TVs are the same as that! Even Senator Coonan is choking.

Mr Murray—You could argue that we could pay for them, but last year we did not pay for them and I am presuming that this year we will not either.

Senator CONROY—You are presuming. Is that a no?

Mr Murray—I do not know.

Senator CONROY—Who is in charge? Who makes the decision. Everyone has given me your name, Mr Murray, I am sorry. You can only blame Dr Parkinson.

Mr Murray—My name has been thrown around a lot today, Senator. I realise that.

Senator CONROY—But not by me. I need you to understand that.

Mr Murray—I would love to pass some of these things back to Dr Parkinson, but I cannot.

Senator CONROY—I did warn him that he may be off your Christmas card list.

Senator Coonan—The trick is to come first, I think.

Mr Murray—Yes.

Senator CONROY—How much did they cost?

Mr Murray—I understand it was \$1,664.

Senator CONROY—For the rental of three plasma TVs for a couple of hours at the Press Club?

Mr Murray—Yes. \$1,664.50. That is the quote.

Senator CONROY—That is the invoice you have received?

Mr Murray—That is the quote for them and then the Treasurer's office will be invoiced.

Senator CONROY—Who obtained the quote?

Mr Murray—I have got no idea. That is not on my piece of paper, I am sorry.

Senator CONROY—You say you have got a quote there. You do not have the actual quote?

Mr Murray—No. I am sorry, Senator; I do not run the Treasurer's office.

Senator CONROY—So you have gone and found this out today because I asked about them last night, or was this already in the bowels of Treasury?

Mr Murray—It was probably in the bowels of Treasury—

Senator CONROY—Already.

Mr Murray—Already—or this information was. But I was alerted to the fact that you had asked this question, so I asked for a piece of briefing, which I was given by our corporate area.

Senator CONROY—I would hope so. I gave you 24 hours notice.

Mr Murray—I have responsibility overall for corporate matters so I asked for the information.

Senator CONROY—Was the department aware in advance that the plasma TVs were being ordered?

Mr Murray—I have got no idea. I presume that, because this was done last year, we did know about it. I certainly expected that when I went to the Press Club luncheon that the Treasurer would not be using charts like he used in his press conference at the lockup, that he would be using the television PowerPoint presentation, which I thought was a very good idea. I was very pleased to see that he did it again.

Senator CONROY—Was an attempt made to get the department to pay for them last year?

Mr Murray—I have got no idea. I do not think so, and we have certainly got no record that we were ever asked to pay for them.

Senator CONROY—I unfortunately was not at the Press Club, so I have not seen them. Is there much of a difference between a PowerPoint presentation normally and a three-plasma-TV effort?

Mr Murray—No, it is just that you throw it up on a screen. They are not huge screens. They are just—

Senator CONROY—How big were they?

Mr Murray—They were about this big—I do not know how you write that into *Hansard*.

CHAIR—The record should show that the witness is gesturing with his hands

Senator CONROY—Wildly!

Mr Murray—Last year they were either side of the Treasurer, as I recall, but this year the three were around the room. I only saw one that was quite near me, but I have to say they were very effective.

Senator CONROY—I would hope so—for \$1,600 for a couple of hours. Oh, dear. It is quite funny, Senator Brandis—they were just lashing out.

CHAIR—I am just giggling at your comedic talent, Senator Conroy.

Senator CONROY—So you are confident that you will not be paying for them?

Mr Murray—If it is like last year we will not be paying for them, no.

Senator CONROY—Is it like last year? You have had 24 hours to find out.

Mr Murray—I have not found that bit out, I am sorry.

Senator CONROY—That would be among the most important points.

Mr Murray—We are making the presumption that we are not paying for it.

Senator CONROY—You would, of course, understand that I would be very keen to find out if that situation changed.

Mr Murray—Yes.

Senator CONROY—I look forward to you taking on notice that, if there is a change to that status, you will immediately let the committee know.

Mr Murray—I will.

Senator CONROY—Thank you. Minister, who will actually be paying for them? If it is not the Treasury, who will pay for them?

Senator Coonan—I do not know who paid for them.

Senator CONROY—It will be taxpayers ultimately.

Senator Coonan—Well, one has an allowance. I do not know how the Treasurer proposes to deal with it.

Senator CONROY—The logical place is out of his allowance. Would that be fair?

Senator Coonan—That may be one source, I do not know. Maybe somebody donated them, I do not know.

Senator CONROY—That is true. Someone could have donated them. Telstra might have been available to loan you three for a couple of days.

Senator Coonan—It is just a suggestion. I do not know. I am just saying that there is more than one possibility.

Senator CONROY—But ultimately the taxpayers will pay for the indulgence of three plasma TVs. That is right.

Senator Coonan—I do not know that that is right. If they are donated it would not necessarily be a taxpayer issue.

Senator CONROY—An invoice has arrived for them, which would tend to suggest that they had not been donated.

Senator Coonan—Invoices can be cancelled, forgiven. I just do not think we can make assumptions; that is all.

Senator CONROY—An invoice has arrived and you live in hope that it might be cancelled.

Senator Coonan—I do not. It does not really concern me, but I am just saying there are lots of—

Senator CONROY—It is not your allowance, is it?

Senator Coonan—It is not my allowance.

Senator CONROY—You are not going to pay for them.

Senator Coonan—I certainly will not be paying for them, and I assume that if we took a collection around the room there would not be many people chipping in.

Senator CONROY—Any volunteers around the room? No? No-one has put their hand up, Senator Coonan.

Mr Murray—If I could just correct for the record: my understanding is that the invoice has not arrived as yet. It is expected in the next few days—so just to make that point.

Senator CONROY—The invoice has not arrived at Treasury yet?

Mr Murray—The invoice has not arrived in the Treasurer's office, as far as I—

Senator CONROY—My understanding is that it has already arrived in the Treasurer's office, and the reason you know about this is because he has tried to foist it on you.

Mr Murray—That is not correct, Senator. I do not know where you are getting your information from.

Senator CONROY—It seems remarkably good so far—up until maybe that point. But it was ahead of you, and you are in charge of the section.

Mr Murray—You are making assumptions that something is ahead of me. I am not saying it is. In fact, I am saying it is not.

Senator CONROY—You did not know anything about it until I mentioned it last night. I would say that puts me ahead of you.

Mr Murray—Senator, there may be many things that I am not aware of—and this is certainly one of them—but, really, I do not think that is particularly relevant.

CHAIR—That is for me to decide, Mr Murray, but on this occasion you are right. Come on, Senator Conroy.

Senator CONROY—Let us not go there, Senator Brandis.

CHAIR—No, let us not.

Senator CONROY—Can we find out tonight? Can we get confirmation from the Treasurer's office that they will be picking up the tab? Minister, is that possible, do you think? It would put a lot of minds at ease.

Senator Coonan—I can well understand that, but I am here tonight.

Senator CONROY—I would sleep better tonight knowing that the Treasurer was not trying to foist it onto the Treasury for his personal indulgences.

CHAIR—Mr Murray said he would take it—

Senator CONROY—No, I am asking the minister whether we can get something from the Treasurer's office.

Senator Coonan—I am going to be sitting here until 11. If the Treasurer is still around at 11, I will go around and ask him for you.

Senator CONROY—The miracles of modern technology are such that the staff of yours watching right now might be able to give the Treasurer's office a ring and then one of them could possibly come wandering along, as they have done 10 or 20 times today, and give you a note.

Senator Coonan—You never know your luck, and if I get a note, you will be the first to know.

Senator CONROY—Perhaps if you just wanted to sort of suggest to anyone in your office listening that they might want to make the call.

Senator Coonan—Well, you know, I do not think—

Senator CONROY—I cannot ask your staff to do something. Only you can.

Senator Coonan—Unfortunately, I do not think I have got anybody listening. I think they have tuned out, Senator Conroy.

Senator CONROY—In that case, we can only live in hope that the Treasurer's office is watching and they will send you a note. I will move on, since we have almost got to the bottom of the mysterious plasma TVs. I wanted to explore the government's fiscal strategy as outlined in appendix A to statement 1 of Budget Paper No. 1.

Mr Murray—You are going to laugh at this one. This is actually a responsibility of Dr Parkinson. Even though we look after the budget, the actual fiscal strategy is his responsibility, it being basically a macroeconomic issue. But I will try my best.

Senator CONROY—I am actually going to be quoting out of the budget papers, so I am hoping that you are familiar with them—as you prepare the budget.

Mr Murray—Yes, but I did not necessarily prepare the strategy.

Senator CONROY—I will not be asking you to give me commentary on the strategy. I will be asking questions about the actual numbers. As I mentioned, on fiscal strategy it does say:

The supplementary objective of no increase in the overall tax burden means that the Government achieves balance over the cycle through a disciplined and prioritised approach to spending and not by recourse to increased taxation. Consequently, an important element in achieving the strategy is containing spending growth by eliminating waste and placing programme spending on a sustainable basis.

Does that sound familiar?

Mr Murray—Yes.

Senator CONROY—You did not write that one?

Mr Murray—No.

Senator CONROY—I would like to look at table 2 on page 2-3 of Budget Paper No. 1, titled ‘Reconciliation of 2003-04 Budget, 2003-04 MYEFO and 2004-05 Budget fiscal balance estimates’. Since the last budget, what has been the net impact of new policy decisions on the surplus? Is it the \$1.4 billion in between the 2003-04 budget and MYEFO plus the \$8.1 billion between MYEFO and the 2004-05 budget?

Mr Murray—That is my understanding. My budget colleagues here can confirm that.

Mr Martine—Essentially, since MYEFO, it is the \$8.194 billion, impact of total policy decisions.

Senator CONROY—But I was asking about since the last budget.

Mr Martine—Since the last budget, if you then add the \$1.423 billion, which is the impact of policy decisions between budget and MYEFO.

Senator CONROY—So, as I said, since the last budget it is those two figures.

Mr Martine—That is correct.

Senator CONROY—So the impact of government policy decisions on the 2004-05 budget is around \$9.5 billion.

Mr Martine—That is correct.

Senator CONROY—How was that \$9.5 billion spend paid for—offsetting savings?

Mr Murray—There are some in those policy decisions. Embedded in them are some savings decisions. So the government, looking at their priorities, will not only make spending decisions but they will make some savings decisions, and they would be embedded and they would be outlined in Budget Paper No. 2 in all the measures. However, we have moved from an improved fiscal position from the start of the year to the end of the year, from a negative \$1.1 billion to a positive \$0.7 billion. But, in the process, as you say, policy decisions have meant expenditures or revenue forgone of \$9.5 billion. So how was all of that funded, both all of the policy decisions plus going from a deficit to a surplus—

Senator CONROY—We have run down the surplus.

Mr Murray—No. There were significant changes to the revenue estimates. So if you look at the effect of parameters and other variations, the revenue changes, between budget and MYEFO, were \$3.768 billion—and in total, including the expense parameter changes, was \$4.1 billion. And then if you go further down the table it is even more dramatic. From MYEFO to budget, the changes in the revenue estimates from parameter and other variations was \$6.1 billion, bolstered by expense changes as well to total \$7.3 billion.

Senator CONROY—Mr Murray, the figures I am quoting are the net figures.

Mr Murray—What I am trying to do, Senator, is explain to you—

Senator CONROY—I know exactly what you are trying to do.

Mr Murray—where did all of this—

Senator CONROY—Largesse come from?

Mr Murray—I would not put it that way, Senator.

Senator CONROY—These are net policy decisions. ‘Net’ means net. That means you do not have to explain to me about all the increased revenue. You have to answer my question about the net spend.

Mr Murray—You have said to me: ‘How was the government able to do this net spend?’ which includes savings measures, and I have just explained to you there were significant—

Senator CONROY—These were parameter increases. Parameter increases in revenue are not the same, and I would appreciate it if you did not try to toss it all in to muddy the water when I am asking a simple question about the net policy decisions.

Mr Murray—Yes, and the net policy decisions are \$9.5 billion.

Senator CONROY—And I am asking you whether offsetting spending cuts were in that \$9.5 billion.

Mr Murray—They are embedded in that \$9.5 billion. If there are decisions to make savings—

Senator CONROY—Yes, which means the net, which means the net position—

CHAIR—Let him finish. Senator Conroy, you cannot object—

Senator CONROY—A minus figure of \$9.5 billion.

CHAIR—Senator Conroy, you cannot object if I require you to let the witness finish his answers before you interrupt him with your next question.

Senator CONROY—Have I objected?

CHAIR—You have not, I am pleased to say. Mr Murray, please finish what you were saying and then Senator Conroy can ask his next question.

Mr Murray—Thank you, Chairman. Senator Conroy, I thought I was giving a simple answer. The \$9.5 billion is a net figure, because if the government makes decisions, they may be positive to the budget, which is a saving, or they may be negative to the budget, which is a spend or a negative revenue—

Senator CONROY—You had a \$9.5 billion running down of the surplus. It is just a mathematical fact.

Mr Murray—If you want to put it that way, fine.

CHAIR—But do you agree, Mr Murray—that it is a mathematical fact?

Mr Murray—Chairman, I have made it quite clear, and the budget papers make it quite clear—

Senator CONROY—It is a fact that you have had a \$9.5 billion wind-down of the surplus.

Mr Murray—If I could finish—

CHAIR—It is perfectly clear to me what Senator Conroy is putting to you, and it is perfectly clear to me that you are attempting to give him a response. Now let me invite you, without interruption, to give a response.

Mr Murray—If I can make it very simple and very plain that over the year the net decisions made by the government on the budget were \$9.5 billion—and I do not think I can put it any simpler than that.

Senator CONROY—Has Treasury calculated the net value of new policy decisions taken in the budget over the remainder of this financial year, the budget year and the three forward estimate years?

Mr Murray—Yes, we have. They are all set out in the budget papers. I am not sure that I have at hand the figures on the remainder of this year, but certainly all the decision aggregates are set out there in that table 2.

Senator CONROY—Has Treasury provided any advice to the Treasurer or his office on the total value of new policy decisions taken in the budget?

Mr Murray—Yes, we have, and that is all set out there on the table. I think you can calculate it from here. From MYEFO to budget, decisions were taken, either before the budget or in the budget, for 2003-04—and I stand corrected here—of \$6.1 billion. That is calculated on an accruals basis, so it is not the actual cash going out the door in that period because some of this related to family tax benefit payments that accrue this year but are not actually reconciled and paid until early next year.

Senator CONROY—I was wondering whether you could help me out. My calculations—and my maths is never that good—show the total effect of policy decisions in the budget is around \$52 billion. I was just wondering whether you could add it up with me to make sure that that was right. So, 2003-04, \$6.139 billion; 2004-05, \$8.194 billion; 2005-06, \$10.869 billion; 2006-07, \$12.398 billion; and 2007-08, we have \$8,985.1 billion in new expenditure measures, which is page 63 of Budget Paper No. 2, plus \$5.378 billion in new revenue measures, which is page 4 of Budget Paper No. 2, and \$6.4 million in new capital measures not including depreciation, which is page 283 of Budget Paper No. 2.

Mr Murray—I will probably get Mr Martine to cover off on this, but if I can just make the point that the first four numbers you quoted seem correct. However, it is not correct to say that these were technically all in the budget. There may have been decisions made before the budget, but they were between MYEFO and—

Senator CONROY—Yes, I am really looking at the MYEFO.

Mr Murray—But the last three numbers—I have not got Budget Paper No. 2 with me—

Mr Martine—Senator, it is the correct methodology; it is broadly the figure that I would come up with. It is around \$52 billion.

Senator CONROY—Is this the biggest ever new net policy spend? The Treasurer has been boasting something along those lines. I just wanted Treasury to back him up.

Mr Martine—It is certainly one of the largest. I cannot recall—

Senator CONROY—Could you contemplate a larger one?

Mr Martine—One would have to sit down, using the same methodology, to quickly work out—

Senator CONROY—Let us ask the people with the grey hair in the room. Does anyone recollect a larger one? Mr Murray? Mr Tune?

Mr Murray—Personally, I have got no idea. Really, if you want to do it properly, you would have to do a percentage of GDP.

Senator CONROY—Oh, cut it out!

Mr Murray—But it is big.

Senator CONROY—It is big, yes.

Mr Murray—I think that goes without saying.

Senator CONROY—Can you think of a bigger budget? Can anyone think of a bigger budget?

Mr Murray—I have only presided over two. It is certainly bigger than the first one.

Senator CONROY—So I think we would have to concede it—this is the biggest spending Treasurer!

CHAIR—The biggest spending budget in Mr Murray's two budgets!

Senator CONROY—I suspect Mr Martine was closer; he cannot think of one. I wanted to talk about the revenue estimates.

Mr Martine—Senator, that is actually output 2.2, revenue group.

Senator CONROY—Don't you want to talk about the revenue estimates?

Mr Murray—If I could make a suggestion, the best way to handle that might be to wait until you have finished with all of the fiscal issues. That comes under output 2.2, and we are output 2.1.

Senator CONROY—So that would mean you leave, Mr Murray?

Mr Murray—I beg your pardon?

Senator CONROY—Aren't you in charge of output 2?

Mr Murray—I am in charge of output 2.1.

Senator CONROY—Only 2.1. Who looks after 2.2?

Mr Murray—That was Greg Smith, until he resigned, and we have not—

Senator CONROY—So there will be nobody sitting next to Senator Coonan?

Mr Murray—No. Greg has resigned and we have not got a replacement as yet.

Senator CONROY—So will anyone be sitting where you are sitting?

Mr Murray—Yes. Paul McCullough will be sitting in.

Senator CONROY—Excellent. We might be able to get you an early night, Mr Murray. Growth dividends from tax cuts? It falls sort of between 1 and 2.

Mr Murray—That is certainly revenue group.

Senator CONROY—Baby bonus estimates?

Mr Murray—That is revenue group.

Mr Tune—Although it cuts across a bit. The baby bonus was incorporated in the new maternity payment, so that was an outlays measure, so that was handled by us, but the offset is in the revenue group's—

Senator CONROY—I am not sure whether that means I can let you go or not, Mr Tune, but that is a nice try. I am not sure that revenue group will be as excited by that effort—you get an early night and they get to stay. Bracket creep?

Mr Murray—Revenue group.

Senator CONROY—Issues around new taxes? Revenue group?

Mr Murray—Yes.

Senator CONROY—Superannuation co-contribution?

Mr Murray—That is revenue group.

Senator CONROY—You are going to get away early tonight at this rate. I am sure you are just saying that they are and there is someone out the back pulling their hair out. This is just your revenge.

Mr Murray—I could say 'Dr Parkinson'.

Senator CONROY—You cannot get away with passing them back to him, but somebody in revenue group is looking for you with a gun. Resource rent tax?

Mr Murray—Revenue group.

Senator CONROY—Definition of charities?

Mr Murray—Revenue group.

Senator CONROY—Family tax benefit changes?

Mr Murray—That is us.

Senator CONROY—Excellent. WET?

Mr Murray—Revenue group.

Senator CONROY—Tax expenditures?

Mr Murray—Revenue group.

Senator CONROY—And PABX system? Possibly ATO? There are some very toey individuals back there—you thought you were on a roll. I think Tax Office will probably look after that one. I would like to ask a few brief questions about the PEFO process. When would preparations start for PEFO?

Mr Murray—Very shortly. I think we are trying to organise the first meeting between ourselves, Prime Minister and Cabinet and the Department of Finance and Administration. Mr Martine, was it for next week?

Mr Martine—No, it is the week after.

Mr Murray—The week after next.

Senator CONROY—And who is on the group? Sorry, I missed that.

Mr Murray—I chair that committee.

Senator CONROY—Is it interdepartmental?

Mr Murray—Yes. Mr Martine is on the committee, as well as deputy secretaries from the department of finance and Prime Minister and Cabinet.

Senator CONROY—When is it scheduled to be completed?

Mr Murray—In two weeks time. And that is similar to what I recall in 2001. I was in Prime Minister and Cabinet at that time and it was about the same time.

Senator CONROY—I might come back to that but I will move on to the family tax benefit changes. Were Treasury officials involved in meetings with other departments that discussed the design of the increase in the rates of FTB A of \$600 per child to be paid as a lump sum upon reconciliation of entitlement?

Mr Tune—Yes, we were.

Senator CONROY—Did this form part of the government's work and family task force process?

Mr Tune—No, it did not—although, in a sense, it was a follow-on from that process.

Senator CONROY—It certainly was. Did the work and family task force ever discuss the family tax debt issue?

Mr Tune—I think it did, yes. It was not the central focus of the work and family task force, but it was an issue because the family tax benefit was being discussed so it was naturally an issue.

Senator CONROY—Were any options developed or discussed to solve the family tax debt issue?

Mr Tune—In the work and family task force?

Senator CONROY—Yes.

Mr Tune—Yes, I think there were some.

Senator CONROY—Was a lump sum payment option ever discussed in the context of solving the family tax debt issue?

Mr Tune—I do not know if I could go into specifics, Senator. I do not think it is appropriate.

Senator CONROY—I think the answer is no, because you have already said that it actually evolved after the process.

Mr Tune—Yes, well, specific options can still get discussed in one context and then follow through to another one, but there was a clear gap in this process.

Senator CONROY—So what sort of preparatory work for PEFO has been undertaken prior to the issuing of writs—that is the committee you were talking about?

Mr Murray—I will do my best to outline some of the things but I will pass to Mr Martine. We have to sort of plan that there might be an election each month, and we have to have critical dates in each month when we might be wanting to change things—so when would national accounts come out, when would forecasts maybe need to be updated, how would the department of finance go about updating the spending estimates? We have to sort out those sorts of issues month by month so that we are ready month by month—and we do it from here, say, until December.

Senator CONROY—How is that process distinct from MYEFO?

Mr Murray—Under the Charter of Budget Honesty, the MYEFO has to be prepared, at the latest, six months after the preceding budget or the January—so it would be January 2005. So that gives us a bit of a framework. The MYEFO has been around about October, November, December. So we have got much firmer timing on our processes. We know when the forecasts would normally be updated. They are the start of the budget process, if you like. So we know when the economic forecasts would be done. We know the timing around mid-October when we would be pretty well geared up as the normal course to be able to get the MYEFO done. MYEFO, of course, because it is loose timing, just the same, we can be ready October, November, December, January.

Senator CONROY—And it ended up merging last time, as I recollect.

Mr Murray—As I recall, yes. I was not then in charge of anything. I was working for the secretary.

Mr Tune—I think last time MYEFO came out one day and PEFO the next.

Senator CONROY—That is right. I do remember that.

Mr Tune—So there were still two separate documents.

Senator CONROY—They got the rubber out and changed the title. On a related matter, I would like to ask you about the costing of Labor's policies. Has the department been requested to cost Labor policy outside an election period since the 2001 election?

Mr Murray—It would have to be a revenue costing, I think, because we do not do the expenditure costings—not normally anyhow. They are a department of finance responsibility. It would be a revenue costing, so I think you would probably have to ask the revenue group that question.

Senator CONROY—So you have done none?

Mr Murray—Not that I recall in my time anyhow—as short as it is.

Senator CONROY—So the department has not been requested to cost any Labor policies at all?

Mr Murray—Fiscal group does not have responsibility for doing costings. They are a revenue matter. The Treasury is responsible for revenue costings, so it is a revenue group matter. All I am saying is that you should ask the revenue group when they come on to give their evidence.

Senator CONROY—I will not bore you with those questions. I left a folder with all of Dr Parkinson's hand-passes for you downstairs in my office, so I do need a moment to go and get them now.

CHAIR—Senator Harradine, do you have questions for these witnesses?

Senator HARRADINE—Yes. I just wanted to raise something about the Tasmanian offices of ATO.

CHAIR—These are not the ATO officers, Senator. This is fiscal group of the Treasury.

Senator HARRADINE—Yes. The only people that I wanted to ask something of very briefly are persons who might be able to provide answers about the downsizing of the ATO office in Hobart and the ATO office in Launceston.

CHAIR—Mr Murray, are you able to respond to that, or who should respond to those questions?

Mr Murray—The Tax Office should.

Senator Coonan—The Tax Office, and they are not due until—

CHAIR—They are due tomorrow?

Mr Murray—They are due just after us.

CHAIR—I am sorry, they are due this evening but after this bracket of evidence. Does Senator Fifield have any questions? No. We will have a short break.

Proceedings suspended from 8.48 p.m. to 9.00 p.m.

CHAIR—We will resume. The Minister will not be far away.

Senator CONROY—I mentioned the maternity payment. Was Treasury the lead agency in developing the maternity payment?

Mr Tune—Yes. I guess we were, in a sense, yes.

Senator CONROY—How long did that process go on for?

Mr Tune—Not that long. During the course of the budget.

Senator CONROY—When did it start?

Mr Tune—There was consideration over a period of time.

Senator CONROY—This is the maternity payment I am talking about.

Mr Tune—The working family task force was looking at it as well.

Senator CONROY—And it had been dealing with it for many, many months?

Mr Tune—Yes.

Senator CONROY—And on the maternity payment specifically?

Mr Tune—Well, there was a whole series of options being looking at by the working family task force. Dealing with the maternity payment and the report by HREOC around paid maternity leave was one set of options in that area.

Senator CONROY—Have you seen the Labor Party's baby care policy released by Mark Latham on 31 March 2004?

Mr Tune—Yes, I have.

Senator CONROY—Do you find it strange that the government's announced maternity payment looks very similar to the Labor Party's baby care payment?

Mr Tune—Not particularly.

CHAIR—That is not really fair, is it? These are public servants.

Senator CONROY—He has already answered the question.

CHAIR—But for future direction and future questions, I do not think it is fair. You can say this is X and this is Y; what are the comparisons?

Senator CONROY—I understand the point you are making and you have made it.

CHAIR—It is a bit party political, Senator Conroy.

Senator CONROY—Did the working family task force ever consider the Labor Party's baby care payment policy?

Mr Tune—I cannot recall, quite frankly, Senator.

Senator CONROY—So you saw that outside the process?

Mr Tune—Sorry?

Senator CONROY—You saw the Labor Party's policy outside of that process?

Mr Tune—Well, obviously, yes. When it was announced by the Labor Party is when I saw it.

Senator CONROY—When did the working family task force last meet?

Mr Tune—It has not met for quite a while. No, sorry, I do not have it there. It has been quite a while. I do not think it has met any time during 2004.

Senator CONROY—Okay.

Mr Tune—I will stand corrected on that. I will check that, but that is my recollection.

Senator CONROY—So it passes on its recommendations to what decision making body?

Mr Tune—It just goes into the normal processes of government.

Senator CONROY—So it certainly has not met since the Labor Party's policy was released?

Mr Tune—Definitely not, no.

CHAIR—There was actually some evidence in the Finance and Public Administration estimates last week on this very point. I forget who the witness was. What they basically told us was that the working family task force, which was an ad hoc task force, was *functus officio*. So there was no occasion for it to meet again?

Mr Tune—That is correct.

Senator CONROY—Were you involved in discussions on the maternity payment after that committee finished?

Mr Tune—Yes. As I said earlier, I was involved in developing the maternity payment that was announced in the budget.

Senator CONROY—Did the design of the maternity payment under consideration change at all after the Labor Party's baby care payment was released?

Mr Tune—There was no change to be made. There was a set of issues discussed by the working family task force. That finished. There was then the development of another policy based in some ways on what was done on the working family task force. There was a distinct change in the process, so the policy was then developed in the budget context and announced on budget night.

Senator CONROY—So had the committee just run out of steam, had done its job? What caused it to stop meeting last year?

Mr Tune—Well, it had done a report to government and that was it. Until it was requested by the government to do further work, there was no need to meet.

Senator CONROY—So when did the government request it do further work?

Mr Tune—It did not request further work; that is my point.

Senator CONROY—I wanted to make sure it had not met this year.

Mr Tune—No. As I said, I will check that, but I would be pretty positive—99 per cent sure—it has not met this year.

Senator CONROY—There did seem to be a fair number of leaks from that committee.

Mr Tune—As I understand it, yes.

Senator CONROY—Have you been investigated, Mr Tune? Have the police knocked on your door?

Mr Tune—No. They have not.

Senator CONROY—I am pleased to hear that. I am sure you are well above reproach.

Mr Murray—We have accounted for all of our documents.

Senator CONROY—Excellent, excellent. I want to talk about the process around the demographic discussion paper. I appreciate that consultations on the discussion paper are to be held throughout May and June. Will that process specifically seek the views of public finance practitioners?

Mr Tune—I would not say specifically. To the extent that they are able and willing to make submissions, we would certainly be interested in hearing from them.

Senator CONROY—Have you approached any of them yet?

Mr Tune—I would have to check. We sent a copy to a large number of people and a large number of organisations, some of whom were sort of in the economics area or demography area.

Senator CONROY—Is it possible to get a list of them? Is it a confidential list?

Mr Tune—I would not have thought so, no. I can take that on notice. I suspect that would be fine.

Senator CONROY—Great, thanks. When you say in the economics area, I am talking about experts in public finance.

Mr Tune—I suppose it depends on how you define public finance. Certainly people who are interested in the issues. I think we tried to get to them.

Senator CONROY—The inquiry sought submissions by 14 May?

Mr Tune—That is correct.

Senator CONROY—Giving interested parties just six weeks to prepare their submissions?

Mr Tune—Yes.

Senator CONROY—How many submissions were received?

Mr Tune—To date, we have received over 50; that is what my brief says. There have also been another 100 pieces of correspondence, which are generally letters to the Treasurer commenting on the issues in the demographics.

Senator CONROY—Fifty submissions and about 100 letters?

Mr Tune—Yes. But 50 formal submissions. Whenever anybody has asked for an extension of time to lodge their submission, we have granted that.

Senator CONROY—Are you expecting many more formal submissions?

Mr Tune—I am trying to think. There have been a number of phone calls that I have had in the last two weeks from organisations looking for a short extension, which we have granted. My staff may have got other ones.

Mr Murray—We consider this to be a large issue and a long-term issue. There is no thought that we are trying to rush this.

Senator CONROY—No. It is just that six weeks is a fairly short timetable, I would have thought.

Mr Murray—In many ways, this could be like the first pile of consultations. We are testing the water, in many ways. There are issues here that really need a lot of discussion in the community.

Mr Tune—It is more or less the first round.

Senator CONROY—It is a concern but not a crisis is how I think it was described last night.

Mr Tune—That is certainly the way we would describe it. I think the demographics challenges booklet puts it in that context.

Senator CONROY—That was quoted to me extensively last night by Dr Parkinson.

Mr Tune—When I go and talk about it, that is the way I describe it as well.

Mr Murray—So he did not pass it to us.

Senator CONROY—So he could have answered the questions. He has obviously read the document. Remember that. Given the focus on encouraging public debate—and that is a lot of what Treasury and the Treasurer have been trying to do—are these submissions publicly available?

Mr Tune—That is an interesting question. I am not entirely sure. I think they go onto our web site unless people—

Senator CONROY—They are not on the web site at the moment. That is why I am asking.

Mr Tune—We do have a specific demographics web site. They may be on there. Can I check that for you?

Senator CONROY—Yes, please.

Mr Tune—Our intention is that unless someone says they do not want something published, we would want it out there in the public arena, I think.

Senator CONROY—Okay. That would be good. I and a number of my colleagues are interested in just having a look at it as part of the debate.

Mr Tune—If they are not on there now—

Senator CONROY—If they are not and if they could be put up, that would be very useful.

Mr Tune—I will certainly investigate it with a view to having them put up there.

Senator CONROY—Unless they otherwise specify.

Mr Tune—Yes.

Senator CONROY—Great. That would be good. When is the inquiry due to complete its work?

Mr Tune—It is not exactly an inquiry. We have this process where we put out the paper and the document. We are doing the first round of consultations, as I said, which involves both the submissions. We have hired a consultant to run some consultations around the country which, as you mentioned earlier, are still going on.

Senator CONROY—It is listed on the web site as an inquiry. That is why I used that word.

Mr Tune—Yes. That is probably a bit of an overstatement. It is an internal process within Treasury where we have hired a consultant to help us. The paper itself was developed by a task force which Treasury led. Mr Murray was the chair of that and I was assisting him. That comprised a whole range of departments through Education, Health, FaCS, Finance and

PM&C. A whole gamut of organisations were involved in helping us put this thing together. Whether we utilise that same task force again after we finish this consultation phase is something we need to determine. We certainly need to provide a report back to the Treasurer, who has initiated the process, and then decide from there where we go, I think.

Senator CONROY—Could I get a list of who was on the task force and their designations and responsibilities.

Mr Tune—I can give it to you by department.

Senator CONROY—Sorry?

Mr Tune—By department. Is that what you just want—the departments involved?

Senator CONROY—If it is not too much trouble, the people.

Mr Tune—The people are switching all over the place. The way it worked is you have a department you request to join the task force. Sometimes someone will come and another time another person will come.

Senator CONROY—Could I get a list of everybody who came?

Mr Tune—I really do not know if we would have that.

Mr Murray—We could give you a list of the main people from each department.

Senator CONROY—Give me the main people.

Mr Murray—They were led by deputy secretaries in the main. When we went to the finetuning of this document—

Senator CONROY—People who would be described as material. How about that?

Mr Tune—If I leave anybody off, they may be offended, that is all.

Senator CONROY—I am trying to avoid you doing a lot of work here, Mr Tune. You can do a lot of work or you can offend people; I do not mind which option.

Mr Tune—Thanks for the choice.

Mr Murray—When we went into the detailed drafting of this consultation paper, we were determined that it would not look like a budget document. We did have a lot of assistance from the communications people in FaCS.

Senator CONROY—A few more plasma TVs involved?

Mr Murray—No. This is a—

Senator CONROY—Well, you suggest it could be a standard communications technique nowadays by Treasury.

Mr Murray—If I can finish. From FaCS and Health.

Mr Tune—And DEWR.

Senator CONROY—It would be great if you could get us that list. Thanks very much. You did mention that it is a report to the Treasurer. Given that this is a public debate or is raising the level of public debate, it is not a public report? You are taking public submissions.

Mr Tune—That is the biggest element. Our first task is to actually report back to the Treasurer. The Treasurer will then make some decisions about where he wants to take it next. That may indeed be another set of consultations opening the thing up more broadly and getting a bit more specific, but that is yet to be determined.

Senator CONROY—I just would have thought there would have been a draft report put out for people to comment on.

Mr Tune—Well, everything is a possibility. We are not closing anything off.

Senator CONROY—What is the timing of that, roughly, do you think?

Mr Tune—Probably about July, I would say, before we get something to the Treasurer. We have commissioned the consultants to run these meetings around the country. They are to analyse the submissions that have come through and try and pull out themes and interests and issues that people have identified.

Senator CONROY—You have mentioned my favourite word—consultants. Who are the consultants?

Mr Tune—The consultants are TNS Social Research.

Senator CONROY—Was there a tender for that?

Mr Tune—It was a selective tender. There were three companies that submitted a tender. Six companies were asked to submit a tender. Three did, and the successful one was TNS Social Research. They were essentially chosen because they had expertise in doing this sort of work.

Senator CONROY—What are the qualifications of the successful tenderer?

Mr Tune—I think largely they had strong experience in doing this sort of work. They had done similar sorts of work with—

Senator CONROY—Consultancy work or demographic work?

Mr Tune—No, consultancy work in drawing together submissions, analysing them and pulling out key themes. They had had strong experience in running public meetings and focus groups.

Senator CONROY—Could you take us through the process they have been going through or you are expecting them to go through?

Mr Tune—I can to some extent. I have not been to the meetings myself. They are being asked to do three things, basically. One is to, as they come through, analyse the submissions and, as I said, pull out key themes and issues and try to draw some coherence out of that. Advertisements were placed in the newspapers on 24 April inviting people to come along to the public consultations. There is at least one in each capital city. There are a couple being held in regional Australia. We are about halfway through them at the moment. There are also a couple of focus groups of particular types of people. Young people, for example, will be in one focus group. They are trying to get the views of young people. Another one might be of older people and middle age people. You are trying to get a cross-section of the demographics. They are fairly open meetings. People are given in advance a copy of the document and have a chance to reflect on it. There is then a discussion.

Senator CONROY—So do they register to be sent the documents?

Mr Tune—They do register, yes. That is right.

Senator CONROY—How many people have registered?

Mr Tune—I do not have the total number here, but we are getting about 40 or 50 at most at the meetings. They are not huge.

Senator CONROY—More than the Senate reform process got.

Mr Tune—For this type of issue, I think that is not too bad. Some people have very strong views. Some people are just coming along because they are interested. So that is the second task—to run those things—and then, as I said, to pull all of that together, both the submissions and the consultation phase, and provide a report to us, which will try, once again, to draw out these key issues.

Senator CONROY—Do the consultants have the expertise to assess the submissions and the discussions?

Mr Tune—Certainly when we looked at their tender document we thought they had pretty strong qualifications, yes.

Senator CONROY—So they understood the demographic issues?

Mr Tune—I think they have a sufficiently broad experience and have dealt with things that perhaps are not specifically demographic but demonstrate to us that they have worked in similar sorts of fields. They have done work with DEWR and other agencies that—

Senator CONROY—I appreciate the point you made—that you have not been to any meetings. Has anyone from Treasury been?

Mr Tune—Yes. My people are going to them.

Senator CONROY—Do you have observers there?

Mr Tune—We have observers at every one, yes.

Senator CONROY—Do they participate?

Mr Tune—No, they do not. No, they sit back and listen and they are learning.

Senator CONROY—Are they disguised?

Mr Tune—No, they are not disguised.

Mr Murray—How can you disguise a Treasury officer?

Senator CONROY—That is a very good question. But there has been a bit of that going on. How much was the tender? What is the contract worth?

Mr Tune—The tender is \$199,502.

Senator CONROY—Is it under \$200,000 for any reason?

Mr Tune—No. It was the cheapest quote, I might add.

Senator CONROY—It just seemed like such a coincidence that it was under \$200,000.

Mr Tune—There is a bit of a clause in there that if they need to do a bit more work to make sure we have sufficient numbers of people there, they get \$200 or something like that. It will probably end up being a touch over \$200,000.

Senator CONROY—I just wanted a better understanding of the qualifications and experience that they have. Is it possible to get a breakdown of their qualifications from when they submitted something to you? I am not asking for their tender documents.

Mr Tune—There would be something in the tender document.

Senator CONROY—Something that sets out their experience and what their actual qualifications are. Are they experts in public finance?

Mr Tune—We can do a summary of their qualifications for you.

Senator CONROY—That would be great. Thank you.

Mr Tune—I assume it is public. I will have to check with them whether they want us to make that public, but I cannot see why not.

Senator CONROY—Mr Murray mentioned that it was an ongoing process. Is this just a one-off contract?

Mr Tune—Yes, it is at the moment, yes.

Senator CONROY—It is not ongoing but you perceive it could be ongoing?

Mr Tune—Well, it depends how the process goes. As I said, it is fairly open. We do not have a fixed view about how it might go from this stage onwards. That is really a decision for the Treasurer to determine. But we would think that if we did go into another process of consultation, we would obviously have to go through another tender process if we wanted to have a consultant. This one will be finished and then there will be a separate tender or separate sort of approach to the whole thing if we went further.

Senator CONROY—In writing the demographic discussion paper, who determined the options that were to be presented for discussion?

Mr Tune—The Treasurer approved this. It was considered by senior ministers of the government.

Mr Murray—The structure of it—where we are looking at capacity to participate, incentives to participate and flexibility within the labour market and the retirement income system—was basically devised by the demographics task force itself.

Senator CONROY—The task force?

Mr Murray—Yes.

Senator CONROY—So in writing the paper, were the views of the OECD, IMF or any others considered?

Mr Murray—We certainly considered views of the OECD. We did not ask them for their views, but they have done a lot of work on this.

Mr Tune—The OECD job study, for example, was an important influence on the work we were doing.

Senator CONROY—I do not know if you were watching last night, Mr Murray. I am hoping not. I am hoping you have a life.

Mr Murray—I was sitting in front of the television with a red wine.

Senator CONROY—You do not have a plasma TV? You were not watching?

Mr Murray—I do not have a plasma TV, but I was sitting in front of the TV with a red wine. I was not watching Senate estimates.

Senator CONROY—I got home last night afterwards and found Dad had been watching it on TransACT, so I was quite distressed for him.

Mr Murray—I understand you can see it on TransACT.

Senator CONROY—Yes, you can. It is quite distressing. Dad thought I was soft on Dr Parkinson, by the way.

CHAIR—Personal anecdotes are not necessary, Senator Conroy.

Senator CONROY—I was just letting Mr Murray know. You said you looked at OECD options, but none of them were presented?

Mr Tune—We looked at OECD studies. The OECD does not necessarily—

Senator CONROY—They do make suggestions and recommendations.

Mr Tune—They do at times, yes.

Senator CONROY—The reason I was asking—you distracted me, Senator Brandis—is that last night I went through a whole range of publications, such as the OECD publication *Policies for an Ageing Society: Recent measures and Areas for Further Reform*. It looks at a range of policy responses to an ageing population. Under the heading 'Australia', one of its recommendations is Australia should accumulate a fund to finance future outlays.

Mr Murray—Could you say that again.

Senator CONROY—Under the heading 'Australia'—they looked at different countries—one of its recommendations is that Australia should accumulate a fund to finance future outlays.

Mr Murray—Yes. Did you want to ask me a question about that?

Senator CONROY—What was Treasury's view of that recommendation? It did not make the paper, so I am presuming you thought it was a crock.

Mr Murray—I think our secretary is on the record as saying that what we consider to be the issue here is not the outlays themselves but the fact that per capita GDP is going to grow much slower over the next 40 years than it did over the last 40 years. If you look at the figures, real government outlays per capita over the last 40 years grew by 207 per cent. Over the next 40 years, they are only expected to grow by 120 per cent. We do not think that the outlays is the real issue. For some countries, that is the real issue. The OECD are right to focus on that. But for Australia that is not the issue. If you look at New Zealand, you find that New Zealand do have a fund where they have decided to put part of the surpluses away.

Senator CONROY—We had a lengthy discussion with Dr Parkinson about this last night.

Mr Murray—The figure I have is that their demographics effect is going to be about 8.5 per cent of GDP. In the Intergenerational Report, we talk of a gap opening up of about five per cent. But that includes health expenditures. Health expenditures are in the main being driven by—

Senator CONROY—Technology.

Mr Murray—countries becoming wealthier and demanding to utilise the latest technologies. Most of the OECD studies, including on New Zealand, where they have this 8½ per cent gap, do not include that at all. They just assume that their health expenditures will grow in line with GDP.

Senator CONROY—I think Dr Parkinson said that in terms of concerns not a crisis, New Zealand could possibly be in the crisis column.

Mr Murray—I think if you talked to the New Zealand Treasury, they would say that they will face a crisis. Certainly the Europeans will face a crisis, where they have universal pensions and they are indexed to wages, not to prices, other than in the UK.

Senator CONROY—But the OECD is aware of these facts. I am presuming that they are aware what goes on Australia.

Mr Murray—They are.

Senator CONROY—They do write regularly about Australia.

Mr Murray—They are here at the moment.

Senator CONROY—They are here at the moment?

Mr Murray—Yes.

Senator CONROY—I remember the Treasurer quoting them extensively almost year by year.

Mr Murray—Yes.

Senator CONROY—So the Treasurer likes to quote them proudly as an authoritative source. I am just wondering why the OECD makes this recommendation and why the IMF considers it specifically for Australia, not in a New Zealand context or with regard to the general demographic concerns around the globe, but Treasury reject it.

Mr Murray—We are not saying that we reject it as a concept. We are saying we reject that it should be the main tool that Australia uses. We think that, given that real GDP per capita is likely to grow much slower over the next 40 years compared with the past 40 years, looking at participation and productivity to grow the economy faster is the real issue. The OECD is here at the moment. We have told them that. They do very good analyses, but that does not mean it is perfect. We are telling them what we think. On most occasions, we agree with the OECD. On this occasion, we are telling them in the Australian context—

Senator CONROY—They are wrong?

Mr Murray—That is not the main issue. If by growing the economy faster we end up with bigger surpluses and you want to put that money aside and invest it because it will be in your bank account and you want to put it into a portfolio and that can then be used later on to fund

expenditures when you need to, so be it. But if the OECD are talking about a fund that would mean would you want to raise taxes to GDP higher than you normally would, so you are wanting these surpluses in advance to be hypothecated to an intergenerational fund, we do not agree with that approach. It is as straightforward as that.

Senator CONROY—Have you broken it to Mr Comley gently?

Mr Murray—Mr Comley is a Treasury officer. We do not have to break anything to him.

Senator CONROY—He is with the OECD and he has clearly given them a bum steer here.

Mr Murray—No. He is in the Australian delegation to the OECD at the Australian embassy in Paris. He is still a Treasury officer.

Senator CONROY—I was not suggesting he was not.

Mr Murray—He is not working for the OECD..

Senator CONROY—He is here in Sydney at the moment, I did hear, and there are no cricket matches and the OECD are visiting, so I am just assuming he is with them.

Mr Murray—He is accompanying them as the Australian Treasury representative, but he does not work for the OECD.

Senator CONROY—Secondment? Would that be a term, possibly?

Mr Murray—No. He is not seconded to the OECD. He is the Australian delegate at the Australian embassy. In the Australian embassy in Paris, we have an ambassador to France and we have an ambassador to the OECD. Mr Comley is in the delegation that works for that ambassador.

Senator CONROY—So what does he do?

Mr Murray—Mr Comley is our man in Paris, if you like. I am sure he would be delighted to hear me describing him that way.

Senator CONROY—I will just leave that one alone.

CHAIR—And Mr Lindwall.

Senator CONROY—I know Mr Lindwall.

Senator Coonan—He is our other man.

Senator CONROY—Our other man in Paris. Speaking of the IMF, when did you hear?

Mr Murray—I beg your pardon.

Senator CONROY—When did you hear about the IMF?

Mr Murray—Me?

Senator CONROY—Yes.

Mr Murray—You mean personally?

Senator CONROY—Yes. Have you got appointed yet to the IMF? Are you sure you are not going to work for them?

Mr Murray—I am not sure that I am technically appointed until the executive director for our constituency appoints me, because I will be going in the first instance to—

Senator CONROY—I was just wondering if you had heard yet, that is all.

Mr Murray—Yes, I have heard. There has been a press release, so I hope I have heard.

Senator CONROY—So you will be our man in—

Mr Murray—Washington.

Senator CONROY—Washington. Excellent. How quickly can you get there? I am going next week. Are you going to be there in time?

Mr Murray—No. I do not go until next March.

Senator CONROY—March. Okay.

Mr Murray—You have to put up with me until then.

Senator CONROY—Always a pleasure, always a pleasure. Hopefully, I will catch up with you when I visit Washington next year.

Mr Murray—I will look forward to that.

Senator CONROY—Now in terms of mature age work force participation, assistance for the long-term unemployed would be important. Would that be a fair statement?

Mr Tune—Well, if the mature age people in the mature age ranks are long-term unemployed, yes, certainly. They often are.

Senator CONROY—I did have a bit of a strange discussion with Dr Parkinson last night. My understanding is there is an overrepresentation proportionately of mature age people in the long-term unemployed.

Mr Tune—Yes. I would have to look at the statistics. My feeling—I could not put it any higher than that—is that it would be at least average vis-a-vis younger people or middle aged people.

Mr Murray—Quite a few mature age workers move to—

Senator CONROY—No. We had the discussion that they give up and bail out to something else.

Mr Murray—They move on to what is called Newstart.

Mr Tune—A lot of them move on to what is called Newstart Incapacitated, which is a form of Newstart allowance where the job search requirements are relaxed quite radically. They then graduate from there over a period of time to the disability support pension. You certainly have an overrepresentation of older people under pension age—say, 50 to 64—on disability support pension. There is a very strong bias.

Senator CONROY—As I say, mature age work force participation assistance for the long-term unemployed is important?

Mr Tune—Yes.

Senator CONROY—Given that is the case, can you confirm for me that the cuts to mature age labour market assistance in 1996 were the largest ever cuts in Australia's history and that these cuts have never been made up?

Mr Tune—No. I cannot confirm that.

Senator CONROY—It is wrong?

Mr Tune—I do not know.

Senator CONROY—You just do not know?

Mr Tune—No.

Senator CONROY—Are you able to find out for us?

Mr Tune—I could have a look. I do not know. I will take it on notice, yes.

Senator CONROY—Thanks. Was there a dramatic fall in the numbers of mature age people moving out of long-term unemployment straight after this cut?

Mr Tune—Sorry, could you repeat that?

Senator CONROY—Was there a dramatic fall in numbers of mature age people moving out of long-term unemployment straight after this cut in assistance?

Mr Tune—Once again, I would have to take that on notice and check the numbers.

Mr Murray—These are probably issues—

Senator CONROY—They are Treasury numbers.

Mr Murray—better addressed to the Department of Employment.

Senator CONROY—They are Treasury numbers, I understand.

Mr Tune—I am not sure they would be. If I were looking for the numbers, I would probably go to Family and Community Services or DEWR. I suppose ABS numbers would provide us with some indication of long-term unemployment, so we could go to either place, yes.

Mr Murray—But they would not be Treasury numbers as such?

Mr Tune—No.

Senator CONROY—Treasury has compiled these numbers before. Can you check?

Mr Tune—Yes, certainly.

Senator CONROY—Thanks. I was discussing with Dr Parkinson last night Dr Henry's speech about the pro-growth strategy, aggregates and public spending per capita. I will read it to you. It is a recent speech Dr Henry gave.

Mr Murray—Do we know the page?

Senator CONROY—Apologies; I do not. But Dr Parkinson found it. It states:

But while the pro-growth strategy does not take a view on aggregate public spending per capita, it most certainly does take a view on the individual components of public spending—including the type and geographical location of infrastructure spending. It evaluates public spending programmes in terms of their implications for GDP per capita growth.

Mr Murray—Yes.

Senator CONROY—I was talking with Dr Parkinson, who at various points during the discussion handpassed to you. We might overlap a little bit with my discussion with Dr Parkinson. I was wondering through what mechanism is a transparent cost-benefit analysis of infrastructure alternatives undertaken at the Commonwealth level. He said he did not have any idea and to ask you.

Mr Murray—Yes. I am not sure I am going to be able to shed a lot of light on this, but I have watched the debate, not last night but this afternoon.

Senator CONROY—This afternoon; yes, we did traverse some of the area.

Mr Murray—Yes. I think there are a few issues. There were issues that you raised about how all of this is coordinated and how you prioritise. You said that the Victorian government now has an advisory committee. That is one way of getting some advice about all of the different sorts of infrastructure and what should be the prioritisation. I think you have to remember—I do not really need to tell you this—that ultimately the coordinator and prioritiser of all of this are the cabinet. They make the decisions, and not just in one year but over a series of years.

Senator CONROY—Hopefully with some advice from some experts in the field.

Mr Murray—They will be experts in the field. It may be important areas like land transport or energy infrastructure or the very important social infrastructures of schools and hospitals. There may be in some of the bureaucracies some cost-benefit analysis done. Certainly in the land transport area there are clearly cost-benefit analyses done.

Senator CONROY—They are always looking to build roads everywhere.

Mr Murray—Yes. But they do have methods for working out what are the economic and social returns from those. I am not privy to all of that.

Senator CONROY—But Dr Henry was talking about wanting to make sure that infrastructure is a cross-portfolio concept. That is what Dr Henry was describing.

Mr Murray—I am not sure that that is what he said. He said that you have to look at the individual components.

Senator CONROY—Including the type and geographical location of infrastructure spending.

Mr Murray—Yes. I think we are making some progress on that.

Senator CONROY—Okay. Tell me about it, please.

Mr Murray—But I am not sure that you would agree that this is a whole of government approach. If you look at the fundamental areas of infrastructure, we are trying, both at the Commonwealth and the state levels, to get some proper structures into some of the important areas. For land transport, the AusLink package has as a fundamental basis a new advisory and discussion mechanism for trying to prioritise between road and rail and the intermodal links. It is trying to get microeconomic and environmental reform into water to try to get both market signals and environmental market signals into the whole water industry. In energy,

again, the energy ministers are going through a process of trying to bring a national market, particularly to electricity. So we are making some important advances on those fronts.

On the social policy front, the federal government does have a new special purpose payments framework because we put significant amounts of money into both education and hospitals. Last year, I pointed out that in Budget Paper No. 3 there was the outline of that new special purpose payments framework. You asked us whether this committee could be supplied with a copy of Dr Henry's letter to the state heads of Treasury about that new framework. We supplied it. It is basically trying to sort out a lot of these special purpose payments agreements, such as the division of responsibilities between the Commonwealth and the states and the objectives of those agreements, and to try and build up a better outcomes-outputs framework and a monitoring and a measuring of those outcomes. You would hope that over time that will put in the state arena, where finally the decisions are made about where the hospitals and schools should go, a better decision-making process on the social and economic returns from that infrastructure.

But I think you also need to recognise that when you look at the Commonwealth's balance sheet, it has not got much in terms of infrastructure. Most of this is done by the state governments, and the Commonwealth funds it. It is basically about getting the structures right and the governance right and maybe we will get better decision making out of all of those processes. I think we are making some progress.

Senator CONROY—Thanks for that. You mentioned this new SPP framework. Could you explain it and what has changed? Could you take me through the main aspects in a bit more detail? Does it apply to infrastructure?

Mr Murray—It does apply. It certainly applies to schools and hospitals. Certainly the AusLink framework is in that mould, so it will apply there as well. What is important is it has not always been clear—that is my understanding with some of these agreements in the past—that there was a clear division of responsibility between the Commonwealth and the states. You have to bear in mind that most of this is all state responsibility. The Commonwealth is making a monetary contribution to these activities. So that is one new thing—to try to get a clear division of responsibilities in these agreements and clear objectives in the agreements, such as what the Commonwealth is trying to achieve through supplying this money. Instead of just having controls over the inputs and how the money is spent, it is trying to look at whether we can build an outcomes-outputs framework. The states have been putting a lot of pressure on us to try to go down that route and to have built-up indicators over time that can measure the outcomes from the investment and the recurrent spending.

Senator CONROY—Does that cover economic infrastructure?

Mr Murray—It covers the whole range of special purpose payments.

Senator CONROY—Which includes some economic infrastructure?

Mr Murray—Yes. All those special purpose payments are set out at the back, I think, of Budget Paper No. 3.

Mr Heferen—If you have Budget Paper No. 3 there, which you might not have, at table B1 through to about B6 at the back it covers all SPPs. In particular, B3 looks at 2004-05 and has a state-by-state breakdown.

Senator CONROY—Thanks. To get this framework for infrastructure, you would need cost-benefit analyses across different sectors?

Mr Murray—You may do. It may not become as sophisticated as that.

Senator CONROY—I was hoping it would.

Mr Murray—But that is one approach.

Senator CONROY—Is it one you favour or think is necessary?

Mr Murray—Conceptually, yes, but it is not always possible. What is the social discount rate you want to use? How do you measure all of the social as well as economic benefits? Yes, as an economic concept it is fine, but you are not necessarily going to always achieve that.

Senator CONROY—But if you are trying to maximise growth, you want the most sophisticated approach possible, don't you?

Mr Murray—In a first best world, yes.

Senator CONROY—What do we have at the moment—about fifth best?

Mr Murray—No. I would not go that far. This is not a fifth best country.

Senator CONROY—Does Treasury have a view on the social discount rate and does it differ from the UK approach, such as for PPP?

Mr Murray—I do not think I can answer that one.

Senator CONROY—Does Treasury have a view?

Mr Murray—I certainly do not. I do not know if any of my colleagues can help you on that.

Mr Flavel—I do not think there is a prevailing view either in Treasury or across government on an issue like the social discount rate. But from time to time, for instance, in relation to property or the capital use charge that used to be in place, the government has articulated a view about particular discount rates for particular purposes.

Senator CONROY—Who is our resident expert on social discount rates? Do we have any volunteers?

Mr Murray—Because these are expenditures, a lot of the responsibility, and certainly the coordination responsibility for special purpose payments, does not rest with the Treasury; it rests with the department of finance. Whether they have a cell within the department of finance that specialises in all of this, I do not know. You would have to ask them.

Senator CONROY—If you are doing a long-term project evaluation, surely you need a discount rate.

Mr Murray—You may do.

Senator CONROY—From the analysis you have been doing and the discussions you have been having, surely you have to have one.

Mr Murray—But that might not necessarily be done in the Treasury. On land transport, for instance, we do not—

Senator CONROY—You are a premier economic department, Mr Murray. Dr Parkinson was having trouble defining to me Treasury's brief outside of doing the budget last night, but I am hoping this output section can do better.

Mr Murray—I am glad you are saying that. But the line departments and the department of finance do have responsibilities in these areas. A lot of that expertise and that work is not done by the Treasury.

Senator CONROY—So does Treasury assess the relative economic benefits of various projects?

Mr Murray—No.

Senator CONROY—Does anybody?

Mr Tune—Except they go to cabinet or they are considered by IDCs or task forces. Treasury will have a view about them on a case-by-case basis.

Senator CONROY—That is what I am trying to understand. Someone must know something about this or do you just, what, add your mother's age, subtract her shoe size and go—

Mr Tune—We will try and provide advice to the government on the cost-effectiveness of proposals that go forward. Implicitly in that—it is implicit rather than explicit—we will be thinking about the social rates of return as well as the economic rates of return.

Senator CONROY—So you around the room and say, 'Anyone got any ideas?'

Mr Tune—No. We have a look at it on the basis of the case that is presented by various agencies and come to a view.

Senator CONROY—Is there a consistent methodology you use on a case-by-case basis?

Mr Tune—I think it is probably fair to say that there is not and I think that is one of the issues that my colleagues were raising. It is not there at the moment and perhaps there is a case for further work to be done on it.

Senator CONROY—I probably agree with you.

Mr Murray—The social policy area is particularly difficult because, if we are going to build some sort of outcomes-outputs modelling for these special purpose payments, we need the data and we need to be able to get it in a timely fashion.

Senator CONROY—The UK treasury has managed to do it.

Mr Murray—But the UK treasury are an amalgam of the Department of the Treasury here and the department of finance and they have much wider responsibilities than we do.

Senator CONROY—So we need to give you wider responsibilities?

Mr Murray—I did not say that at all.

Senator CONROY—Is something being done to redress this? Mr Tune mentioned that we are having this discussion about what we are trying to do to improve the process. Is this something you have in hand, Mr Murray?

Mr Murray—Certainly as we do each new special purpose payment agreement we try to improve the processes. But, as I say, this is a process that is coordinated by the department of finance. It does involve, importantly, the line agencies. Quite often, they are the ones that have to then go and do—

Senator CONROY—It sounds like it would be almost impossible to have a consistent methodology, given the disparate things involved. This would tend to suggest it would be helpful if there were a consistent methodology and process.

Mr Tune—There is a set of guidelines, certainly, that they need to follow, so there is a template, in that sense, that they use. But I guess within that they do use different methodologies; that would be true, yes.

Senator CONROY—Do you think it would be advantageous if we had a consistent whole of government approach to the methodology?

Mr Murray—I think that that is what we are trying to build, Senator, but I think you have to recognise that there is a lot of history in all this.

Senator CONROY—I am accepting that it is on—

Mr Murray—There is a lot of building. At the end of the day, will we have some perfect system of cost-benefit analysis? I suspect not. But I suspect that over the next four or five years we will make a lot of progress in building a much more robust analytical framework that will take into account economic and social costs and benefits.

Senator CONROY—I look forward to it. Again, Dr Parkinson kindly pointed me in your direction. He was talking about box 2 on page 3-20 of Budget Paper No. 1, which looks at the growth in infrastructure investment in recent years, particularly by the private sector under PPPs.

Mr Murray—Dr Parkinson's people wrote this. I just thought I would preface it with that.

Senator CONROY—I certainly appreciate that. It states:

While vehicles such as PPPs are an increasingly important component of business investment, important public policy issues around the appropriate management and allocation of risks in such projects remain.

Mr Murray—Yes. That is certainly true.

Senator CONROY—I would like to explore Treasury's view on these issues in more detail.

Mr Murray—You have to recognise that with public infrastructure there is a cheap form of finance and it is called government borrowing. Nobody can borrow cheaper than the government. So why would you do this in partnership with the private sector? What you are trying to do is bring in the expertise of the private sector to not only build a lot of this infrastructure but also run it. To make sure that you are getting value for money in all that process, you really need to transfer a lot of the equity risks, if you like, from the public sector

to the private sector. If you cannot do that, there is not a lot of use in doing it. If something goes wrong, not only will you have paid more for it in terms of the borrowing costs but you will suffer losses as well. You will bear those losses. So the transfer of risk is a central issue about public-private financing. The Commonwealth does not do a lot of its own investment. But the department of finance does have guidelines. I brought them along tonight. I am quite happy to hand them over, but I presume they are on the department of finance's web site. I am not an expert on these guidelines, but they importantly talk about value for money and about transparency and accountability. I would like to table the document for the committee.

Senator CONROY—Thank you very much. You are a man after my own heart, Mr Murray, as much as that may frighten you.

Mr Murray—That does frighten me.

ACTING CHAIR—Is it the will of the committee that the document be tabled?

Senator CONROY—I so move.

Mr Murray—We have also done work through the heads of Treasury. The heads of Treasury have an accounting advisory committee that looks at a lot of accounting issues. As boring as that may sound, it is actually—

Senator CONROY—No. I am very excited by this particular issue. I am very excited by the scams that go on in accounting for these things.

Mr Murray—Yes. That is very important. So they have been looking at what the accounting standard should look like. They have done a lot of work. They have attempted to road test this with some examples, but that is work in progress. Senator Coonan has also reminded me that there can be tax advantages in all of this, so you need to weigh up all of those.

Senator CONROY—Tax advantages, but not for the taxpayer.

Mr Murray—There are tax issues.

Senator CONROY—Implications.

Mr Murray—That is the right word.

Senator Coonan—That is where the transfer of risk gets really tricky.

Senator CONROY—I agree with you. The heads of Treasury was done a long time ago but did not seem to go anywhere. Is that right?

Mr Murray—I would not say it did not go anywhere. I do not have a great background in this because a lot of the work was being done, I think, in about 2002 when I first took up this job and first started being interested in heads of Treasury issues.

Senator CONROY—How long is it since they first considered it? You might not actually know just off the top of your head.

Mr Murray—I do not know.

Senator CONROY—Can you take that on notice?

Mr Murray—I can.

Senator CONROY—I am told it was around three years ago.

Mr Murray—That sounds about right. My understanding—and other people might have information here—is that maybe about 12 months ago there was a proposal that this sort of draft accounting standard could be implemented. But the heads of Treasury are still not satisfied that this is a robust standard.

Senator CONROY—And they were going to promulgate it via the Australian Accounting Standards Board?

Mr Murray—I am not sure that they are at the stage of doing that. But you would presume that that would be the next step.

Senator CONROY—The parliament promulgates accounting standards.

Mr Murray—Yes. And that is what you would presume we would be next moving to.

Senator CONROY—Okay. But at this stage it is not going far?

Mr Murray—I would not say it is not going far.

Senator CONROY—Well, it is 12 months overdue. You said you hoped it would be there 12 months ago.

Mr Murray—I am not sure on that; I am not sure when it was exactly due, but there is certainly still road-testing, trying to make it robust.

Senator CONROY—Did you or Treasury get a chance to have a look at a review of Victorian PPPs by Mr Peter Fitzgerald?

Mr Flavel—No, we did not. As Mr Murray has said, formal responsibility for private financing policy rests with the Department of Finance and Administration.

Senator CONROY—Fortunately, we have Treasury looking over their shoulder on this matter. I am much more excited by Treasury's supervision of this.

Mr Murray—I will explain. At heads of Treasury meetings, the Department of Finance and Administration is represented as a full member on the Commonwealth side at the deputy secretary level. Occasionally Dr Watt comes along as well. The department of finance is heavily involved in the heads of Treasury accounting committee.

Senator CONROY—I know they are. I have talked at some considerable length to them about accounting standards.

Mr Murray—And Paul Roe at the end of the table here is the Treasury observer on that committee, so in fact Finance play a very heavy role in that committee.

Senator CONROY—You have your own representation other than Mr Roe? This is no offence to Mr Roe, but you have your head there?

Mr Murray—This is the accounting subcommittee.

Senator CONROY—Sorry, on the accounting one; I thought you meant on the heads of Treasury one. I thought, 'Mr Roe gets to observe—that's good.' I am hoping the heads of Treasury have it because the heads of Treasury need it! Sorry, Mr Roe; I was a bit confused there.

I would recommend Mr Fitzgerald's report. It is actually a surprisingly—and this is a reflection on Mr Fitzgerald—good dissertation. Does Treasury have any expertise in PPPs, given the work that has been previously undertaken by the heads of Treasury? Mr Murray, are you familiar with some of these issues?

Mr Murray—I am familiar with some of these issues, but that is only because I have been around a long time, Senator.

Mr Tune—I think it is probably fair to say that most of the expertise is in relation to the tax implications of looking at these things. So the Revenue Group would look at it from that particular perspective. But broader than that, as people have been saying, it is a Finance responsibility.

Senator CONROY—I appreciate the point you have just made. In terms of how PPP policy is developed, would the relevant Commonwealth minister be Senator Minchin, the Minister for Finance and Administration? He is responsible for developing the policy?

Mr Murray—Yes. It is not a huge issue for the Commonwealth because we do not invest—

Senator CONROY—I remember the patrol boat debate, which I thought was a very good debate, where the very simple question was asked: if the boat gets sunk during the war, who pays to replace it? The answer was: the Commonwealth, of course. That is a very quick summary. In other words, there was no transfer of risk.

Mr Murray—If you ultimately want to see the transfer of risk, you really have to contract for a service, not for a capability. So it is the supply of services of patrol boats, not numbers of patrol boats. That is when you really transfer the risk. It is then up to the private provider to make sure he has enough patrol boats to meet the service.

Senator CONROY—War is a tricky thing, though.

Mr Murray—That is why it is quite difficult at the Commonwealth level, because a lot of our investment is in defence, and so it becomes quite difficult.

Senator CONROY—Fair enough. I think, Mr Murray, it was said that you certainly are across the implications for tax.

Mr Murray—I am not personally across those implications.

Mr Tune—No, I said Revenue Group would be. They look at tax issues, in the context of tax arrangements for leasing deals and so forth.

Senator Coonan—It is Mr Regan.

Senator CONROY—Is he here with us tonight? If he is not, that is okay. In terms of the tax—and it may be that Mr Regan is needed for this—I just make the point that it is a very important issue. Do Treasury, DOFA and DOTARS have a similar view?

Mr Murray—On the tax angle?

Senator CONROY—Yes.

Mr Murray—I have no idea.

Mr Tune—I do not know either.

Mr Murray—I think you should ask the Revenue Group.

Senator CONROY—I will, thanks. All state governments have a coordination unit or body for PPPs. Is there an equivalent coordination unit at the Commonwealth level?

Mr Murray—Yes, there is.

Mr Flavel—As I mentioned before, I think there is actually a private financing unit or branch within the Department of Finance and Administration who actually put out the guidelines which Mr Murray tabled before.

Senator CONROY—How many people are in that unit?

Mr Flavel—That would be a question for the Department of Finance and Administration.

Senator CONROY—I do vaguely recognise that you were from that department up until relatively recently.

Mr Flavel—Far be it from me to put my former colleagues in it, but I think that it is a reasonably small unit. It is somewhere between zero and 10 people, for argument's sake, but you would need to check that.

Senator CONROY—I will not hold you publicly accountable if that figure does not turn out to be completely accurate, but thank you for the effort. I will ask Revenue when they come up. It may not come up tonight, because I suspect we will probably go over to Friday, so it may be that we can hold that part of the questioning off until Mr Regan is here on Friday. I would not want you to go chasing to get him out of bed now. What about the treatment of Telstra?

Mr Murray—Telstra is really an issue for the department of finance. What did you want to ask on that?

Senator CONROY—In the statement of risks, there is an item entitled 'Asset Sales: Telstra'.

Mr Murray—The statement of risks is a matter for the Department of Finance and Administration.

Senator CONROY—So you would not be able to answer any questions at all?

Mr Murray—I do not think so, no.

Senator CONROY—What about the contingency reserve?

Mr Murray—That is the department of finance.

Senator CONROY—So you would not be able to help at all?

Mr Murray—I doubt it.

Senator CONROY—You would not be able to discuss with me the figure within the contingency reserve?

Mr Murray—No.

Senator CONROY—That is disappointing.

ACTING CHAIR (Senator Fifield)—Senator Conroy, you will notice that on the front of the voting papers there are the names of two ministers, for Finance and Treasury.

Senator CONROY—I cannot believe you still let them do that. After eight years trying, you could not get rid of it.

ACTING CHAIR—It is a joint publication.

Mr Murray—I am not trying to be unhelpful, Senator. It is just not our responsibility; that is all. If I tried to answer the question and got it wrong—

Senator CONROY—I am accepting your point that I will need to ask Finance, so that is fine. What about the abolition of the baby bonus in terms of revenue?

Mr Tune—It depends what angle you are after, Senator.

Senator CONROY—Okay. I am just giving them some advance notice if it is not your area. You are not just trying to get the questions out of me early, are you, Mr Tune? You have to help them out to make up to them for all the dumping on them you have done!

Mr Tune—I will have a shot.

Senator CONROY—On 1 April, immediately following a policy announcement by Labor, the Treasurer produced a note from Treasury with figures for the baby bonus revised down. Were the baby bonus figures revised by Treasury?

Mr Tune—I think that would be a question for revenue. If you are going into that sort of depth, it is probably for them. I could talk about the costing that was involved in the net offset for the new maternity payment. I have that figure here, if you want that.

Senator CONROY—No.

Mr Tune—If you are going back further—

Senator CONROY—There are just a few questions. I am happy to put them to revenue. I noted a Commonwealth-state financial relations information to the public measure. What does that measure involve?

Mr Heferen—Are you talking about the measure announced in the budget?

Senator CONROY—Yes.

Mr Heferen—There was a sum of \$3 million being allocated in 2003-04 to assist in providing information to the public.

Senator CONROY—Plasma TVs for everybody?

Mr Heferen—I do not think it involves that, Senator.

Senator CONROY—So what does it involve?

Mr Heferen—Press advertisements and TV advertisements.

Senator CONROY—Who is in charge of producing these?

Mr Heferen—We have used hma Blaze for the print advertisements. Universal McCann were used for the TV advertisements. That has been through the Government Communications Unit within the Department of Prime Minister and Cabinet.

Senator CONROY—Can I ask you questions about the process? Would you be able to answer them? Have you seen the ads? Can I ask you about the content?

Mr Heferen—Certainly.

Senator CONROY—So you have been involved? You are the one-man focus group on the ad?

Mr Heferen—No. I have not had an opportunity to be in the focus groups, but I have certainly seen the advertisements to ensure that they are factually correct.

Senator CONROY—Was this a measure recommended by Treasury?

Mr Heferen—In what sense?

Senator CONROY—The answer should be that you cannot possibly tell me what you have recommended to government?

Mr Heferen—That is right.

Mr Murray—That is certainly the answer.

Senator CONROY—I thought I would start to ask and answer my own questions. Will Treasury or the government determine the information to be provided to the public—or, as you have already pointed out, the government's media unit?

Mr Heferen—The work is done in consultation with the Government Communications Unit.

Senator CONROY—Which officer are you dealing with there?

Mr Heferen—The head of the GCU, I think, is called Mr Williams. The assistant secretary, I think, is called Mr Taylor.

Senator CONROY—And you are dealing with those individuals?

Mr Heferen—I have had most dealings with Mr Taylor.

Senator CONROY—Mr Taylor mainly. With regard to the content, do you sit at your desk and draft it up?

Mr Heferen—No. I am afraid I do not have those sorts of skills necessarily.

Senator CONROY—I am talking about the content; I am not talking about the spin.

Mr Heferen—We provide the factual material to the Government Communications Unit. They then have their own processes to decide how that material is best packaged and communicated to the public.

Senator CONROY—But it is a Treasury department measure?

Mr Heferen—Yes. We are allocated the money and we will pay the bills, and the Treasurer, our minister, is the one who would authorise both the placing of the TV ads and the placing of the newspaper ads.

Senator CONROY—Can you give me a breakdown of the TV ads versus radio ads spend: what is the spend in each of these areas of media?

Mr Heferen—I have some estimates here, although I do understand that, as yet, not all invoices have been received.

Senator CONROY—Have the ads run?

Mr Heferen—There have been ads that have run, yes.

Senator CONROY—I might have seen some newspaper ads.

Mr Heferen—There have been newspaper ads.

Senator CONROY—TV ads?

Mr Heferen—There have been TV ads in Victoria and there have been newspaper—

Senator CONROY—Only in Victoria?

Mr Heferen—Yes. The TV ads have only run in Victoria.

Senator CONROY—Why is that?

Mr Heferen—That would be a matter, at the end of the day, for the Treasurer.

Senator CONROY—No. It is a matter for the Department of the Treasury. You have made a decision to spend money in Victoria. I am a Victorian. I am just wondering why.

Mr Heferen—The ads basically have two sets of reasons, if you like. The first set of reasons was to do with the advertisements run by both the New South Wales government and the Victorian government in relation to their grant shares out of the recent Commonwealth Grants Commission methodology review. The government felt that there was a specific need to correct what it saw as potentially misleading information.

Senator CONROY—Potentially, did you say?

Mr Heferen—Yes. About the grant shares. I think both New South Wales and Victoria ran ads suggesting that the allocation of—

Senator CONROY—Why only TV ads in Victoria, then? I am feeling persecuted.

Mr Heferen—In what sense, Senator?

Senator CONROY—Because there are only TV ads in Victoria, you said. New South Wales is running ads. Why are you not running TV ads in New South Wales?

Mr Heferen—At the end of the day, the advertising process is probably best taken up with the Department of Prime Minister and Cabinet and the GCU.

Senator CONROY—You are paying for it, so I am going to ask the officers responsible for paying for it.

Mr Heferen—Our role is to ensure that what goes out is accurate and the material properly reflects the amount of money that is actually provided to the states and territories. That money is essentially dealing with the GST revenue that is provided to the states and territories. It also has some element of the SPPs but largely deals with the GST revenue. The grant shares are ultimately determined by the Treasurer, upon advice from the ministerial council, on advice from the Commonwealth Grants Commission. So the Treasurer has a particular interest in ensuring that the information put out there is accurate.

Senator CONROY—He is Victorian as well, the Treasurer.

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

Senator CONROY—Careful. You almost gave something away there, Mr Heferen.

Mr Heferen—I do not think so, Senator. I think that is on the public record.

Senator CONROY—Now what did the TV commercials say?

Mr Heferen—I do not have the TV commercials in front of me, but—

Senator CONROY—Could you get them to the committee by, say, Friday, when we are likely to be reconvening?

Mr Heferen—The TV commercials?

Senator CONROY—A videotape of them would be good, but at least the script.

Mr Heferen—We can certainly get the script.

Senator CONROY—And any pictures or images. Unfortunately, I have not seen them, because, being a Victorian, I do not get home that often.

Mr Heferen—They are straight—

Senator CONROY—That is why I am so surprised. I actually have not seen any of them. I know I am not a normal part of your demographic testing, but I just have not seen any of them.

Senator JACINTA COLLINS—I have not seen them either.

Senator CONROY—You are home a little bit more than me, but not that much more.

ACTING CHAIR—They are excellent.

Senator CONROY—Mitch has seen them.

ACTING CHAIR—They are excellent.

Senator CONROY—Did you authorise them?

Senator JACINTA COLLINS—Maybe Mitch saw them before they were authorised.

Senator CONROY—I think Mitch saw them. I am willing to bet, Senator Collins, that you are right; Mitch did see them before they went to screen.

Mr Heferen—The relevant information is the amount of Commonwealth funding that is provided to Victoria.

Senator CONROY—Okay. Is it possible to get the script and any images?

Mr Heferen—Certainly.

Senator CONROY—Is it just four messages in print up on the screen or is it Senator Fifield standing up spruiking?

Mr Heferen—No. There are just straight black and white images.

Senator CONROY—If we could have the images that represent the script, if there is any talking.

Mr Heferen—Certainly. We could provide that tomorrow.

Senator CONROY—That would be great: for all the forms—TV, radio and newspaper. Are there any other forms?

Mr Heferen—Sorry, there is only TV and newspaper.

Senator JACINTA COLLINS—When you say the amount of funding provided to Victoria, is that presented in proportional form or just in raw form?

Mr Heferen—Certainly for the newspaper ads it is provided in raw form. It is essentially the total share of GST funding that each state receives. It also includes national competition payments. It also includes SPPs, but only SPPs paid to the state and not through the state. That is information provided in the newspaper ads. For the TV ads, I think it just provides total funding.

Senator CONROY—So do you sign off on the ads? You are paying for them, so I presume are you ultimately responsible for them.

Mr Heferen—We ensure that the information in the ads is correct.

Senator CONROY—So, if I saw these ads and I thought they were potentially misleading, it would be you I would talk to?

Mr Heferen—If you felt the information was wrong, I would be very surprised, because the information is correct—so I guess in a sense it is a hypothetical.

Senator CONROY—All I am asking is, if I am asking questions about the content, do I ask you? You are the signing-off officer?

Mr Heferen—I approve the expenditure, yes.

Senator CONROY—That is what I mean: you sign off. It is not the Treasurer, it is not PM&C, it is not the government's spin doctor unit: it is you.

Mr Heferen—In terms of the money that has been allocated for these, that has been allocated to the department, and I would be the one who approves the expenditure, yes.

Senator CONROY—You mentioned focus groups. Were they focus group tested?

Mr Heferen—Are you talking about the TV ads? The process, or the way it is done, would be best raised with the Government Communications Unit.

Senator CONROY—You are paying for it, so I am asking the person who is paying for it.

Mr Heferen—The process we go through is consistent with a lot of media arrangements, I think. We speak to the GCU, the Government Communications Unit, in PM&C. They then engage people to do the advertisements. They engage people to do the necessary research to ensure that whatever is being produced is going to—

Senator CONROY—Would that research include focus group testing?

Mr Heferen—I am not familiar. I do not know.

Senator CONROY—You are paying the bills. I presume you have a breakdown.

Mr Heferen—The bills that we have—

Senator CONROY—The ads have gone to air, so I am presuming that you have paid some of the money, which means you must have paid for focus group testing because, by definition, the focus group testing comes before the ads go to air.

Mr Heferen—Yes. The firm Universal McCann placed the TV ads and the firm Whybin TBWA prepared the advertisements. The advertisements were researched to ensure they met the needs of the Victorian community.

Senator CONROY—Could I have a breakdown of all the expenditure that has taken place.

Mr Heferen—Certainly. Whybin TBWA prepared the television advertisements for a cost of \$62,000. Universal McCann placed the TV advertisements on the basis of their expertise, and that was \$490,000. So the cost of the TV advertisements to date is the sum of those two, which is approximately \$552,000. It may be the case that there are further bills that need to be paid. This is on the basis of—

Senator CONROY—What you have paid so far.

Mr Heferen—what we have paid so far.

Senator CONROY—With the placement of the ads, obviously most of that goes directly to the TV stations and is passed through presumably the cut, whatever that would be, for the placement agency. Could I get a breakdown of the rotation of those ads? Which stations they are on, how often—that sort of information?

Mr Heferen—Certainly.

Senator CONROY—With the \$62,000, that would include the focus group testing. Could I get a breakdown of what that \$62,000 was spent on. How much was focus groups? What are the other aspects of the \$62,000?

Mr Heferen—So a breakdown of the \$62,000?

Senator CONROY—Yes. Into what it is and what it was for.

Mr Heferen—I can certainly take that on notice.

Senator CONROY—Sure. You mentioned you had \$3 million.

Mr Heferen—Sorry, in relation to when the ads were shown, did you want that? It is a reasonably extensive list.

Senator CONROY—I do not think I want each individual time. I just want, for example, that on Sunday nights there were X and on Monday nights there were X—and between which hours. Were they all during the Sunday night movie? Were they all on at 3 o'clock in the morning?

Mr Heferen—No. It seemed to be arranged from around half past five to 6 o'clock through to 10 o'clock and 10.30 at night, on Seven, Nine, Ten and SBS.

Senator CONROY—On which nights?

Mr Heferen—It went from Wednesday, 5 May, I think, through to 15 May. I will just check on that. It went from 5 May until 13 May.

Senator CONROY—Okay. Can you give me the breakdown of how many ads were shown on each station per night. Would that be possible?

Mr Heferen—Certainly. Is that something you would like now?

Senator CONROY—No. If you can get it to us tomorrow or by Friday when we come back.

Mr Heferen—Certainly.

Senator JACINTA COLLINS—Similarly, is it possible to have the break-up of the \$62,000 tomorrow rather than on notice?

Mr Heferen—I do not have that information. I will have to try to get that from the GCU.

Senator CONROY—I presume it is listed on the invoice. Presumably they do not just send you a bill for \$62,000; presumably they itemise what the \$62,000 is for.

Mr Heferen—To be honest, I do not know.

Senator CONROY—If you can get whatever information you can, let us know by Friday—when you come back on Friday.

Mr Heferen—Certainly.

Senator CONROY—That only comes to about one-sixth of the allocation of \$3 million.

Mr Heferen—That is correct.

Senator CONROY—What else are you up to, Mr Heferen?

Mr Heferen—At this stage, the cost of newspaper notices is approximately \$440,000.

Senator CONROY—Okay. Can you give us a breakdown of which newspapers the advertisements were placed in and how many were in each. I am happy for you to take that on notice.

Mr Heferen—I can take that on notice or provide it now.

Senator CONROY—When I say take it on notice, you can provide it on Friday.

Mr Heferen—If you want it now, I can provide it now.

Senator CONROY—Yes. Go for it now.

Mr Heferen—There were ads on 27 and 28 March, at a cost of \$120,548. Those were in the *Daily Telegraph* and the *Sydney Morning Herald*. There were advertisements on Saturday, 1 May in the *Age* and the *Herald Sun*. The cost of the ones in the *Age* was \$33,976.80. The cost of the ones in the *Herald Sun* was \$24,925.26. Advertisements appeared on Sunday, 2 May in the *Age*, at a cost of \$24,814.08. They appeared in the *Herald Sun*, at a cost of \$22,376.72. They appeared on Wednesday, 5 May in the *Age*, at a cost of \$23,791.63 and in the *Herald Sun*, at a cost of \$27,912.98. They appeared on Saturday, 15 May in the *West Australian*, at a cost of \$10,746.40. They appeared on Sunday, 16 May in the *Sunday Telegraph*, at a cost of \$30,576.17, in the *Sun-Herald*, at a cost of \$24,426.12, in the *Sunday Age*, at a cost of \$19,087.75, in the *Herald Sun*, at a cost of \$22,376.72, in the *Brisbane Sunday Mail*, at a cost of \$18,808.06, in the *Adelaide Sunday Mail*, at a cost of \$12,479.92, in the *Sunday Times*, at a cost of \$14,738.36, in the *Sunday Tasmanian*, at a cost of \$2,266.32, in

the *Sunday Territorian*, at a cost of \$2,776.38 and in the *Canberra Times*, at a cost of \$2,295.58. That comes to a total of \$438,923.25.

Senator CONROY—That is about \$1 million. Has anything else been spent yet?

Mr Heferen—Not that I am aware of.

Senator CONROY—Okay. You have two more to go. What have we got planned?

Mr Heferen—I think that will be—

Senator CONROY—I presume it is going to be spent.

Mr Heferen—a matter for the government.

Senator CONROY—Minister, are you aware of what the other \$2 million is going to be spent on?

Senator Coonan—With the programs that we are rolling out as part of the budget, there could be a number of things—as part of telling people about all the good things we are doing. I cannot actually give you a precise answer as to what that will be spent on.

Senator JACINTA COLLINS—So there is an allocation in the budget for undisclosed items at this stage?

Senator CONROY—Another \$2 million.

Senator JACINTA COLLINS—I understand there is another \$2 million, but is that for undisclosed items at this stage?

Mr Heferen—The expenditure was for a communications campaign to inform all people in each state and territory of the Australian government's spending on each state and territory.

Senator JACINTA COLLINS—So you have rolled out some of that. What do you intend to inform people of that you have yet to roll out?

Mr Heferen—Again, that would be a matter for the government.

Senator JACINTA COLLINS—So there is just this bucket of \$2 million that is yet to be disclosed?

Mr Heferen—It has been disclosed.

Senator JACINTA COLLINS—It has been disclosed that it exists, but its purpose has not been disclosed.

Mr Heferen—The purpose remains the same. I guess the question of when they—

Senator JACINTA COLLINS—Are they yet to identify which particular aspects they would like to highlight?

Mr Heferen—I am not aware of that.

Senator CONROY—So \$2 million is waiting for the government to give us more factual information about how much GST revenue is going to the states.

Mr Murray—Or the SPPs.

Senator CONROY—Or SPP.

Mr Murray—Or national competition policy.

Senator CONROY—That is very blatant political advertising, Minister.

Senator Coonan—I do not think so. It is very important to inform people, Senator Conroy.

Senator CONROY—So Treasury is perfectly happy about that?

Senator Coonan—There is not much point doing things, if you do not tell the people who are going to benefit.

Senator CONROY—So Treasury is perfectly happy and endorses that sentiment?

Mr Murray—I do not think that that is particularly relevant. This is a government program and the government has decided that it wants to inform people of the flow of funds from the Commonwealth to the states. There has been a lot of misinformation coming the other way. I think it is pretty important that the people of Australia do now know that all the states are now better off as a result of tax reforms.

Senator CONROY—I possibly will not see you between now and the next election, so no doubt it will all be spent by the time I see you next, Mr Heferen.

Mr Heferen—That remains to be seen, Senator.

Senator CONROY—With regard to the 2003-04 final budget outcome, how long after the end of the financial year does Treasury have to publicly release and table it under the Charter of Budget Honesty?

Mr Martine—Under the Charter of Budget Honesty, the FBO is required to be tabled by the end of the September.

Senator CONROY—The end of September. Thanks. What was the Fuel Sales Grant Scheme?

Mr Murray—I do not know.

Senator CONROY—No? Do you deal with the Fuel Sales Grant Scheme? Does revenue?

Mr Murray—Revenue.

Senator CONROY—Bad luck. When will the FBO be available? The web site says November. Is that right?

Mr Murray—The FBO will be available by the end of September. That is when it is required.

Senator CONROY—The web site says November at the moment.

Mr Martine—Senator, we actually picked that error up today. It should actually say by the end of September.

Senator CONROY—By the end of September. So you will correct that?

Mr Martine—Yes.

Senator CONROY—If you have not already.

Mr Martine—Yes. I saw some advice that went to our Internet people today to correct that to the end of September.

Senator CONROY—Excellent. I just want to make sure, given that Dr Parkinson has passed things around, that I have everything covered. I would not want to call you back. Obviously, I would like to talk to Mr Heferen on Friday. I actually will not be here, but someone is going to want to talk to you. I might see if Senator Faulkner can fill in for me, while I am not here.

Mr Heferen—Sorry, is that Friday—not tomorrow?

Senator CONROY—Not tomorrow, which is Thursday, but Friday. It is called the spill over day. Consider yourself spilled over.

Mr Murray—I will probably be here.

Senator CONROY—I am sure you will come and keep the committee entertained, as always. So it is definitely the end of September?

Mr Martine—That is the requirement under the charter.

Senator CONROY—Under the charter, yes. Okay, great.

Senator JACINTA COLLINS—Can I just clarify something. Some of these officers will be back tomorrow afternoon, will they not?

Senator CONROY—Are you on tomorrow afternoon? I unfortunately go to trade estimates tomorrow, so I am not quite sure. They are coming back tomorrow. Is there ACCC in the morning?

Senator JACINTA COLLINS—Yes.

Senator CONROY—Then do we just roll straight back in?

Senator JACINTA COLLINS—Yes.

Senator CONROY—My apologies: it will be tomorrow, probably after the ACCC. If we are lucky, we can knock it over early. I just want to give you enough time to do the job. I do not want you to spend all night getting this. It can be later in the afternoon, if that is easier for you.

Mr Heferen—I think from memory the material you wanted was—

Senator CONROY—The scripts and things like that.

Mr Heferen—The scripts, the times that the advertisements were run in Victoria and the breakdown of the \$62,000.

Senator CONROY—Was it not \$64,000?

Mr Heferen—I think it was \$62,000. The first two we can get quickly. There will be no problem with getting them by tomorrow afternoon. The third is out of our hands. I will have to seek that from another agency. It depends a bit on the level to which you want it broken down. But we will get what we can and bring it tomorrow.

Senator CONROY—That will probably be tomorrow around midday. The ACCC will go until probably 11 o'clock or a bit later so it probably will not be until around 12 o'clock at least. If Mr Samuel is surprisingly unloquacious, you may be earlier.

Mr Heferen—Certainly. We will try.

Senator CONROY—So forget Friday. That is the good news.

Mr Murray—But presumably you will be questioning revenue group tomorrow afternoon?

Senator CONROY—I was just thinking I could knock you guys over quickly first, so that you did not have to hang around while we talk to the people from the revenue group. I am happy for you wait until after them, if that is easier for you.

Mr Murray—No. We will do it according to your plan. It will get done according to your timetable.

Senator CONROY—Okay. Bear with me for a moment. Mr Murray or Mr Tune, you were going to get some information about the consultants and a summary of their qualifications.

Mr Tune—Yes. I think I took that on notice. Do you want that tomorrow as well?

Senator CONROY—I am just trying to save time, if it is possible.

Mr Tune—If I can do that, I will do it.

Senator CONROY—If you can do it, I would appreciate it, but I understand if you are not able to. At some stage tomorrow would be great, if you are able to. There were some PPP questions to do with DOTARS and a few other agencies. You suggested I ask Mr Regan.

Mr Murray—If it is a tax angle, yes.

Senator CONROY—And the Fuel Sales Grant Scheme was revenue?

Mr Tune—Yes.

Senator CONROY—I think we did run through all of the other ones in my little pack here and identified who got what. Until tomorrow, thank you.

Mr Murray—I want to raise a couple of issues before I go. I understand this afternoon when you were talking to the markets group that Jim Murphy did make some comments about national competition payments. I am pretty sure that I did point out after the budget last year that there are provisions for the national competition payments in 2006-07—and obviously now in 2007-08. However, even though the provisions are made, the amounts are not disclosed, because we are going to negotiate on that and the government does not want to give away its negotiating position. I just wanted to clarify that.

Senator CONROY—Yes.

Mr Murray—Secondly, I have been involved in some of the OECD work on participation. I am not familiar with the report you were quoting earlier that talks about the recommendations for Australia on the intergenerational fund. Do you have the date of that report?

Senator CONROY—Hopefully, I do, or someone else will as well. I think it is November 2003. It is the OECD publication called *Policies for an ageing society: recent measures and areas for further reform*. There is a table on page 62 headed 'Main conclusions from EDRC country reviews of ageing policies'. I think Australia gets a separate guernsey.

Mr Murray—Okay. Thank you.

ACTING CHAIR—Thank you, Mr Murray and friends.

Senator CONROY—And if you have any update on the plasma TVs and who is paying for them by tomorrow, that would be great, as Senator Coonan has been unsuccessful in rousing the Treasurer's office.

Senator Coonan—I have been nailed to the floor here, Senator Conroy.

Senator CONROY—Mitch, what is the story?

ACTING CHAIR—Is it this year or last year you are talking about?

Senator CONROY—They did not pay for them last year and you are trying to slip them to them this year. What is the story? The whole place has gone to the dogs without you!

[9.33 p.m.]

ACTING CHAIR—Welcome, Commissioner, and Mr McCullough and Mr Tilley. We will continue with outcome 2, output 2, Revenue.

Senator CONROY—Am I in the right place for revised revenue estimates?

Mr McCullough—Yes. We have Paul Tilley, who is the general manager of our tax analysis division, who should be able to handle most of the costings questions for you.

Senator CONROY—Excellent.

Mr McCullough—You are probably used to Mr Smith being able to do it all himself.

Senator CONROY—I will not judge you poorly because you are not trying to take on the entire role yourself.

Mr McCullough—We will definitely have to do a tag team role.

Senator CONROY—The reconciliation of the 2003-04 budget, the 2003-04 MYEFO and the 2004-05 budget fiscal balance estimates indicate that, between MYEFO and the budget, revenue estimates were revised upwards by \$6.13 billion in 2004-05, \$5.7 billion in 2005-06 and \$6.3 billion in 2006-07 due to parameter and other variations. What parameter changes led to the increase in estimated revenue?

Mr Tilley—There is a range of parameters that have had an impact. The biggest revisions by dollars due to parameter revisions would be in companies and individual withholding tax.

Senator CONROY—Individual withholding tax, did you say?

Mr Tilley—Yes—so basically PAYGO on individuals. Basically, it is generally coming off an upward revision in nominal GDP, but in particular, for those revenue heads, upward revisions in forecasted company profits and then the impact of employment and wages on IWT. Across all the revenue heads you will see that there are upward revisions, but they are the two that drive the dollars. This is all set out in statement 5 of Budget Paper No. 1.

Senator CONROY—In your experience, would this be a rather large upward revision in revenue?

Mr Tilley—This was certainly a large upward revision in revenue estimates, yes. You quoted the numbers: it was a large change between MYEFO and budget.

Senator CONROY—From looking at past budget papers, going back to the 1999-2000 budget, the upward revision would seem to be at least twice as large as any other revision in those figures.

Mr Tilley—I do not have those numbers here. Whether it is twice as large I am not sure, but certainly this is a relatively large upward revision due to parameters.

Senator CONROY—Can you ever remember such a large upward revision in just a six-month period, Mr McCullough? I think it is the first time I have seen Mr Tilley at the table.

Mr Tilley—I am broadly aware of the history of changes in budget estimates. I could not say whether this is the largest.

Senator CONROY—It would be up there, surely, though.

Mr Tilley—It is a relatively large upward revision.

Senator CONROY—But it would be among the largest you have seen?

Mr Tilley—Yes.

Senator CONROY—You have some experience and knowledge of the history.

Mr Tilley—Yes. We are just talking about the parameter revision, not total revenue.

Senator CONROY—No, the parameter. Thanks for clarifying that. How much do these revisions add to the underlying surplus over the forward estimates period?

Mr Tilley—I do not know the total, but you can add it up by looking across the column you have just referred to—

Senator CONROY—Let us do it.

Mr Tilley—of parameter and other revisions. If you look in either statement 2 or statement 5—I think you were looking at statement 2—and the changes between MYEFO and the 2004 budget, in table 2 of statement 2, then you add up the figures across the forward estimates period—this table has 2003-04 as well. You simply add up those numbers under ‘Total parameter and other revisions’.

Senator CONROY—I am sorry, I do not have the numbers in front of me. I was wondering if you could help me out there.

Mr Tilley—I do not have my calculator with me. Are you interested in the numbers for revenue or total parameters for the budget?

Senator CONROY—Let us do both.

Mr Tilley—Okay. The revenue figures are 3.5—this is starting in 2003-04—going across the year to 6.1, 5.7 and 6.3. The expenses, starting in 2003-04, for parameter and other revisions are minus 1.7, minus 1.5, minus 2.2 and minus 2.4. The totals across those four years—this is out to 2006-07, not 2007-08—is just the addition of those two lots. So that is 5.2 in 2003-04, then, going across, 7.3, 7.9 and 8.7.

Senator CONROY—You mentioned a nominal revision in GDP, I think. What were the main drivers of these upwards revisions? Was it that purely?

Mr Tilley—On revenue? The two I mentioned in terms of the big drivers of the dollars—it depends whether you look at percentage change in the revenue head or if you want to look at the aggregate impact—are in companies and IWT in particular. It is strong there. It is an upward revision to the outlook for the economy, in particular nominal GDP, pushing up our forecasts for company profits, and on the IWT side it is the strength of employment and wages.

Senator CONROY—Does it concern you that if the revenue estimates prove to be just a little bit optimistic, the budget will plunge into deficit?

Mr Tilley—Well, it is always a concern.

Senator CONROY—It would not take much for them not to be as robust as that.

Mr Tilley—I mean we are always concerned about—

Senator CONROY—Given the size of the variation you have had this time, you cannot be too confident of your forecasts, which were done six months before that?

Mr Tilley—I do not think we are any more or less confident this time than—

Senator CONROY—Well, you were massively out last time. I am suggesting it would only take a minor variation and we are in deficit.

Mr Tilley—In terms of forecasting the revenue, we forecast on the back of the economic parameters that exist at the time. There is a substantial upward revision in some of those relevant parameters, which drives the upward revision in revenue. The revenue result, the forecasts, are not surprising given the strength of the parameters. But I guess your point is that if the economic story turns out to be incorrect, the revenue forecasts will turn out to be incorrect.

Senator CONROY—My point is that it will only take a minor error downwards and we are in deficit.

Mr Tilley—Certainly the thing about forecasting revenue is we are forecasting a revenue base of around \$200 billion. You would have to be out by a lot to get a significant dollar—

Senator CONROY—Well, you were out by a lot this time. That is six months after you made the last forecast.

Mr Tilley—I would not say the revenue forecasts are out. If the outlook for the economy changes, the outlook for the revenue forecasts change. There is a section—I cannot remember which statement it is—which has a discussion around the risks around the forecasts. It looks back at some forecasting history to look at order of magnitude that we would expect to get the revenue forecasts in. Our feeling is we do not think the risks are particularly on the upside or the downside. One thing for sure is that the revenue forecast will not be to the exact dollar we have in here. The outcome will be a bit higher, but not lower.

Senator CONROY—You are filling me with confidence.

Mr Tilley—Sorry?

Senator CONROY—You are filling me with confidence. We are back to the Treasury's best guess.

Mr Tilley—Any forecast is of that nature. There is no point pretending that we can forecast things to the precise dollar.

Senator CONROY—Do you have a KPI that includes getting close?

Mr Tilley—We have done some analysis of how accurate the revenue forecasts have been over a long period of time.

Senator CONROY—How are we going?

Mr Tilley—Pretty good, actually.

Senator CONROY—Just had a shocker this time, did you?

Mr Tilley—We feel these forecasts are our best estimate given the state of the economy that is forecast at the moment.

Senator MURRAY—You tend to undershoot, though, do you not?

Senator CONROY—Not this time they have not.

Mr Tilley—No.

Senator MURRAY—They have undershot. They estimated less revenue than they achieved.

Senator CONROY—That just meant that there was a very low surplus going into the last few years. That is a coincidence, is it not, Senator Murray? In terms of the income withholding tax, what proportions of the upward revisions are due to earnings and employment?

Mr Tilley—I do not think we provide that breakdown between the impact of the different parameters. We provide a description—I will just actually look it up—of the general influences on the forecast, but we do not break it down into the impact of different parameters. We do not quantify that.

Senator CONROY—Is it possible to get?

Mr Tilley—It is not here in the budget papers.

Senator CONROY—Is it possible to provide it?

Mr Tilley—I can take that on notice, if you like, and check. But what I can explain is the estimates we have that have been published.

Senator CONROY—One of the jobs I do is ask what makes up the figures. So is it possible for us to get the components of that figure, as I have described, on earnings and employment? Going back to this issue of forecasting, if 10 per cent of the additional revenue predicted does not eventuate for 2004-05, the predicted fiscal surplus of \$698 million would almost be completely wiped out. That is just maths more than anything else. I just want an indicator. We have had a massive revaluation and it would only take 10 per cent and we would almost be in deficit. That would be for 10 per cent not to eventuate of the substantial whack of money.

Senator JACINTA COLLINS—Before you move on, I would like to clarify with Mr Tilley how long he thinks it might take to provide that information.

Mr Tilley—The information about the impact on the different parameters?

Senator JACINTA COLLINS—Yes.

Senator CONROY—I think we are coming back tomorrow. If it is possible for it to be—

Mr Tilley—I can explain the estimates that are published. I do not have a quantification of those different ones. I am happy to take it on notice. That is all I can do.

Senator CONROY—But someone in Treasury must have it.

Mr Tilley—Whether we do it precisely in that way I am not sure.

Senator CONROY—You might be able to advise us tomorrow.

Mr Tilley—All I can do is take the question on notice, I am afraid.

Senator CONROY—Why are the income withholding tax components not in the budget?

Mr Tilley—The estimates are in the budget.

Senator CONROY—No, the components.

Mr Tilley—There is a general description given of the different impacts. There is a level of detail provided in the budget papers across a lot of different issues. That is the level that the Treasurer has chosen to provide in his budget papers. I am happy to take on notice—

Senator CONROY—Did the Treasurer's office have a role in preparing these estimates? Did it approve them?

Mr Tilley—They certainly approved them. They are the Treasurer's estimates. We provide advice to the Treasurer on the budget, including the estimates. The Treasurer and the Minister for Finance and Administration together publish the budget papers.

Senator CONROY—So they are the Treasurer's estimates of revenue forecasts, not yours?

Mr Tilley—These are the Treasurer's estimates.

Senator CONROY—Are they different from the ones Treasury provided?

Mr Tilley—We provide advice to the Treasurer, which goes into his budget papers. I cannot disclose what advice we provide to the government.

Senator CONROY—Sure. Has the Treasurer asked Treasury not to provide the information that I have been asking for in terms of interest withholding tax?

Mr Tilley—I am not aware of the issue specifically being raised. It may well have been, I suspect, in the past. We can certainly take it on notice.

Senator JACINTA COLLINS—Mr Tilley, I am slightly confused about the way in which you are responding to these questions. Certainly for many years now explanations were provided to questions about the basis of assumptions that are explained in budget papers. You seem to be suggesting to me that you can essentially explain what is in the budget papers, but if we ask questions relating to any further elaboration, you need to take that on notice because you are not clear about whether you can actually furnish such explanations.

Mr Tilley—I am happy to provide what assistance I can in explaining the estimates that are provided in the budget. But it is not normal for us to provide additional unpublished budget estimates.

Senator JACINTA COLLINS—Not normal?

Mr Tilley—No.

Senator JACINTA COLLINS—That is certainly not my experience, but I think we will come to that in a bit more detail tomorrow. Were you aware of the answer to Senator Conroy's question about the components, you would have been able to provide him with that advice. You would have no problem in providing that advice?

Mr Tilley—No. I would take it on notice and seek the government's advice, the Treasurer's advice, what estimates he wishes to provide.

Senator JACINTA COLLINS—So you need authority from the Treasurer before you can answer any question about underlying assumptions of the information?

Senator CONROY—And people wonder why they get so entertaining.

Senator JACINTA COLLINS—You said it is just roughly about the last 12 months, did you not?

Senator CONROY—I could have been generous to Treasury when I said that. But that has been a consistent pattern for a long period now.

Senator JACINTA COLLINS—It is certainly not my previous experience with Treasury, but that is about three years old. It is certainly inconsistent in terms of their relationships with other agencies.

Senator CONROY—I am lucky enough to only do these people. I have no chance to experience the delights of the other portfolios. We would like to know the basis of the increases in income withholding tax, whether it is earnings or employment. Do you know the answer to that?

Mr Tilley—I can give a general description about the fact that it is due to both strength in employment and wages. What I cannot do is quantify how much is which.

Senator CONROY—But you are going to see if you can get that information for us tomorrow?

Mr Tilley—I will take the question on notice.

Senator CONROY—Do you know what day it is tomorrow?

Mr Tilley—Do I know what day it is tomorrow?

Senator CONROY—Do you want to take it on notice? It is not listed in the budget paper. Be careful—the Treasurer may not have given permission for that to be publicly revealed.

Mr Tilley—May have given permission for what to be made public?

Senator CONROY—What day it is.

ACTING CHAIR (Senator Fifield)—This is fascinating, Senator Conroy, but do you have a question to put?

Senator JACINTA COLLINS—Yes. What day is it tomorrow?

Senator CONROY—Lots. It is just that it appears that the Treasurer is refusing to allow them to be answered. You might know more about that than most of us.

Senator MURRAY—Well, he cannot. I think on a point of order, the Acting Chair should make it clear that the Senate can require any question to be answered.

Senator CONROY—Thank you, Senator Murray.

ACTING CHAIR—The Senate can, but witnesses are also given reasonable opportunity to refer questions to ministers, which I think is all that Mr Tilley is seeking to do.

Senator CONROY—Not when it is every single question being referred to the Treasurer.

ACTING CHAIR—I do not think the Senate resolutions stipulate the number of questions that a witness is or is not able to refer to their minister, Senator Conroy.

Senator CONROY—So that would be an accurate statement.

Senator MURRAY—With respect, on the same point of order: there is a lot of history to this. If a witness is seen to be avoiding answering questions as opposed to genuinely referring them when they do not know, there is an issue at hand. Now I am sure the Treasury officer is aware of why we are saying this.

ACTING CHAIR—I think we will have to wait and see what morning holds.

Senator Coonan—I think he needs a reasonable—

ACTING CHAIR—A reasonable opportunity—

Senator Coonan—opportunity to clarify his position. Certainly every time I have been sitting here, Mr Smith, on my left-hand side, as you would know, Senator Conroy, says, ‘That is not published material’, and we have moved on.

Senator CONROY—We have not quite moved on. We have had a lengthy discussion about it, unfortunately. We certainly have not just moved on.

ACTING CHAIR—I think tomorrow morning—

Senator Coonan—It is only another day or so.

Senator CONROY—We may eventually shame some answers out of them. They have been able to tell us what day of the week it was.

ACTING CHAIR—I think tomorrow is a reasonable opportunity to refer to the minister. Senator Conroy, do you have a question?

Senator JACINTA COLLINS—Just while we are still on that point of order, with respect, I think the approach that Mr Tilley has presented this committee with essentially makes the whole Senate estimates process a farce because we can all just pack up, go away and read the budget papers.

Senator CONROY—Welcome to my life on Senate estimates, and Senator Murray’s.

ACTING CHAIR—I do not think Mr Tilley is suggesting that. He is just seeking a reasonable opportunity to refer the question to his senior minister, as is provided for in the Senate resolutions in relation to witnesses.

Senator JACINTA COLLINS—No. He has actually indicated that if an explanation is not provided in the budget papers, he cannot assist us without referring it to the minister, which is a farce.

ACTING CHAIR—I do not think Mr Tilley is saying he cannot assist the committee.

Senator Coonan—My recollection was that he said that he had some difficulty with advice that was given to the Treasurer and that the Treasurer was actually the one who adopted the figures.

Senator CONROY—It is the Treasurer's fault. You cannot be critical of Mr Tilley. It is the Treasurer who has made this policy decision that unless the number is published in the budget papers, the Treasury officers are instructed to refer matters to the Treasurer. That is what Senator Coonan is indicating. It is not Mr Tilley's—

Senator Coonan—What he said is that the Treasury provides advice to the Treasurer. They do not talk about what advice they provide. But the Treasurer's decision is reflected here in the budget. I think what Mr Tilley has said is that he wishes to refer additional material that had some implications in your questions to his senior minister. That is as I have been listening to him.

Senator CONROY—This is a requirement from the Treasurer, though?

Senator Coonan—No. I do not think it is a requirement. I think it is just a matter of Mr Tilley knowing what is appropriate in terms of advice that has been given to the Treasurer. That is as I understand his concern.

Mr Tilley—My understanding is that it is traditional for us to take questions on notice where the committee is seeking—

Senator CONROY—It is a Treasury tradition, it is not a parliamentary tradition, let me assure you, Mr Tilley.

Senator JACINTA COLLINS—It is a Treasury tradition which seems to be expecting—

Senator CONROY—It could be described as Treasury's arrogance, but I will not go there. I am not trying to reflect on you personally, Mr Tilley. I appreciate that you are just following orders.

Mr Tilley—I am following, looking back through previous *Hansards* of previous committee hearings, the approach that has been taken and that has been accepted by the committee in the past.

Senator CONROY—No. It has never been accepted by the committee. I can provide plenty of *Hansards*, videotapes and newspaper articles—anything you want—that illustrate that. Verona Burgess makes a living out of writing about it.

ACTING CHAIR—Mr Tilley, you are seeking a reasonable opportunity to refer the question to the Treasurer?

Mr Tilley—Indeed.

ACTING CHAIR—I think Mr Tilley should be given a reasonable opportunity to do so.

Senator CONROY—No-one is holding Mr Tilley to blame for this issue. He is following orders. Given that it is about two minutes to 11 o'clock, rather than embark on a new string of questions, should we call it stumps?

ACTING CHAIR—Sure. There being no more questions for tonight—

Senator MURRAY—I can give you one, if you prefer.

Senator CONROY—I just did not want to launch into a new bracket.

ACTING CHAIR—Will you finish by 11 o'clock?

Senator MURRAY—Oh, absolutely. I hate to see a person who I have a regard for sitting here with nothing to say, Mr Carmody.

Mr Carmody—I can see this is going to be a challenge for me, Senator.

Senator MURRAY—It will be very brief. You may want to come back tomorrow with this. I want to ask you about death benefits. Does the tax office know how much tax is collected from the taxation of death benefits paid from superannuation funds? In other words, when people die, they cannot leave their money to some sectors of the population—a son to his mother or a mother to her sister, these sorts of things—and they end up getting taxed on it, in contrast to other people who can leave their super money to other people. That is a de facto death benefit.

Mr Carmody—I will accept your question, but I do not have an answer for that. But we can follow it up and make sure that we can provide some intelligence response tomorrow.

Senator MURRAY—I thought you would need a bit of time. I just want to explore that anomaly.

Mr Carmody—I do not know the detail of that.

Senator MURRAY—But you understand the question?

Mr Carmody—I understand the question. I do not necessarily accept the premise or whatever, so we need to have a look at it for you.

Senator MURRAY—I will hear from you tomorrow. Thank you.

Senator JACINTA COLLINS—Senator Murray has reminded me that perhaps on a similar vein I may raise an issue that I will be looking at tomorrow related to salary sacrifice. I am seeking to quantify, to the extent possible, revenue forgone with respect to salary sacrificing arrangements for child care. I understand there are going to be a series of problems with that vein.

Mr Carmody—The problem I foresee is that I am not sure that what is reported to us breaks it up into that level of detail, but I will see if I can find out as quickly as possible whether we are able to help you.

Senator JACINTA COLLINS—I do not think it is.

Mr Carmody—No. Neither do I.

Senator JACINTA COLLINS—But perhaps from what is reported to you overall it may well be in the future we need to look at trying to do a survey of the usual break-ups of those sorts of arrangements.

Mr Carmody—I am sure we can look at that. The only thing is that traditionally the more we ask for on returns, you understand, the more people object to you and us about the costs of compliance in breaking things up. But I will see what is available and see what can be done.

Senator JACINTA COLLINS—Thank you.

ACTING CHAIR—Thank you. The committee stands adjourned until 9 a.m. tomorrow, when we will proceed to the ACCC. We will return later tomorrow to the Department of the Treasury. Thank you very much.

Committee adjourned at 11.00 p.m.