COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

ECONOMICS LEGISLATION COMMITTEE

ESTIMATES

(Budget Estimates)

THURSDAY, 3 JUNE 2004

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SENATE

ECONOMICS LEGISLATION COMMITTEE

Thursday, 3 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 Conroy, Fifield, Harradine, Lundy, Mason, Murray, Sherry, Watson, Webber and Wong

Committee met at 9.06 a.m.

TREASURY PORTFOLIO

Consideration resumed from 2 June 2004.

In Attendance

Senator Coonan, Minister for Revenue and Assistant Treasurer

Australian Competition and Consumer Commission
Overall Outcome: Strong, sustainable economic growth and the improved wellbeing of Australians
Outcome 1: To enhance social and economic welfare of the Australian community by fostering competitive, efficient, fair and informed Australian markets

Mr Robert Antich, General Manager, Compliance Strategies Branch
Mr John Bridge, Chief Finance Officer
Mr Brian Cassidy, Chief Executive Officer
Mr Michael Cosgrave, General Manager, Telecommunications Group
Mr Joe Dimasi, Executive General Manager, Regulator Affairs Division
Mr Tim Grimwade, General Manager, Adjudication Branch
Ms Lee Hollis, General Manager, Enforcement Co-ordination Branch
Ms Helen Lu, General Manager, Corporate Management Branch
Mr Mark Pearson, General Manager, Mergers and Asset Sales Branch
Mr Nigel Ridgway, Deputy General Manager, Compliance Strategies
Mr Graeme Samuel, Chairman
Mr David Smith, Executive General Manager, Compliance Division

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

Mr Tony Coles, Manager, Superannuation, Retirement and Savings Division Revenue Group
Mr Matthew Flavel, Manager, Budget Policy Division
Mr Tony Free, Manager, Indirect Tax Division
Mr Rob Heferen, General Manager, Commonwealth-State Relations Division

Mr Alan Mallory, Manager, Superannuation, Retirement and Savings Division Revenue Group
Mr David Martine, General Manager, Budget Policy Division
Mr Neil Motteram, Acting General Manager, International Tax and Treaties Division
Ms Maryanne Mrakovcic, 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 Paul McCullough, General Manager, Review of Self-Assessment
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
Mr Peter Greagg, Manager, Tax Analysis Division
Mr Geoff Miller, General Manager, Individuals and Entities Tax Division

CHAIR—Good morning. I declare open the public hearing of the Senate Economics Legislation Committee. Today we resume our examination of budget estimates 2004-05 for the Treasury portfolio. The committee has set Friday, 16 July 2004 as the date for the submission of written answers to questions on notice. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. I further remind officers that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. Evidence given to the committee is protected by parliamentary privilege. I also remind you that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate.

Australian Competition and Consumer Commission

CHAIR—I welcome Senator Coonan, the Minister for Revenue and Assistant Treasurer, officers of the Department of the Treasury and officers of the Australian Competition and Consumer Commission. Mr Samuel, do you have any opening remarks?

Mr Samuel—Yes. We last appeared before this committee on 19 February. Since then there has been some extremely good news in the budget with the significant increase in funding. It is important for us that that news came through in the budget because corporate Australia may have felt that the ACCC did not have the funds to properly enforce the act. The budget funding sends a clear signal that this is not so. The ACCC received a total of $77 million in additional funding in the 2004-05 budget, including $25.2 million to replenish the litigation contingency fund which is used to meet other parties' costs in cases that the ACCC loses. The additional funding was primarily for litigation in the enforcement area but there was also additional money for the mergers, adjudication and regulatory areas.

Corporate Australia may have believed that the ACCC had been weakened by recent losses and would not have the inclination or the funds to take on difficult cases. Let me assure everyone that this is not so. The ACCC will continue its work with the same vigour as before. In particular, the ACCC will not be deterred by firms with deep pockets seeking to test the ACCC's resource commitment. The funding increase is most welcome but the ACCC is mindful that it must make sure that it uses its resources as effectively as possible with a strong focus on its enforcement and regulatory priorities and modus operandi. The ACCC maintains its commitment to enforcing the act without fear or favour.

This was an important signal not only externally to corporate Australia, because I think there was certainly a sense that our lack of funding, particularly as occasioned by recent losses—and I am thinking of Boral and AGL—may have dissipated our intention, our vigour or our ability to take on difficult cases. That is not the case. I think that will be evident in the not too distant future. The signal was also important internally. Despite best endeavours by senior management and me towards those within the organisation to communicate that our funding resource issues should not be a deterrent to taking on difficult matters, it is absolutely understandable that senior managers and regional directors would have a sense of funding resource constraint when looking at investigations and pursuing potentially difficult matters. I think the budget decision has unblocked the resource pipeline and we will start to see that flow in the not too distant future.

It used to be the case that litigation was a significant publicity or advocacy tool for the ACCC. It used to be the case that litigation was regarded as an essential, if not the prime, tool for publicising what the ACCC was doing and publicising elements of the Trade Practices Act and elements of the ACCC's resources in enforcing the act. I have to say to you that that is not currently the view. The view is that, while litigation is an important, powerful tool, it often can be used in terrorem to bring about a satisfactory result for consumers and the Australian community but it is not necessarily the case that one needs to institute litigation to bring about such a result or indeed to publicise the activities of the ACCC. Indeed, publicity ought to be used most effectively to bring about changes in industry behaviour rather than necessarily to simply publicise our activities.

There have been many instances over recent times where the use of litigation in terrorem has brought about a very quick satisfactory result for consumers. One that I have often been prone to quote in more recent times by way of contrast with the use of litigation as distinct from the use of negotiated settlements involves the company Danoz Direct, the direct selling company. In our last Senate estimates, I noted to senators that we had then recently won a major court case in consumer protection against Danoz Direct regarding the sale of the Abtronic units. We made a bit of a light comment about the Abtronic units at the time. That case was fine—it was a good victory and it achieved some good publicity for us—but the result was unsatisfactory for consumers because 90,000 of these units had been sold. Some $15½ million had been ripped off consumers and there was no way of restoring that situation; consumers had simply lost their money.

Very recently we used the threat of litigation with Danoz, and Danoz understood that the process of litigation can be costly, time consuming and very difficult. We used that threat of litigation to settle very quickly a matter with Danoz involving the sale of some pest control units. I think over 240,000 of these units had been sold. Danoz agreed, by undertakings that are court enforceable, that they will refund consumers if they feel that they have been misled in respect of the sale of these units. They will undertake corrective advertising and a compliance strategy process within the organisation to deal with their future compliance with the act. In many respects, without any sense of use of litigation at all, that has achieved a much more satisfactory result for consumers because at least there is the opportunity for the purchasers of up to a quarter of a million of these units to obtain some restitution or refund.

We are using what are loosely called campaigns and publicity also to bring about some substantial changes in behaviour. I have referred previously to our real estate campaign. I think that has proved to be very effective indeed in bringing about some changes in industry behaviour. Back in September last year I announced that we were going to undertake a concerted effort to focus on the real estate industry. That was focusing on two primary areas: first, the property spruikers—the property promoters who ran seminars to get consumers in to get-rich-quick schemes; and, second, the activities of real estate agents, with dummy bidding, underquoting, overquoting to vendors, false advertising, airbrushing of photographs and the like. Since the announcement of that campaign we have received over 1,000 complaints. Many of those have been dealt with very quickly—they have been dealt with by phone calls or by correspondence. We have also had some state legislative changes in one or two of the states related to the activities of real estate agents.

I think what has been more important is that the industry and consumers have now become far more sensitive and aware of the problems. We have seen significant behavioural change on the part of estate agents. The Real Estate Institute of Australia has been working with the ACCC to produce some new guidelines and codes of conduct on the manner in which auctioneers and real estate agents should behave in relation to auctions. Practices that, I guess, have previously been condoned or regarded as acceptable—for example, undisclosed vendor bidding or dummy bidding and underquoting in relation to prospective auction sale prices—have now been clearly indicated by real estate institutes around the country to be simply unacceptable and, of course, more importantly, in breach of the Trade Practices Act and therefore subject to potential prosecution.

If we have managed to contribute towards a significant change in industry behaviour in that area then I think we will have stopped the problem before it arises. An important part of our activity is to actually stop problems from arising rather than waiting for them to arise and then having to resort after the event to litigation and prosecution, which can be time consuming for consumers and generally unsatisfactory. So what we are endeavouring to do is put in place the filtration points before the activity and the breaches of the act arise. That has been the case, I think, in respect of the real estate industry.

We have instituted two court proceedings in the real estate industry. The first was against Henry Kaye and the National Investment Institute. Leaving aside that particular case, which is awaiting judgment at the moment, I think it is fair to say that it had a salutary impact on the property promotion spruiker industry. A number of ads that had been seen previously in newspapers were withdrawn. A number of the property promoters simply closed down their activities, particularly when they were contacted by us about potential misleading and deceptive conduct that they may have been engaging in with the advertisements and activities concerned. Whilst there are still a number—I think about 10 of these activities are currently under investigation and more are coming out of the woodwork; we have seen recent signs of that, and some of them are going underground and moving onto the Internet and direct calling—I think it is quite clear that we are focusing on this area and it will receive swift prosecutorial action from the ACCC should it be continued. The other court action we launched was against an estate agent in Melbourne in respect of some underquoting. That matter is currently before the courts, so is not appropriate to comment any further on that. But, again, the message has gone out.

Another area where we have attempted to put in filtration points, shall I say—that is, stop industry misbehaviour which can harm consumers rather than wait for the harm to occur and then seek to rectify it by litigation afterwards—has been in the media outlets. At the consumer rights day conference in February this year I announced that we were communicating with all electronic and newspaper media outlet proprietors to tell them that they may well be in breach of the Trade Practices Act misleading and deceptive conduct provisions if they are involved in the publishing of advertisements, advertorials or infomercials. I guess that perhaps the most concerning of all is the promotion of products or schemes on current affairs programs ostensibly as part of an investigative reporting process but, in reality, as part of a simple promotion of these schemes. I announced that we would actually bring those media outlets to account if misleading and deceptive conduct were involved.

I wrote to all media outlet proprietors following the national consumer day conference and I am pleased to say that, for the large part, we have had a very positive response at the point of the media outlets. We have had responses from television networks. They have been in to see us and have said that they are putting in place enhanced protocols and procedures to ensure that advertising, whether prepared in-house or outside by external agencies and then submitted for publishing, is now vetted by the outlet concerned to ensure that it does not contain extravagant claims that might well be the subject of potential prosecutorial action by the ACCC for misleading and deceptive conduct.

Most importantly, I think we are now seeing media outlets, particularly electronic media outlets, being far more sensitive to the use of current affairs programs to promote products or

schemes. In one or two cases we have actually seen current affairs programs promoting, on one, two or three evenings, particular schemes and providing a link from their web site—that is, from the current affairs program web site—to the scheme itself, suggesting that viewers may well wish to look at the scheme by the means of the web site of the current affairs program. We regard that as completely implicating the media outlet in the promotion of those products and schemes. Frankly, if they contain misleading and deceptive conduct we will have no hesitation in prosecuting the outlets concerned as well as the promoters of the schemes. I have to say to you that there are one or two instances of that that are currently under investigation.

I was particularly taken by an article that appeared just a couple of days ago, on Monday of this week, in the *Australian* headed 'Laws property ads pulled by station'. It noted that 2UE had actually withdrawn some live read ads that were being used by host John Laws in respect of some investment properties at Queensland's Coral Cove. Without wanting to comment on the ads at all, let me simply quote the general manager of 2UE as referred to in this particular article. It says:

He said the "live read" ads were pulled because they were "pretty aggressive".

I think that, if we have been able to contribute in some sense to that form of filtration process, we have been able to assist in ensuring that consumers are not the subject of misleading or deceptive activities by media outlets.

In the same vein, Internet scams have also been the subject of concerted campaigns by us. In particular, we had a two-day sweep involving agencies right around the world. We coordinated this sweep. It involved the International Consumer Protection and Enforcement Network. We led the sweep involving 24 agencies around the world and agencies throughout Australia, including ASIC and state consumer affairs agencies. There were 76 agencies in total. The 2004 sweep was concerned about 'Is it too good to be true'—that is, sites were detected that related to flogging work at home schemes, lottery scams, multilevel pyramid schemes, get-rich-quick scams, prize/free offers, educational qualification offers and also those that would assist you to recover from ill health. Some of the worst were suggesting that they had cancer cures and cures for Parkinson's disease and other such diseases. We contacted traders in this country in respect of over 50 sites and I am pleased to say that more than 85 per cent of those sites were removed or amended in light of our concerns.

That is the consumer protection side. In particular, in the area of competition, we have been concentrating significantly on cartels. The number keeps changing. We now have just short of 40 suspected cartels that are under investigation. A number of these are coming in as a result of our leniency policy, which senators would be well aware of. The leniency policy, just to remind you, is the policy which says to those involved in a cartel: 'If you are the first in the door to tell us about the cartel then we will give you a guaranteed path of leniency. If you are the second in the door, even if by a few seconds, then it is too late.' We have a 24-hour dedicated fax line that deals with these matters. What I have been able to indicate to business around Australia is that, if they are involved in a cartel, they should go to bed at night and lie awake wondering whether one of their co-cartel operators might be in fact using the fax line at that very minute and whether, at seven o'clock the next morning, it might be too late. I think it is starting to have a significant impact. There are indeed one or two legal firms now

that are indicating that they are specialising in dealing with the ACCC on leniency approaches. That is good too, because it is making it very clear to those involved in cartels that there is a process whereby these cartels can be busted open.

The cartels range from small price-fixing arrangements in local areas, for example, in Australia right through to very substantial international cartels. All of them are under investigation. You would have to appreciate, of course, that these investigations need to be undertaken rigorously. You cannot simply go to court because a whistleblower gives you some information; you need to have sufficient evidence to make sure that, when you take the thing to court, the matter can be prosecuted. But those investigations are well down the track at the moment. As I said, there are more coming in on a weekly basis. I am certainly pleased that the Dawson recommendations in relation to criminal penalties are being examined by the government and, as I understand it, they have the support of the opposition in principle.

It is very interesting to note the look on the faces of some businesspeople when one talks about the prospect of jail sentences arising as a result of cartel activity. When you combine that with an effective leniency policy, I suspect what it will lead to is many sleepless nights on the part of corporate executives who are aware that they are involved in cartels and must be wondering whether they ought to be sleeping that night or going to the fax machine to provide some material to us because they just may be too late at 7 a.m. the next day. In this context, it is very important that we build up our international cooperation with agencies around the world. Cartel activity and consumer protection enforcement activities are increasingly international. That is a necessary result of globalisation and the increasing presence of the Internet as an important means of communication between business and consumers—and, therefore, the potential source in consumer protection areas of misleading and deceptive conduct.

It is difficult to enforce Australian court orders for breaches of the trade practices law against overseas residents. International cooperation between regulatory agencies is vital. It is well known, of course, that we have a treaty with the United States of America and memoranda of understanding with other regulatory agencies around the world. However, it is clear that greater harmonisation of our laws and, in particular, greater cooperation as to enforcement are necessary. We are actively involved in a number of international organisations, such as the OECD, the International Competition Network and the International Consumer Protection Enforcement Network, and through those we can do a lot. But I think it has become clear to us that we need to engage a lot more on a bilateral or smaller multilateral basis with agencies of the developed nations, particularly at heads of agency level, to develop a greater level of cooperation. Then we need to put proposals to government to give us legislation to enable court orders to be enforced and to enable us to share information across borders to build up our enforcement activity.

I am pleased to be able to say that on 21 to 23 November this year in Sydney we will be hosting an international cartels workshop. That will involve enforcement agencies from throughout the world coming to Australia, together with a number of experts, to examine ways of increasing the investigation, detection and enforcement of trade practices laws and competition laws in respect of cartels.

The other area that it is appropriate to mention at the moment is that of mergers. You will be aware, if you read the day's newspapers, that on Friday last week I announced some significant moves by the ACCC to enhance our merger processes. Let me emphasise that this has nothing to do with the Dawson recommendations relating to formal or informal clearance processes. The proposals that I announced on Friday apply to any clearance process that the ACCC is engaged in, whether it is formal or informal. They are founded on the principles of transparency and accountability—fundamental principles of corporate governance that apply to the ACCC and, frankly, to all those dealing with the ACCC.

What we are proposing is that, without bureaucratising our current very successful and very important informal process, we want to introduce far more transparency and accountability into the process on the part of all parties involved. That will contemplate, for example, reaching agreement with parties or indicating to parties at the commencement of a merger clearance process the time frames on a step by step basis during which the merger clearance application will be considered, and setting those time frames out on a public register. When there are variations to the time frames, occasioned either by the ACCC's inability to meet its own time frames or by parties' inability to meet time frames for disclosure or delivery to us of information, that will also be on the public register. That will make the process more transparent and will make everyone accountable. We will provide more guidance on the type of information that we require, especially in the more complex matters. This could include indicating when section 155 notices are required, particularly where we receive an indication that we are receiving from parties less than accurate or reliable information that may be necessary for us to be able to properly conduct our inquiries.

We will also indicate to parties with greater certainty—and, again, provide potentially on public registers—which commissioners and which staff will be the contact points for dealing with mergers, keeping in mind that we have in place a process whereby no decisions are made on mergers and contacts are not held with parties on mergers by any commissioner on their own. It is not the chairman nor any single commissioner. It always involves at least one commissioner and at least one, two or three staff members and potentially, on many occasions, two or three commissioners. All decisions relating to merger clearances are made by our mergers panel and, in complex matters, by the full commission itself. No decisions are made on mergers by individual commissioners. That is an important governance principle.

On many occasions, we have provided parties with statements of concerns as to mergers at a reasonably early stage. I would have to say to you that, particularly in the context of public company mergers on the stock exchange, applicants for clearance are not keen for statements of concerns to be made public. There is a very good reason for that and that is that, the moment the statements of concerns are made public, it tends to deter shareholders from accepting a takeover offer. They will hold back. Therefore, applicants for merger clearance would prefer to deal with those statements of concerns on a private basis.

The difficulty with that is that it takes away from the transparency and accountability of the merger process and leaves the market uninformed. Therefore, we propose that our new guidelines will ensure that statements of concerns, when they are formed by the commission and when they are advised to merger applicants, will be placed on public registers that will give shareholders, the share market, the investing public and other stakeholders, including

those that may wish to make submissions to us, a chance to understand publicly what our concerns are and then make their decisions as to what they do, either in their interaction with the ACCC or in dealing with their shares if it happens to be a public takeover. You might well imagine that there are some involved in the merger process—those who are making takeover offers and making applications to us—who would not necessarily welcome that level of transparency or accountability, but we believe that it is an essential part of the transparent and accountable process in relation to mergers.

We already announced last year and have undertaken a process of publishing our reasons for decisions. That is limited to areas where mergers have been rejected, where mergers have been accepted but subject to certain qualifications or conditions or where the parties have asked for reasons for decisions to be published. We think it is now appropriate to expand the circumstances in which reasons for decisions are provided, particularly to those areas where mergers may have been approved but where there are important issues that should be in the marketplace so that the market can understand why we have approved a merger and can have some guidance into the future as to the processes and thinking of the commission in some of these important areas.

These guidelines are all about accountability and transparency on the part of the ACCC but also on the part of those with whom we deal. We think it is important for an agency such as the ACCC dealing with matters that are of important public interest—as mergers almost invariably are—not just to the applicant parties and the ACCC but also to other stakeholders, including employees, customers, shareholders, the investing public and a wide range of observers. It is important that there be greater transparency in the process. We will be proceeding with those guidelines after consultation with business and their advisers in the very near future and I am sure that most informed observers would welcome the increased transparency and accountability that will apply as part of that process.

Let me conclude with two final items which are of continuing interest. The first relates to some issues involving Telstra. You will be aware that, at or around the time of our last appearance before this committee, Telstra had announced new retail prices for its broadband service. Very soon after that we received a flood of complaints from Telstra's retail competitors, who are also Telstra's wholesale customers that access the ADSL broadband infrastructure. We found it necessary to take some steps with Telstra to sort out what we considered to be anticompetitive conduct in terms of a price squeeze. Those processes involved a series of steps that are prescribed under the act, but on the 19th March we issued a competition notice. This is a very potent tool because, from midnight on Friday, 19 March, Telstra was on notice that, as from that time, the Federal Court on our application could determine that they be subject to $10 million penalty to a back date of $1 million penalty per day—that is, from 19 March—and, most importantly, third party damages from third parties who were suffering as a result of the alleged anticompetitive conduct.

As a result of publishing and serving that competition notice on Telstra, Telstra announced new competitive pricing structures, which were a significant move away from the position that Telstra had adopted previously in relation to its retail prices. The matter is not yet complete. The competition notice is still on foot. It will be removed only when we are satisfied that anticompetitive conduct has ceased, and we have yet to satisfy ourselves that

that is the case. It is a matter of continuing investigation by the ACCC and we will be continuing with that investigation over the next short while to ensure that Telstra does not continue to engage in anticompetitive conduct, which is so important in terms of the availability to retail consumers of broadband services at cheap, affordable prices.

The final matter I want to address is the issue of small business. Of course, I will not address the issue of the Senate Economics References Committee report, because that has been addressed previously and I think the ACCC's views in respect of that report are now public and well known. I think it is appropriate perhaps to address two specific areas which we are focusing on in our engagement with small business at the moment.

The first is the availability of section 51AC—that is, the unconscionable conduct provisions. We consider those to be very important provisions in terms of the vertical relationship between those who are negotiating between small and big business—that is, where there is a dominant negotiator or a party in a dominant negotiating position and a party in a less dominant or an inferior negotiating position. It is interesting to note some statistics. Since 1996, we have had over 3,300 complaints and inquiries logged into the commission in respect of unconscionable conduct. The net result of all those—because a large number of those are dealt with very quickly on the basis that they are less unconscionable conduct but rather issues of some simple, hard, tough bargaining—is that 93 have progressed to in-depth investigations; 17 have proceeded to litigation, of which four are currently before the courts; six have been resolved through section 87B undertakings; and 70 were not progressed any further. In many of those cases, it was because of insufficient evidence, or compromises or resolutions having been reached, or some compliance processes being put into place. I think the unconscionable conduct provisions are proving to be a very important tool for small business, and we are encouraging small business to focus on that area where they feel that they have been dealt with unconscionably or harshly and oppressively by bigger business in their trading.

The other area that we are particularly focusing on at the moment is collective negotiations. It is a terribly important area for small business and the relationship of small business to big business. I suspect senators will be aware that we have, in more recent times, authorised collective negotiation arrangements between a number of sectors of small business. Let me just mention a few: TAB agents of NSW in their negotiations with the TAB; the Australian Newsagents Federation and the Queensland Newsagents Federation in their negotiations with certain publishers; the Australian Hotels Association and hoteliers in their negotiations with Sky Channel and the TAB; and Tasmanian and Victorian chicken growers in their negotiations with processors.

Collective negotiations, dealt with properly and with authorisation from the ACCC, are a very important part of the way small business can level the playing field in their negotiations with bigger business. We are emphasising this in our dealings with small business. We encourage small business groups to approach the ACCC to seek guidance as to the circumstances in which collective negotiations might be authorised, the limitations on authorisation that we will consider and the sorts of steps they need to take to facilitate our authorisation process.

We are conscious of the fact that the Dawson recommendations—and indeed the Senate Economics References Committee report—included favourable support for facilitating the collective negotiation process. Of course, that is now a matter for government in terms of legislation, but we are endeavouring in the meantime to try and facilitate the process of authorisation for collective negotiations, subject to the limitations that I have briefly described, in dealing with small business. We are meeting with small business groups on a regular basis, and particularly in the next few weeks, to emphasise to them the importance of collective negotiations in the process of small business taking advantage of advantages or protections afforded to them under the Trade Practices Act in their dealings with bigger business. At that, I will stop and leave it to senators for questioning.

CHAIR—Thank you very much, Mr Samuel. This question is perhaps to Mr Cassidy. Can you bring us up to date on current litigation, please, under both part IV and part V? Since the last estimates hearings, how many cases have been instituted, how many have been discontinued, how many have been resolved and, in the case of those that have been resolved, what was the outcome? In relation to pending appeals to the full Federal Court and the High Court, can you bring us up to date on where cases in that category stand as well?

Mr Cassidy—Given that that involves a reasonable amount of detail, that is probably a question we will need to take on notice. In a broad brush sense, we currently have 41 cases in court and we have just over 200 serious investigations on foot, but the breakdown of that, if I can, I will take on notice.

CHAIR—Are you able to tell us about section 45 and section 46 cases?

Mr Cassidy—I certainly can tell you about section 46 cases—that is something you and the committee have asked about previously. Currently, we have three what we call serious section 46 investigations under way. Last time you asked me about this I reported eight—that was at the last Senate estimates hearing. Our figure currently is three. We have four section 46 cases in court at the moment, including the Safeway case in which we are currently seeking leave to appeal to the High Court.

CHAIR—How many section 46 cases have there been since these same questions were asked by me at the last estimates? Have any been discontinued?

Mr Cassidy—Given we had eight serious investigations under way at the time of the last estimates, five investigations have been discontinued. The last section 46 actual case that was discontinued was the Qantas case, which was almost certainly before our last Senate estimates appearance.

CHAIR—Since the last Senate estimates, have any new section 46 cases been commenced?

Mr Cassidy—No.

CHAIR—And you will take on notice those same issues in relation to the section 45 cases, other part IV cases and part V cases?

Mr Cassidy—Yes.

CHAIR—Thank you. Mr Samuel, you spoke about the harmonisation of our competition laws with those of other jurisdictions. Have you had an opportunity to study those chapters of

the free trade agreement with the United States which deal with competition law and policy? Assuming you have, are you able to speak to the question of whether—because this has been asserted by some—the free trade agreement would, were it to become part of Australian law, in any sense diminish or prejudice the efficacy of domestic Australian competition laws?

Mr Antich—I suspect that is not the position. I suspect that the way in which the agreement would work would be building on the existing treaty that we have with the United States. I do not think there is anything in the free trade agreement as far as we are aware that would take away from the position. There are issues with our relationships with overseas regulators that will need to be addressed through, potentially, legislation in respect of ensuring that we can do things such as share information, but I do not think there is anything in the free trade agreement that will take away from the position.

CHAIR—Do you share that view, Mr Samuel?

Mr Samuel—Yes. Indeed, just a few days ago I signed a document that evidences our support on an agency basis for a provision of the free trade agreement. I do not have it in front of me so I cannot give you the exact words, but it provides for work to be undertaken to enhance the level of cooperation between the US Federal Trade Commission and the US Department of Justice and the ACCC in relation to both consumer protection and competition and antitrust issues in the US and in Australia. It deals with the sorts of issues relating to cooperation between agencies that I mentioned before as being so essential in dealing with some of the globalised anticompetitive conduct and consumer protection conduct that we are having to face at the moment. It is an important element of the process of enhancing the level of cooperation in enforcing court orders and in the sharing of information. As I indicated before, the process of bilateral discussions between heads of agencies that might then lead to legislative enabling at both ends will be enhanced by those provisions of the free trade agreement that relate to this particular issue and relate to the document I signed just a few days ago.

This is important, not only with respect to the US but with respect to a number of other more developed nations in the world in terms of competition policy. I am thinking particularly of Europe, the United Kingdom, some of our major trading partners in Asia and of course the whole of North America—that is, Canada and the United States. We will be pursuing bilateral discussions with heads of agencies there with a view to bringing recommendations to government to try to emulate some of the material contained in the US free trade agreement in our relationships with the US.

CHAIR—So, speaking as the regulator, in your professional judgment those people who assert that the free trade agreement would in any way diminish the efficacy of Australia's competition laws are simply wrong?

Mr Samuel—I have not seen enough of the provisions of the free trade agreement to express an opinion on that. But I can say that, in the area I have been primarily focusing on, which is the level of cooperation between the ACCC and our counterparts in the United States, the free trade agreement provisions that I have subscribed to, as requested the other day, provide significant steps forward in the level of cooperation and thus our ability to

enforce competition laws and consumer protection laws across borders where the US is involved.

Senator CONROY—I will start with a couple of issues that you mentioned in your opening address, one of which is property spruikers. I see that you are in the paper today—I do not know whether you have had a chance to see the *Australian*—talking about the 10 to 30 property spruikers you have been looking at; that was great to see. ASIC's May 2003 report, which I discussed with them yesterday and which never saw the light of day, says that, based only on ASIC's sample, property seminars appear to have grossed well in excess of $60 million in fees and to have attracted perhaps as many as 80,000 people. The report says these get-rich-quick schemes 'recklessly overstate benefits and use psychological manipulation to draw people in'. Get-rich-quick wealth creation seminars use advertising and marketing that 'stands apart as offensive and unethical'. ASIC's report says that some of the spruikers were charging $4,997 per person and others up to $20,000. Mr Johnston said yesterday, 'We stand by the comments that were made in the draft report.' They made them secretly, because they did not release the report. But he is standing by his secret statements in the report.

Yesterday I asked ASIC about property spruikers in a report ASIC produced, as I said, but did not publish. The ACCC has taken action in relation to misleading and deceptive conduct in relation to property spruikers. I understand, as you have indicated publicly and again today, you are investigating between 10 and 30 spruikers. Why has the ACCC decided to take action on property spruikers? Isn't it an issue which should fall within ASIC's domain?

Mr Cassidy—This gets into the area of financial services, and misleading and deceptive conduct in relation to financial services, which we have discussed previously. The way the law currently stands—and since March last year—the ACCC does not have any direct responsibility or oversight in relation to misleading and deceptive conduct in financial services, and we have shared responsibility with ASIC in relation to unconscionable conduct in financial services. So when you come to real estate seminars, for argument's sake, the way in which the law currently works is that if the advertising of the seminars is misleading then that falls to us—

Senator CONROY—You can deal with it.

Mr Cassidy—but what is said in the seminars in relation to investment in property and investment strategies falls to ASIC. So we have been taking action in relation to that area of real estate investment activities that is still within our jurisdiction, and of course the rest of it falls to ASIC.

Mr Samuel—It is perhaps worth noting that the action that we took in respect of some alleged misleading and deceptive conduct on the part of Henry Kaye and the National Investment Institute related to a free seminar.

Senator CONROY—How successful were you with Henry Kaye?

Mr Samuel—It is still in the courts but in practical terms it is perhaps important to reflect upon the following. Following our action and as a result of some highlighting of these issues, the number of advertisements that appeared in the daily newspapers fell dramatically and the number of attendees at these seminars fell dramatically. I noted a quote in one newspaper from Mr Henry Kaye, who indicated that the significant contributing reason for the financial

demise of the National Investment Institute was that, as a result of the publicity and actions, the number of attendees at his seminars fell dramatically and that had some negative impact on his cash flow.

Senator CONROY—I think you should frame that and put it up on your wall, Mr Samuel, as a trophy. Is there a regulatory gap where the spruiker's conduct is not misleading and deceptive but is nevertheless offensive and unethical, or possibly amounts to advice on investments?

Mr Antich—As you may be aware, there is a SCOCA working party—a fair trading agency working party—looking at that issue and there is a discussion paper that should be released soon.

Senator CONROY—That is right; it has been going for about a year.

Mr Antich—It is one of the faster ones.

Senator CONROY—One of the faster ones! It has taken nearly a year to produce a discussion paper and that is a faster process? Heaven help the Australian public if there is a slower process. Is there a regulatory gap there? ASIC are basically saying that they cannot do much, and you have done as much as you can with your powers—and you are looking at 10 to 30 more. Clearly there is a gap here.

Mr Samuel—Inevitably where two or more agencies are involved with similar courses of conduct and with the same industry there is a potential for gaps to arise. I guess we are more concerned with gaps than we are with overlaps. We are endeavouring to deal with the gaps by some cooperative action with ASIC, using our respective agencies' abilities to cross-refer or cross-delegate, but it increases the complexity from a regulatory viewpoint in dealing with some of these issues. It is a little complex when the point at which we can deal with property spruikers, for example, relates purely to the advertising material but once the advertisement is published and people have got in the door—

Senator CONROY—It seems you can try and help the public before they get in the door; once they are in the door, they are basically—

Mr Samuel—It is outside our control.

Senator CONROY—This transfer of responsibilities of financial services and consumer protection across to ASIC does not seem to be working particularly well.

Mr Samuel—It is still in its early stages.

Senator CONROY—I think you are being modest there. It has been going on for a couple of years.

Mr Samuel—It only started last year. It is terribly important that we establish strong lines of communication and cooperation with ASIC in an endeavour to ensure not so much that the overlaps do not cause us concern but that the gaps do not cause concern—to the agencies and the consuming public. That is the area that we are addressing at the moment. There have, of course, been some changes at senior levels in ASIC and, as those changes have settled in, we are now in close communication and contact with ASIC to endeavour to overcome those gaps.

Mr Antich—Not all of the conduct being alleged in respect of these sorts of spruikers may fall within our act even if we had jurisdiction. There are issues about conflicts in relation to whether there has been adequate disclosure of related businesses and all sorts of issues that have come through the FSRA about disclosure. Those issues may not fall within our jurisdiction even if we had it.

Senator CONROY—Sure. I am trying to look at it from the consumer's perspective. Before they walk up to the door, you guys are in there batting. They walk in the door and you guys cannot touch them; there is nothing you can do about what goes on inside. ASIC have sent officers along in disguise to be part of the crowd—I do not know whether they have paid the fee or whether they have been to one of the free seminars, but they have sent them in. They are coming out and saying, 'There are only a few areas where we can actually do anything.' There just seems to be a huge gap.

Mr Samuel—What we can do though is endeavour to stop consumers walking in the door or, perhaps more importantly, stop the doors from being opened.

Senator CONROY—And you are doing a good job to stop them walking in the door.

Mr Samuel—If we could stop the doors from being opened, that would probably be equally effective. We also have people who go inside the seminars. We then match up what occurs inside the seminars with the advertisements. If we find at that point misleading and deceptive conduct, it gives us a basis to go to the seminar promoters and say, 'Close down your seminars because they are not doing what you promise in the advertisements they will do.' We tend to find there is a pretty quick reaction to doing just that, and that closes the door. So that is equally helpful for consumers.

CHAIR—Do your people know who the ASIC people are?

Mr Samuel—No; we all operate under deep cover, Senator!

CHAIR—I wonder whether some of these seminars could be entirely populated by ASIC and these spruikers.

Mr Samuel—I am not sure. Certainly, as our budget is allocated much more towards litigation, we restrict our attendance to the free seminars.

Mr Cassidy—Given the cost of these seminars, we usually only send one to each seminar.

Senator CONROY—There is a report in this morning's paper that says:

Privately senior ASIC officials say that property investment is Australia's No. 1 consumer issue and ASIC desperately needs new laws to regulate it.

In your view, are new laws needed?

Mr Cassidy—In a sense, this is a bit difficult. As Mr Antich said, you are really asking us about legislation which is the domain of ASIC and probably would be even with new legislation—

Senator CONROY—But I think Mr Samuel has been on the record before as saying this has to be regulated and that we are going to need new regulations because clearly there is a gap.

Mr Samuel—There is no better regulation than a regulation that says a person or a corporation shall not engage in misleading and deceptive conduct in trade and commerce. That is a pretty wide and far-reaching provision. If you have that, whichever agency is vested with the power to deal with that, you probably have almost as much as you need to be able to take proceedings to stop and to restrain parties from engaging in that sort of conduct. Then you can have more specific provisions that flow on from that. Of course, in the context of the ACCC, we have those in section 53 of the act and also in some of the mirroring provisions of part 5C relating to criminal prosecutions. But I think it is more important that the relevant agency, whichever it is, has the necessary powers and the necessary law to be able to deal with what is fundamentally misleading and deceptive conduct—in other words, dishonesty.

Senator CONROY—But you have stated before that there is a need for national regulation.

Mr Samuel—I am not sure that I did.

Senator CONROY—I am not trying to put words in your mouth; I thought I had read that.

Mr Samuel—No, I do not think I did. I think I indicated that I thought that—

Mr Cassidy—Senator, this is also an area where there is an overlap in jurisdiction between ourselves and our state counterparts, the fair trading agencies. We might have said on more than one occasion that, given the national nature of some of these operations, it was really an activity which needed to be dealt with on a national basis; hence the reason we were taking action in the area rather than individual state offices of fair trade—although they have been active as well. Maybe it is that that you are referring to.

Senator CONROY—I think that is what I was referring to: that there is a need for national coordinated action rather than the mishmash that we have currently. The discussion paper, after 12 months of hard work, will possibly be out soon and no doubt there will be another 12 months of discussions about the discussion paper.

Mr Antich—I do not know whether it has been 12 months. I think the emphasis is on trying to get the paper out as quickly as possible. It discusses a range of regulatory options and it has the input of the states.

Senator CONROY—No doubt we will look forward to chatting with you about it at the next estimates.

Mr Antich—Probably more so with ASIC.

Senator CONROY—In the meantime, while we are discussing the discussion papers, overseas spruikers are beginning to target Australia. There is already evidence of a number of them moving into the market to fill the position of Henry Kaye. Are you familiar with this new problem?

Mr Samuel—Yes, we are. We are undertaking as much work as we can, consistent with the limits of our jurisdiction, to deal with that. I mentioned media outlets before and not only correspondence with them from me but also investigations currently taking place into some spruikers appearing on current affairs programs and whether those programs have been involved in some way or another in promoting property spruiking activities and other products and schemes. But, as I said, there is a point at which we can go no further and that

point is at the door. Once the consumer has gone through the door it is too late for us. If we can stop the doors from being opened, or stop consumers learning the location of the door, that is exactly what we will do.

Senator CONROY—But if big US overseas property spruikers are turning up on our doorstep the word must be out that we have a pretty soft regime. If we are making it onto the radar of screen of big American property spruikers, internationally the word must be out that we are a soft touch.

Mr Samuel—I am not sure that that necessarily suggests that we are a soft target. I suspect that the property spruikers have seen, somewhat belatedly, some of the opportunities available in Australia because of a booming property market. They probably have not caught up with the fact that the booming property market has somewhat deflated in recent times and they may find it more difficult to make a living here. The furthest we can go, as I said, is that the moment we learn of these we follow them up. We follow up on their promotion activities but once consumers are inside the door there is not much that we can do at the ACCC level.

Senator CONROY—I accept your point about a booming property market and maybe now it is deflating a little. But a booming property market accompanied by a tough national regulatory scheme is not going to be as attractive to these big US spivs. You are both nodding and I am not sure that Hansard can record a nod; you need to say something rather than just nod. Clearly the word must be out that we are a soft touch.

Mr Cassidy—Again, as I said, this is difficult because the area of regulation that you are talking about is really not ours. It is hard to disagree with your proposition, hence the reason we silently nodded.

Senator CONROY—You have taken a very strident position that you are trying to do everything you can.

Mr Cassidy—With a tighter regulatory environment in this area you probably would not get as many of these would-be investment advisers being attracted to it. You are really asking us questions about a regulatory area which basically is not ours.

Senator CONROY—I appreciate that. Have you raised the issue of property spruikers with any minister, parliamentary secretary or their officers?

Mr Samuel—No more than reporting upon our current activities since September last year and indicating the course of action that we are pursuing and also indicating—as we must, so that there are no misunderstandings—the limits on what we can do.

Senator CONROY—Have you raised with them that you have these limits and that you think there needs to be a national regulatory approach?

Mr Samuel—I cannot remember the exact words of any discussion we have had with ministers or parliamentary secretaries but we have discussed the campaign that we have been conducting to date and the efficacy of that campaign. We have also discussed the limits on what we can do, where it is that our jurisdiction stops—the door you described—and how much further we can take the matter. I do not think I have said anywhere that this matter requires a national legislative approach. I have indicated that, where state consumer affairs bodies might have believed that, for example, dealing with certain real estate promoters or

auction practices was a matter for a state consumer affairs body, we have taken the view that these are a matter of national importance and national relevance to consumer protection. Therefore, we have taken it on as a national consumer protection agency, rather than necessarily leaving it to state bodies, either under their state fair trading laws or under their specific laws relating to auction practices.

Senator CONROY—You have described that you have raised these issues with the relevant ministers or parliamentary secretaries. There is a report in today's papers that says that ASIC has put the case for greater powers to senior government officials but 'they close their ears'. Has this been your experience in relation to property spruikers when you have delivered this message?

Mr Samuel—No, because it has not been within our scope to deal with legislation relating to property spruikers with government—it is not within our jurisdiction. So as far as our jurisdiction goes, which is to correct the advertisements that might lead consumers to go in the door, we have the relevant powers under part 5 in terms of sections 52 and 53. The issue of what occurs behind the doors is not for us; that is a matter for ASIC and government legislation relating to ASIC.

Senator CONROY—Minister, have you closed your ears to the pleas from ASIC for more powers?

Senator Coonan—No; it is not in my portfolio.

Senator CONROY—I just thought they might have mentioned it to you at some stage.

Senator Coonan—No.

Senator CONROY—You are not one of the ministers who have closed their ears to their pleas?

Senator Coonan—I have not had briefings from ASIC.

Senator CONROY—Are you concerned that ASIC are describing people in government as having closed ears to this issue?

Senator Coonan—I do not know what reports you are referring to.

Senator CONROY—Page 6 of the *Sydney Morning Herald*.

Senator Coonan—I do not know that that is conclusive. ASIC were here for a couple of hours yesterday. During the course of that evidence, I think it was explained again that there are certain jurisdictional problems and issues that the relevant ministerial council has expressed an interest in trying to have a better and more collaborative approach to, and I think that is the correct position.

Senator CONROY—These are not my quotes.

Senator Coonan—Whose quotes are they, as a matter of interest?

Senator CONROY—This is Mr Garnaut's report.

Senator Coonan—No; Mr Garnaut is a journalist. It is not an official—

Senator CONROY—I was about to read you the quotes from his story; I was just trying to finish my sentence and you jumped in before I got a chance to finish it.

Senator Coonan—Much as I respect Mr Garnaut, I do not think he has quoted a source.

Senator CONROY—He says:

Privately senior ASIC officials say property investment is Australia's No. 1 consumer issue and ASIC desperately needs new laws to regulate it.

… … …

One official said ASIC had tried to put the case for greater powers to senior government officials but they 'close their ears'.

Senator Coonan—You had an opportunity for two hours to question officials from ASIC and I do not remember hearing that evidence.

Senator CONROY—It does say 'privately'. Unfortunately the Senate processes here are fairly public. But they did have trouble remembering whether they had had any discussions with the minister publicly at first.

Senator Coonan—As I say, that is not the evidence I recall.

Senator CONROY—But you are definitely not one of these senior government officials who have closed their ears on this issue?

Senator Coonan—As I said, I have never been—

Senator CONROY—You are receptive? You have an open mind?

Senator Coonan—I have not been briefed by ASIC in relation to those matters.

Senator CONROY—You sat here for two hours while we talked about it.

Senator Coonan—I did not hear the issue that you are—

Senator CONROY—I am not suggesting there was that evidence. It is clearly described as private, so I am not trying to suggest that they said it publicly. I am just saying that is what they are saying privately.

Senator Coonan—They may be; I do not know. You do not know either.

Senator CONROY—I am only going on the report that that is what has been said. I am not alleging they said that; I am just going on the report.

Senator Coonan—Reports are not evidence.

Senator CONROY—You mentioned, I believe, in your opening address that litigation used to be used as an advocacy tool for the ACCC. Could you expand on that?

Mr Samuel—I think there was a belief that one of the important means whereby the activities of the ACCC—

Senator CONROY—I am sorry; there was a belief within the ACCC?

Mr Samuel—I am sorry; yes. There was a belief within the ACCC that one of the important means of publicising the activities of the ACCC and thus making consumers and business aware of competition laws and the role of the ACCC in dealing with competition and consumer protection laws was litigation. So matters might have been litigated on the basis that achieving a result from the court would lead to more effective publicity in this area than

might otherwise be achieved by means of a section 87B undertaking or whatever might be the case.

It is fair to say that the view of the commission in relation to litigation at the moment is that it has two important purposes. The first is obviously to be used in terrorem to bring about effective results where business understands that failure to bring about an effective result for consumers, be it in the area of anticompetitive conduct or in the area of consumer protection, will lead to litigation. The second is the use of litigation to deal with what I will call the hard cases: those cases that are either complex at law or where you are dealing with a hard case in terms of the offender—that is, someone who just does not understand what compliance with the Trade Practices Act is about.

I think you will find that the focus of our litigation is particularly on those hard cases: it is on businesses who just do not understand what compliance with the law is about, who do not have a compliance culture. It is not to deal with instances where there is evidently a compliance culture within an organisation but there has been a slip-up or a problem has arisen that can be very quickly rectified, particularly with restitution for consumers by some other means than necessarily litigation. Litigation is a powerful tool in terrorem; it is a powerful tool to deal with hard cases. Let me emphasise that litigation does not necessarily confine itself to civil prosecutions. We have the capacity—at least in respect of part V matters—to deal with matters on a criminal basis and we will not be hesitant in doing that as well, as I think will be evident in due course.

Senator CONROY—So you think the ACCC has been too litigious in the past?

Mr Samuel—It is not appropriate for me to comment upon the extent of litigation in the past. I will simply say that litigation needs to be focused on achieving the right outcomes. It is important that the right outcomes are directed towards what is necessary to ensure that there is a change in industry behaviour, that consumers are protected from further misbehaviour, that where misbehaviour has affected consumers adversely that adverse impact is rectified and restituted as quickly as possible and that the businesses involved put in place compliance strategies so that they understand what compliance with the act means and therefore take steps to ensure they do not engage in behaviour that contravenes the act in the future. So compliance strategies are a very important part of doing just that.

If that is the focus of our enforcement activities then that can be undertaken by the use of a number of tools. The best tool is education beforehand. It is to prevent people, consumers, being trapped by walking in through the door, to use the expression we have used before. So an important part of our tool is to ensure that business broadly has a keen understanding of what the act is about and that consumers have a keen understanding of what the act is about and where the ACCC and the act itself can provide them with protection. This of course is focusing on both big and small business. We have extensive education campaigns and information campaigns that we conduct with the small business community to ensure that they understand not only their responsibilities under the act but, as I mentioned before, some of the rights they have, particularly in the area of unconscionable conduct and collective negotiations. So compliance education information is one tool. An important and powerful tool is that of litigation, but it ought to be used properly, with proper focus, to deal with those cases where there is no other way to bring about a proper outcome for consumers.

Senator CONROY—You keep making the comment that it is has to be used properly. Are you suggesting that it has been used improperly before?

Mr Samuel—I do not want to comment on the past, because that predates my time. I will say that, if the prime focus is outcome oriented, to deal with rectifying consumer harm—

Senator CONROY—I thought that the prime focus of the ACCC was to enforce the law—but then I might be a bit of a dinosaur.

Mr Samuel—That is what enforcing the law is about. Enforcing the law is about bringing about the right outcome, which is to stop industry misbehaviour and business misbehaviour and to ensure that the consumer is not harmed. Enforcement of the law can take place through a number of processes. One of those processes is litigation. Litigation is an important tool that can be used in actual form or it can be used in terrorem.

Senator CONROY—Doesn't it demonstrate that this behaviour will not be tolerated? Isn't there a demonstration effect?

Mr Samuel—That is the reason it is used.

CHAIR—Mr Samuel, since you took over as Chairman of the ACCC, have the guidelines on the basis of which decisions to institute proceedings are made been changed?

Mr Samuel—No, not at all. Decisions with respect to litigation are made by the enforcement committee, which includes all commissioners. If litigation is resolved upon by the enforcement committee then they proceed to the full commission for ultimate decision. What has changed is that, in order to speed up the litigation—there was a concern that I had when I arrived at the commission about the time lines involved in some of our litigation processes and the control of our litigation—we have carved out of the enforcement committee the litigation tactics and strategies into a new committee that is titled the litigation committee. It is headed up by Jennifer McNeill, who is of course a former partner in a senior law firm responsible for litigation. She has significant skills in litigation. The litigation committee includes those members of our enforcement and legal team within the organisation, including the General Counsel Unit, that have significant skills in litigation strategy and litigation tactics. That has helped to increase the efficacy of our litigation work.

CHAIR—Does that mean that decisions to institute proceedings which had previously been made by the commissioners on the recommendation of the enforcement committee are now made on the recommendation of this new litigation committee?

Mr Samuel—No, the strategy of enforcement is conducted by the enforcement committee. The litigation committee deals with the tactics and the strategy of the litigation process—

CHAIR—Once a decision has been made to litigate.

Mr Samuel—Yes, once the decision is made. The pleadings, the tactics, the means, the processes for coordinating litigation, the use of lawyers and of counsel involved and the process to obtain quick interlocutory relief are now put in the hands of the experts—as it should be—rather than in the hands of a mixture of economists and former lawyers who do not have a great deal of experience in this area.

Senator CONROY—Who are the negotiations undertaken with—the enforcement section or the litigation section?

Mr Samuel—When you say 'negotiations'—

Senator CONROY—You said 'pleadings', so I am assuming that means that the enforcement committee are not directly involved with this; it is the litigation committee which pleads out the witnesses.

Mr Samuel—Once a decision has been made to litigate, the process of litigation—the form of the pleadings, the use of counsel, the process of interlocutory proceedings—is then handled by the litigation committee, and they will report immediately after the committee each week to the enforcement committee so that the enforcement committee knows exactly what is occurring and how it is being done.

Senator CONROY—They will tell them what has happened.

Mr Samuel—Yes, but it is not a question of 'tell'; that is not the way we work in the commission. We work on the basis of strong collaboration between all commissioners and departments and divisions within the commission. The litigations committee will report to the enforcement committee, but of course there is an open dialogue that occurs with some cross-membership as well.

CHAIR—Does that suggest that there has been a greater degree of centralisation of oversight of litigation, once commenced, than was the case hitherto?

Mr Samuel—I think that is right; there is a greater degree of central coordination of litigation. We are developing our database to ensure that our enforcement and litigation processes are more centrally coordinated. This is not to take away from the investigative work or the initiation work that is undertaken right throughout Australia by our regional offices but to ensure that our processes are more effective, more efficient and more coordinated. And it is to ensure that we all have an eye on the time between the receipt of a complaint and the bringing about of the ultimate conclusion to the matter, which may involve litigation, a very publicly advertised section 87B undertaking or some form of restitution—all of which is very public and transparent. This will ensure that two, three, four or five years do not transpire between the receipt of the complaint and the ultimate conclusion of the matter. That is not a really satisfactory way of dealing with matters that affect consumers—whether they be competition breaches or consumer protection breaches.

CHAIR—Does the new litigation committee have any role in recommending, to the enforcement committee, a decision to litigate?

Senator CONROY—They can recommend that it stop.

CHAIR—I am sure that they can if they think it is appropriate.

Mr Samuel—The decision to litigate is made by the enforcement committee. Jennifer McNeill is a member of both the enforcement committee and the litigation committee. And all staff members of the litigation committee attend all meetings of the enforcement committee so the views are openly expressed. I do not want to suggest that this is a bureaucratised separation of powers but rather to say that the enforcement committee consisted previously of not only the litigation expert and others around the commission table but also a group of

economists and former lawyers—as in my case—who did not have a great deal of expertise in the strategy and tactics of litigation. Those issues have now been moved off into a very specialised committee. That is already having an impact because now there is a greater coordination of the process of litigation; timelines are put in place; and a review of cases occurs on a regular basis to ensure there are no delays. Sometimes delays will occur simply because there is a lack of attention by those who might be handling the matter—that is, the legal personnel involved—either inside or outside. The committee ensures that there is a lot more rigour and attention being paid to the process of litigation to try and bring about outcomes very quickly.

CHAIR—Does that also mean that, since the litigation is being supervised by a specialist committee of litigation lawyers within the ACCC, less money has to be spent in seeking advice from private legal firms or counsel in relation to the tactical steps in a particular piece of litigation?

Mr Samuel—I could not comment at this early stage on whether it is saving money but, with the contribution of the expert litigation strategic and tactical advice that can be provided by the commission, it is possible for the commission to give more certain instructions to lawyers and to be more actively involved with legal counsel as to the courses of action that might be taken. This might well have an efficiency result in terms of finances. I would like to think that the greater impact will be in the efficiency of the outcome of the litigation. It ensures that there is less potential for slip-ups and misdirection of the tactical strategic process of litigation. It simply makes litigation more effective.

Senator CONROY—Thank you for interrupting my questions, Chair.

CHAIR—I am entitled to ask questions too, Senator Conroy.

Senator CONROY—I appreciate that the chair can just butt in when they want.

CHAIR—It was relevant to the topic you raised, Senator Conroy.

Senator CONROY—That is quite all right; I always enjoy your chairing. Last week the ACCC announced some changes to the way it assesses merger proposals. How do your proposals compare to the Dawson proposal for a formal merger clearance process?

Mr Samuel—In my opening statement I pointed out that they did not really relate to the Dawson proposals. They relate, rather, to the process of assessment that the commission undertakes at the moment with respect to merger clearances. They are designed to make that process far less secretive, far less private in the negotiation process, far more transparent and far more accountable. They are designed to put what we are doing in relation to merger clearances far more onto the public register. That will mean that, where it is appropriate that the ACCC should be criticised for having failed to undertake the process properly, we will be criticised, but we will be criticised based on information rather than speculation. Speculation, as you are well aware from many years in political life, can often be—shall we say—fed by those who have an interest in the outcome of certain proceedings.

It will limit the gaming of the process by some of the experts in the merger world in business and amongst their advisers. Transparency and accountability are very important parts of the way we operate. I think they are also important in ensuring that the world at large

knows how these processes, which often involve very public issues in terms of mergers and takeovers, are conducted, what the roles of various parties are and what the relevant information might be, so that all interested stakeholders—employees, customers and shareholders—can make decisions as to what they should do with respect to the matters that they have at stake. It will simply provide for a more transparent and accountable process.

Senator CONROY—It keeps being described in the media as your response to try and head off the Dawson proposals. Do you want to respond to that?

Mr Samuel—I think, frankly, that is nonsense, if I might say so. We have had discussions at previous Senate estimates hearings about the role of the media, and I tend to just let all of that go over like water off a duck's back. I emphasised at the time of announcing this that this has nothing to do with the Dawson proposals, it has nothing to do with formal and informal clearance processes; this is all about making the process that we currently undertake more transparent and more accountable. It limits the gaming of the process. I think an article in the *Financial Review* just a couple of days ago indicated that this process should be welcomed by most stakeholders. It should be welcomed by investors. It should be welcomed by the Australian Shareholders Association. It should be welcomed by the investing public. It should be welcomed by merger parties. It will not be welcomed by some.

Senator CONROY—Has anyone welcomed it? I have not seen much response from the business community.

Mr Samuel—Welcoming it?

Senator CONROY—Yes. Are they very bashful?

Mr Samuel—I do not want to selectively rely on the media, but I think a number of advisers have said that this is a significant step forward in increasing the transparency of the process. But there are some who believe that being able to conduct their merger applications in secret—having private negotiations with individual commissioners or with the chairman, without the presence of staff or without the presence of other commissioners—enhances their ability to obtain approval of their merger process.

Senator CONROY—Has that happened in the past?

Mr Samuel—It certainly has not happened since 1 July last year. I cannot comment before that, but since 1 July last year we do not conduct private negotiations. There are no meetings that are held on any matter, frankly, that do not involve at least a senior member of staff and a commissioner or the chairman, or two commissioners, as the case may be. That is the way that we conduct things. But that sort of process, with more transparency and more accountability, will not be welcomed by those who may seek to game the process at present and who believe that by conducting things privately they can enhance their position in obtaining approval of their mergers.

Senator CONROY—Dawson also proposed that parties be able to bypass the ACCC and seek a merger to be authorised by the ACT. Professor Fels, your predecessor, strongly opposed this proposition. Does the commission have the same view? What is your view?

Mr Samuel—We should just clarify that. I noted some discussion that took place yesterday in relation to this matter that perhaps needs some clarification. The Dawson proposals, as I

recall, indicated that in respect of authorisation of mergers only there should be a direct path to the ACT. Also I think Dawson indicated that, if a party attempted to bypass the ACCC on issues of substantial lessening of competition and sought to take those to the ACT under the ruse of 'We're seeking an authorisation,' then the ACT would have to refer the issue of substantial lessening of competition back to the ACCC. So the process of direct application to the tribunal is a matter that only applies to authorisation. I cannot recall the last authorisation that occurred with respect to a merger—except, I guess, in the margin, the strategic alliance that was proposed between Qantas and Air New Zealand.

I believe, subject to advice from others, that the numbers of applications for authorisations of mergers where there is a demonstrable anti-competitive detriment and where there is an attempt by the parties to demonstrate that there is an overall net public benefit that exceeds the anticompetitive detriment might amount to one a year or one every two or three years. Others could assist me. That is a matter that is part of the Dawson proposal. It is a matter that will be dealt with by government as a matter of government policy. I am not sure where that is at at the moment, so I cannot comment any further.

Senator CONROY—How many mergers does the commission typically oppose in a year?

Mr Samuel—About two per cent. We deal with around 200 mergers each year. Of those, we formally oppose around four or five. There are about two per cent that are opposed.

Senator CONROY—I thought it was a relatively small number.

Mr Samuel—Yes. A number go through some processes of qualification involving undertakings and they might amount to another three per cent. It is of that sort of order; the number is relatively small.

CHAIR—These decisions are, in part, a function of market concentration, aren't they?

Mr Samuel—I think I indicated when I gave my speech the other day to the AICD in Sydney that you might expect there to be an increasing number of mergers that could run into difficulties with the ACCC. That does not suggest any change at all in the attitude of the ACCC. In fact, we cannot change: our attitude is governed by the law and the law has not changed in this matter. It deals with the issues, essentially, of lessening competition in a market. As the market in Australia becomes increasingly concentrated in certain sectors we will have greater difficulty with the mergers. The most obvious one has been the recent issues concerning Boral and the cement industry, and Boral and Adelaide Brighton. There is increasing concentration there. We have a difficulty with that and we have expressed our views. We have indicated the reasons for our decision so that it is out there in the marketplace.

It is perhaps worth observing, in respect of that particular takeover, that if our proposed new guidelines had been in place there might have been a couple of changes in the process, for example, relating to the Boral merger. The application was made to us on 19 December last year. I think it is fair to say that the first meeting did not take place until the middle of January. Information was provided. We were not satisfied with the reliability of that information and therefore found it necessary to serve section 155 notices on Boral. They were concerned about the extent or breadth of those section 155 notices and wanted to negotiate a narrowing-down of the extent and the application of the notices. That process took place right through until the end of February. I think it is fair to say that the first reliable information that

we received from Boral did not arrive on our doorstep until towards the middle or end of February in 2004. I put that in perspective because that is a period of 2½ months that elapsed before we started to receive what we regarded as reliable information in response to formal section 155 notices.

The process of investigation then took place. Very early in the piece we expressed our concerns to Boral, but of course those concerns were not placed on a public register, so there was a lot of speculation out there in the market place, particularly by commentators in the newspapers—and I suggest that that speculation may have been informed by certain parties as to what the ACCC's attitude might be—but it was, for the most part, uninformed speculation, so shareholders were left in a vacuum. Come the middle or end of April we reached a decision but the parties asked that we did not finalise that decision but enter into further discussions and negotiations with them. That led to the middle of May, when final decisions were made.

We were criticised over the five-month time frame. The reality is that the commencement of the time frame was probably not until towards the end of February when we began to receive, in response to the section 155 notices, what we could regard as reliable—I underline the word 'reliable'—information. The conclusion of the time frame was probably towards the end of April but then the parties asked that we extend the time. Those sorts of matters ought to go on a public register. They ought to be available for people to understand what is going on in the process. The moment we formed our concerns and relayed those concerns to Boral, that also ought to have been on a public register because it would have enabled all parties—stakeholders, competitors within the industry, customers, shareholders and the investing public—to form a view very quickly as to whether or not they ought to be involved in contact with the ACCC, and whether or not they ought to be accepting the takeover.

It is interesting to note that since our decision has been out there in the market place the level of acceptances and of Boral's substantial shareholding has dropped from somewhere around the 42 per cent mark to somewhere around the 27 per cent mark. It may have been that if we had adopted the new process of putting our statements of concern out into the marketplace a lot earlier, the level of acceptances would never have reached 42 per cent; they might have been back at the level where they currently are which, including Boral's existing shareholding of 19.9 per cent, is at the 27 per cent level.

You can well imagine that that sort of transparency is very valuable to the investing public, to customers and to competitors. You can also well imagine that it might not be embraced so warmly by takeover bidders, who might see shareholders as being somewhat reluctant to accept their takeover offers at earlier stages because they can see that the ACCC has genuine concerns that might well stop the takeover from proceeding. Thus you can understand some pushback that might occur from certain sections of the takeover industry, including advisers, to the transparency and accountability that we are proposing in these guidelines. I frankly think that they happen to be very good for the vast majority of those involved in the takeover process and, therefore, it is an essential part of the way that we will deal with the process in the future.

Senator CONROY—The government has the Dawson bill out to the states for consultation. Have you been given a copy? Have they allowed you to have a look at it yet?

Mr Cassidy—We are not privy to the bill that is currently with the states. We have seen earlier versions but we have not seen the version that is currently with the states.

Senator CONROY—Hopefully, you will see it soon. Do you think that the commission would get a look at controversial proposals such as the Qantas-Air New Zealand, AGL Loy Yang and Boral Adelaide Brighton proposals if the Dawson proposals are implemented? Do you think they would start with you, or do you think it would go straight to the ACT?

Mr Samuel—No. AGL, Boral Adelaide Brighton—what were the others you mentioned?

Senator CONROY—Qantas.

Mr Samuel—The Qantas-Air New Zealand proposal was an authorisation application. It was also a mixture of merger issues relating to the acquisition by Qantas of 27 per cent of Air New Zealand and the issue of the strategic alliance, which I think is far more relevant to the authorisation application. There were various agreements and arrangements to be entered into. That would come directly to us; it would not go to the Competition Tribunal. The issues that would go direct to the tribunal would be matters relating to authorisation of the acquisition of shares or assets that were substantially anticompetitive and where the parties had determined that they wanted to put the issues of net public benefit before the tribunal for authorisation rather than try to argue the issue of anticompetitve impacts.

Senator CONROY—Do you agree that both of Dawson's proposals on mergers—that is, the formal clearance and the possibility of direct authorisation by the ACT—undermine the capacity of the commission to negotiate an outcome on a merger?

Mr Samuel—The view we have previously expressed, and I think we maintain, in this area is that when any process is formalised there have to be trade-offs. It is too early at this point, because I am not aware of what is in the final bill, to understand how a formal process will work. Let me say, however, that the moment that processes are formalised the capacity to deal with an informal process will of necessity have some modifications. There will be some trade-offs. The extent of the trade-offs is not something we can comment upon at this point because we just do not know. We have indicated, however—

Senator CONROY—What sort of trade-offs?

Mr Samuel—I think the trade-offs will be in the flexibility available to the commission to actually deal with merger proposals in an informal process. It is probably more occasioned by the capacity of those involved in the merger process to try to game the commission through dealing with an interplay between the informal and formal process. We are currently seeking some advice on the extent to which our informal processes will need to be modified. But let me emphasise that what I announced on Friday has nothing to do with this; it is about making the process more transparent.

It is interesting, though, that some of those involved in the takeover industry who have raised some concerns about the processes of transparency that I announced on Friday are the same persons advocating a more formal process. I find some contradiction in the views being expressed. On the one hand they want us to maintain secrecy, privacy of negotiations, privacy of processes and privacy of timelines—and thus, if I may say without being too cynical, a greater ability to game the process that currently occurs—but on the other hand they want

some formality in the process, which is what Dawson has recommended. That, of necessity, suggests that they may see some capacity to game the formal process and use it as a bit of a lever in the informal process. We will have to see about that. If that sort of gaming process occurs we will obviously have to reconsider our method of operation under the informal process, and it is possible that the informal process will become less available. We will just have to wait and see how that occurs.

Mr Cassidy—In relation to merger authorisations it is certainly the case, in keeping with the Dawson recommendations, that if they are to go straight to the tribunal we will not be able to negotiate with parties on merger authorisations because we are supposed to assist the tribunal and that would be a quite inappropriate role for us to play. The authorisation process would become much more one of the parties having to put their propositions, including any proposed undertakings, up-front for the tribunal to deal with. So as far as the commission is concerned there would be no negotiation in relation to merger authorisations, because that would not be part of the process.

Senator CONROY—The Dawson committee recommendations are strongly supported by big business. They are certainly relentless in their pursuit of them, as I am sure you know, Mr Samuel. Why do you think they are so passionate about trying to achieve this outcome?

Mr Samuel—It is not for me to guess their motives but, as I have indicated for some time now, mergers are of intense interest to certain parties in the takeover industry. I was very interested to see some of the quoted—albeit under the cloak of anonymity—responses to the transparency and accountability guidelines that I put out the other day. It is interesting to note, again without wishing to be too cynical about it, that transparency and accountability have been an important part of the submissions that have been made to government, particularly to the Dawson committee, in relation to mergers for some time now. I often wonder, particularly when I read some of the responses to the guidelines that I announced on Friday—anonymous responses, as I said—whether it is clearly understood by business that transparency and accountability work both ways. The ACCC must accept complete transparency and accountability as to its processes, but business equally has to accept that it should be transparent and accountable when it is engaging with the ACCC in these areas and that we will not conduct negotiations secretly, behind closed doors. These are matters of importance not only to shareholders and applicants in merger processes but to customers, to employees, to investors and to the public at large. That is why the process must be a lot more public than it is. Of course we will respect confidentiality as and when that is necessary but we will deal with confidentiality issues having regard to the necessity to make the process a lot more transparent and accountable than perhaps it has been in the past.

Senator CONROY—Are the rest of the commission here today?

Mr Samuel—No.

Senator CONROY—We have just had some appointments, haven't we?

Mr Samuel—That is right.

Senator CONROY—I was going to congratulate them, if they were here; that is all.

Mr Samuel—I think we have one staff member who is attending his last Senate estimates as a staff member. He is about to retire as a staff member in two day's time and become a commissioner.

Senator CONROY—I will congratulate him when he appears next time as a commissioner.

Proceedings suspended from 10.44 a.m. to 11.04 a.m.

Senator LUNDY—My questions will focus on the telecommunications area. In answers to previous questions on notice, reference was made to a more complete analysis of the ACCC's views of competition. In February this was said to be a few months away. Has that more complete analysis been done on the state of competition in telecommunications?

Mr Dimasi—Yes, we are required to complete a number of reports. Those reports have been completed. They are in the process of being prepared for publication and they have been provided to the minister.

Senator LUNDY—When were they provided to the minister?

Mr Cosgrave—On Monday evening. I should add that they are not in a form that can be tabled, but we are hopeful that they will be by the end of this week.

Senator LUNDY—Can you describe the process that needs to occur? You are obligated under the legislation to provide that report, aren't you? Or was it a ministerial request?

Mr Cosgrave—No, the reports we are talking about in this instance form a package of three reports that we are required by statute to report. They are a general report in relation to competition safeguards, which includes the ACCC's assessment of competition in the telecommunications sector, a report on price changes and a report on Telstra's compliance with the price control mechanism established by ministerial determination.

Senator LUNDY—Have you complied with the statutory requirements as far as the dates for furnishing the minister with these reports?

Mr Cosgrave—There is no statutory requirement.

Senator LUNDY—In February it was suggested it was a few months away. It is now June. Has it taken longer than you anticipated?

Mr Cosgrave—It has. There are a number of reasons for that, which relate to the provision and validity of data provided by a number of carriers in relation to the price controls report and the assessment of a value claim made by Telstra in relation to the price controls report. The reports have been provided as a trio, in effect, for a number of years. The price control report was the last to be completed, and I think that was completed around the end of May. That was as a consequence of audit requirements in relation to Telstra's compliance with the price controls.

Senator LUNDY—These reports that you are talking about are separate from the recordkeeping reports, aren't they?

Mr Cosgrave—They are annual reports that are required under the provisions of the Trade Practices Act and the Telecommunications Act.

Senator LUNDY—Are you able to identify the carriers that were late in providing their information?

Mr Cosgrave—Yes. We had difficulties with AAPT in relation to the provision of their information. For the second year in a row, we had difficulties with Optus in relation to the validity of certain data that they provided us. As I have previously indicated, compliance with the price cap required an assessment of a value claim that Telstra made in relation to its line rental product. That was supplied to us in September and required an assessment by us of that value claim.

Senator LUNDY—What was the result of your assessment of the value claim?

Mr Cosgrave—That is contained in the report which is yet to be tabled.

Senator LUNDY—I do not think I need to ask you, but is there any indication from the minister as to when we can expect to see this report made public? Is the ACCC is aware of the time frame?

Mr Cosgrave—All I will say is that we are yet to provide the report to the minister in a form that can be tabled. Obviously we took the opportunity, as soon as it was complete, to provide it to him. We have sent it to the printer. Our expectations are that it will be provided in a form that can be tabled by the end of the week.

Senator LUNDY—Is it envisaged that the report be publicly available at that point?

Mr Cosgrave—It is a matter for the minister then.

Senator LUNDY—Can you describe what has occurred in previous years? Has there been a lengthy delay between the provision of the report to the minister's office and the report becoming public?

Mr Cosgrave—The minister has the discretion to table it before the parliament at any time within 15 sitting days after receipt.

Senator LUNDY—If they received it on Monday, that will enable it to be reported before the sitting sessions are over?

Mr Cosgrave—I repeat: it can be tabled at any time within 15 sitting days after receipt.

Senator LUNDY—At the last round of estimates I asked about the ACCC's observation about increasing or decreasing levels of competitive pressure within the telecommunications market. One of the comments that came back was that there was a slight slowing down in some of those competitive pressures. And then this report, the analysis that we have just been discussing, was mentioned. Are you now in a position to tell the committee whether or not the 2002 legislative changes impacted negatively on competition? Has the impact of issuing competition notices been made more difficult for the commission?

Mr Cosgrave—There are a number of issues you have raised. The principal measures introduced by the 2002 amendments related to a package known as the accounting separation framework—as my colleague Mr Dimasi reported to you on the last occasion of estimates. The commission has been undertaking a process of implementing and moving towards improving those rules. We have done that by the production of a number of reports and by the commencement of a—

Senator LUNDY—I have got some questions on the record-keeping rules development, so I will come to that shortly. I am putting this to you in a more general context about the issuing of the competition notice and your observations on the competitive tensions within the telecommunications market as they have developed over the last year and a half.

Mr Cosgrave—The competition notice regime is separate from an assessment to the degree of competition in telecommunications markets. There were a couple of amendments made in relation to the competition notice regime in 2002. The principal one was a requirement around issuing a consultation notice prior to issuing a competition notice, and that is something we have done. In terms of the ADSL competition notice, that is currently on foot.

Senator LUNDY—Do you think that was an improved procedure?

Mr Cosgrave—It is a procedure we have followed in relation to this notice.

Senator LUNDY—Has it allowed you to more effectively ensure that there is fair competition, or less effectively?

Mr Cosgrave—I think the intent of the provision was to ensure that there was a period of consultation prior to the issue of the competition notice. In the ADSL competition notice instance, the period between the consultation notice and the competition notice was, I think, seven days. There was a process by which the potential recipient of a notice could reflect on views that were put to it by the ACCC via a consultation notice. That occurred. The commission still felt it was in a position where it had reason to believe that a contravention of the act was occurring and issued a competition notice.

Senator LUNDY—Following receipt of the consultation notice, was there any change in the actions of the recipient, Telstra? Or did they argue that they did not think that they were in breach and nothing changed until—

Mr Cosgrave—If I read the evidence Telstra gave before estimates a week or two ago, I think it was their belief that they were still not in contravention. That remains their view.

Senator LUNDY—I am looking for your confirmation that there was no change in Telstra's behaviour as a result of receiving the consultation notice, with the obvious subsequent action that you issued a competition notice.

Mr Dimasi—I think it is fair to say that, following the consultation notice, Telstra did make some changes, but they were not considered by the commission to be adequate, hence the competition notice was issued.

Senator LUNDY—That was issued on 19 March, wasn't it?

Mr Dimasi—That is right.

Senator LUNDY—Mr Samuel, you described that as a potent tool in managing that behaviour that was perceived by the commission as anticompetitive. Can you describe what occurred following the issuing of that competition notice in terms of the ACCC's discussions with Telstra?

Mr Samuel—I think it is fair to say that that was probably the first occasion on which Telstra started to focus its attention on the issues that we were dealing with. There had been

some focusing before, to be absolutely fair, but it was probably more at the margin. I think there was a realisation on Telstra's part at that point in time that from midnight on 19 March penalties were applicable, subject of course to the Federal Court, and damages actions would flow from third parties. That is the importance of the competition notice: suddenly it puts the party against whom there is an allegation of anticompetitive conduct on notice that from that point onwards it is up to them to rectify it, and failure on their part to rectify it will lead to penalties.

In the case of Telstra, one can question whether a $10 million or even $1 million per day penalty is of enormous significance. Of far greater significance are potential third party actions. That is the impact of the competition notice. It suddenly raises the stakes. It makes the competition notice a very potent and powerful too. Between the commencement of our knowledge of this issue, 15 February, and the publication of the notice there was just over a month—it was from 15 February through to 19 March. From the commencement of the application of the new retail pricing, 27 February, through to 19 March, I think there were three weeks, and that is a relatively quick process for the application of a competition notice. It would not be—

Senator LUNDY—Relative to what?

Mr Samuel—Relative to perhaps what Telstra might have expected would be the case. I think that Telstra might have expected us to take—

Senator LUNDY—Sorry; is there any relativity other than Telstra's expectations?

Mr Dimasi—One relative issue is the past experience with competition notices. I think it is fair to say that this one here was much quicker than past notices.

Senator LUNDY—Are they past notices in the telecommunications area?

Mr Dimasi—Telecommunications, yes.

Senator LUNDY—So when would the previous notice have been issued in the telecommunications area?

Mr Cosgrave—2001.

Senator LUNDY—So it was prior to the legislative changes anyway?

Mr Cosgrave—That is right, yes.

Senator LUNDY—Is it a fair observation that the consultation notice had no real effect on forcing Telstra to change or contemplate their conduct seriously? It was only the competition notice that focused their attention—I think that was the phrase you used, Mr Samuel.

Mr Samuel—I think that is right. There were three stages we went through, one of which is not obligatory and that was the advisory notice. The advisory notice ought to put the party to whom it is directed on notice that there are some concerns; otherwise they are of little relevance. The consultation notice puts the party on specific notice that we are about to issue a competition notice, and that ought to have an impact. I cannot read Telstra's mind, but it did not seem to have a significant impact. It was not until the competition notice was in place that there was a significant impact.

Senator LUNDY—I am sorry to interrupt, but I remember the debate around the legislation at the time. The intent of that preliminary notice—that consultation or advisory notice, whatever you want to call it—was to try to avoid the issuing of a competition notice. My memory of the debate was that it was supposed to give companies room to move without becoming subject to a competition notice, yet with the first example we have following those legislative changes it seems to have been arrogantly ignored by Telstra—and then only upon the receipt of a competition notice anyway. I guess it comes back to my original question about the effectiveness of the changes.

Mr Cosgrave—There was some movement between the issue of the consultation notice and the competition notice but certainly there has been far more significant pricing movement since the issuing of the competition notice.

Senator LUNDY—Perhaps we should go to what actually changed between the issuing of the consultation notice and the issuing of the competition notice and the nature of the discussions with Telstra through that period.

Mr Cosgrave—I do not know about discussions with Telstra but, in early March, Telstra made a second round of pricing offers for their wholesale customers that included some further small reductions in wholesale rates and some reduced charges for backhaul and other services. I guess the obvious point is that the commission did not believe those reductions were of a nature that changed its belief that Telstra was engaging in a contravention.

Senator LUNDY—Are you talking about prior to the competition notice?

Mr Cosgrave—Yes. In between the consultation notice and the competition notice.

Senator LUNDY—On the issuing of the competition notice, what then happens in terms of the ACCC's communications with Telstra to force them to be accountable and to comply with the law?

Mr Samuel—I think it is fair to say that communications from Telstra to the ACCC probably became more focused and more intense. Remembering that 19 March was a Friday, work occurred over the weekend and some communications occurred over the weekend. In the ensuing week, some very urgent work took place with Telstra on focusing on the issues that we had raised with them.

I think we need to understand the processes that can work here. A lot of time can be spent going through the process of imputation testing. That process can sometimes be used to bring about a situation whereby the ACCC is set up to put in place its view on what prices should be. That is an unsatisfactory process because that is not the ACCC's role. The effect of the competition notice is to suddenly thrust the burden back onto the party on whom it ought to be imposed—that is, Telstra. The impact of the 19 March notice is: 'You know what is anticompetitive; you also know what is competitive. Fix it. If you do not fix it, certain consequences will flow.'

Senator LUNDY—Following the issuing of that competition notice on 19 March, what was the nature of the communication between the ACCC and Telstra over that weekend? Who was responsible for that? Who conducted those discussions?

Mr Samuel—I am trying to remember, but I am caught on the dates. I know that Michael and I were involved, together with Commissioner Willett, in a meeting that took place on the Sunday or the Monday. I am sorry, but I have forgotten the exact dates of the meetings. But, very quickly, very high level discussions took place involving senior people at Telstra and senior people at the commission. I am sorry, but I cannot remember offhand.

Senator LUNDY—You were involved in those meetings?

Mr Samuel—Yes, in some—as well as the continuing meetings taking place involving senior staff of the commission in the telecommunications area.

Senator LUNDY—I am trying to get a feel for this. I think we can make some reasonable assumption that the notice issued on Friday was expected by Telstra, given the discussions that had already have taken place. Following receipt of that notice did Telstra then contact the ACCC? I want the detail about the nature of that approach and the subsequent organising of meetings.

Mr Samuel—I cannot remember the exact date.

Senator LUNDY—You can take that on notice. I am trying to understand what happens next in the chain of events once a competition notice has been received—what obligation is there on the ACCC to respond to what I presume would be rather focused attention, on behalf of Telstra, to try and resolve the issue, including the meetings on Sundays, who was called in and things like that. I would like you to detail the attendances at meetings and what communication by phone or email occurred and provide any documentation relating to those exchanges.

Mr Samuel—I think it is important to observe the comment I made before. It is the nature of the evolution of this process that there is a point in time at which the ACCC has to say to the party—in this case, Telstra: 'You know what is necessary to fix this. We are not going to fix it for you. It is not for us to determine the appropriate pricing. You know what it is. Pull it out of the bottom drawer and use it.' The nature of the discussions that took place in the week following 19 March was to draw a very firm line in the sand and say to Telstra: 'Step up to that line in the sand—it is called the competition line. Until you have stepped up to it you have this guillotine of potential penalties and, more importantly, potential third party actions for damages running against you. You had better fix it.'

Senator LUNDY—I have a question on what Telstra then has to do. You mentioned imputation testing. What relevance does that have to the competition notice?

Mr Cosgrave—The nature of the allegation in relation to Telstra is a price or margin squeeze between its wholesale and retail rates. Fundamentally, in determining whether that has occurred one of the instruments used is, effectively, imputing whether an efficient competitor can make a margin. That is done by some relatively complex testing, but it is an accepted instrument for determining whether a price squeeze is occurring. The alleged price squeeze behaviour that we are concerned about is also a concern for regulators in the UK and France and both of those regulators are using imputation testing in determining whether price squeezes are happening in their wholesale ADSL markets.

Senator LUNDY—So with the imputation testing, Telstra has to put something together that shows—

Mr Cosgrave—They have to put together imputation test modelling, which they provide to the commission. They provided that to the commission shortly after the initial announcement.

Senator LUNDY—How shortly after?

Mr Cosgrave—We first received notice of the impending rises on the Sunday.

Mr Samuel—On 15 February.

Mr Cosgrave—I believe the modelling was provided to us in the week following that. If you need a precise date I would have to take that on notice

Senator LUNDY—You can take that on notice.

Mr Cosgrave—It was provided to me at a meeting which I think was at the same time we were before the estimates committee last time on 19 February.

Mr Samuel—We should remember that imputation testing involves economic and financial modelling that can be the subject of continuous debate for as long as the parties want to debate it. The purpose of the debate in competition matters was to say to Telstra that we are not going to play that game any more.

Mr Cosgrave—It would be fair to say that there was considerable difference between the commission and Telstra, and there continues to be issues between the commission and Telstra as to a variety of inputs into that imputation testing.

Senator LUNDY—You have got a problem with Telstra's methodology.

Mr Cosgrave—We have a number of issues with Telstra's methodology, yes.

Senator LUNDY—And that is part of the current dispute.

Mr Cosgrave—That is part of an ongoing investigation, yes, but I should add that I think the point Mr Samuel was making earlier is that it of itself is not determinative in the commission's view of whether a contravention of the act is occurring.

Senator LUNDY—So you are not compelled to accept at face value what Telstra provide and, as you say, Mr Samuel, the onus is on Telstra to demonstrate that they are not being anticompetitive, as opposed to the onus being on you to prove that they are.

Mr Samuel—At this point in time, in the event that we wish to prosecute the competition notice by taking it to the Federal Court for penalties, or in the event the third parties wanted to take damage actions, they would then have the onus to deal with the matter. That is in the context of having issued a part A competition notice. There is the part B competition notice which will switch that onus of proof. But this is not simply a matter of reaching an agreement between Telstra and the ACCC as to whether or not anticompetitive conduct ceased. It also involves extensive market inquiries on our part to be sure that, in terms of the way that the market is operating, the anticompetitive conduct has ceased. That is part of the process that we are undertaking at the moment.

Senator LUNDY—So you talk to everyone else who is affected anyway.

Mr Samuel—Yes.

Senator LUNDY—Let me get one thing clear. For the financial penalties under the act to apply, the ACCC would have to make application to the Federal Court.

Mr Samuel—That is correct.

Senator LUNDY—When can you do that?

Mr Samuel—At any point after the issue of the competition notice.

Senator LUNDY—At what point is it reasonable that you would do that? I appreciate that that is a bit of a hypothetical question but just give a bit of an idea.

Mr Cosgrave—A part A competition notice is issued on the basis of the commission having a reason to believe a contravention of the act has occurred. Clearly simply having a belief that a contravention had occurred would not be a sufficient basis on the commission's part to initiate an action for prosecution. Inevitably, therefore, the commission conducts further investigations, and that is what it is doing at the moment.

Senator LUNDY—Is it a prerequisite step that you issue a part B competition notice before you could make application to the Federal Court?

Mr Cosgrave—No, it is not. The effect of a part B competition notice is largely an evidentiary one in the sense that, if you do go to court, it reverses the onus of proof in relation to matters stated in the notice, but it is not a prerequisite to—

Senator LUNDY—Can you just spell out how that reversal of the onus of the proof would work as far as the ACCC's ability to prosecute the case is concerned?

Mr Cosgrave—The ACCC does not have to issue a part B notice to initiate an action before the court. It is not a prerequisite. Indeed, the ACCC could initiate a part B notice subsequent to a matter being taken to court. A part B notice effectively changes the evidentiary onus in relation to the matters that are stated in the notice, so the ACCC would in essence state a wide range of facts in a part B notice, and the stating of those facts in the notice would be prima facie evidence before a court of the existence of those facts.

Senator LUNDY—So, in the context of the part A competition notice and the ongoing investigation, which is where you are now, if Telstra were to provide evidence to you in the form of these imputation reports—

Mr Cosgrave—Imputation testing.

Senator LUNDY—Is that enough to muddy the waters and make it impossible for you to develop a view, if you are in dispute with them about their methodologies?

Mr Cosgrave—The answer is no—probably because the test is whether there is conduct occurring that has the effect of substantially lessening competition through taking advantage of market power.

Senator LUNDY—So it does not have the effect of completely thwarting the process, if you dispute what they are providing?

Mr Samuel—No. Market inquiries are probably more important to us. One of the processes that is well known publicly is that we have been in the market making inquiries, in

some cases obtaining potential witness statements if we find it necessary to go to court. They are all part of a necessary preparation in case that is the course of action we have to take.

Senator LUNDY—Following 19 March, your investigations continued. On 31 March, the ACCC released a press statement saying 'Telstra revised broadband pricing: ACCC response'. It goes on to say:

Preliminary consideration suggests that Telstra may have devised a competitive wholesale pricing structure that could meet the requirements of the ACCC ...

On what basis did the ACCC release that statement and with whom had they consulted about it?

Mr Cosgrave—I would preface my comments by repeating the words of the release which said 'preliminary analysis'. At the time that release was made, some analysis had been done around the pricing that Telstra had released at that time. The analysis led us to the preliminary conclusions stated in the release at that time.

Mr Samuel—The media release goes on to say, however, that if there are 'anomalies'—I think that is the word used—further action or communication will be necessary. Since that time, there has been constant interaction with Telstra, including at the most senior levels, to deal with some inadequacies in the pricing structure that was published by Telstra.

Senator LUNDY—So there were anomalies?

Mr Samuel—Yes. Further interaction and the continuing existence of the competition notice has brought about some variations and increasing flexibility on the part of Telstra in dealings with its wholesale customers. That has led to some changes and more flexibility in its pricing structure. So it is one of those processes that moves, unfortunately, a bit slowly, but it is still evolving.

Senator LUNDY—At the time, I remember Telstra had a press conference to announce their new pricing structures prior to this press release being prepared. Were you aware or briefed beforehand of their intention to announce their changed approach in that way?

Mr Samuel—I think they gave us an indication in a meeting that we had 24 hours beforehand of the sorts of pricing structures they were contemplating and the potential for the two options—the growth option and the protected rates option. I do not think we had the final figures presented to us at that point.

Mr Cosgrave—There may have been some issue around the figures, but certainly the principles around the two options were made available to us.

Senator LUNDY—Did they seek the ACCC's permission to take that action? In meeting with you and flagging what they were planning to do, what impact did that have on the ACCC endorsing or somehow accepting what they put on the table?

Mr Samuel—Clearly they would have liked to have had an approval from the ACCC.

Senator LUNDY—Were they seeking an approval at that meeting?

Mr Samuel—Telstra are constantly seeking our approval, and they are constantly not getting it. They did not get it. It was made very clear that what they were proposing, as it was presented to us, was certainly a move in the right direction but that we would need to examine

more carefully what was being proposed—to conduct market inquiries, to talk to with their retail competitors, their wholesale customers, to assess the impact. But it certainly seemed to be a move in the right direction.

Mr Cosgrave—It comes back to what was put earlier: that the onus is squarely put, via the issue of the notice, upon the recipient of the notice. It is not for the commission to seek to endorse the steps they take to seek to meet the notice prior to full consultation.

Senator LUNDY—No, but by meeting with you and flagging it prior to that it certainly seems that Telstra was trying to put the ACCC in a difficult position. Is that a fair comment?

Mr Cosgrave—I don't know about 'a difficult position' but, as Mr Samuel says, they are constantly seeking endorsement of what they do. For the reasons we have outlined, we do not think it is our role to make an assessment around any particular pricing approach.

Senator LUNDY—On the subject of the press release that the ACCC put out following Telstra's announcement: first of all, the media reporting of Telstra's announcement was that it was a big shift—40 per cent price decreases and so forth. Many have subsequently viewed the ACCC release as endorsing that. I appreciate that technically it is a qualified statement but it said: 'Today's announcement does appear to be a victory for common sense'. This was then reported as support for what Telstra had done. Was the ACCC comfortable with that or do you think that was an unfortunate interpretation of the ACCC's public statement?

Mr Samuel—I think it was probably an unfortunate interpretation. One tries to bring about a bit of a balance with these media releases. Part of the circumstances we are dealing with here is the fact that there are those with whom Telstra must negotiate, in terms of wholesale pricing, who may believe that the only thing they have to do is sit back and wait for the ACCC to extract for them the final negotiated arrangement, the final pricing. Part of the message that we have to put out, which is contained in that media release, is that it is not only incumbent on Telstra to deal fairly in negotiations but it is also incumbent on those with whom Telstra must negotiate to actually sit down with Telstra and start negotiating. Otherwise, you can end up with a consistent stand-off. What we were anxious to avoid, which we are at all times anxious to avoid, is the position where the ACCC becomes effectively the negotiator for all parties—it becomes, in a sense, the arbitrator. As I indicated to you immediately following 15 February, there was a part attempt, if you like, to try to put us in the position of telling Telstra what their price ought to be. That was the imputation testing debate. We switched that by simply saying, 'We are not going to play that game. We'll take you through to a competition notice if need be; at that point you will have to deal with the anticompetitive concerns. You know what the competitive line in the sand is—step up to it.' By the same token there needs to be indicated to other parties with whom Telstra must negotiate that they also have to start taking some steps towards whatever the competitive line in the sand will be. Whether that line has been reached now is still a matter of investigation. It is simply to indicate to those in the marketplace not to sit back and expect the ACCC to do this work for them, because that is not our role; we cannot do it.

Senator LUNDY—There are a couple of points there. Was this press statement issued in consultation with any other competitors in the market or was it based solely on the

information you received from Telstra prior to them making their public announcement? Or perhaps it was inclusive of what information was in their public announcement.

Mr Cosgrave—It is the latter, which is why it is termed a 'preliminary evaluation'. I think the gap between being made aware of the pricing initiatives that Telstra were intending to put in the market and their release to the market was very small.

Senator LUNDY—But at the point of releasing this statement you had not had any direct consultation with wholesale competitors or resellers. Is that true?

Mr Cosgrave—Not at that time. Of course we have had substantial consultation subsequently.

Senator LUNDY—Mr Samuel, one of the issues relating to the development of model terms and conditions handled by the ACCC was the way that panned out, and I have discussed this at various estimates and inquiries previously. Once those model terms and conditions had been accepted by the ACCC, did that effectively set a price? There was absolutely no pressure on Telstra to negotiate a price lower than that which was set, so it had the effect of establishing a price cap. Was it that experience that led the ACCC to be so hesitant in looking at identifying, in your opinion, what an appropriate price would be for the issues under consideration of this competition notice?

Mr Samuel—No, as I indicated before it was the fact that if you enter into a debate on imputation testing it involves some intricate issues of economic and financial modelling and it is possible for that debate to be gamed and to be gamed with significant time delays—and time delays were simply unacceptable in this context. If the issue of the competition notice had been delayed any further, then there was the real prospect of substantial irreparable damage being done to the marketplace and to Telstra's wholesale customers and retail competitors that could perhaps never be rectified. It is damage that might result in damages actions, it might even result in penalties, but that fundamentally damages the structure of the marketplace so you cannot get into that debate.

Senator LUNDY—Yes, I appreciate that. I am thinking about the process you are going through now in utilising that imputation or testing information, or whatever it is called, and for the ACCC to take a stronger role in determining what the outcome should be—particularly if there are no negotiations taking place in the commercial market.

Mr Samuel—I will leave it to Mr Cosgrave to comment upon about the level of negotiations that are taking place, but I am not sure we would be using any imputation testing debate or discussion that we are having at the moment to assist in those negotiations. That would be far more relevant in terms of any action that we might take in the Federal Court to deal with a competition notice. But Mr Cosgrave might be able to comment on negotiations.

Senator LUNDY—I am about to ask some questions about the record-keeping rules anyway. Mr Cosgrave, I do not know if you can comment on the crossover and why that course of action would not be feasible.

Mr Cosgrave—It is important to recognise the different context in which these functions arise. The competition notice regime arises under industry specific competition rules where the commission is performing a traditional role of a competition regulator. The setting of

model price terms and conditions is under different provisions of the act to the processes where we are performing more traditional regulatory functions. The nature of the processes are far more exhaustive before you get to a situation of setting indicative prices or accepting price undertakings or making an arbitral determination in relation to prices. The functions we are performing are somewhat different and one of the factors for not seeking to be a price setter when using any competitive conduct provisions is exactly that—that you are performing a different role.

Senator LUNDY—Turning to the record-keeping rules and, in particular, the obligations imposed upon Telstra to provide information under those rules for the purposes of accounting separation—I think that was the stated political objective—I note in a press release issued on 6 April that the ACCC states that they have not received one of the reports associated with core access services that constitute part of the obligation on Telstra. That core access service report that has not been received relates to the unconditional local loop service. That is my introduction to ask you to give the committee an update on Telstra's level of compliance with the record-keeping rules. Your press release states:

Telstra is unable to perform an imputation test for this service at present relating to the unconditional local loop.

Mr Cosgrave—I think there was an acceptance in that press release that there were limitations on Telstra in performing the task required of them by that section of the direction. But our role under the ministerial determinations is, in part, to comment upon the information they provide to us, and that is what we have done there. In previous fora we have indicated a view that accounting separation does impose significant implementation costs upon the regulated entity. We also recognised fairly early, particularly in relation to current cost accounting, that that was a process that was going to take some time and would involve a staged introduction on the part of Telstra. We are moving through that. We think we are getting reasonable cooperation from Telstra in relation to its implementation. But it is going to be a matter of implementation over an 18 months to two-year time frame.

Senator LUNDY—So you are telling me that the record-keeping rules as legislated in December 2002—which were due to come into operation, I believe, in June 2003—are currently not being implemented in full?

Mr Cosgrave—No, they are being implemented. They are being implemented progressively.

Senator LUNDY—But they are not in place completely in terms of the political objective that was described at the time, are they?

Mr Cosgrave—Full current cost accounting is not in place. That is correct.

Senator LUNDY—Would you have expected it to be, given that it is now June 2004?

Mr Cosgrave—No, I would not. The reason I would not is that it involves a considerable re-evaluation of just about every asset in Telstra's customer access network. It is clear that, for their own purposes, they have not had a system of valuing assets within the customer access network previously and that is a substantial task.

Senator LUNDY—So when you say in your press release that they have not provided that part of the report it is because, in your view, Telstra are unable to or they have just told you that they are unable to? The ACCC did provide a comprehensive answer to the committee from last estimates, which goes through the history of this and the nature of the reports. I want to refer to that because I think it is relevant to these questions. For anyone reading this, they should read it in conjunction with that rather than me recap all the issues raised. I will recap one—that is, a comment by the ACCC, stating:

… the highly aggregated nature of the reports may serve to mask specific instances of conduct that may require investigation.

Have you had any luck in your ongoing finessing of the record-keeping rules to get that information referred to there disaggregated?

Mr Cosgrave—There are two comments to make in relation to that. We indicated at the time we made the initial record-keeping rules—which are the statutory rules we make in relation to the accounting separation framework—that we would be reviewing that in June this year, so we are just about due. We have indicated to both Telstra and the rest of the committee, through a consultative committee around accounting separation that we instituted in May this year, the nature of the improvements to each of the three limbs of the framework. So the industry are broadly aware of the direction we are going in relation to accounting separation.

The comment in relation to the aggregated nature of the information provided remains, in our view, accurate. I guess what we are foreshadowing there is that, whilst in our view accounting separation does impose some additional disciplines and can provide information at an aggregated level, that does not relieve us of the obligation in individual instances of allegations of the anticompetitive conduct of drilling down beneath those figures.

Senator LUNDY—Are you currently challenging or disputing the substance of those reports received from Telstra under the record-keeping rules?

Mr Cosgrave—No. They are subject to an audit process. The requirement in relation to publication of the rules is that we are required to publish two of the reports: firstly, imputation testing reports, which we have talked about before in the context of the ADSL competition notice. These are aggregated imputation testing reports across a number of products and we are required to produce those on a quarterly basis. We are also required to publish a report in relation to any variances between Telstra's wholesale and retail performance of a variety of non-priced terms and conditions. They are released a quarterly basis. Our reports in relation to current cost accounting are released on a six-monthly basis. The audit requirements under the direction require audit on an annual basis, so, in effect, some of the information provided to us and published by us is unaudited at the time we publish it—and we obviously make that point.

Senator LUNDY—Yes, I noticed the massive amount of qualification—it is not independently audited.

Mr Cosgrave—We make that point when we release the information.

Senator LUNDY—In terms of access to information, recently during estimates I asked Telstra a question regarding the sale of information about their network. I had heard and have subsequently been advised that Telstra sell information relating to their network infrastructure

to competitors. What would be the ACCC's view on behaviour by Telstra whereby they sell information and data sets about their network that would enable faster decisions for competitive investment being sold on a commercial basis?

Mr Cosgrave—I would preface my subsequent comments by saying that those allegations are new to me. I must not have read that part of the transcript. But Telstra, in fact all carriers, have obligations under the Telecommunications Act in relation to the provision of network information in certain circumstances. Those obligations exist, I think, via certain schedules to the Telecommunications Act. I think—and I would need to confirm this on notice—that those provisions involve an arbitration mechanism, which tends to suggest that some payment for provision of information is expected. The arbitration mechanism is by private arbitration. In the absence of agreement as to an arbitrator, arbitration is by the ACCC. But certainly no arbitrations of that sort have come to us in the seven years those provisions have been in operation.

Senator LUNDY—Are the data sets defined for the purposes of any involvement the ACCC have, or is it based on what complaint you receive and then conducting an arbitration?

Mr Cosgrave—Our role is simply a reserve arbitral role, in the event that the parties cannot reach agreement as to an arbitrator. The data sets required of all carriers in relation to network information are—and again I would want to confirm this to you—according to my recollection, fairly general in nature.

Senator LUNDY—Finally, Telstra have a broadband demand register. You type in your phone number and it is supposed to show you whether or not you are ADSL enabled. I have had a number of complaints from constituents, where phone numbers that were typed in had a prefix that associated them with a certain location or area, but that number had been taken by the customer to another location, so the number had been transferred.

Mr Cosgrave—Local number portability has been used; is that what you are suggesting?

Senator LUNDY—Yes, I think so. If I moved to Wanniassa, I would take my phone number with me. The number would stay the same, but the prefix would imply it was from somewhere else.

Mr Cosgrave—Yes, that could certainly be the case.

Senator LUNDY—That is one problem. The other problem is that I still get complaints from people who get a positive response—'Yes, your exchange is ADSL enabled'—but for whatever reason they are not able to get it. It might be pair gain; it might be distance from the exchange. I know Telstra has made some refinements to it, but there are still a lot of gaps. Is there any action you can take under sections of the Trade Practices Act, not necessarily the telco section, to stop Telstra misleading people through that broadband demand register? I ask primarily because I had some constituents who bought a house on the back of checking that it could be connected to ADSL and subsequently found it could not. I think that is misleading, and that is the charge that the constituent has put to me. Can you take that on notice—whether or not there is any scope under the Trade Practices Act to direct Telstra to either make it an accurate service or desist from using it?

Mr Cosgrave—Yes, we can take that on notice.

Senator LUNDY—Thanks. That is all I have. Thank you for your patience, Senator Webber.

Senator WEBBER—I might start with a few questions on the issue of collective bargaining. I have noticed in recent media reports, in the past few months, that the ACCC has issued a number of authorisations of collective bargaining arrangements. The most recent decisions have covered newsagents, New South Wales TAB agents, Tasmanian chicken growers—and it is a pity Senator Sherry is not still here—and private hospitals. How many collective bargaining arrangements has the ACCC authorised in the last 12 months; and have you changed your approach in assessing these authorisation proposals?

Mr Grimwade—I might be able to answer that. I do not have an exact figure for how many we have authorised in the last 12 months. I can certainly take that on notice, but—

Senator WEBBER—If you could take that on notice.

Mr Grimwade—I could say that it is probably half a dozen. As you mentioned, there was an authorisation for chicken growers in Tasmania to collectively bargain, an authorisation for TAB agents and an authorisation for the Hotels Association. There are also decisions which have not been finalised but which are interim decisions. One relates to various groups of primary producers in Tasmania; we are dealing with McCains and Simplot as well. There are also hoteliers and newsagents, as you mentioned. There are probably half a dozen.

I do not think it signifies a change in approach so much as it reflects the increasing number of applications coming before us. It is up to applicants to decide whether or not they wish to collectively bargain. If they do so and they consider they are at risk of breaching the act then they have the opportunity to come in and demonstrate to us that doing so is in the public interest. I think perhaps the publicity associated with some collective bargaining authorisations has generated an increasing number, and I think you are right to say that there has been an increasing number over the last few years.

Senator WEBBER—Would it also be fair to say that the majority of the collective bargaining arrangements authorised so far have involved small businesses dealing with bigger businesses?

Mr Grimwade—Yes, that is absolutely correct.

Senator WEBBER—How long do the authorisation proposals, such as the Chicken Growers Association's and the others I mentioned, usually take?

Mr Grimwade—The commission tends to impose a limited time duration. It would average out to perhaps four to five years, at which time the commission has an opportunity to reassess, if the applicants want to continue, whether continued authorisation is in the public interest. It also depends on the applicants; they may wish to apply for a certain period of time. So it can vary, but I would say that on average the commission's authorisations of collective bargaining by small businesses, particularly rural producers, tend to be five years. Sometimes contracts are that long; sometimes they are yearly contracts.

Mr Samuel—Just to clarify, Senator, I think your question was addressed to how long the applications take to process.

Senator WEBBER—Yes—how long it takes for you to authorise them. That is interesting, and it saves me from another question.

Mr Grimwade—The answer to that is that they also vary depending on two things: the contentiousness of the application and the complexity of the arrangements. Related to that is the information we need to seek to be satisfied that it is in the public interest. Some can take many months; some can take very few months. There are some statutory processes that require us to consult publicly for a period, issue a draft decision and then allow parties to request a pre-decision conference with the commissioner before we issue a final decision, which can be appealed to the tribunal. If all those steps take place, it can be many months before a final decision. Having said that, the commission does use a mechanism called interim authorisation, whereby it can authorise arrangements to take place immediately while it considers the merits and goes through the process. It has done that on a number of occasions, most recently in respect of various primary producers in Tasmania such as, I think, pea growers, potato growers and brassica growers with McCains and Simplot.

Senator WEBBER—Would it be standard for you to issue an interim authorisation?

Mr Grimwade—If it is requested of us, we consider whether or not to issue an interim. There are a number of factors we take into account. An interim authorisation does not allow us to actually consult on the merits of an application, so we have to be fairly comfortable that by issuing an interim authorisation no significant detriments or harm will occur to other parties in granting that protection whilst we consider the authorisation and that there is some urgency for that interim protection to occur. That has been available in a number of collective bargaining authorisations.

Mr Samuel—You are asking whether there has been any change of approach. Mr Grimwade correctly responded that there has not been a change. But what has happened is that there has been an evolution in our process of understanding the public benefit issues and in our ability to assist parties—particularly small businesses—that wish to approach us for authorisation in the manner in which they make their application, the issues that they should focus on and the manner in which they ought to present material to us. What has occurred is an evolution in the experience and understanding not only of the ACCC but of those dealing with us as to how to make the process more efficient and bring about a speedier and more satisfactory outcome. That has operated to the benefit of those groups that are approaching us.

Importantly, there is now a clear understanding by small business—and we are keen to promote that—that there is a course of action available for collective negotiations. It has some limitations. It is not a carte blanche in terms of proceeding with any small business groups that come along and say, 'We want an authorisation; will you give us an interim authorisation tomorrow?' But I think it is becoming much clearer to small business now that there is a process available. That process would of course be enhanced if some of the proposals that have been encompassed in the Dawson report and in the subsequent Senate Economics References Committee report were adopted.

Senator WEBBER—Will those Dawson proposals make it significantly quicker or cheaper for these collective bargaining arrangements to be entered into?

Mr Samuel—They will not change the law in relation to what will or will not be authorised. I use the word authorised in a loose sense. What they will do is change the process. The process now is that an applicant has to come to us, apply for an authorisation, go through the process of public hearings and the like and then, subject to interim authorisation, wait for whatever period of time it might be until authorisation takes place. If the Dawson proposals are adopted, the process will involve giving us notification of the collective negotiation proposed and after a period of time—and it might be 14 days or 28 days, whatever is ultimately resolved from the Dawson proposals—that notification will, of itself, provide immunity for the collective negotiation process to proceed without fear of prosecution under the act until such time as we form a view, if we do, that the matter ought not be subject to continuing immunity. That puts the obligation on the ACCC to deal with the matter.

Senator WEBBER—So it would reduce some of those many months that Mr Grimwade was discussing?

Mr Samuel—Yes. It would reverse the whole process.

Senator WEBBER—Has the ACCC allowed collective boycotts as part of any collective bargaining arrangements that you have authorised recently?

Mr Grimwade—There has been an occasional request accompanying an application for collective bargaining for a collective boycott. There has not been a boycott authorised in a collective bargaining authorisation application, except in the case of an arrangement between private hospitals, which was fairly recent—I think within the last three months. There are from time to time authorisation applications for exclusionary conduct, which constitute boycott behaviour and which from time to time have been authorised in the past but on very few occasions.

Senator WEBBER—Would you describe the ACCC as being more open to allowing collective boycotts now with the increase in collective bargaining?

Mr Grimwade—I understand that the test really remains the same in what is proposed and in what exists, in that it is a net public benefit test. Whether or not a collective boycott would be authorised would be dependent upon whether we were satisfied that authorising a boycott were in the net public benefit.

Senator WEBBER—Do you think this would change under the Dawson proposals as well?

Mr Samuel—No. It would be the same test. The same test would apply.

Senator WEBBER—The change of notification procedure proposed by Dawson will not have any impact on that?

Mr Samuel—It is intended to be a process change rather than a change to the substance of the law itself.

Senator WEBBER—Would the ACCC ever allow a collective bargaining arrangement that provided for an industry wide collective boycott right by small businesses against a larger party in the event that negotiations broke down?

Mr Grimwade—Again, that would depend upon the application of the public interest test to the circumstances of the case. I will give you an illustration. A few years ago there was an application by dairy farmers for what was essentially an industry wide price fix. At that time the commission was not persuaded on the evidence available that an industry wide price fix was in the public interest, but it did impose conditions which constrained the collective bargaining arrangements on a regional basis and it was satisfied that they would generate a net public benefit. I do not think a boycott was sought as part of that application. That would be a matter of speculation and would depend on the circumstances.

Senator WEBBER—But it is possible, depending on the circumstances?

Mr Grimwade—It is possible that one could be requested. I am not sure how possible it is that the commission would authorise it. It would depend on the facts of the case.

Senator WEBBER—How would the commission respond to a collective bargaining arrangement in which an industry association required that, say, as a condition of membership of that association, members allow the association to collectively bargain on their behalf and require that all members collectively boycott if required to by that industry association?

Mr Grimwade—Again, that requires me to speculate. It is difficult to say. That might even entail third line forcing conduct itself, which may necessitate authorisation. I am just not sure how the commission might respond to that. Authorisation is conducted on a case-by-case basis and is dependent on the evidence that is put before us by all interested parties, including the applicants.

Mr Samuel—I think it is fair to say that elements of compulsion would militate against a finding of net public benefit.

Senator WEBBER—I would have thought so. I will try to move through some of this fairly quickly, bearing in mind the time. Previously the commission has been seen to be a very strong supporter of the introduction of criminal sanctions for cartel activity, going back to some of your opening comments, Mr Samuel. Yesterday Treasury, when they were appearing before this committee, confirmed that criminal sanctions would not form part of the government's Dawson bill. Would the commission be disappointed that, 12 months after the Dawson report was released, criminal sanctions still have not made it into the draft bill?

Mr Samuel—I think this is a matter of policy for government, Senator. Our views have been made clear in the context of Dawson; I think the government's views have been made clear also in the context of Dawson. We believe that criminal penalties are an important issue in respect of enforcement of cartel activity. We remain of that view, but it is a matter for government to determine in terms of timing and whether or not it proceeds with that course of action.

Senator WEBBER—Would you see it as being a complex task to draft those kinds of provisions?

Mr Samuel—My understanding is that a working party involving representatives of the commission and of other relevant parties, including the DPP, have been working on this matter for some time. It does involve some issues of complexity, including defining what is a hard-core cartel that should be the subject of criminal penalties and the interaction of the

ACCC and the DPP—and that is particularly relevant in the context of the application of our leniency policy at the moment in respect of cartel activities. So there are some complexities but, as I say, that is ultimately a matter for government.

Senator WEBBER—Indeed, but it has been achieved in other countries, so I would not have thought it was too complex a task. Going to your leniency policy and the fact that you were saying before, Mr Samuel, that people are beginning to come forward and blow the whistle on cartels, would the effectiveness of this policy be enhanced by the introduction of criminal sanctions, do you think?

Mr Samuel—I think, as I indicated before, if you are lying in bed at night wondering whether 7 a.m. tomorrow might be a bit too late to avoid several years in jail, that might suggest that you go to the fax machine a bit earlier.

Senator WEBBER—Would your leniency policy have to change in any way if criminal sanctions were introduced?

Mr Samuel—I am not so sure about the leniency policy, but its mode of application would need to be dealt with in conjunction with the DPP. You can imagine that, if a party comes in making application for leniency, it can deal with the ACCC only in respect of any civil prosecution. It would have to deal with the DPP in respect of a possible criminal prosecution. There would therefore need to be strong early collaboration and communication between the DPP and the ACCC in respect of any leniency application to ensure that there was not a difference of opinion that arose. You could imagine that applicants coming in to see the ACCC might say, 'It's all very well for you to provide a path of leniency, should you proceed with civil prosecution, but, if you decide to refer this to DPP for criminal prosecution, we'd like to be just as assured that leniency was going to apply.' It is that process of operation that needs to be clarified.

Senator WEBBER—Mr Samuel, in your opening remarks I think you said that the commission had up to 40 suspected cartels under investigation. Is that right?

Mr Samuel—I think the exact figure is 38.

Senator WEBBER—What sort of industries are these cartels operating in?

Mr Samuel—It is widespread, ranging across areas of petroleum, consumer goods—both consumables and not consumables—areas relating to the computer industry. There is a whole range of them, and I want to be careful about identifying them too closely at the moment while they are still under investigation.

Senator WEBBER—So it is fairly widespread.

Mr Samuel—Very widespread, yes.

Senator WEBBER—Can you give an indication of when we can expect any of these matters to come before the courts?

Mr Samuel—Some are advanced; some are not. You will of course be aware that one—albeit a relatively small price fixing arrangement—was brought before the courts towards the end of last year or early this year. That relates to alleged price fixing in the Geelong area in

relation to certain petrol retailers. That is a small one. They are in various stages of investigation. I would not want to put an exact time frame on it—

Senator WEBBER—Are they a long way off or do you think some are approaching?

Mr Samuel—This year, I am advised.

Senator WEBBER—That saves me from repeatedly asking the question. Mr Cassidy, in the February estimates in a response to a question from Senator Allison on the issue of tobacco you said:

We are hoping to be in a position in about the next six to eight weeks of having something in front of the commission for the commission to decide on what will happen in relation to the light and mild investigation.

Where are you up to with progressing any litigation in this area?

Mr Cassidy—That has taken a bit longer than I thought. The problem with the investigation has really been that there has been very little in the way of evidentiary material in Australia, particularly epidemiological material. Much of that relates to the US. Using that material has in turn led to questions about whether the way cigarettes are manufactured in the US is the same as the way they are manufactured in Australia. That may seem intuitively obviously but, if it ends up in court and you are arguing about how much nicotine, tar and so forth a smoker is inhaling, all those technical issues come into play. So it has taken a bit longer because we have actually had to have people in the US working on this, but we are in a position where this will be going to the commission for its consideration very shortly. I cannot give you a precise timing on that—in a sense, not because I do not know but because it is not our practice to be saying exactly what is going to be considered by the commission and when. Let me say that it is virtually ready to go to the commission and it will go to the commission very shortly.

Senator WEBBER—I imagine that any litigation in this area would be fairly expensive not only because of the issues involving the US but knowing tobacco companies as we all do. Is the commission planning on spending any of that recently received funding boost on litigation on this?

Mr Cassidy—You are quite right. If we do proceed to litigation on this it will be most probably against the three tobacco companies, because they all manufacture these types of cigarettes and we expect that that would be hard fought litigation, as a lot of these tobacco matters are international. We would obviously need to resource that. Without wanting to distinguish one dollar from another, the additional resourcing that we have received would be helpful in that regard.

Senator WEBBER—Has the commission or any other legal representatives had contact with cigarette manufacturers about potential litigation?

Mr Cassidy—We have had, in the investigatory sense, if you like, of obtaining relevant material from the tobacco companies. We have also had the tobacco companies approach us to discuss the progress of the investigation and to canvass possible remedies that they may be prepared to enter into. That second leg of the discussions has not gone all that far because we have basically said to the companies that that is something we are not really in a position to

discuss until the commission makes some decisions about how it wants to proceed on the matter.

Senator WEBBER—Have you received extensive legal advice on the issue from lots of different sources or has it all just been in-house at the moment?

Mr Cassidy—What is extensive depends a bit on your benchmark—

Senator WEBBER—I do my best not to deal with lawyers at all, so 'extensive' is very short to me.

Mr Cassidy—Some of the matters that we have been involved in over the last couple of years have involved very extensive legal advice. Yes, we have had advice from senior counsel on this matter and, indeed, I think it is fairly commonly known that we have actually sent a senior counsel to the US as part of our investigations so that he could talk to industry experts in the US and assess the value of their potential evidence in the matter.

Senator WEBBER—And that is looking favourable in terms of the advice that they are giving you to commence the litigation? You do not have to say too much.

Mr Cassidy—That is probably something that I prefer not to comment on.

Senator WEBBER—Fair enough.

Mr Cassidy—It is obviously something which the commission is going to have to consider when it is weighing up the various considerations on how it wishes to proceed on this.

Senator WEBBER—Has anyone at the commission briefed or discussed or perhaps written to either the parliamentary secretary or any other government MP about the progress of this litigation or the need for increased funding to cover the costs of this litigation?

Mr Cassidy—I am on the public record on this. This came up when we appeared before the economics committee recently. We have been dealing with a number of tobacco matters. One of them relates not to light and mild but to more generalised claims of misleading, deceptive and unconscionable conduct in relation to tobacco advertising generally. That then gets into what is a very substantial volume of documentary evidence which has come out of the United States, and we are talking in the order of 30 million pages of documentary evidence. We have done some preliminary investigation on those more generalised claims but, basically, we have written to the government indicating that if we were going to take that further—and we could not give any real assessment of the likely success of that—it would be a very costly and resource intensive matter. Therefore it is something that we would need special resourcing for. That is not light and mild—

Senator WEBBER—These are other issues to do with tobacco.

Mr Cassidy—it is in on separate track. These are the much more generalised claims about tobacco advertising generally being misleading and deceptive and unconscionable. So late last year, I think it was, we wrote to the government along those lines.

Senator WEBBER—Have you had a response, favourable or otherwise?

Mr Cassidy—The Minister for Health and Ageing responded to us indicating that he had received our correspondence and had noted what we had said.

Senator WEBBER—I would like to turn to voluntary codes, and we will put the rest on notice, I think. In August last year the ACCC announced its intention to endorse voluntary codes of conduct as a way to avoid prescriptive regulation. As I understand it, the draft regulations were released last October. What has been the public response to those guidelines? Has there been any?

Mr Ridgway—The public response has been somewhat varied, with some sectors of industry indicating some strong interest in the proposal, some other areas of industry raising questions about costs with respect to compliance and some sectors of the consumer organisations raising questions with respect to the place of voluntary codes in relation to the place of rigorous enforcement of the law.

Senator WEBBER—Mr Ridgway, you almost got away with not having to appear this time! On the whole, would you say that it has been a positive or a negative response?

Mr Ridgway—Generally, it has been positive. Certainly, it has been positive in the sense of raising debate about the place of codes and the benefits that codes and self-regulatory mechanisms more generally can bring to increased behaviour standards within the market.

Senator WEBBER—Which sector would you see as being most in favour of them, of all those that have been responding?

Mr Ridgway—Some industry associations individually have responded positively, and they vary from professional service providers to organisations. Again, service provision would probably be the category if I were to look for one.

Senator WEBBER—As I understand it, there was a public briefing in February. How many organisations attended that?

Mr Ridgway—I might have to take the question on notice with respect to the exact number. As I recall, there were 20 or more representatives, both of industry and on the consumer movement side, represented around the country.

Mr Antich—We can certainly get that number, Senator Webber.

Senator WEBBER—That would be great. Does the commission intend to proceed with this proposal? Do you plan on making any changes to your original proposal?

Mr Ridgway—The commission is proceeding with some caution with respect to the proposal—and when I say caution I mean that it is a response to issues raised at the table, such as the costing issue and so forth. The commission staff have subsequently engaged in a very careful consideration of the matters raised and are due to return to the commission as a body with some proposals on ways forward.

Senator WEBBER—How many people in the commission are working on this initiative at the moment?

Mr Ridgway—There is a team drawn from a number of areas within the commission who have participated in the process with respect to this. If I were to draw on a number—again, I might take the specific question on notice—I would say that on average it is five or six individuals at a staff level.

Mr Antich—Senator Webber, I think that that issue has been raised before in terms of the number of staff. In terms of the people who work on the codes process it is in a branch that I manage, and that branch generally deals with issues relating to liaison with business and stakeholders, so it is within the core business of that area.

Senator WEBBER—At the recent economics references committee inquiry into the Trade Practices Act there was, as I recall it, some discussion about the legal capacity of the ACCC to disendorse codes where a firm or industry breached them. I think at the time the commission said that it was confident that the withdrawal of endorsement would not give rise to a legal challenge. The commission said that they had received oral advice to that effect. I was wondering if we could obtain that advice, if it was available, in writing.

Mr Cassidy—We will take that on notice.

Senator WEBBER—Thank you.

ACTING CHAIR—Thank you, Mr Samuel, for outlining to the committee the directions, acknowledgements and achievements of the commission. The committee notes with interest your approach to and comprehensive grasp of the issues. Thank you for appearing before the committee today.

Proceedings suspended from 12.35 p.m. to 1.37 p.m.

CHAIR—I welcome to the table officers from the Treasury. Mr Murray, I understand that you have some responses to questions put to you yesterday by Senator Conroy.

Mr Murray—Yes, we have various answers. Senator Conroy asked for a rundown on the relevant experience of the consultant we are using to undertake the consultation process on demographics. They are called TNS and I have that rundown to table.

CHAIR—Why don't you table everything in a bundle at the end?

Mr Murray—Yes, and I will hand over to Mr Heferen, who has some things to table on the advertising campaign.

Mr Heferen—Last night Senator Conroy requested three pieces of information from me. Firstly, copies of the TV advertisements run in Victoria, secondly, a list of times when these ads were shown and, thirdly, on what TV stations. I have these to table.

Senator SHERRY—What advertisements do these go to?

Mr Heferen—These were the advertisements that inform citizens in states and territories of the amount of Australian government funding provided to them, and the TV advertisements that were run in Victoria.

Senator JACINTA COLLINS—Did we get anywhere else with the $62,000?

Mr Heferen—Yes. We had some discussions with the Government Communications Unit. The breakdown is $12,000 for the concept of the advertisements and $50,000 for their production.

Senator JACINTA COLLINS—Their production? Remind me.

Mr Heferen—These were the TV advertisements.

Senator JACINTA COLLINS—I thought that had been outsourced. It was not.

Mr Heferen—Yes. The GCU have the people that they would deal with in the advertising industry, and this one was Whybin TBWA. That was the $62,000, which was payable to them and they were the company that prepared the ads. That $62,000 was split into $12,000 for the concept and $50,000 for the production.

Senator JACINTA COLLINS—What was the process for their selection?

Mr Heferen—All that is done through the GCU. Questions going to any detail on how they went about that process are probably best directed to them.

Mr Murray—I have one more clarification. Last night I told the committee that in last year's budget for the plasma screens at the Treasurer's National Press Club luncheon—

CHAIR—The famous plasma screens!

Senator Coonan—The Press Club paid.

Mr Murray—Last year Treasury did not pay but the previous year we had some audiovisual, which we part paid for. We have gone back to the previous year to have a look at what we did pay for. I thought I had better just clarify that and let the committee know.

Senator JACINTA COLLINS—So you cannot clarify precisely what you paid for in relation to them? Is that the outcome of that?

Mr Murray—No. Last year Treasury did not pay at all for the plasma screens, and that was the first year the Treasurer used plasma screens. The previous year he used some audiovisual and we part paid for those. The Press Club paid for part and we paid for part.

CHAIR—So you did not pay at all for the plasma screens that caused such excitement last night?

Mr Murray—No. I have clarified with the Treasurer's chief of staff that neither the Treasurer's office nor we have received an invoice as yet for the National Press Club address that the Treasurer gave straight after this year's budget.

CHAIR—Do you have any documents germane to that issue to table?

Mr Murray—No.

CHAIR—Do you have any other responses to questions or any other clarifications you want to make?

Mr Murray—No.

CHAIR—Mr Murray tables a bundle of documents in response to the questions that he has referred to. Is it agreed that the tabled documents be received by the committee?

Senator JACINTA COLLINS—Yes.

CHAIR—Thank you, Mr Murray.

[1.44 p.m.]

Australian Taxation Office

CHAIR—Welcome, Mr Carmody.

Senator HARRADINE—I want to discuss the number of officers at a particular level, as a result of the downsizing of employment at the higher level, than was the case previously. In other words, what has been the situation with regard to employment in the last, say, five or six years, since the mid-1990s?

Mr Carmody—I can give you the numbers for the last three years. Someone might have earlier numbers available. As a matter of point, I do not think there has been a downsizing of our presence at all in Tasmania or in Hobart.

Senator HARRADINE—I am talking about at the higher level.

Mr Carmody—At the broad level I have the numbers, but I do not have a break-up. I was not aware that you were looking for a break-up of the levels. At the general level, the number of staff on hand at June 2002 in Hobart was 357. In June 2003, it was 463. In April 2004, it was for 430. There will always be fluctuations around the margin, but you can see that from June 2002 it has gone up substantially.

Senator HARRADINE—I understand that that increase would have been influenced by the call centre. But was it a fact that higher level officers were encouraged to transfer or take redundancies in the later part of the 1990s?

Mr Carmody—I am not sure about the later part of the 1990s. I think that in early 2000, there had to be a significant number of redundancies in the organisation, which turned out to be voluntary redundancies. But they were across the board; they were not focused particularly in Tasmania. There were several hundred—950 in early 2000. They were spread across the country and were on a voluntary basis, which allowed people to choose whether to take a package.

Senator HARRADINE—Is the Taxation Office being directed from Melbourne? Previously, there used to be an officer in charge who held the position, I think, of deputy commissioner—

Mr Carmody—Deputy commissioner. We used to have positions of deputy commissioners, where we operated on a geographic basis. But some years ago we moved to a national basis of operation, and that has been in place for a number of years. So it was not only Tasmania where that change was made; it was across the country. Depending on the size of the activities, there will be circumstances where the senior position is not necessarily located in the particular office.

Senator HARRADINE—Would you take on notice the request for a pattern of the levels.

Mr Carmody—We will do that.

Senator HARRADINE—There were a number of persons at a senior level in the Taxation Office in Hobart and Launceston who transferred interstate to other positions. When selection is made on merit, how can there be a secondary selection criteria consideration which takes into account relocation costs and costs of training? An officer can be selected, and miles ahead of anyone else, but there could be another officer—a delegate—of the taxation department who, under secondary selection considerations—relocation costs, in other words—would not be appointed.

Mr Farr—I do not think it relates so much to secondary selection criteria but, when a person is selected on merit, they must be available to take up the position in the location it is in. If the position is in Hobart—or anywhere else—they must be able to take up duty at that location. So, even if they are the most efficient person, if they are not prepared to move to where the position is, they are not available to take that position up.

Senator HARRADINE—Say, for example, if somebody in New South Wales was applying for a position as advertised in the Taxation Office in Tasmania, they would surely be ready to leave. They would know where the location is. Isn't it about relocation costs? What discriminatory effect does that have for taxation officers in Tasmania, Perth, Darwin or North Queensland? How many of those decisions have been made?

Mr Farr—Relocation costs are paid for somebody to take up a position essentially where it is in the public interest to do so. What we generally apply is that the public interest is served when it is a merit selection. So, if someone is selected on merit into another position which requires them to relocate, we would normally pay their relocation costs.

Senator HARRADINE—The document I have in my hand talks about the secondary selection considerations. The officer who is responsible could, despite the merit or otherwise of the person, say, 'It's too costly to go. Under the secondary selection considerations, we won't have you appointed. It will need to be somebody else.'

Mr Carmody—I do not know the specifics. If you are open to giving them to us, we could review that case. But the principle is certainly as Mr Farr has outlined. I know that we have paid, over the years, relocation costs. I have many staff who have moved to senior positions, and we have met their relocation costs. That is the principle, and I have seen it apply in practice. Short of knowing the specific facts, I cannot comment more on that.

Senator HARRADINE—Thank you. I think I will follow that through.

Mr Carmody—If you would like to follow it outside the public forum, I would be happy to do that.

Senator HARRADINE—I have not anybody actually in mind, but I have a document.

Mr Carmody—If you would like to share that with us outside this forum, we will pursue it.

Senator BRANDIS—Thank you, Senator Harradine. I will pass the call to Senator Lundy. Is it IT?

Senator LUNDY—Yes, it is on IT services in the ATO. It was noted in the February estimates that the Change Program was progressing and a number of contracts had been put in place and were still to be put in place. Can you provide the committee with an update of the contracts that have been put in place in relation to the Change Program since February and also recap on the other ones?

Mr Farr—We have broken the Change Program up into phases. The first phase was a broad design stage and business case, referred to as phase 1. We finished that in March. We are now some weeks into phase 2, which is a more detailed design stage and, once again, a firming up of the business case and overall solution. We have a contract with Accenture to go forward with phase 2 of the business case; joint Accenture ATO teams are operating. Also in

that period we began the purchase of certain amounts of software which we will be using as part of the Change Program. We have signed a contract with Siebel to provide us with a CRM product. We now have that product installed in our environment but not connected up to anything. It is in a sandpit environment so that we can use it, but it is not connected. That was installed by ATO staff in combination with support from the vendor, Siebel.

We expect to move into phase 3 in about the first or second week in August. As yet no contract is in place for that although we did take advice at the end of phase 2. Where previously we were looking to build our own solution, when we looked at the risks, the costs and the time required to do that and saw that solutions were in operation around the world, including the Accenture TAS solution, we made an in-principle decision that that appeared to be the less risky and less costly way to go. We have proceeded into phase 2 on that basis. But I guess that is not yet a final decision to go forward; it is still in the detailed design and evaluation phase.

We sought and received independent advice from the Gartner Group. Essentially, we asked them whether our thinking was right—that a transfer solution that is actually in operation would be a less risky, less costly and more timely way for us to go—and in that regard they confirmed our thinking. We also told them of the Accenture AMS solution and asked whether they would evaluate it against any similar operations of which they might be aware and tell us whether at this stage it would be the most appropriate for our circumstances. Once again they have largely confirmed that it is.

We will not make any firm decisions on phase 3 until, as I said, early August. We have been out to the market for some additional software and, as I have said, we have the CRM software. Probably within the next week or so further decisions will be made on software products that we will purchase. Evaluation of the tender has been done and essentially the contracts have been negotiated. The legal advisers or probity auditors are going through that at the moment and, subject to their sign-off, we will probably be in a decision within the next week or so to announce some further purchases in that area also.

Senator LUNDY—That is under phase 2?

Mr Farr—It will be for the whole program. But during this phase we have indicated that, given the lead time for the tendering processes—and in a sense, whichever solution we go for, we are still going to need this range of products—we will go out to the market so that, when the final design of the solution is settled, we will have those products ready and waiting to be incorporated into the solution.

Senator LUNDY—Can you give more detail about those pending contracts? They have not been announced and obviously you are in the late stages of negotiation. What are they for?

Mr Farr—In the most immediate future we will be announcing those for content document and image management software. In fact, I have signed a contract for analytics and dynamic decisioning—but I do not think that has been announced, because the unsuccessful vendors have not been informed yet.

Senator LUNDY—I think it just was.

Mr Farr—Sorry?

Senator LUNDY—I think you just announced it.

Mr Farr—Did we?

Senator LUNDY—On the public record.

Mr Carmody—No, he did not say who got the tender.

Senator LUNDY—Sorry, what did you say?

Mr Farr—I said the software for analytics and dynamic decisioning. So that would also be public fairly shortly. We are looking at software for application integration, EAI. They are probably the main ones in the near future. We are once again in the final stages of negotiations and selection of an ETL tool. That would be probably a small number of weeks away, the others probably within the next week or so.

Senator LUNDY—What is ETL?

Mr Farr—It is data integration and transfer.

Senator LUNDY—Going back to the tax administration system, are you saying that you have decided to adopt or use the TAS software from Accenture?

Mr Farr—It is not quite that simple. We have decided that at this stage of our design and evaluation a transfer solution where there is a product already in operation would minimise our technology risks, our costs and our time. In a sense, a transfer TAS solution is not like going and buying an off-the-shelf software package. In particular jurisdictions, as part of revenue systems tax agencies around the world use different parts of that solution to meet their needs. Jurisdictions in the United States and Ireland use that system. Singapore is also using that system. We have been able to mix and match, if you like, to take the best out of them and say, 'At this stage it looks like that would be the best solution for us.'

Senator LUNDY—Has that gone out to tender?

Mr Farr—No, that has not gone to tender.

Senator LUNDY—Why not?

Mr Farr—Just recapping slightly, you may recall we went out initially for an implementation partner with the idea of taking the whole program and going forward with that. In the end, none of the tenderers was able to fully satisfy the full breadth of the requirement that we had in that tender document and we moved into the next phase with Accenture on the basis that they were the highest ranked of the respondents.

Senator LUNDY—Was TAS part of what they were offering?

Mr Farr—They were highest ranked in the sense of being by far the highest ranked systems integrator. So, whether it be TAS or whether it be a solution built, they were by far the highest ranked. It was subsequent to that that we actually identified the potential for a transfer solution. So we asked Gartner, as I said, whether our thinking was sound—and they said, yes, it was—and whether any other transfer solutions were around that would meet our needs.

Senator LUNDY—Once you determined that you wanted a transfer solution, rather than go out to tender you got Gartner to, I guess, report on your decision and whether there were any other potential competitors in the market?

Mr Farr—Yes.

Senator LUNDY—Is that a fair process for other potential participants or solution providers?

Mr Farr—Yes, I think it is not only fair for the other solution providers but also less costly. As you are aware, to respond to a tender of that nature requires a significant effort and a significant cost on the part of the vendors.

Senator LUNDY—So you think it is fairer because you did not actually ask them to tender and you saved them money, and then got Gartner to tick off your process?

Mr Farr—No. I would say it is fairer because what we identified was the potential solutions that would meet our need. If the solutions available out there did not meet our need, it would waste the time and money of the vendor, and waste our time and money in going through the process of going out into the market and evaluating it.

Senator LUNDY—I can understand where the Taxation Office is coming from, because it would of course save you a lot of time and money not to do any of those things. But had the original tender, which failed to satisfy the tax office requirements and ranked Accenture highest, albeit technically not satisfying, been put to market in a different shape or form specifying the transfer solution, I guess the market could argue that they would have had a much greater chance of complying. What is your response to that?

Mr Farr—My response is simply to repeat that we asked for an independent review of what solutions were available in the marketplace, and a significant number of them were looked at by Gartner. The only one that actually met our needs was the TAS product. It would not have done anyone any good, least of all vendors in the marketplace, if we knew in advance that these products that they were offering did not suit our needs.

Senator LUNDY—What if Gartner had reached a different conclusion?

Mr Farr—Then we would have clearly gone in a different direction. If Gartner came back and said, 'Yes, a transfer solution is the way to go; there are these six vendors who could satisfy your needs and they are all pretty good,' then that would have led us, I suspect, to a tender solution.

Senator LUNDY—So it is just lucky, I guess, isn't it?

Mr Farr—I think it is a fact of what is in the market.

Senator LUNDY—Just going back to prior to the Change Program being initiated, with the technology changes over the years, particularly those surrounding the implementation of the GST, is the tax office able to provide an overall figure of the costs associated with the implementation of the GST from an IT expenditure point of view? I know we traversed this some years ago, but I cannot recall ever getting an aggregate figure for the net cost to the ATO of that change.

Mr Farr—I clearly do not have it with me, but I would think that we would be able to go back and reconstruct our records to provide that.

Senator LUNDY—Just going a step further, with the transfer of services online, in particular the ability to complete online BAS forms and so forth, what is the specific dollar value that the tax office attributes to the provision of that service?

Mr Farr—The provision of online BAS?

Senator LUNDY—Yes. That is, the cost to the tax office for implementing that new service.

Mr Farr—From day one people have been able to lodge BASs electronically, and the cost of the provisioning of that would be included in the figures that we previously discussed. Since then we have developed further options for people to lodge BASs—for example, they are now able to lodge through the portal. I do not have the figures for that.

Senator LUNDY—Could you take on notice what the cost to the tax office is of providing that service of lodging BASs through the portal?

Mr Farr—Sure. You are looking for the development costs of the ability to do it or the ongoing costs of operating that system?

Senator LUNDY—All three, now that you mention it. Mr Carmody, can I ask you I guess the converse question, which is: what costs is the provision of this service saving you in the administration of the paperwork that would have otherwise come in?

Mr Carmody—I do not have a dollar figure. The benefits I think are fairly clear. Paper creates problems and creates costs. There is double handling of paper. We find that, as opposed to where you can lodge things electronically, where you can build edit checks and so on into the package, you end up with more errors, which then require manual intervention to fix. Having millions of items of paper running through a system is very costly and error prone, as opposed to our having an electronic version. It is also for the benefit of the community. For example, very shortly with electronic lodgment of their activity statement they will immediately get confirmation of the updating of their accounts. If a refund is going to be issued, they will be advised of that; and within three working days it will be in their account. It is three working days because of the banking system, not us. If a refund is being held up, people will be told it is held up. From the point of view of not only the costs of running a paper based system but also accuracy and support for the community, electronic lodgment offers obvious advantages.

Senator LUNDY—What are your projected savings from the transfer from paper to electronic?

Mr Carmody—I do not know that I have those here.

Mr Farr—No, I do not have them.

Senator LUNDY—Perhaps you could undertake to try to get those figures some time today. If you can get them by the time I finish my questioning, that would be great. But, if not, it would be very helpful if you could provide them later today.

Mr Carmody—Okay. I would add one thing, though: not only would we need to look at cost savings to the organisation but we would need to look at benefits to the community. I am not saying this is the case, but if the solution were more costly we would probably do it anyway.

Senator LUNDY—No, I appreciate that. I have already asked Mr Farr for the costs of the system. Obviously what I am interested in is the difference—if there is a net saving to the ATO, how big it is. I understand the Change Program is being funded from within the tax office. I am particularly interested in whether you did not actually receive any additional budget allocation for the Change Program and, if so, whether you hope to fund the Change Program through the savings achieved via electronic lodgment of activity statements. Is that what you are trying to achieve, Mr Carmody?

Mr Carmody—Yes, although back in 2002, I think it was, when we went for our pricing agreement with government and we went to a total funding envelope we projected that we would need to do these sorts of things. So there was not specific funding as such, but we projected within the budget that we went forward with that we would do that. Yes, there are savings. Like with all things, you tend to get the savings after the investment, so there is a period you need to work through, and we have had to strike our finances according to that. But, yes, that is what we are seeking to do.

Mr Farr—I am sorry, I missed a little bit of that. I was trying to get an answer to your question—and, with any luck, I will be at least consistent with the commissioner.

Senator LUNDY—One would hope so.

Mr Farr—It is not just a reduction in our costs, of course; it is a reduction of the community's costs. In some cases it will actually cost us more internally to reduce the compliance costs of the community. So they are decisions that we are making as well.

Senator LUNDY—In which case, I think my question still holds true about how that then looks on your expenditure and outlays. Is it costing the tax office more overall? If it is, so be it. But my understanding of the budget papers is that you have not received any additional allocation for this program. It seems to me it is quite a fine balancing act here between the investment and then actually making the savings within your own bottom line, regardless of the cost benefit to the community.

Mr Carmody—That is true, and that is part of our responsibilities of management. When we get a bucket of funds, not only do we get that bucket of funds to do today's work but we get that bucket of funds to ensure—this is part of our responsibility—we have a sustainable administration into the future. Yes, we are looking at a program that will over time repay itself. But there is a timing period. For example, you would see in the budget papers that for next year we are budgeting for a loss of $35 million. The reason for that is partly to manage this funding program over the medium term.

Senator LUNDY—Going back to previous questions about what can only be described as quite massive increases in expectations of costs relating to IT, and I am referring of course to the extension of the EDS contracts and other contracts on top of that, how confident are you of containing the Change Program within the envelope of funding that you have allocated to it not only in the current budget year but also in the out years, and what is that envelope?

Mr Farr—I will answer the last one first because it is shorter. Once again, we have not publicly given a definitive figure for the total cost of the Change Program, although I have said publicly that I would expect that to be in the range of $300 million to $350 million.

Senator LUNDY—I think that has been reported in the media, and that is the one I referred to earlier.

Mr Farr—Yes. But that will not really be known until probably August-September, in which case we will have a much better figure. We are very conscious of the need to bring the Change Program in within the budget that has been allocated to it, and very allied to that is the time and the scope that we are setting ourselves up for. We are setting up very strong program management functions to ensure that that occurs.

At the moment we are also in the market—I should have mentioned this previously, and I am sorry I forgot—for an independent assurer. We are looking for someone who can maybe look over our shoulder for the entirety of the program—both ours and that of any partner that we bring on board. They will be saying to us, 'You are on track,' or, 'You are not on track,' or, 'These decisions you are making are going to get you into trouble.' So that is also one of the mechanisms that we will be using. Also, the way we construct the contracts—and at this stage I do not want to go into this too much—will have a bearing on how firm the price will be for the particular scope of that contract.

Senator LUNDY—Can I interpret that as your having learnt from past experience?

Mr Farr—We have learnt from past experience, and at the moment we are busily learning from everybody else's past experience as well. We are doing a lot of work in that area. In any project of this nature there is inherent risk. There is no escaping that. We have made decisions, such as technology decisions, that do not put us on leading edge technology solutions, which can minimise the technology risk. So we are looking to minimise each of those risks as much as we can. We will minimise the contract risk. We will put in strong program management to minimise risk of scope creep. We have strong management of the business case, which will be in front of the executive continually to see that that business case is actually being delivered; and we will have an independent assurer to tell us that we are doing what we think we are doing.

Senator LUNDY—How much have you spent so far on Accenture?

Mr Farr—In respect of?

Senator LUNDY—In respect of their contracts with the ATO in whatever.

Mr Farr—Total?

Senator LUNDY—Total. While you are looking for that, perhaps I could ask Mr Carmody: in terms of your existing contracts with the range of IT service providers, suppliers et cetera, how do those ongoing commitments affect the Change Program or are you essentially looking at the two budget items as being separate?

Mr Carmody—We have to continue to run our operations. So, to the extent that we have or need contracts with other suppliers to meet changes to the law, and in relation to implementation of those, annual updates of our systems and continuing improvements of our systems, we will continue in the marketplace for that. You talk about the challenges of the

budget. One of the big challenges you face is how much you put into fixing up current and running as opposed to that. So all the things you are raising are obvious issues for us, but it is our responsibility to manage that.

Senator LUNDY—Just to get this very clear, the investment in the Change Program that is currently occurring is going to facilitate obviously a new design of your information systems, but in the meantime the old systems will obviously continue to run and at some point in the future you will transfer over to the changed program per se?

Mr Carmody—Yes, it is our objective that at a point in time, roughly three years or something like that—

Senator LUNDY—Three years from now?

Mr Carmody—For that total back-end change.

Senator LUNDY—But there will be transitional elements between now and then?

Mr Carmody—We are trying to build up our new systems as much as possible. One of the big challenges of a project like this is that one of the things that sometimes goes wrong is the linkages between your existing and new. If you put too much emphasis on it as a basis of operating while you are building, that is where lots of things go wrong. So we are trying to keep that as discrete as we can. But I would say to you that, while that total transfer is probably to an after-three-year time frame, we have been very clear, for the benefit of both the community and our own staff, because they deal with the same systems, to implement a range of things progressively. So a lot of the front-end electronic lodgment initiatives, the portal and so on have been built up front and there will continue to be development of those up front while you are redoing, to put it technically, your back-end major processing systems.

Senator LUNDY—Did you find an answer, Mr Farr?

Mr Farr—Yes. I have here a listing, and there are a number of individual contracts for which I can give you the amounts.

Senator LUNDY—If you could provide those to the committee, that would be helpful. But if you could just give me an overall figure, a ballpark figure.

Mr Farr—Mr Gibson has added it all up and tells me it is $12.5 million. I will trust his maths.

Senator LUNDY—Perhaps you could also take that on notice for the sake of completeness.

Mr Farr—We will check that and make sure that that is a complete list.

Senator LUNDY—Thank you. A recent article references the Change Program and the Gartner report, and asserts that the Taxation Office has taken advice from the Gartner report, particularly in a move to open standards. I think the Gartner report—I have a copy of it here—was focused on use of open source software. What has changed? Last time we spoke you really asserted that a number of different operating systems would in fact continue to be used. So what was the real news behind the announcement and the tax office's consideration of the Gartner study?

Mr Farr—I hope I am answering your question. We have certainly developed with Gartner—and you have a copy of it—an open source policy. It also mentions open standards. It also mentions there is considerable confusion between the two. We are looking at both open standards and open source. We have now adopted and signed off an open source policy—open source as opposed to open standard—which means that when we are looking for software purchases we will be looking to see whether there is a mature open source solution available to us. We have spoken to Accenture in this phase of the work to say, 'We are quite serious about considering open source as an option, and we would expect you to also consider that.' In information that we are putting out to the community now around potential tenders, that is specifically spelt out to the industry in some of the explanation of our standard operating environment. So nothing has changed. We are seriously evaluating it. We have a policy where we are developing further around evaluation. It will be part of our life.

Senator LUNDY—What about open standards? Has the tax office identified and set a requirement for open standards in any specific areas? I ask that question in the context of the National Archives recently promoting the need for documents required to be archived to be in XML format and so forth. What are you doing about mandating open standards within the ATO?

Mr Farr—A number of things. In the first instance, we are working collaboratively with a number of government agencies, because the first port of call for us would seem to be that interoperability and the ability to share data between government agencies, looking for common standards, common taxonomy across government standards. We are also working with both the OECD and another group which is sponsored by the Netherlands on being able to get common standards across agencies—and in the projects sponsored by the Netherlands there are also large accounting firms on it. We are progressing that quickly. We have developed, I think, our XML standards. We are pushing that very hard. The point most important for us I think is across government so that we have that ability to share across government.

Senator LUNDY—What are you able to practically do to insist that your range of vendors comply with those standards?

Mr Farr—I guess what we would be practically doing is setting out, 'These are the standards. If you want to actually come and deal with us, these are the standards that we will be setting out.'

Senator LUNDY—What about existing contracts?

Mr Farr—I cannot think of any particular existing contracts which have not progressed to a point of actual implementation that that would cause a problem with.

Senator LUNDY—In terms of providing services to citizens through the tax office portal and through—I presume you still have software downloads in some circumstances?

Mr Farr—Yes. E-tax, for example, do you mean?

Senator LUNDY—Yes.

Mr Farr—That is still software download, yes.

Senator LUNDY—What have you done to make those standards open so people with other than Windows can access online the services of the tax office?

Mr Farr—This is an issue that we probably revisit each year.

Senator LUNDY—Do you mean at estimates or—

Mr Farr—No, as part of our decision-making process.

Senator LUNDY—I think we have revisited it a couple of times.

Mr Farr—Periodically, particularly around Mac—when do we make things available for that. What we do is we test what the demand for it is. It is expensive for us to put it across platforms. If there is demand, we supply it. If there is not sufficient demand, then we cannot. It is just cost prohibitive.

Senator LUNDY—The question really relates to what degree the tax office determines what kind of commercial software citizens are forced to buy to access the services. Why hasn't the tax office adopted a policy of genuine open standards and make it a policy to provide it in whatever format customers, clients, citizens or whatever require? Why haven't you done that?

Mr Farr—I think it is just a matter of cost.

Senator LUNDY—I guess I am suggesting to you, Mr Carmody, that it is a matter of principle.

Mr Carmody—Yes, and perhaps as we move forward we can better do that. But just on, for example, the e-tax, I know that we have regularly surveyed the demand for the Mac product. Given where we are now, to meet that accessibility would be costly. The feedback has been that it is very marginal demand. So while we are in the state we are in it does not seem to us to be a good use of taxpayers' funds to bear that cost. But I think as we move forward into the future perhaps the potential is better for us.

Senator LUNDY—Without wanting to debate it, I think it is an issue of cause and effect. People who want to access your services already had that. So when you ask them whether they want it in Mac they are going to say no, aren't they? It is a bit of a no-brainer.

Mr Carmody—Mac users, as far as I recall, are not backward in demanding access to products that use their things. But just where we have done it in a deliberate way for this particular e-tax product there is not the demand that justifies the expenditure. You are right: you are a product of your past development and what opportunities for development were done there. We are where we are at the moment with e-tax, and I believe it would not be a good use of the community's funds to meet what is a very small demand at the moment. But, as we all move forward, our system bases change and develop.

Senator LUNDY—What about the portal? Does that work really well in Explorer and not very well in other browsers? What mind have you paid to the functionality?

Mr Carmody—I do not think we have had any complaints, as far as I have heard.

Senator LUNDY—That is actually not the point. The point is: what attention have you paid to making sure the services you are providing are not designed to work more effectively or better or in only one particular company—of course, I am referring to Microsoft Explorer.

Mr Gibson—As part of the production release of portal versions, we in fact test quite extensively a variety of browsers, whether it be Netscape, Mozilla, Windows Explorer and so forth. So we cover the largest population of browser users and do not restrict it to just Windows Internet Explorer.

Senator LUNDY—So you can say with confidence that there is no constraint upon that portal being used by citizens who choose not to have Windows on their desktop?

Mr Gibson—There is no unreasonable constraint. In fact, most Internet users we would accommodate, aside from the Mac platform question.

Senator LUNDY—On the software download?

Mr Gibson—Yes. Does that help?

Senator LUNDY—Yes, it does. Thank you. The newspaper article from the *Australian* I referenced earlier has the tax office putting a strong emphasis on greater transparency in their decision making. What does that mean, and how are you planning to achieve it?

Mr Farr—I think what it means, from my perspective anyway, is that as we are dealing with the industry we are transparent and open to the broad industry about exactly what our thinking is, what our direction is, the things that we are valuing, what we would be looking to value into the future. As we make decisions we put things up on our web site—for example, open source—and there will be other things coming up where the industry generally can see our policy documents, they can see our decision-making rationale, if you like.

Senator LUNDY—So what about a scenario like the Accenture contract? Will you be putting up statements on your web site saying: 'No-one complied, but we liked Accenture the best. So, if anyone has a problem with that, come and see us'? How do you deal with that scenario in promoting greater transparency?

Mr Farr—The way we dealt with that scenario was that each of the unsuccessful vendors was given the opportunity, and I think all took it up, to have extensive discussions with us following that decision. I have personally since had discussions with some of those unsuccessful vendors to make sure that they fully understand the rationale for our decision and where we are headed into the future, and to give them the opportunity to understand where they would fit into the overall program.

Senator LUNDY—Just going back for a minute to standard setting, has the tax office identified or adopted standards for digital rights management?

Mr Farr—No.

Senator LUNDY—What standard do you currently use?

Mr Farr—I will have to take it on notice.

Senator LUNDY—Is it the tax office's intention, in light of your commitment to open standards, to adopt an open standard in digital rights management?

Mr Farr—I would have to say up front I know what digital rights management is but I do not pretend to be the world's expert in it.

Senator LUNDY—Shall I help you?

Mr Farr—Any help that you could give would be most welcome.

Senator LUNDY—The open standard is in fact called ODRL, and there is a proprietary standard called XMRL. I am interested to see whether you have adopted either. Specifically, is it your intention to adopt ODRL, given it is the established open standard?

Mr Farr—We do not have that information with us. We will take it on notice and get back to you.

Senator LUNDY—If you have not made a determination, could you provide me with the detail of what standards are being used within the suite of tax office contracts at the moment?

Mr Farr—Yes, we can do that.

Senator LUNDY—Going back to the big picture issue, how many people are likely to be directly employed as part of the Change Program?

Mr Farr—We have not finalised the figure for the next phases, if you like. If I looked at the number of ATO people who were going to be involved in that, I would put an estimate at somewhere around the 200 mark. That does not include any partners, and it would probably be about a one-for-one split. For the IT group in particular it means there will be an increase in the number of IT people in the office during that period. There will be people continuing to maintain our legacy systems as well as working on the development of new systems to be in a position to take over the continued maintenance of those new systems when they are fully developed.

Senator LUNDY—So you are likely to have a period with that overlap?

Mr Farr—Yes.

Senator LUNDY—There will be a net increase of IT professionals?

Mr Farr—Yes, that is what we would expect.

Senator LUNDY—At least 200 within Tax itself and obviously more as contractors come on board.

Mr Farr—The 200 whom I referred to are not all IT people, but I would certainly see a significant increase in the number of IT people during that transition period.

Senator LUNDY—At the three-year point—this sort of spectre out there—of the changeover, what are the likely employment implications for IT professionals not only with the tax office but also with the associated contractors? Have you done any estimation or anticipation of that impact?

Mr Farr—In large measure, at the end of the program when we are operating entirely on new systems we are likely still to be running similar types of skill sets as we have now. So it is likely that we will be running a mainframe Cobol solution for our bulk processing.

Senator LUNDY—I thought you were moving away from a mainframe Cobol solution?

Mr Farr—No.

Senator LUNDY—Are you going back to it now?

Mr Farr—No, not for bulk processing. We have looked at moving—

Senator LUNDY—We talked about Talon and COOL:Gen in the meantime. They used them as well?

Mr Farr—Yes. There is still use of Talon and COOL:Gen. They will continue for the period of the Change Program. Depending on the solution we get, there is probably going to be just native Cobol at the end of it. So from that perspective it is nowhere near as big a change for the people as perhaps it could have been if we had have gone to a straight mid-range solution.

Senator LUNDY—I remember our discussing that concept of the sort of network model, if you like, and some time ago that was the direction you were heading in. I am trying to understand whether that has changed again as the Change Program has developed.

Mr Farr—I do not know that we ever had a set direction to go with the—

Senator LUNDY—I am not sure whether the discussion was with you, Mr Farr, or whether it was with Mr Wilson in some of our early exchanges around .net and the potential for a computer network based infrastructure for the tax office.

Mr Farr—Certainly it was one of the options, and I can only talk from my time, I guess. At the end of the day, we were unconvinced—I was unconvinced, I think the executive was unconvinced—that, within the bounds of acceptable risk, a mid-range solution would scale to the point that we need. As I said, one of the decisions we made was to actually minimise our technology risk to keep the overall risk of a program this size within manageable proportions. So we would be expecting, at this stage anyway, that our main processing function will still be on the mainframe, we would still be running web front end et cetera. So that would not be too difficult. We would expect with a new integrated system that there would be some efficiencies in the way that we do our development work so that it would be easier and quicker to market to actually make the changes in the responsiveness. I do not think that necessarily translates into lesser expenditure on IT, because the demand is on the upside.

Senator LUNDY—I appreciate that.

Mr Farr—What it means is that hopefully we will get, if you like, a bigger bang for the buck and we will be able to provide to the organisation a greater level of IT support.

Senator LUNDY—On that issue, one of the big underlying assumptions here is that people are actually going to start lodging their activity statements electronically and so forth. What is the Taxation Office doing to help that side of the equation, to help educate people—to give them a computer so they have a chance of doing it? What are you doing on the citizen side of the equation?

Mr Farr—You may have seen a couple of months ago now, for example, the launch of the business portal. We had a significant information program out to the community around registering for digital certificates to be able to be ready to interact; also the benefits that you can achieve going through the small business portal and lodging online; and, as the commissioner mentioned, in the next release being able to have your BAS processed real-time. At that stage I think we were issuing ATO digital certificates at the rate of about 500 a week. I think at one stage recently we were up to about 1,000 a day. It has gone up exponentially. If we look at the usage of the tax agent portal, we are getting over one million

page hits a week and things like that. We are making sure that people have the ability to do it and understand what it requires, and that we actually provide services that will attract them to that channel as opposed to having to mandate that.

Senator LUNDY—Who is Dr Richard Tate, and what role did he have in the ATO?

Mr Farr—Dr Richard Tate was employed by me some time ago—I cannot quite remember how long—as a strategic IT adviser. As we kicked off particularly the Change Program I felt there was a need to have someone with the experience of Dr Tate assist me and actually help us chart the course through technology. He is still working for us periodically to make sure we stay on track, more now providing advice to Mr Gibson and standing back a little bit and making sure our strategy is well formulated and on course.

Senator LUNDY—Presumably he was contracted for that time. What were the terms of his contract, and what were his credentials to advise on such matters of great importance?

Mr Farr—He was employed under just a contract of labour, if you like. In relation to his credentials, both academically and practically he has considerable experience in large-scale IT applications—ANZ Bank, Coles-Myer and others.

Senator LUNDY—As a consultant?

Mr Farr—No, as a hands-on manager in those institutions. He has been through large-scale change with both big mainframe back-end systems and the front ends, things like banking systems, which are very similar to ours. So it was someone who has actually hands-on managed something like this before.

Senator LUNDY—I want to put a few questions on notice. The first question is about Accenture and how much money is involved. Can you provide the answer going back four years, not just for the current financial year?

Mr Farr—So total Accenture—

Senator LUNDY—Total Accenture expenditure.

Mr Farr—That will not be any problem.

Senator LUNDY—I know you have already taken some of this question on notice, but in relation to the difference between the expense associated with the Change Program and the anticipated savings you gave me a figure of a loss of $35 million in this forthcoming financial year. If you could give me as much information as you can about those differentials or how the budget papers look in the outyears on the IT budget, and then perhaps in a separate table the ongoing IT commitments for the existing contracts—so that I can get obviously in the lead-up to the conclusion of those contracts a picture of the point at which change is likely to occur and look at the budget items in between—and the likely impact on the level of employees, the number of employees.

Mr Carmody—Some of that will depend on the contract.

Mr Farr—It will.

Senator LUNDY—To the best of your ability.

Mr Farr—We have obviously a business case rationale at the moment. It is likely to change markedly come August, but we can give you what it is—

Senator LUNDY—If you think there is potential ambiguity or change, if you could just note that. But if you could provide those figures to the best of your ability. I am sure you have them, otherwise you would not be responsible. So I will look forward to getting those answers as soon as possible.

Mr Farr—The only caveat I put on that, Senator, is although I am more than happy to give you the figures, if there is stuff that is going to actually prejudice our ability to deal in the marketplace, we might just need to have a look at that.

Senator LUNDY—State your case for commercial-in-confidence. The default position is that it be provided and the committee will consider the claim for commercial-in-confidence.

Mr Farr—I do not have any problem giving it to the committee; I would just prefer not to have it out in the market.

Senator LUNDY—State your claim, and the committee will consider it. That is all I have. Thank you.

Proceedings suspended from 2.47 p.m. to 3.04 p.m.

CHAIR—I propose to give the call to Senator Murray, who has questions on a number of discrete topics. I will ask him to foreshadow what topics he will be addressing and the sequence in which he will be addressing them so that the officers concerned can have a rough idea of the order in which they will be required.

Senator MURRAY—I have a number of discrete topics, as the Chair has said. I think it is only fair to start with the one which I gave you advance notice of, Mr Carmody, not from last night, and that will be the death benefits one. I want to ask a follow-up question to a question I asked last year about showing average tax rates on the returns to taxpayers. I want to ask about tax file numbers. I want to ask about the Australian Valuation Office. I want to ask a very brief, easy question on tax stats. I want to ask about ATO activity on rental properties. I want to ask about capital profits being routed through—what should we describe them as?—tax havens, I suppose. I think that covers it. I might ask about self-managed super funds. Mr Carmody, you understood the question about death benefits, so I will just move straight to the answer.

Mr Carmody—You asked whether we had a particular split of the tax from no effect. It is not readily available, so I am not able to supply you with a figure here. My experts have said, if you are happy for me to take it on notice, they will investigate whether there is a reliable way of estimating it from related data. So I am afraid we do not have a readily available answer, but if you are happy for me to take it on notice I will commit that we will do everything we can to try to get a reliable estimate.

Senator MURRAY—I would be happy, Mr Carmody. I would be content with a snapshot, frankly. Take a random sample of whatever you think is meaningful—a hundred cases—and see what the incidence is. My concern is that there is an inequity. Some people are being taxed in the same circumstances as others simply because of the legal structure of the dependency.

So, if we could get some feeling as to what that means in the community, that would be helpful.

Mr Carmody—I will commit that we will do what level we can reasonably—

Senator MURRAY—I certainly do not want you to trawl through your several million taxpayers, but a snapshot would do me fine.

Mr Carmody—Yes.

Senator MURRAY—Thank you, sir. The question I wanted to ask you about the average tax rate was a question I asked on 6 November 2003. The *Hansard* page number is E126. I cannot see any other reference here. You gave me a good answer to a question on notice as to whether we will start to see on the notice of assessment going to a taxpayer the average tax that had been paid. That percentage is not there at the moment. You indicated the sorts of issues that need to be considered in arriving at that conclusion. But essentially you said the notice of assessment is currently undergoing a review whereby the format context and content of the information presented to the taxpayer are being examined. So, eight months later, how is your review going? Have any decisions been made?

Ms Vivian—We have been out consulting with a number of users about the notice of assessment. The feedback we got on showing tax as a percentage of income was that a very small minority suggested it could be useful, but most people thought it was not meaningful. Most of the feedback we got was about using a little plainer English on the notice of assessment, looking to show some breakdown of aggregated amounts and those sorts of things. So we have run that consultation. At the moment we are just looking internally at how we can make some of those changes.

Senator MURRAY—If you are going to be producing the *Tax Pack* and soon will be processing, as early as next month in some cases, notices of assessment, will your review changes be included in those notices of assessment?

Ms Vivian—No, our review changes will not be for that year.

Mr Carmody—The systems changes to do that take some lead time.

Senator MURRAY—So the earliest would be the 2005-06-year?

Ms Vivian—Yes.

Mr Carmody—I suspect so. There is quite a cycle in developing those things.

Senator MURRAY—I understand that. Thank you very much. On tax file numbers, Mr Carmody: there was a report in some newspapers—I think I have a reference to it; it was on ABC *PM* on Friday, 14 May 2004—about Immigration officers raiding Doyles Seafood Restaurant, I understand quite a famous restaurant, in Sydney for illegal workers. It is quoted that Immigration officers detained probably 80 per cent to 90 per cent of their staff, and he said, 'That was a large number of people.' My simple question is: can illegal immigrants obtain tax file numbers?

Ms Holland —There are particular guidelines to obtaining tax file numbers. One of the main ones is the provision of an Australian birth certificate. That is in relation to the

provisions of the guidelines. I would have to take the particular case on notice. I do not know the detail.

Mr Carmody—But, in relation to the application for a tax file number, we have proof of identity arrangements. We have enhanced those over recent times, moving towards a Commonwealth platform. We have tightened up on the sorts of documents they can provide. I think we have arrangements with the Department of Immigration and Multicultural and Indigenous Affairs whereby when people come in and they are here for a designated short time we have a matching program for when they leave to make sure. If you are in the country, you may be entitled to have a tax file number. You may be entitled to work. You might be doing casual work or whatever. But our arrangements with the department of immigration allow matching of when people enter and leave or are supposed to leave, I believe.

Senator MURRAY—I can understand from what you have said to me that, where you have identity checks and somebody commits fraud, there is nothing you can do about that—you would have given out a tax file number in all honesty—because you have been dishonestly dealt with. I understand what you have said about a legal immigrant being able to get a tax file number, because we have the arrangements whereby people can work here for a year on a visa. But are there any circumstances where an illegal immigrant can actually lawfully get a tax file number?

Mr Carmody—I am not quite sure—you will have to excuse me—what is meant by 'an illegal immigrant'. If they come through the normal border, we have our links with DIMIA. If they stroll in off a canoe and the first thing they do is race up to get a tax file number, I am not sure.

Senator MURRAY—Let me use different terminology. If foreigners come to Australia, whether legally or illegally, and are not entitled to work in Australia, because you have to have a visa permit to do so or you are not allowed to work—you can be on holiday or visiting—can they get a tax file number when they are not permitted to work in Australia?

Mr Carmody—It may be they need a tax file number—it is a bit hard for me to speculate—because they have interest income or other income. But certainly, as I say, both for our purposes and for DIMIA purposes we have a matching process to detect any inappropriate activities, and that includes visa details. As I said, if they come through the border we should be able to meet both our requirements and DIMIA's requirements.

Senator MURRAY—Bear in mind I am not taking sides here, because I cannot ascertain the reality of it, but Mr Doyle says—and I will quote him from the transcript:

> ... it was just, you know, stormtrooper tactics where they came in right on lunchtime when we were opening, detained probably 80 to 90 per cent of our staff, stopped them from working, quite abrupt to the staff, the way they spoke to the staff, you know, asked questions—where's your ID? I didn't know we had to carry, you know, ID in Australia, but obviously you do now.

In the introduction, Mark Colvin said:

> The Immigration Department is today fending off claims of heavy-handed tactics, after raids to find illegal workers at a number of Sydney restaurants. Twelve people were taken to the Villawood detention centre as a result of the raid—they face the prospect of deportation.

All but one were employed in three popular seafood restaurants owned by the Doyle family, and the Doyles today are spitting chips.

Isn't that the most obvious pun? The story has apparently 50 immigration officers descending in simultaneous raids. Liz Foschia, reporting for *PM*, said:

Peter Doyle says many of the workers had been with his family's business for a number of years and all had produced tax file numbers and bank account details when he employed them.

So, on the face of it, they are paying their due tax, they have tax file numbers, they have bank accounts, but they are not allowed to work. That is really the nub of the question.

Mr Carmody—Our primary responsibility is to ensure that they pay tax.

Senator MURRAY—That is right.

Mr Carmody—So, to the extent that they have bank accounts or are in employment, we want them in our system. But, from a whole-of-government perspective, the matching with DIMIA enables DIMIA to deal with what their responsibilities are.

Senator MURRAY—But as the system is now—and of course this refers to a few years back, I gather, when they got their tax file numbers—if you are not entitled to work in Australia you are likely to find that out on an application for a tax file number?

Mr Carmody—Yes, and there is matching. You are getting into a level of detail, but I do not think we would refuse a tax file number in that circumstance because we want all income to be declared, whether it is illegal, criminal or whatever. I think the important thing from the community's perspective is that we have the matching arrangements with DIMIA to ensure that those responsibilities can be fulfilled.

Senator MURRAY—I agree with you. I would rather the criminal was paying their tax than not paying their tax.

Mr Carmody—That is right—and I am told some of them do, actually.

Senator MURRAY—Why wouldn't you! Moving on to the Australian Valuation Office, has any action been taken to implement the findings of the Australian Government Competitive Neutrality Complaints Office report on the AVO in respect of its professional indemnity insurance premium? If so, please detail. If an officer is not here, I am happy for you to take that on notice.

Mr Carmody—We do not have here an officer from the Australian Valuation Office, but my recollection is I saw that report only very recently. We will be acting on it, but I do not know that we can say anything more than that at this stage.

Mr Farr—I cannot add too much more to that other than to say that part of the issue around professional indemnity insurance was the low inherent risk of the valuations that were being undertaken by the AVO as opposed to other valuation companies. What is being done at the moment is that the Valuation Office is going back to look at, with the professional indemnity insurers, whether that risk profile in fact is matching appropriately their professional indemnity insurance. My understanding is that that is currently in train. I do not know any projected time to finish that.

Senator MURRAY—As you would expect, the background to these questions is that people have complained to us that the AVO is pricing uncommercially. I will give you a specific example, and again I am happy for you to come back on notice. We have been told that there is an AVO contract with the Northern Territory government which runs at a loss—so we are told; we have no way of verifying that—and that the contract is uncommercial. That is the allegation. The question is whether, if that is so, that is being addressed.

Mr Carmody—In response to that, I do not know the specifics of that contract obviously, but I think the report from whatever institution it is, the competitive neutrality, whatever, addresses a whole range of these allegations and goes—

Senator MURRAY—It should be right on the top of your head. It is the Australian Government Competitive Neutrality Complaints Office.

Mr Carmody—Thank you. I must be getting old. But those sorts of allegations, such as the AVO were underpricing that, were the background to that review and report. While, yes, there was a question on indemnity insurance, and that is not a huge component, in fact in the whole range of other areas where there were complaints of the nature you raise the report found that there was no substance.

Senator MURRAY—If you have more to tell me, I would be pleased to receive it. The next one is probably a yes or no answer. Are you still on schedule to produce the 2001-02 taxation statistics later this month?

Mr Carmody—I signed off on that yesterday, I think, and electronically it will be available this month.

Senator MURRAY—As you would expect, I am one of your readers.

Mr Carmody—We will be publishing the electronic version on our web site this month.

Senator MURRAY—The next area: rental properties, ATO activity. Thank you for your answers to the questions on notice that Senator Bartlett gave you the last time around. We have figures for only 2000-01, but the summary is that there are 759,631 taxpayers with rental losses. We are advised from your answers that 718 were audited and 1,237 had letters sent to them. Firstly, what is the difference between letters and auditing? Is a letter the first stage of an audit, or is it something that is distinct from it?

Ms Vivian—The difference between letters and audits is that in the audit action that we undertake we do a range. First of all, we send out what we call information letters, where we identify that someone potentially might have an issue for them to think about when they lodge their income tax return the following year. Then we actually get schedules in from taxpayers when they lodge their income tax returns. On the basis of those schedules, we then select some for further auditing. That then is when we probably ask them to send in proof of some of their claims or have some discussion with them. So the distinction there is normally the letter is something that we send out often right at the start, just giving them some warning. Also, once we get the schedules in, in addition to doing some of the audits, we do identify and ask some people to look at some potential issues for when they lodge their return next year and to think about some of the claims they are making as well.

Senator MURRAY—Of the 718 that were audited on rental losses, you advised us that 96 per cent were wrong and that 70 per cent said they were in loss but ended up paying tax an average of $1,845 each. That seems very high. Is it high because you found the 718 who are being naughty or is it high because rampant tax avoidance is going on right across that sector?

Ms Vivian—In terms of that response that we sent you, it is high because the selection of the people who were audited was of a highly targeted nature. We have got many thousands of schedules in, and from there we have selected those we think are most likely to have claims which have not been made correctly.

Senator MURRAY—The difficulty with that answer is this: this year you will audit, according to your information, 3,000 and send letters to another 20,000; so out of 1.2 million taxpayers with rental income, which is your estimate, less than two per cent will be audited. I recognise the long bow I am about to draw, but if 96 per cent of those 1.2 million taxpayers claiming rental income circumstances were not correct in their assessments that is a very substantial sum of money.

Mr Carmody—It is, but you correctly said it is a long bow. As Raelene has mentioned, we do operate a very targeted program here. I guess it is also worth mentioning a few broader things that we are doing in this area. Part of the way we deal with this is that, where we are finding the areas of claims that are inappropriate, that is leading to our getting new information out. You will have seen some recent kerfuffle in the media about our reviewing depreciation. So some of the issues we have been amending are leading us to change the information in the market. This is an area where, whenever there is a lot of people involved and tax is involved, there are some people who take a fairly progressive view of what is deductible. There has even been some competition amongst surveyors, I understand, to get out there and be the one that can offer you the most deductible expenditure, and that is what has led us to revise our schedules, so we can bring that under control. You will notice from those figures that we are increasing our coverage there, because of the factors you have talked about.

Also, there was additional funding in the last budget for two things that I think are relevant. One is to examine capital gains, which is an issue in this market and others. You will have seen that we are increasing our matching with regulatory authorities in the states to enable us to do that in a much more efficient way, because we cannot audit, if you take your long bow, one point something million individual taxpayers. If we did, we would never get around to dealing with the large issues in corporate Australia. So we are improving our matching for the purposes of capital gains, and there is support from the government in the budget.

The other thing is that more generally on claims of this nature and work expense claims we have also received funding to focus on better profiling of tax agents and on those claims that are, on the face of it, outside the norms. That will be a further aspect that will assist us in this area.

Senator MURRAY—What I call linkage analysis. I am a great supporter of your efforts in that regard, on the record. Being me, of course, I extrapolated the 1.2 million and the 96 per cent at an average of $1,845 each, to just see what my long bow would bring, and it is of

course over $2 billion worth of target that you could enrich the government by if you were to find that that long bow turned out to be an accurate bow.

Turning to tax havens: Stephen Mayne's Crikey—and I am not mentioning them because I want a free subscription because I already get their material—did produce on 13 April 2000 an item on Zinifex's tax deductible losses. It is a serious issue, and I will encapsulate it briefly for you. They said that the sale of a company called Pacific Brands resulted in a $1 billion capital profit and that Pacific Brands was sold to businesses in the Cayman Islands, Luxembourg and the Netherlands Antilles. Whether that is possible under the law is not the issue here. The issue that I want to pursue with you is the tax consequences. As a consequence of that, do we miss out on capital gains processes or any other tax proceeds?

Mr Duffus—I am not sure I can go to the specifics of your question. All I can say, I guess, is that over recent months we have been looking at the significant flows of funds to tax haven countries, and they have involved countries like Jersey, Guernsey, Bermuda, the Cayman Islands and Vanuatu. As a result of that work, we have found that many of the transactions going to those countries are legitimate but clearly there are transactions going to those countries that require follow-up work. We have approached about 1,300 taxpayers. We are following that up quite closely now with about 400 audits as a result of that work. We see those transactions as a result of the transactions going through AUSTRAC.

Senator MURRAY—I will quote this media report to you—and I emphasise I have no means of verifying its accuracy and therefore can make no inference. The second paragraph says:

> Crikey hears that the private equity firms who bought the business from Pacific Dunlop in 2001 are sending the profits straight off to tax havens such as the Cayman Islands, Luxembourg and the Netherlands Antilles. No tax is payable in Australia on the basis that they maintain no "permanent establishment" in Australia. The nominal tax of $300 million would pay for a lot of schools and hospitals.

It would; that is a fact. I think it is unfair to ask you to answer the specifics here, and it might be unfair to the taxpayers anyway for you to put them on, but if you have anything further to say, on reflection, on the issue of potential tax avoidance in circumstances such as these the committee and I would appreciate it.

Mr Carmody—We might provide you with a more expansive answer on notice, but first of all there are rules. As you correctly point out, whether on a residency basis or if operations are carried on and have a source in Australia through a permanent establishment in Australia then tax is payable in Australia. We also have a range of agreements—not with those countries—which reflect our position there. There are potentially two issues. One is whether tax is actually payable under the law and, if it is not, that is a consequence of the operation of the law. If in the particular circumstances tax is payable but tax havens, and I am not referring to this one, are being used to try to avoid that, we have released a fairly extensive publication on our operations in tax havens and the sorts of techniques that we use to identify people using tax havens to avoid tax.

The other general point I would make in this area is that, if we see that moneys, whether from the sale of shares or otherwise, can be traced and they are going to, say, Switzerland or somewhere else, and if there is a reasonably based conclusion that taxable income is involved,

we have the ability under the law to raise what are called default assessments and to get the agents of those persons to withhold the amount relevant to their assessment. We do employ that on occasions. Without going into the specifics, that is the sort of thing we do.

Senator MURRAY—Just wrapping up this area, if I understood this article correctly, Stephen Mayne also made the allegation or the statement—I assume he wrote this—that companies which make a substantial loss, and therefore can gain the tax benefits of recording that loss, record those losses in Australia and stay nicely resided here, but as soon as these cross-border companies have the opportunity for a profit they go offshore. In other words, Australian taxpayers are wearing losses but not getting the benefit of profits. Is that a feature of corporate behaviour of some corporates in this area, and have you any means to deal with it?

Mr Duffus—We do have quite a comprehensive transfer pricing audit program.

Senator MURRAY—Yes, I am aware of that.

Mr Duffus—That would be one of the techniques we would use for that particular circumstance you have described.

Senator MURRAY—So you look for that kind of thing?

Mr Duffus—That is right.

Senator MURRAY—That is reassuring. Senator Sherry was perhaps going to pick up my last item, but I wanted to check it with you. We, like other parliamentarians, have received plenty of correspondence expressing outrage at the budget announcement of the Minister for Revenue to improve the integrity of the superannuation system by preventing defined benefit pensions being paid from small self-managed funds. What is the estimate of the revenue that is at risk through the use of these lifetime pensions? Does anyone know?

Mr Carmody—I will have to pass to my left.

Senator MURRAY—I am just after the revenue at risk that you are attacking.

Senator Coonan—Because there are a lot of outlays at risk with people who are accessing the pension inappropriately. So that is an additional matter.

Senator MURRAY—I presume that is why you are tightening up on it.

Senator Coonan—It has two aspects to it. One is the outlays impact, which is the inappropriate accessing of pensions, and the other of course is the revenue issue with inappropriate use of the reasonable benefit limits.

Senator MURRAY—I think I understand what you are saying, but let me be sure. By 'inappropriate' you mean they are accessing their pension funds for reasons other than giving themselves a pension once they reach the pensionable age. That is what you mean, isn't it?

Senator Coonan—Yes.

Senator MURRAY—Is there any assessment of the revenue risk? Obviously if self-funded people use their money now they are going to end up as a state cost later on.

Senator Coonan—Is there any what, sorry, Senator?

Senator MURRAY—Is there any assessment of the revenue risk?

Mr Coles—Essentially, we have been unable to estimate the possible cost to revenue of this measure. A lot of this information is not recorded in returns by the superannuation funds. It is a mixing, I guess, also of payment of pensions returned under normal income and personal income tax returns. So we are unable to estimate the cost to revenue of these measures.

Senator MURRAY—Do you have a feeling about whether it is minor, large, significant?

Mr Coles—I think the issue of concern here is the fact that the promotion of arrangements was growing and that there is a need to address that promotion of the arrangements.

Senator MURRAY—They are on nightly on my television back home in Western Australia. This is not part of my portfolio responsibility, so I do not necessarily understand the consequences of it all, but the question I have here is whether there is abuse of the actuarial assumptions in the RBL rules and whether this has any influence in or connection with this issue.

Mr Coles—'Abuse' is a derogatory word. I think the assumptions being used by actuaries and others to calculate the capital value of the pension are open to manipulation perhaps. The formula in the relevant section of the tax act allows for the calculation or seeks the calculation of the capital value, and that is derived based on a range of considerations by the actuary. That can include the deemed earning rate, the asset allocation, the relevant life expectancy of the member and various other factors. The more abusive side of the arrangements can provide for a low capital value, which when multiplied by the pension valuation factors and include the amount of undeducted moneys means that the arrangement falls below the pension RBL.

Senator MURRAY—Is this a significant reason why you have gone down this track or is it not connected?

Mr Coles—It is one of the reasons we have gone down this track.

Senator MURRAY—Because there are people who have said to us that it is the main reason.

Mr Coles—A number of people have indicated we could resolve these issues in other ways. I think there were media articles about simply changing the pension valuation factors. That does not resolve that issue. It is a far more complicated problem than that. So the government chose this path as an appropriate means for resolving the tax avoidance issues.

Senator MURRAY—I have probably reached the extremes of my expertise in this particular area, so I am happy for you to jump in, Senator Sherry.

Senator SHERRY—I suspect we will be dealing with this on another occasion, but it is RBL compression, isn't it? The actuary can manipulate—that might be too strong a term—the RBL upper limits. What is the current RBL upper limit?

Mr Coles—The current pension limit for the RBL is about $1.17 million.

Senator SHERRY—Splitting contributions would enable you to do the same thing, wouldn't it?

Mr Coles—Splitting of contributions is I guess a different aspect of the policy—of a much broader policy continuing.

Senator SHERRY—That is not what I asked. If you split contributions, a couple can effectively have a much greater RBL threshold, can't they?

Mr Coles—The intent of the splitting contributions policy is to allow people to have two income thresholds, RBL thresholds, in effect.

Senator SHERRY—And two RBLs?

Mr Coles—That is correct, but over a period of time not to compress them down.

Senator SHERRY—I accept it is over a period of time, but it is still two RBLs, isn't it?

Mr Coles—That is correct.

Senator SHERRY—There are points to make about that at another time. Just on this issue, though, don't you accept that it makes it more difficult to act in this area if you cannot provide accurate data in a detailed way about numbers of cases of abuse and loss of revenue? You just said you cannot estimate the loss of revenue.

Mr Coles—To require reporting in relation to every member, every benefit payment, every accumulation fund or every accumulation in relation to that member and how that is divided would impose an enormous cost on industry.

Senator SHERRY—I accept that. But you could still have done a spot check of X number of funds to determine at least some sort of representative data about revenues that have been lost and revenues potentially at risk. You say, 'We do not know; we cannot estimate anything.' If asked, 'Where is the list of abuses that are occurring?' you cannot provide it. That is the sort of question that, rightly or wrongly, a lot of the emails and letters around this place are posing at the moment. I am sure you have seen them.

Mr Coles—That is part of the data of concerns in relation to this measure. But we are aware, and I think the ATO are aware, of more extreme abuses of the arrangements. The issue then is: do we not do anything or do we actually act in the best interests of the retirement income system? I think that the government has sought to protect the integrity of the retirement income system.

Senator SHERRY—I am not questioning that. I am just saying: where is the evidence; produce the evidence. It is one of the concerns of the people who are complaining about the proposed changes. When you cannot produce the evidence and you cannot produce some estimates and a reasonable survey—I accept the difficulties—in any sort of significant detail, I think you have a problem in convincing people.

Mr Coles—I think it is also a matter for the tax office as well. In essence, the analysis showed that there is a promotion of the arrangements. People who are able to enter the arrangements are perhaps not great in number at the moment, because the benefits of the arrangements are really directed to those who have very large benefits. The decision to address the arrangement was on the basis that it is better to perhaps cut it off now than to allow it to get out of hand. The promotion of it seemed to be clear. I think, as Senator Murray said, they were promoting it quite openly.

Senator SHERRY—Sure, but at the same time the contradiction is that, at least in respect of the RBL limit, the government has a policy of contribution splitting, which longer term will

lead to an individual tipping income into a lower income contribution and accessing two RBLs and two tax-free thresholds. It seems to me there is an inconsistency in the approach. I am sure that is going to be pointed out to you by other people as well.

Senator Coonan—That is not quite right, Senator Sherry, because the splitting proposal requires some very specific rules as to what in fact can be split. You cannot split the entire account, as you would appreciate, because there might be other charges on that account, such as the surcharge, for instance. So it is not quite the same thing as the kinds of issues on which I have received advice.

Senator SHERRY—It is not identical, but it still allows a couple to access over time two RBLs; they can double their RBL.

Senator Coonan—Yes, but that is done as a matter of deliberate policy design.

Senator SHERRY—Exactly.

Senator Coonan—This of course is not a deliberate policy design. If you have deliberate policy design, you can actually address the architecture of the scheme in such a way that it does not lend itself to the same kind of manipulation that has been identified in this situation, together of course with the prudential concerns, which was the other thing underpinning the advice that I have received—that to provide a guarantee with non-arms-length funds in a defined benefit fund when there are only five members is stretching it a bit.

Senator MASON—Commissioner, my questions relate to the concern that some charities may be abusing their charitable status by engaging in political and lobbying activities that go beyond their original charitable purpose. I should just say I received a letter from Mr Mark Konza on—

Mr Carmody—Say hello.

Senator MASON—Let me just say it is a wonderful letter, sir! I want to ask you a couple of questions about the letter in a bit more detail. I would hate to misrepresent you, so please tell me if I am on the wrong track. Mr Konza, looking at question 1, I understand from reading your answer to my question that entities endorsed as charities or deductible gift recipients—and therefore qualify, of course, for all those taxation and other benefits—are effectively required to self-regulate; that is, they are effectively required to advise the Taxation Office when they no longer comply with the law and when they no longer are eligible for a charitable status. Have there been any cases where someone previously endorsed as a charity or a deductible gift recipient has ever said they no longer qualify for that status? I think you say down the bottom of question 1 there are some 40,000 to 50,000 entities. Has anyone ever said they do not qualify?

Mr Konza—I do not know whether there have been any cases of that nature. I would need to look into it. When you say that they are required to tell us if they no longer fall within the law, we require them to tell us if they no longer fall within the terms of the endorsement we gave them, so if they move away from their objectives under that requirement. But I could not say off the top of my head how often that happens.

Senator MASON—Out of the 40,000 to 50,000, are you aware of any that have said they no longer fall within the endorsement?

Mr Konza—I am not personally aware of it, but I do not work operationally in that area. We do have a program where, upon receipt of community information or any other indicators, we go out and check on them. But you are talking about changing people's self-assessment.

Senator MASON—Yes, just the self-assessment regulatory aspect of this.

Mr Konza—I cannot help you today with that answer.

Senator MASON—Can you take that on notice and find out?

Mr Konza—Yes. We will see what we can do, because we have to see what the records show.

Senator MASON—Because my next question was going to be, and perhaps it is a question for the minister, whether you are satisfied that the self-regulatory system is working well.

Senator SHERRY—Is it to the minister?

Senator MASON—I do not mind, Senator Sherry. If Mr Konza feels he can answer—

CHAIR—It is not really a policy question. It is an operational or a functional question.

Senator Coonan—It is an administrative question.

CHAIR—So I do not see why the public servants cannot be asked it.

Senator Coonan—I will chime in if I think I need to, Senator.

Senator MASON—Thank you, Minister.

Mr Konza—We assess our satisfaction with how the system operates by what we see and what we hear. What we see is that we do not have a great deal of problems in this area, nor do we get a great many complaints about it. So, based upon those two observations, we remain satisfied. We have said and our continual experience is that the not-for-profit sector is generally highly compliant.

Senator MASON—Mr Konza, you say you have not had any complaints about it. But you are aware, are you, of press reports and other reports of concern that certain charities are misusing their charitable status for political lobbying? Are you aware of that debate?

Mr Konza—An organisation receives its charitable status in response to the dominant purpose of that organisation. From time to time, people object to activities of organisations, and that may or may not go to whether their dominant purpose—

Senator MASON—Can I get to that in a minute, Mr Konza. That is a fair point, and can I come back to that in a minute. I just want to take this sequentially. So we have looked at the self-assessment aspects and you will get back to me on that.

Mr Konza—Yes.

Senator MASON—You mention in question 2 that, in addition to self-regulation or self-assessment, the Taxation Office has conducted audits—I assume random audits or audits based on information received—and some endorsed entities have had their tax benefits revoked as a result of such audits. You say that at the bottom of question 2, and you can confirm that a number of organisations have had their ITEC, income tax exempt charity, status and/or DGR, deductible gift recipient, status revoked as a result of not complying with

all endorsement requirements. We are talking again about 40,000 to 50,000 entities. How many entities have lost their endorsement as a result of Australian Taxation Office audits?

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

Senator MASON—Can you do that for me as well?

Mr Konza—Yes.

Senator MASON—Thank you. Thirdly, have there been any cases of endorsed entities losing their tax benefits on account of political activities that they have engaged in being deemed by the tax office as not merely incidental to their principal charitable purpose but actually constituting their main purpose? Have any entities lost their status as a charity because they are engaging in political purposes deemed to be their dominant purpose?

Mr Konza—I would need to take that on notice as well because I am not aware.

Senator MASON—All right. My next question, Mr Konza, relates to your answers to questions 3 and 4, to the principle of means and ends. I understand from your answers that as a general principle—and if I am misrepresenting you please tell me—if the political activity is the means to a charitable end, an endorsed entity will not lose its endorsement. Is that right? Perhaps I should give you an example. Is that a fair summary of what you said? I think that is right. You have said that.

Mr Konza—I will go back to what I said before, which is that the dominant purpose of the organisation is what counts. So that is perhaps only an illustration of how that test works. If an organisation is involved in political lobbying and it in fact supports the dominant purpose, the charitable purpose, of that organisation, then it will not result in their loss of endorsement.

Senator MASON—Let us take an example. That is probably best.

Mr Konza—The dominant purpose has to be charitable. So you cannot solely engage in such activity—

Senator MASON—That is really not the issue. I accept that. Of course the dominant purpose has to be charitable and has to be registered as that. But that is not my point. My point is what people actually do. What is their means to that end? That is the crux of it. That is where the tyre hits the tar. That is the issue. Can I give you an example. Let us say a charity's dominant charitable purpose is poverty reduction. That would be a fair charitable purpose.

Mr Konza—Yes, the relief of poverty.

Senator MASON—There is an election campaign coming up, and that charity believe that party X will relieve poverty. So the charity go out and do things like produce leaflets and say, 'Vote for party X,' or indeed, 'Give your second reference to party X.' Is that outside a predominant charitable purpose? Would you strip them of their charitable status for doing that?

Mr Konza—The reason I was careful to say 'relief of poverty' is that that implies the action under which poverty is actually relieved, rather than some general concept of poverty reduction. So, if we were concerned about that, we would look at what the actual physical activities of that organisation are and, so long as their dominant activity remains the relief of

poverty, they would be okay. But if their dominant activity were engagement in political activity for poverty reduction then that would not be okay.

CHAIR—That raises the question of what advocacy means, though. Presumably at one level for any organisation established for any purpose one would say, 'To advocate that purpose bears a close relationship with the purpose itself.' But does that extend to advocacy through direct involvement in a partisan, political way?

Mr Konza—We endorse organisations in respect of their dominant activities, and that is what we have to keep coming back to.

Senator MASON—Isn't it that you register people on the basis of their stated dominant purpose?

Mr Konza—Yes.

Mr Carmody—This is a really tricky area of the law. While Mr Konza is right about activities, it is not the sole determinant. There have been cases on this through history and you have to look at the total circumstances. If you go to the Board of Taxation report on definition of charity, I think you will see an exposition of our general approach here. It is often put to us, 'If the stated purpose is this, go away, tax office; that is the end of it.' Our position is, yes, stated purpose is important, but if when we look at the activities we can discern—and this is where it gets tricky; it is not a precise formula, 51:49 per cent or anything like that—from the activities that in fact they have taken on the dominant purpose of that organisation then we would base it on that.

Senator MASON—When do you know that? It really is a matter of degree.

Mr Carmody—You are highlighting the difficulties of administering some of our law.

CHAIR—You said there were legal precedents.

Mr Carmody—Yes.

CHAIR—What do you understand to be the legal test?

Mr Carmody—It still comes down to the dominant purpose of satisfying the charitable purposes. The difficulty, when in a practical sense you look at an organisation, is how do you come to that decision about dominant purpose. All I can say at this stage is that we do not simply accept a statement of their purpose. We would look at the activities. It is not an arithmetic formula. It comes down to a judgment, and that is about what the cases have said.

CHAIR—Mr Carmody, is that right, with respect? As Senator Mason put to you at the start, there is a distinction here between ends and means. Can I give you a hypothetical example of my own. Let it be assumed that there is a charity, the exclusive purpose of which is the protection of forests or the protection of the natural environment in a particular part of Australia. Let it be assumed that there is no question whatsoever as to the bona fides and the exclusivity of that purpose. That is all these people care about. That is the only reason the organisation exists. But let it also be assumed that in furtherance of that purpose, in advocacy of that purpose, they engage in election campaigns in which the protection of the forest is an important issue. They might run parliamentary candidates. You could say that is fine because everything they do is in furtherance of their genuinely held purpose.

Senator MASON—Its stated charitable purpose.

CHAIR—Exactly. I guess the issue is: is purpose attenuated by the mode of advocacy?

Mr Carmody—It may well be. I am reluctant to say yes or no in the particular cases you are putting to me. There have been court decisions in this area. The one difficulty I will mention before we go too far is that these are very old cases. So there are arguments about how far they relate to—

CHAIR—As you know, Mr Carmody, the law on this area goes back for 404 years.

Mr Carmody—Yes, I know. But the law and court decisions do tend to evolve with the community and business environment.

Senator MASON—Mr Carmody, I am not even so concerned about the law. I am more concerned about what you do.

Mr Carmody—We apply the law.

Senator MASON—Do you enforce the law?

Mr Carmody—That is our job.

Senator MASON—Do you do it effectively?

Mr Carmody—We do it as effectively and as efficiently as we can, and I think we do a pretty reasonable job across the broad spectrum of things that we have to do. There is in fact some reasonably old law that produces this dilemma. In these sorts of cases, in years gone by, political activity to change the law, if significant, was seen as taking them past the acceptable charitable purpose because it had become more a purpose of changing the law.

CHAIR—That would also apply to protecting the illegal status quo—for example, making sure a law was not changed.

Mr Carmody—It could be. In the dexterity of judicial decisions there were some other cases around that time that turned on how they structured themselves and the degree of this. The points you are all making are relevant, but at the end of the day there is an overall judgment as to whether they are dominant purpose. We do not accept the mere statement of purpose. We have regard to activities, but it is not a 51per cent/49 per cent issue. The courts would tell us that some particular weighting has to be given where it can be seen that the purpose is about changing the law. I really cannot say any more than that that is the guidance that we have.

Senator MASON—I accept that. I am sure the chair accepts that it is a highly technical and difficult area. In the context of some of these environmental charities, they often have no research capacity at all, and certainly there is no evidence of them actually getting their hands dirty, but they spend an enormous amount of the money they raise on lobbying. I accept there is a fine line. Let us accept that the law is complicated. The second part of my questioning of you, Mr Konza, is this: the law is complex, but is it being effectively enforced in any case? That is why I asked the first three questions. I want to know whether self-regulation is actually working; whether the auditing system is actually catching people and how many it is catching; and, thirdly, the political activities—how many claimed charities have had their

charitable status stripped by virtue of undertaking political activities. That is why I asked those questions.

Mr Carmody—I think we have taken those on notice. Let me mention one extra complexity in this. Let us take a number of charities that we can accept are genuinely relieving poverty or whatever and, as an adjunct to that, they are doing a bit of lobbying.

Senator MASON—Advocacy.

Mr Carmody—Yes, because they see that a change in the law would be of benefit. If that is an adjunct to what they are doing, so be it. What is put, and one of the dilemmas you have to deal with, is that that group of charities might decide, 'It is completely inefficient for each of us to do a bit of lobbying, so why don't we set up a joint organisation that does that element for us?' Then you get into questions such as, 'If that organisation is only about lobbying to change the law, does that mean they are out?' to which the retort is, 'Hang on, we are doing this only as an efficient way for each of us to do it.' I will leave you with that dilemma.

Senator MASON—I understand that.

CHAIR—Can I ask you what I think is not a technical question but a conceptual question.

Mr Carmody—It is beyond me, then!

CHAIR—Are you satisfied that dominant purpose is the best test? Would it not be better, in view of the sorts of points Senator Mason has been making, for there to be a dominant activity test so that you look at not just what their cause is but what they actually do?

Mr Carmody—The government went through an exercise of referring to the Board of Taxation a proposal to codify the common law to make it more workable. Some of the things that you have put were in there.

CHAIR—As I had to point out to the legislation committee that reviewed the legislation, it is not the common law; it is the Statute of Charitable Uses of 1600, which is so old that everybody thinks it is the common law.

Mr Carmody—Thank you, Senator. I will take that under advisement.

CHAIR—As Senator Coonan, Senator Wong and all the other lawyers around this table already knew.

Mr Carmody—What you are opening up here is the whole issue that was involved in that proposal: is there a way of providing much clearer guidance, having much clearer tests and so on? After all the effort that went into that, the government has decided we are better off sticking with the continuing interpretation of the law you referred to.

CHAIR—Let us go back to the hypothetical case I put to you—people who lobby, or who stand in a parliamentary election or recommend that a particular party be supported. Assume the only reason they are doing this is to advance their charitable purpose; their charitable purpose is the exclusive motivation here, yet their activity is not something that would immediately strike one as a charitable activity. Would it not be better if we had an activity focused test rather than a purpose focused test?

Mr Carmody—What I have put to you is that they are exactly the sorts of issues that were raised in the context of that review, and the decision from government is to stick with the existing law, be it common or other.

Senator MASON—The crux of it, using Senator Brandis's example, is that the defeat of the government may be the means to a greener end.

Mr Carmody—As I have said, you point to some of the cases and they do say you have to have particular regard to political considerations. Some of them said you cannot do it, and some said it depends on how you structure it. So I understand everything you have been saying, but we have to deal with the way the law has developed and make our judgments based on each case and each fact circumstance.

CHAIR—Just on that last point, is it generally the case that in applying the law—and I appreciate every instance turns on its own facts—that you would regard the participation in an election campaign of a charity to be a strong indicium that its dominant purpose was not a charitable purpose?

Mr Carmody—It would be a strong factor that we would have to take into account, yes.

CHAIR—As indicating that it was not entitled to the status?

Mr Carmody—That is the ultimate objective of our inquiries.

CHAIR—So participation in electoral activity is, as a general rule, taken by you as a strong indicium against charitable status—is that right?

Mr Konza—Yes, because you are not advancing your charitable cause; you are attempting to influence someone else to advance your charitable cause.

Senator WONG—Mr Carmody, you referred to some of the history of this matter. It has certainly been a matter of a fair bit of public debate. The government, in relation to the report which was released on 29 August 2002, accepted the recommendation which included that the principles enabling charitable purposes to be identified be set out in legislation—that is correct, isn't it?

Mr Carmody—I think there was that decision, yes.

Senator WONG—Why has the government abandoned this commitment?

Mr Carmody—All I can tell you is the sequence of events.

CHAIR—That might be a question for the minister.

Senator WONG—Maybe the minister can explain it.

Senator Coonan—I answered this, I think, earlier in the estimates. The Treasurer's press release, to the best of my recollection—I do not have it in front of me—indicated that after the matter was looked at by the board of tax there was considered to be a lot of criticism from various groups as to how you would actually codify it. As I think I explained to Senator Conroy yesterday and as you would appreciate, Senator Wong, when you codify there can sometimes be unintended consequences, and it was thought to be extremely difficult to be able to accommodate all of the concerns. In the end, the judgment was made that it was better to stick with what I will call the common law definition and to add to it some statutory classes

that were considered to be well-defined circumstances that would qualify but where, because of the activity, it might not be so clear. That is why the other categories were added and the common law definition retained.

Senator WONG—It is the case, isn't it, though, that on two occasions—both in August 2002 on the report and subsequently after the referral to the Board of Taxation—the government did commit to including this in some legislation?

Senator Coonan—Yes, but committing to doing something and then going out to consult really shows that you are going out there to listen and to see how it will work and whether there are some difficulties that are surmountable or insurmountable. I am reminded that in July 2003 we released an exposure draft to try to clarify the meaning and to extend it to include child care—which obviously otherwise might not cover children as a class; they would not be necessarily regarded as a charitable class—self-help groups, because often self-help groups are both the helper and the helpee, as with, say, Alcoholics Anonymous; and religious orders or closed orders.

On release of the draft legislation, it was referred to the board of tax to consult. So we have taken advice from the board of tax. That is what it is set up to do. Our advice was that the draft legislation was not going to achieve the level of clarity that was desired from codification. So in those circumstances the decision was taken that, subject to adding those categories, we were better off with the common law definition and with the way the tax office has administered the common law definition than ending up codifying something that was going to have unintended consequences.

Senator WONG—Mr Carmody or Mr Konza, in relation to the draft bill to which the minister referred, one of the reasons for that legislation was to deal with precisely the sorts of concerns being raised by Senator Mason and Senator Brandis, wasn't it?

Mr Carmody—The draft legislation was said to be an attempt to codify the existing common law.

Senator WONG—I understand that. But one of the issues—and I think it is well documented in public discussion—that the government articulated as being sought to be addressed by the legislation was the sorts of concerns that Senator Brandis and Senator Mason have reiterated here, and that is the political comment aspect. That is correct, isn't it?

Mr Carmody—Yes, but it was doing it in a way that was intended to reflect a codification of the sorts of judicial and other interpretations that we have seen.

Senator WONG—But the fact is that the response in the charities sector was a perception—certainly a reported perception—that the bill was aimed at limiting their ability to criticise government.

Mr Carmody—That might have been the perception.

Senator WONG—Would you agree it was the perception?

Mr Carmody—It was certainly put to the board of tax, without impugning any motivations, that the effect of that would limit that area. However, I go back to the point that the draft was intended not to change the existing law in that respect.

Senator WONG—Nevertheless, the response from the charitable sector, if I can use that term rather broadly, was fairly strong and they appeared from their public comments to be of the view that the legislation would prevent them from politically criticising the government or indeed any other political party.

Mr Carmody—I can only repeat that that was the sum of their point of view. The intention of the draft legislation was to codify the existing operation of the law.

Senator WONG—But, rather than codifying and simplifying, the actual response from the sector was probably one of more uncertainty and concern.

Mr Carmody—Perhaps that is what led to the codification not proceeding.

Senator WONG—That is why it did not proceed, isn't it?

Mr Carmody—I can only report as a matter of fact that there was not agreement that the codification would achieve the purpose of providing more certainty.

Senator WONG—Essentially the government put it out there and then backed off because the political response from the charitable sector was very strong and very anti the reforms.

Senator Coonan—That is dead wrong, Senator Wong.

Senator WONG—What is the policy basis for the changes?

Senator Coonan—The reason for the government not proceeding with it, as I outlined firstly to Senator Conroy and now to you, is that to codify it in such a way that a bill does not have unintended consequences is a difficult thing to achieve. If you consult on an exposure draft, the purpose is to ascertain whether or not you will achieve the policy intent if you actually can codify it. If you cannot do it, you are better off trying to do it in such a way that you will give maximum certainty—at least people know where they stand with the common law definition—and add the statutory classes. That was the government's response following consultation.

Senator WONG—And the unintended consequences to which you refer, Minister, were that the charitable sector considered that this would be an unacceptable muzzling of their ability to engage in political campaigning.

Senator Coonan—No, that is not the only reason. There were a number of issues, as I understand it, that were brought to the government's and the Treasurer's attention. There is no point in mindlessly codifying in situations where people have been proceeding for a number of years and have had a reasonably clear understanding of what is in and what is out. If you try to draft in such a way, it can mean that as you go down a pathway of consultation you find there are unintended consequences.

Senator WONG—Apart from political comment, were there a range of other unintended consequences?

Senator Coonan—I think there were. I cannot give them to you. I have not been part of the consultations and I certainly have not been part of the board of tax. But my understanding is that there were a number of issues that arose out of the consultations, not only political comment, which meant that on balance the government decided that there was more clarity in proceeding with the common law definition that had been in place and that everyone

understood but adding those statutory classes where there was uncertainty—and they were indeed some of the issues that were brought up, which is why they are being codified—to give the best expression to what we were trying to achieve.

Senator WONG—On the assertion that you make regarding more clarity, I think Mr Carmody himself said this is a very complex area of law. It is a very long time since I have looked at cases on this issue, but I recall being very confused about it 10 years ago. It is a difficult area of law. Wouldn't you accept, Minister, that a definition in the statute is likely to provide more certainty than the current definition, which is extremely complex and relies on a whole range of precedents for effect?

Senator Coonan—On the contrary, I think what was needed in an area such as this was perhaps some administrative flexibility, which is what is retained with the common law definition. Where matters in addition to charities have been brought to our attention—such as the problems that people had with child-care organisations, with closed and contemplative orders, and with self-help groups—we have been able to look at perhaps adding them in as part of a clarification process. But a number of potential unintended consequences were brought up in the board of tax and in the consultation process.

Senator WONG—Minister, are you able to give an undertaking that, should the government be returned, this legislation will not be reintroduced?

Senator Coonan—I am not going to give any undertakings.

CHAIR—I am not sure that is a proper question for an estimates committee, with respect, Senator Wong.

Senator WONG—I can ask the minister. I am not asking the public servant, Chair.

CHAIR—It does not relate to the expenditure of funds.

Senator WONG—There is a forward estimates period.

CHAIR—I do not think you can ask for an undertaking not to present a bill in a future parliament.

Senator WONG—It is all right; the minister has indicated she cannot give it.

Senator Coonan—Whether you can ask for it or not, Mr Chairman, I am not giving one.

Senator WONG—Thank you for clarifying that, Minister.

Senator JACINTA COLLINS—Before I move on to the area of family tax benefit estimates, I have a couple of questions on this charitable issue. In relation to the financial impact assessment of $3 million in each financial year from 2005 to 2006 in the Extension of Charitable Purpose Bill, are you able to give us a break-up of that estimate with respect to each grouping?

Mr McCullough—I do not think we have that figure, but we can take it on notice.

Senator JACINTA COLLINS—In terms of the definition of child care, has there been any thought as to whether child care relates to organisations such as playgroups?

Mr McCullough—I do not have the bill or the explanatory memorandum in front of me, but I understood the bill with the definitions of the extensions of charity was actually introduced last week.

Senator JACINTA COLLINS—Yes, it has been introduced. But, further to that introduction, I am still seeking to clarify whether the definitions in the bill rule in or rule out playgroups.

Mr McCullough—I cannot answer that question for you, Senator, so I will have to take it on notice.

Senator JACINTA COLLINS—You might be able to come back to me tomorrow on that issue. I would not expect it should take months to clarify.

Mr McCullough—At this stage I am taking it on notice.

Senator JACINTA COLLINS—But you will endeavour to see whether that is a question you can answer before tomorrow?

Mr McCullough—I have taken the question on notice. That is the best I can do at this stage.

Senator JACINTA COLLINS—It is not the best you can do. We have had several issues where an undertaking has been given to see whether an issue can still be addressed within this round of estimates. I am asking you to seek to do that. I am quite prepared to accept that there is some reasonable reason why that is not possible, but I am asking you to seek to do that.

Mr McCullough—All right. I will seek to do that.

Senator JACINTA COLLINS—Thank you. Do we have the appropriate officers here with respect to Treasury's work in relation to the family tax benefit? Mr Tune is one of the officers I have been told I should direct questions to.

Mr McCullough—That would be fiscal group, not revenue group.

Senator JACINTA COLLINS—When will fiscal group be dealt with?

Mr McCullough—They have been dealt with, as I understand it.

Senator JACINTA COLLINS—I was certainly advised by the secretariat of this committee that this was the appropriate time for me to deal with these questions. If the appropriate officers are not present, I will be very concerned.

Mr McCullough—It depends on the exact nature of your question. But, if you have been told that Mr Tune is the man to ask, he has already appeared before the committee and I think has been dismissed by the chairman.

Senator JACINTA COLLINS—I do not think he was dismissed, because the questions that Mr Tune was dealing with I think also related to some issues returning. Are you seriously telling me that Mr Tune has been dismissed by this committee?

Mr McCullough—He was here last night. I saw him here last night. I thought fiscal group returned immediately after lunch and the reason why outcome 2.2 is being dealt with, as I understood it, is that outcome 2.1 had been finished.

Senator JACINTA COLLINS—No, there were still matters to come back to this committee from outcome 2.1. I recall that myself from last night.

Mr McCullough—They have already come back, before we came.

Senator SHERRY—I think it is a bit difficult; the chair is not here. They came back to give us a response to some issues from last night. I cannot recall whether they were dismissed or not, but that probably should be clarified.

Senator JACINTA COLLINS—We need to clarify it because this committee has been on notice now for at least two days that I have questions for Mr Tune in relation to the FaCS estimates.

ACTING CHAIR (Senator Fifield)—Senator Collins, can I make a suggestion: put your questions and we will see whether the officers are able to address them.

Senator JACINTA COLLINS—We will see, but I know some of them relate specifically to Mr Tune. I know Treasury is aware that they relate to Mr Tune. I am somewhat concerned if Treasury is seeking to avoid dealing with these matters.

Mr McCullough—Senator, I am not trying to avoid dealing with the matters. All I was observing was that—

Senator Coonan—Senator Collins, I do not think that is warranted. We should clarify what rulings have been made by the chairman and, if necessary, we will see what we can do to accommodate you. Let us try to cooperate here.

Senator JACINTA COLLINS—I am happy to cooperate but these issues have been clearly flagged. We will see how far we get. If we do not get far enough, we will look at returning if we need to. I am quite happy to start and we will see how far we get.

Senator Coonan—Yes, do that. I think we should clarify what the understanding is or what rulings the chairman has made. If there is some issue, I will consider what I can do for you.

Senator JACINTA COLLINS—Thank you. In terms of the development of the family tax benefit changes, was Treasury the lead agency?

Mr McCullough—That would be a question for Mr Tune.

Senator JACINTA COLLINS—Yes. So you can see how far we got. As you are aware, I was here yesterday evening and I was advised yesterday evening that today, after we finished with the ACCC, would be the time to deal with these issues.

Mr McCullough—Be that as it may, I understand that Senator Conroy did ask that question and I think it was answered last night, but I cannot recall the answer, so I cannot give it to you again. But I do recall that line of questioning last night as I was sitting in the other room.

Senator JACINTA COLLINS—Did he ask specific questions about discussions with FaCS over the release of forward estimates?

Mr McCullough—I believe he did.

Senator JACINTA COLLINS—What was the answer to that?

Mr McCullough—I cannot recall that one either, I am sorry. It is not my area, so I was not paying attention to the answer, but I did notice the line of questioning.

Senator JACINTA COLLINS—I suspect he did not ask as many questions as I need to ask. I suggest, given this misunderstanding, that we ensure that the relevant outcome 2 people be in attendance to deal with Treasury's dealing with the family tax benefit issues. On top of that, I would add the baby bonus issues, the lump sum payment—

Mr McCullough—The baby bonus issue may well be something that we can deal with.

Senator JACINTA COLLINS—We possibly can come to that. I also have questions on Treasury's involvement in FaCS's forward estimates. I would rather deal with the baby bonus issues after I deal with the family tax benefit issues.

Mr McCullough—That would also be a question for the fiscal group rather than the revenue group.

Senator Coonan—I suggest, Mr Acting Chairman, that we take a short break to see whether the chairman can be located so that we can work out what the position is.

ACTING CHAIR—We will take a short break.

Proceedings suspended from 4.30 p.m. to 4.43 p.m.

ACTING CHAIR—We have Mr Tune in attendance. Commissioner, you wanted to add to some earlier answers.

Mr Carmody—Yes, thank you. There were a couple of questions that we were asked and, to save time, I would like to respond to them now and very briefly put them on the record. There was a question about the savings from electronic take-up. Our projections show that the savings are projected to rise progressively to a rate of $24 million per annum. Senator Harradine also asked about the profile of staff in the Hobart tax office. I have a document here which shows that.

Senator SHERRY—I will have a look at that, too.

Mr Carmody—It shows it has grown to higher levels, actually.

ACTING CHAIR—Does the committee wish that to be tabled? There being no objection, it is so ordered. Thank you, Commissioner.

Senator JACINTA COLLINS—Whilst Mr Carmody is wrapping up some earlier issues, have you made any progress on that salary sacrifice issue?

Mr Carmody—As I suspected, Senator, the information provided to us does not break up the expense payment fringe benefit or potentially even property fringe benefit into amounts that people have salary sacrificed for child care. We just do not have those figures, I am afraid.

Senator JACINTA COLLINS—What is the total?

Mr Carmody—For what?

Senator JACINTA COLLINS—For all areas where people might apply salary sacrifice. What is the total revenue forgone through that measure?

Mr Carmody—I certainly do not have that with me. We might have to try again.

Senator JACINTA COLLINS—You did not expect me to give up this easily, did you?

Mr Carmody—The only problem will be that the proportion that will be salary sacrificing for child care will be very small compared to the total. So I am not sure that it will get you to your answer.

Senator JACINTA COLLINS—It may through separate means. We may conduct separate research into—

Mr Carmody—We will attempt to get the answer. What you are looking for is the—

Senator JACINTA COLLINS—Total amount of revenue forgone by the fringe benefits tax measures that allow for salary sacrifice of child care. So there will be other elements in that group.

Mr Carmody—I do not have the child-care figures.

Senator JACINTA COLLINS—I understand that. But the closest you can get through which it can occur with child care—

Mr Carmody—An expense payment fringe benefit is potentially there, so we could get that. Expense payment fringe benefit is probably the element. We will attempt to get the expense payment. You would appreciate that could be a whole range of expenses.

Senator JACINTA COLLINS—If you could give me the information of all the other ranges that are likely to occur within that, that would be helpful too.

Mr Carmody—It can be any expense—anything that you pay.

Senator JACINTA COLLINS—And you would not necessarily know?

Mr Carmody—No. There are various benefits under the fringe benefits tax law. One of them is expense payments. They report under each of those categories. We do not require them to go into detail.

Senator JACINTA COLLINS—Can it be any expense payment?

Mr Carmody—Yes. That is the problem. All we get is an expense payment sum. So I really do not think that it is going to get you to your answer.

Senator JACINTA COLLINS—How do you understand then as an expense payment that the child-care service meets the other criteria? You don't?

Mr Carmody—This comes into your compliance and audit programs. The actual information that is returned is only at the expense payment level. So I just do not think it will get you close to what you are looking for.

Senator JACINTA COLLINS—We can then look at alternative means of trying to ascertain what tends to be the proportion of expense payments.

Mr Carmody—I am sure we can get the expense payments.

Senator JACINTA COLLINS—If you can give me the expense payments, that gets us one stage closer. In ATO dealings with Centrelink, do you have any understanding of the level

of compliance problems associated with people claiming child-care benefit as well as salary sacrifice?

Mr Carmody—I am sorry, I do not think we have any information here.

Senator JACINTA COLLINS—You may need to take that on notice.

Mr Carmody—We will take that on notice.

Mr Konza—You are asking whether we think there is a problem between two sets of claims?

Senator JACINTA COLLINS—We know there is a problem.

Mr Konza—Our answer to the last question was that we do not know anything about—

Mr Carmody—But we need to see whether at that level there have been compliance issues raised with us.

Senator JACINTA COLLINS—Yes. I am seeking to ascertain the incidence of this particular problem. The problem is that people who salary sacrifice their child care are not eligible to claim child-care benefit. We understand there is some level of a compliance problem there. I am seeking to ascertain the extent of that problem. I would like whatever information you are able to provide on that without compromising your compliance program.

Mr Carmody—Okay.

Senator JACINTA COLLINS—Going back to the family tax benefit, I think the question is pretty much still outstanding. In terms of the development of family tax benefit changes, was Treasury the lead agency?

Mr Tune—The development of the budget measures around family tax benefit was done jointly by a number of agencies, including Treasury. FaCS was also involved, as was Centrelink.

Senator JACINTA COLLINS—No particular lead agency?

Mr Tune—No. It was pretty much a joint exercise, as are most budget exercises like this. As you would appreciate, the family tax benefit cuts across both the outlays side of the budget and the tax side of the budget.

Senator JACINTA COLLINS—So what role did Treasury play and what role did the other agencies play?

Mr Tune—As I said, it was a joint exercise.

Senator JACINTA COLLINS—Yes, and in a joint exercise what was Treasury's role?

Mr Tune—Treasury's role was to develop advice to the government on options and to assist in costing those options and various other factors, including the preparation of the budget material.

Senator JACINTA COLLINS—What was FaCS's role?

Mr Tune—FaCS's role was somewhat similar. Centrelink was involved in advising on implementation in particular, and FaCS was also involved in those elements.

Senator JACINTA COLLINS—What role, if any, did the work and family task force play?

Mr Tune—None.

Senator JACINTA COLLINS—None at all?

Mr Tune—No.

Senator JACINTA COLLINS—So there was no involvement by PM&C?

Mr Tune—No.

Senator JACINTA COLLINS—Over what period was this work undertaken and what was the process?

Mr Tune—The work was undertaken in the budget context and was in the normal course of developing a budget for the government.

Senator JACINTA COLLINS—Over what period was it undertaken?

Mr Tune—It was done in the budget context, as I said.

Senator JACINTA COLLINS—So when did that start?

Mr Tune—Over a period of a month or so.

Senator JACINTA COLLINS—Just over a month or so?

Mr Tune—It is hard to say. Yes, a month or so.

Senator JACINTA COLLINS—How were the family tax benefit measures costed?

Mr Tune—In the main, they were costed using STINMOD.

Senator JACINTA COLLINS—Was there any further analysis using administrative data?

Mr Tune—The data that was used was STINMOD augmented by administrative data. To get a bit technical for a moment—

Senator JACINTA COLLINS—I like getting technical, Mr Tune.

Mr Tune—STINMOD itself, which has been developed by NATSEM, has an undercount of the number of families receiving FTB in it. So it needs to be augmented by some administrative data. That is what was done. The augmented data was used to cost the various measures.

Senator JACINTA COLLINS—What is the disaggregated cost of each of the components for family tax benefit A, the $600 per child increase in the maximum rate, plus the reduction in taper from 30 per cent to 20 per cent?

Mr Tune—You cannot actually do that because of the interactions involved. The way we cost these things is that you take FTBA and you cost the changes that you are proposing for that as a package. To give you an example, in a package where you have a $600 per child increase and you also have a change in the taper rate, the $600 per child by itself increases the range of incomes over which a 30 per cent taper would apply. You then apply a 20 per cent taper to that. It extends it out even further. So you cannot actually break it down into its component parts. If you do, you will make a mistake. You will undercost it. So you have to

get the interactive effects, and that is the way we did it. We have not broken it up further than that.

Senator JACINTA COLLINS—So you have not broken it up any further than dealing with its interactive parts?

Mr Tune—That is right. So it is a combined costing of the two elements.

Senator JACINTA COLLINS—Does costing take into account those families with an end-of-year lump sum payment that will never be made because they simply offset existing debts?

Mr Tune—The one-off payment?

Senator JACINTA COLLINS—Yes.

Mr Tune—No, there is no offset against debts for the one-off payment.

Senator JACINTA COLLINS—Previously this debt may have been paid off at the end of the year, whereas there is now a compulsory repayment of up to $600 for anyone with a debt of $600 or more. This has a timing benefit for government, doesn't it, in relation to the $600 payment?

Mr Tune—Sorry, you are not on the one-off payment anymore; you are on the ongoing $600 payment?

Senator JACINTA COLLINS—That is right.

Mr Tune—What was the question?

Senator JACINTA COLLINS—Sorry, the earlier question was not about the one-off payment, so let us go back to that one. Does costing take into account those families with an end-of-year lump sum payment that will never be made because they simply offset their existing debt? So we are talking about the second payment now.

Mr Tune—The ongoing $600 payment does have provision for a debt to be offset; that is true. With respect to the costing, it is very hard to get a handle on the time frame or the debt repayment profile—I suppose that is what you would call it—of the existing stock of debt. Also, nobody knows at this point in time what is going to happen in respect of 2003-04 because the reconciliations have not been done. So it is almost impossible to take account of that in the way you go about doing the costing.

Senator JACINTA COLLINS—So you have not?

Mr Tune—No.

Senator JACINTA COLLINS—Does that then mean you have not costed the timing benefit of it being paid off earlier than it would normally be?

Mr Tune—The timing benefit to whom?

Senator JACINTA COLLINS—To the government.

Mr Tune—No.

Senator JACINTA COLLINS—This would, however, affect the budgeting for family tax benefit payments by reducing the receivables variable?

Mr Tune—The receivables variable? I am not sure what that means.

Senator JACINTA COLLINS—The receivables variable is the variable that you would take into account given that ordinarily it would be more costly to recoup those payments over time than in one immediate payment up front.

Mr Tune—I am just trying to think through the implications of what you are saying. I am not sure I actually follow, Senator.

Senator JACINTA COLLINS—The receivables variable will measure the additional cost associated with receiving back those debts over time. I am asking whether your costings took into account, in receiving the debts or $600 of those debts earlier than would ordinarily occur, the benefits in the package for that.

Mr Tune—That is true; that would be the case. If you are getting the debt paid more quickly, yes, there is an impact there.

Senator JACINTA COLLINS—So what is the scale of this reduction in receivables?

Mr Tune—As I said, we have not been able to factor that in because we do not know what it was.

Senator JACINTA COLLINS—You did not factor it in?

Mr Tune—We do not know what the debt repayment profile was, we do not know what is going to happen in 2003-04, so we cannot cost it in there.

Senator JACINTA COLLINS—We do know what the pattern has been to date.

Mr Tune—That pattern is somewhat old. It also depends on how that is reflected, of course, in the forward estimates, because that is the basis on which everything comes off.

Senator JACINTA COLLINS—Yes. We will get to that point.

Mr Tune—You need to be consistent across the two things.

Senator JACINTA COLLINS—On your assumptions, how many families are expected not to receive the full benefit of the $600 per child payment as a result of outstanding family tax benefit or child-care benefit debts or new reconciliation debts?

Mr Tune—We have not worked that through yet.

Senator JACINTA COLLINS—You have not worked it through yet?

Mr Tune—No.

Senator JACINTA COLLINS—How have you costed the forward estimates?

Mr Tune—We worked through the $600, and costed that. We did not include the debt stuff, because we do not know what it is. Therefore, there is no assumption in there about what proportion of that will go into debt.

Senator JACINTA COLLINS—Can you tell me what the policy rationale for the lump sum payment is? Is it simply about sorting out the family tax debts problem or is there some other policy rationale for it?

Mr Tune—Which lump sum payment are we talking about now?

Senator JACINTA COLLINS—Let us start with the initial one.

Mr Tune—The initial one is to provide additional assistance to families to help them raise their children. The second one is about that and it is also there to assist people who may have an overpayment. It will assist them to repay that overpayment. But the primary function is to provide additional assistance to families to help them raise their kids.

Senator JACINTA COLLINS—In terms of providing for additional assistance, I would expect on analysing the forward estimates in relation to that $600 payment to see that its value is maintained over time?

Mr Tune—Yes, and that is the case. If you look at the legislation, that is indexed over time.

Senator JACINTA COLLINS—It is indexed over time?

Mr Tune—It gets incorporated into the base rate or the existing rates of FTBA. It gets indexed.

Senator JACINTA COLLINS—Were Treasury officials involved in meetings with other departments that discussed the design of the increase in the rates of family tax benefit A of $600 per child to be paid as a lump sum upon reconciliation of entitlement?

Mr Tune—Yes, we were.

Senator JACINTA COLLINS—Over what period did those considerations occur?

Mr Tune—As I said before, in the context of developing the budget.

Senator JACINTA COLLINS—So just in the stage immediately before the budget?

Mr Tune—Yes, over the course of that month that I mentioned earlier.

Senator JACINTA COLLINS—These were not options being considered, at least to Treasury's knowledge, before then?

Mr Tune—You asked about the work and family task force before. Some of those options had been considered along with many other options in the context of the work and family task force. That task force has not met during the course of 2004 so there was a discrete break in the process.

Senator JACINTA COLLINS—But earlier than that, this was one of the options that they were contemplating?

Mr Tune—I think it was. I cannot recall specifically.

Senator JACINTA COLLINS—Could you check for me?

Mr Tune—I cannot confirm or deny what was in a document that went to cabinet.

Senator JACINTA COLLINS—No, but you can check your recollection of evidence that you have put before this committee. You said that you did not recall and I am asking whether you can clarify your recollection for us.

Mr Tune—Yes, I can do that. Whether I can then pass that information on, I think is a matter that I need to consider. If it is going to material that was then put before the government as a confidential matter I would not be able to divulge that.

CHAIR—Take that question on notice and if, having refreshed your memory, you consider that you should take that objection, then you can take that objection in your written response.

Mr Tune—Certainly.

Senator JACINTA COLLINS—Were any alternative options to the lump sum payment considered?

Mr Tune—I think that goes to development of policy advice to the government that I cannot really talk about.

Senator JACINTA COLLINS—What is the projected value of the $600 payment after adjusting for inflation in each of the forward estimate years?

Mr Tune—I do not know. I guess on the basis of a CPI of about two and a bit per cent over each year of the forward estimates you are looking at a two per cent to a 2.5 per cent increase per year.

Senator JACINTA COLLINS—So it is CPI adjusted?

Mr Tune—Yes.

Senator JACINTA COLLINS—How many additional families are expected to become eligible for family tax benefit A as a result of the $600 family tax benefit supplement extending the taper range from the base rate of payment to zero? I understand STINMOD would provide that.

Mr Tune—There are a couple of impacts going on there. On that particular thing alone it is in the order of under 10,000, I think.

Senator JACINTA COLLINS—Is it the case that these families constitute the only group of families to become newly eligible for family tax benefits?

Mr Tune—No. At the moment families can make a choice between youth allowance and family tax benefit and take whichever one is most advantageous to them. The addition of the $600 to the rates of FTBA changes that choice for some people and makes it more advantageous for them to switch from youth allowance to FTBA. So there is an impact there and we would expect people to move across from youth allowance to FTBA.

Senator JACINTA COLLINS—What is the order of that?

Mr Tune—Fifty thousand or 60,000—somewhere in that order. These numbers are a bit loose; there is still some analysis being done on these things with FaCS.

Senator JACINTA COLLINS—The value of people shifting from youth allowance back to family tax benefit, because it is more advantageous, is going to be different from the value of those becoming newly eligible, won't it?

Mr Tune—In quantum? You would expect so, yes. It varies. A person who at the moment is not entitled to FTBA because they are right on the limit of about $85,000, or whatever it is for one child, will actually gain $600. Then it tapers away to zero from there over a range of $2,000. So the maximum gain for the first group of newly eligible ones we talked about is $600 tapering to nil. This group is probably up to $600, I suppose, so it is hard to say whether it is a different order of magnitude.

Senator JACINTA COLLINS—So it is up to $600 and then back down again to nil in their case.

Mr Tune—Yes.

Senator JACINTA COLLINS—Excluding the $600 family tax benefit supplement, how many families will have an increased rate of fortnightly payment as a result of the taper change?

Mr Tune—I do not think I have that information for you.

Senator JACINTA COLLINS—Would you take that on notice?

Mr Tune—Certainly.

Senator JACINTA COLLINS—What is the average fortnightly increase in family tax A that will occur as a result of the taper changes for family tax benefit A?

Mr Tune—I will have to take that on notice also.

Senator JACINTA COLLINS—Is Treasury aware that FaCS and Centrelink have advised that they will not be able to provide the $600 payment until September, this is the ongoing $600, because they were not notified early enough in the policy development process?

Mr Tune—I do not know about the last part of your question, but I am aware that the $600 will be payable from early September.

Senator JACINTA COLLINS—When did you first become aware of that issue?

Mr Tune—Prior to the budget.

Senator JACINTA COLLINS—How early in the budget consideration process?

Mr Tune—It was at the stage where we were talking about implementation with those agencies.

Senator JACINTA COLLINS—At what stage was that?

Mr Tune—It was in that period prior to the budget, that month I was talking about.

Senator JACINTA COLLINS—Early in the month or late in the month?

Mr Tune—It is hard to say. I assume it was later rather than sooner because you develop the policy first and then you think through the implementation implications.

Senator JACINTA COLLINS—But consideration about lump sum payments has been on the board for some time.

Mr Tune—I am talking about the development of the package that was in the budget.

Senator JACINTA COLLINS—When was Centrelink advised that they would have to deliver this payment?

Mr Tune—When it was announced in the budget.

Senator JACINTA COLLINS—When was the implementation of this payment first raised with Centrelink?

Mr Tune—In that period that I was talking about. I think I have already answered that one, Senator.

Senator JACINTA COLLINS—No, you have answered that it was within a period of about four weeks. As it turns out, a period of about 12 weeks could end up being quite critical in the election process. Can you take on notice to provide the date on which the implementation of the payment was first raised with Centrelink?

Mr Tune—Yes.

Senator JACINTA COLLINS—Was there any analysis undertaken in respect of the increased work force participation of parents resulting from the changes in family tax benefit?

Mr Tune—No, there was not, and it is not usual that we would take account of those sorts of things in doing the general static costings. That is the standard.

Senator JACINTA COLLINS—But the government has previously incorporated behavioural responses in costings, hasn't it?

Mr Tune—For very big packages—for example, it did so in the context of the new tax system, which was a huge package. This is not quite the same order.

Senator JACINTA COLLINS—Because this package is not as large as ANTS?

Mr Tune—It is also difficult to do. In fact it is extremely difficult, if not impossible, to do in any intricate way.

Senator JACINTA COLLINS—Was time constraint one of the elements?

Mr Tune—No. It just would not be done.

Senator JACINTA COLLINS—Who did the analysis of the impact of changes to family tax benefit on work incentives—Treasury or FaCS?

Mr Tune—It was done jointly.

Senator JACINTA COLLINS—Has it been completed?

Mr Tune—No. There is still more work to be done because there are all sorts of implications that need to be thought through.

Senator JACINTA COLLINS—When do you anticipate that the process will be completed?

Mr Tune—In the next few weeks probably.

Senator JACINTA COLLINS—How many families will have an increased rate of family tax benefit B as a result of this measure?

Mr Tune—I think the *More help for families* booklet talks about 550,000 families.

Senator JACINTA COLLINS—What is the average rate of this increase?

Mr Tune—I do not know that, but I suppose one way of finding that would be to divide 550,000 by the cost. I will have to take the detail of it on notice.

Senator JACINTA COLLINS—How many families will become newly eligible for family tax B?

Mr Tune—I will have to take that one on notice as well.

Senator JACINTA COLLINS—What is the average of the new benefit they will receive?

Mr Tune—I will take that on notice.

Senator JACINTA COLLINS—How many families face reduced effective marginal tax rates as a result of the changes to family tax B?

Mr Tune—Looking at these sorts of impacts is the work that is ongoing.

Senator JACINTA COLLINS—Perhaps you can take that on notice, and by the time we get your answers it might have concluded.

Mr Tune—I am sorry?

Senator JACINTA COLLINS—Perhaps you could take it on notice and, in the time frame of responding to this round of estimates, your other work may have concluded.

Mr Tune—That may be so.

Senator JACINTA COLLINS—Is it the case that the measure has resulted in an increase in the effective marginal tax rates for some families?

Mr Tune—Whenever you change taper rates it is almost axiomatic that they will decrease for some and will increase for others. It is like a—

Senator JACINTA COLLINS—You are not going to tell me it is like a sausage.

Mr Tune—No, I was going to use another analogy. I usually use the analogy of a pumped up balloon where you push in somewhere and it pops out somewhere else. That is the mathematics of it.

Senator JACINTA COLLINS—Are you able to tell me how many families will face a higher effective marginal tax rate?

Mr Tune—No, I cannot.

Senator JACINTA COLLINS—Is that some of the work that is being conducted?

Mr Tune—This all has to be done, yes.

Senator JACINTA COLLINS—Can I ask you to consider that in the responses to questions on notice?

Mr Tune—Yes.

Senator JACINTA COLLINS—Does the new taper range for the family tax benefit now overlap with the partnered parenting payment?

Mr Tune—I think it always did.

Senator JACINTA COLLINS—My understanding was that previously it did not, generally.

Mr Tune—No, I think it always did. What happens is that it is income for the purposes of the family tax benefit B; therefore, there has always been an interaction there. The interaction changes because you change the taper rate.

Senator JACINTA COLLINS—Has the scope of that interaction increased?

Mr Tune—You would think so, yes.

Senator JACINTA COLLINS—Was Treasury aware of this problem prior to the budget?

Mr Tune—Yes, but it is not a problem; it is an issue—it is just a consequence.

Senator JACINTA COLLINS—It is a problem if you are looking at return to work incentives.

Mr Tune—If I can put it another way: if it were not there, you would not have the big increases in assistance for those people that are evident in the cameos that went out with More Help for Families.

Senator JACINTA COLLINS—If what were not there—the partnered parenting payments?

Mr Tune—Yes. If you did not have that interaction, you would not have received those benefits. That is how they arise.

Senator JACINTA COLLINS—But there are ways of achieving benefits without necessarily affecting effective marginal tax rates, aren't there?

Mr Tune—You could have increased the maximum rate of assistance, but that would have been extremely costly.

Senator JACINTA COLLINS—So when did Treasury become aware of the particular problem in relation to the partnered parenting payment?

Mr Tune—I do not accept that it is a problem.

Senator JACINTA COLLINS—So you are suggesting it is not a concern to the department that these effective marginal tax rates may act as a disincentive in return to work?

Mr Tune—There are a couple of steps in all of that. I agree that there is an interaction. It may or it may not impact on effective marginal tax rates; some of them go down, some of them go up. Then you need to work through whether that has any impact on work incentives. That is a very difficult thing to do and quite a bit of analysis would be needed to come to a judgment about those things. There is no right answer to these things.

Senator JACINTA COLLINS—And that analysis is occurring now, isn't it?

Mr Tune—We are having a look at those sorts of things, yes.

Senator JACINTA COLLINS—So when did you first identify this issue that you are now doing an analysis about?

Mr Tune—This issue is a consequence and flows straight through into the system. When you model the system and model the benefits that you get from these changes you see it there. It is part of the system. As I said, that is how you get those benefits to those low-income groups.

Senator JACINTA COLLINS—When did you decide to commence analysis of this particular issue.

Mr Tune—This is one part of a wider set of issues around those sorts of things.

Senator JACINTA COLLINS—Yes, and when did you decide to cast particular analysis to it?

Mr Tune—Once the budget is done and all that material has been prepared, as you go through the implementation phase, you start to think about some of these things and put in train processes to address them.

Senator JACINTA COLLINS—In assessing the issues in this area, would it be fair to say that an increase in an effective marginal tax rate is likely to be a greater concern when it relates to families that are starting from a situation of already high effective marginal tax rates?

Mr Tune—No, I do not think you can be emphatic about that. It depends what the increase was and over what income range it applies. If it is only over a very small income range, most people will jump straight through. That is what I mean about this judgment. You have to be very careful about making judgments—just looking at the bare numbers and saying, 'That therefore equals a change in the disincentives to work or the incentives to work.' It is not quite that simple.

Senator JACINTA COLLINS—Let me give you a cameo. I presume you will have to take it on notice. I have given FaCS the same cameo. Let us see if you reach the same concern. Is it not the case that a dual-income family with two children, one under five, on $23,000 per annum will experience an effective marginal tax rate of 93 per cent if a secondary income earner increases their earnings from $8,000 per annum—so that is the ratio of earnings—an increase of six per cent over the pre-budget effective marginal tax rate, which would have been 87 per cent for the same family?

Mr Tune—I have no idea. I will have to take that one on notice, certainly.

Senator JACINTA COLLINS—I understand. Tell me if our factoring is wrong there, or confirm it if your analysis finds the same result. I turn back to the budget assumptions on participation effects. Did that not occur in relation to the Australians Working Together package? Assumptions were made about behavioural change in that package.

Mr Tune—I do not know. I was not involved in developing that one.

Senator JACINTA COLLINS—Perhaps you could confirm for me whether that was the case.

Mr Tune—That is an issue for FaCS.

Senator JACINTA COLLINS—Why is that?

Mr Tune—They developed it.

Senator JACINTA COLLINS—On their own?

Mr Tune—In the main, I think, yes. There was a task force looking at it, but they would have done the costings on it.

Senator JACINTA COLLINS—So on that occasion it was not a joint Treasury-FaCS exercise.

Mr Tune—I do not know. I was not involved, so I cannot really comment.

Senator JACINTA COLLINS—Did this package not assume participation effects as a result of welfare reforms?

Mr Tune—This one or the previous one?

Senator JACINTA COLLINS—This one.

Mr Tune—No, I said it did not.

Senator JACINTA COLLINS—This one does not. But it does show that these effects have been included before, doesn't it? You are just arguing that the effects were included before, but only in larger packages. I am advised that Australians Working Together did incorporate such effects.

Mr Tune—You may be right, Senator Collins; I just do not know. I cannot confirm or deny it. I have no idea.

Senator JACINTA COLLINS—But it does seem to question your understanding that in larger projects such as ANTS you might do it, but in projects of this magnitude you have not.

Mr Tune—I do not know what I am comparing it against, so I cannot comment, I am sorry.

Senator JACINTA COLLINS—You were comparing it against ANTS.

Mr Tune—But now you have compared it against another package which I do not know anything about, so I cannot draw that comparison.

Senator JACINTA COLLINS—Why would you not take such effects into account in a package such as this?

Mr Tune—Largely because they are so uncertain. Even when you do it for a large package it is a macro number; it is not a detailed microanalysis of these things. You take it on a macro scale.

Senator JACINTA COLLINS—I would have thought that the larger the package the more compounded the uncertainty.

Mr Tune—That is exactly right, but you can look more at the broad macroeffects. That is the way it was done in ANTS. It is very hard to do it at a micro scale with this one.

Senator JACINTA COLLINS—But other modellers do, don't they?

Mr Tune—Other models do.

Senator JACINTA COLLINS—Modellers.

Mr Tune—I do not know. I know that the Melbourne Institute does some work on this stuff. But I would not say that there is universal agreement about that model—not by a long shot.

Senator JACINTA COLLINS—About the Melbourne Institute model, no, but that is not the only model that takes into account behavioural effects.

Mr Tune—As far as I know it is, yes. On this sort of stuff I think that is true, at least in Australia.

Senator JACINTA COLLINS—I move on to the issue of Treasury's involvement in FaCS's forward estimates. Are you aware of the discussion that occurred within the FaCS estimates with respect to my concern raised about answers to questions on notice concerning estimates of future years' administered expenses being regarded as confidential?

Mr Tune—Yes, I am.

Senator JACINTA COLLINS—Can you explain why the assumptions underlying them are now regarded as confidential?

Mr Tune—It is probably true to say that they have always been confidential. They are parameters which, in part, are not released by the government as part of the budget process. The lead-on from that is that they get reflected in some of the calculations that are done around expenditure in the out years for the administered items of FaCS; hence there is a flow-through effect. So if the assumptions are not released it is difficult to release the expenditures that—in part, at least—flow from them.

Senator JACINTA COLLINS—That does not explain to me why those assumptions cannot be transparent.

Mr Tune—It is a decision made by the government not to release those assumptions.

Senator JACINTA COLLINS—So it is a government decision not to be transparent about how they calculate their forward estimates?

Mr Tune—It is the government's decision about what it releases in the budget.

Senator JACINTA COLLINS—Why would that material have been made available for the past six years?

Mr Tune—I have no idea. That is a FaCS issue. I was not aware of it and I do not think Treasury was aware of it in the past.

Senator JACINTA COLLINS—It is not just a FaCS issue. Forward estimates are provided to a number of Senate estimates committees.

Mr Tune—It depends how they are built up though. It is not so much the fact of the forward estimates; it is the assumptions that are underlying them which the government has decided not to release.

Senator JACINTA COLLINS—In some cases, but in others it is okay to release them.

Mr Tune—In other cases they may just be dollar amounts with no underlying assumptions like that built into them.

Senator JACINTA COLLINS—Would the forward estimates for DEST involve assumptions that the government might believe should remain confidential?

Mr Tune—It depends which ones you are talking about. I am not totally familiar with the forward estimates for DEST.

Senator JACINTA COLLINS—The issue for DEST is that, at the time we were being told that Treasury was holding confidential the forward estimates for FaCS, forward estimates of the same nature were provided to DEST.

Mr Tune—It is not true that Treasury were withholding permission for FaCS.

Senator JACINTA COLLINS—I am responding to what I was told the other day. This is your opportunity to correct the record.

Mr Tune—I can run you through the process as I was involved in it. There may have been other processes; I do not know. FaCS approached Treasury about whether it was appropriate for them to provide this information. I said, 'It looks as if it might be using some assumptions that are not generally released with the budget; when you are developing your answer, would you mind passing it by us to have a look at and hopefully agree on.' On that basis, FaCS drafted an answer to the question. It was sent to Treasury and Treasury agreed with it.

Senator JACINTA COLLINS—Agreed with what?

Mr Tune—With the draft answer—we concurred with it. But the decision as to what answer to give was solely for FaCS; it was not for us.

Senator JACINTA COLLINS—You concurred with the answer.

Mr Tune—All we did was agree with it and say, 'That looks fine.' But it is always the decision of FaCS as to what they do; it is not for us to decide what they do.

Senator JACINTA COLLINS—FaCS tells us that this material is Treasury's.

Mr Tune—The assumptions underlying it are a Treasury responsibility.

Senator JACINTA COLLINS—The question sought the provision of the latest detailed four-year forward estimates expenditure for all administered appropriations across all output groups. The answer provided was, 'Estimates of future years administered expenses, other than those published, and the assumptions underlying them are confidential.' Essentially, no further information was provided. From what you are saying, this is obviously not the answer Treasury saw.

Mr Tune—I think it is.

Senator JACINTA COLLINS—It is not an answer to: 'What are the forward estimates?'

Mr Tune—A draft answer to the question on notice was provided by FaCS to Treasury. Treasury had a look at that answer and said, 'Yes, that looks fine.' It conveyed that to FaCS. FaCS then made a decision as to what they wanted to do. They could either run with that answer or do something different; it was up to them.

Senator JACINTA COLLINS—That is very interesting. It seems to indicate that FaCS have made a decision themselves, rather than Treasury, that this is the point in time when they no longer want to provide forward estimates.

Mr Tune—Quite clearly I cannot tell FaCS what to do.

Senator JACINTA COLLINS—I will revisit this with FaCS tomorrow. We have already found a number of answers that are contradictory in the evidence provided to us the day before. This just adds to it.

Mr Tune—I do not know; it is a matter for them. I am telling you how we see it from our side. They certainly consulted us. We said that the assumptions underlying those things are confidential, as stated in the answer to the question on notice, and from there it was for them to decide what to do.

Senator JACINTA COLLINS—Do the estimates for DEST involve confidential underlying assumptions?

Mr Tune—I do not even know whether they are released.

Senator JACINTA COLLINS—They are.

Mr Tune—The norm is that forward estimates are only released for the coming year—in this case, 2004-05. That is what would be in a department's portfolio budget statement, and that is the generality of it.

Senator JACINTA COLLINS—Mr Tune, you came from FaCS to Treasury, didn't you?

Mr Tune—Yes, I have worked in FaCS.

Senator JACINTA COLLINS—You are not aware that, for the last six years, FaCS has delivered four-year forward estimates to our estimates committee?

Mr Tune—No, I am not.

Senator JACINTA COLLINS—You are not aware of the fact that DEST released four-year forward estimates in the last round of answers to questions on notice?

Mr Tune—No, I am not.

Senator JACINTA COLLINS—But you are aware that you advised a FaCS officer that the underlying assumptions, in some cases, may be confidential—

Mr Tune—Are confidential. The government has decided not to release them; therefore, they are confidential.

Senator JACINTA COLLINS—When did the government decide not to release them?

Mr Tune—It is what is in the budget papers; they are not there.

Senator JACINTA COLLINS—Yes, I know that. But when did the government decide to apply this approach to forward estimates? Frankly, it seems that the experience we had in this committee last night is being confirmed again here today: 'We might as well not bother having Senate estimates because the government has decided that if it is not printed in the budget papers, we can't talk about it.'

CHAIR—Senator Collins, you are not Senator Conroy. We expect better of you than that. These gratuitous diatribes are not appropriate. Questions, not statements, please.

Senator WONG—It is reasonable to ask when that decision was taken.

CHAIR—I am not overruling that; I am simply saying these sorts of gratuitous commentaries on the responses which do not take the form of questions are, strictly speaking, not in order.

Senator JACINTA COLLINS—Chair, the question was: when was the decision made that Treasury should not answer any question other than where the information is printed in the budget papers?

CHAIR—Does the witness accept the premise that that was the decision?

Mr Tune—That the government decided that?

CHAIR—Yes.

Mr Tune—All I know is what is published now.

Mr McCullough—After we had our discussion last night, I went back to look at this very issue that was raised about a year ago. Mr Smith, of course, is not with us anymore, but he addressed this issue directly and I believe that you, as chair, ruled on his position. Mr Smith had referred to a longstanding practice not to disaggregate figures that had been included in budgets. I think that is the principle that Mr Tune is referring to: the government chooses the information to publish in its budget papers. If it is a question of wanting additional information that is not published, then it has been—in Mr Smith's assertion—a convention for quite some time that the question is taken on notice in order that it be referred to the minister for the minister to then decide whether a greater level of disaggregation or a further amount of information is to be published.

CHAIR—I will review that ruling. But, for the time being, what I understand Senator Collins to be asking is the date on which a decision was made and she has, in putting that question, characterised the decision. If it is a fair characterisation of the decision or if it is accepted that a decision to that effect was made, it would be a fair question to ask on what date such a decision was made. But if you do not accept the characterisation of the decision or you do not accept that such a decision was ever made, then it is not a fair question because it is based on a false premise. Whichever of those two propositions obtains, you can take the question on notice.

Mr Tune—I do not know the answer, regardless of which premise I accept, so I would have to take it on notice.

Senator JACINTA COLLINS—The response by Mr McCullough certainly fits with some of the discussion that we had last night about our understanding from this end of the process. Certainly, my participation in this committee in the past—which was some years back—was that this was not the case. Senator Conroy has informed me that, for the last 12 months, it has been the case, which seems to concur with your discussion then about Mr Smith. My concern is that this approach seems to be now extending into other estimates committees, where we are being told information that has historically been made available quite routinely is now not to be made available, although there is some difference in the character of the response in terms of precisely who is responsible for that.

Mr Tune has told me today, contrary to what we were told two days ago in FaCS, that FaCS prepared an answer to a question providing essentially no information on the basis of Treasury's advice that to provide such information would be providing confidential material. The answer did not say: 'The minister has considered your request for such underlying assumptions to be received and has decided not to disaggregate.' The answer simply said that such material was confidential.

CHAIR—Where is this going, Senator Collins? Are you going to raise a point of order or ask for a ruling, or are you just saying that by way of observation and then you are going to go to another question?

Senator JACINTA COLLINS—I am saying it by way of observation and then I am going to another question. But in doing so I think I am highlighting that this is of much greater magnitude than just dealing with this issue with these officers. Whilst you, perhaps unfairly,

characterised my earlier comments as 'a diatribe', I think this is actually a serious issue for the Senate and we may need to refer it there.

CHAIR—I do not characterise the comments you have just made as a 'diatribe', Senator Collins.

Senator Coonan—Since I have been the minister in this portfolio, this has certainly been the approach of this committee. I do not know what other committees do, so I can only hear what Senator Collins has raised. Where it goes from here, we may all have to consider, but certainly this has been the position in this committee. I have never been the minister at the table in any others, I don't think—certainly not FaCS.

CHAIR—All I can do is listen to the questions one by one. The overriding rule, as we all know—and as the opening statement affirms every morning—is that there is no area in connection with the expenditure of public funds in respect of which there is a discretion to withhold an answer. That rule is itself subject to the overriding principle of relevance, which the standing orders also acknowledge, and, as a matter of ordinary process, issues such as procedural fairness; for example, a witness cannot be asked something which is on a false premise as if the premise were accepted by the witness. There are other conventions and practices of the committee, some of which are expressly acknowledged by the standing orders—so I suppose those are not practices; they are actual procedural rules—like the policy exception as it has been interpreted over the years. There are other practices as well. For example, there is no standing order which prohibits senators asking about the affairs of an individual taxpayer and there is no standing order that prevents senators asking about current investigations by regulators such as ASIC. But it has always been accepted practice in this committee—accepted by senators from all parties—that questions such as that should not be asked and need not be answered if they are. As to whether or not there is a practice in relation to questions of this kind, I will listen carefully to the questions and, if I need to seek advice, I will.

Senator Coonan—Mr Chairman, I take on board what you say. In all of these things, I suppose, in terms of the conventions and practices, it is a matter of getting the balance right. Practices have been in place for a long time. It has never been the practice of any government at estimates that I am aware of—and I have looked at some past ones—to talk about some of the confidential information that goes into the estimates. If we are going to start raking that over, it raises a whole lot of issues. I think we have put it fairly and squarely on the table. I have listened to Senator Collins and I will also listen very carefully to how we go from here.

Senator JACINTA COLLINS—The example that I covered earlier is a pertinent one. I asked questions about disaggregating the $3 million in each year from 2005-06 in relation to the extension of charity bill. It was a straightforward response: 'I don't know that at the moment, Senator. I will take it on notice.' Whereas the response to these questions seems to be: 'I'll take that on notice, Senator, because that disaggregation, or those underlying assumptions, may be confidential.' I cannot understand the difference between my questions essentially about the disaggregation in the forward estimates in relation to the financial impact of the extension of charity bill and the forward estimates that I am now talking about with regard to portfolio outputs.

CHAIR—It is always safest in cases like this to listen to the question and apply the rules to each question once the question has been put, rather than anticipate where the questioner might be going.

Senator JACINTA COLLINS—What is important now for me, given what I have said about evidence that we received in FaCS, is to clarify with Treasury their evidence about how this particular case was dealt with.

CHAIR—All I can suggest to you is that you put your questions. If the minister wants to invoke an objection then she will no doubt do so, or if, independently of that, it seems to me that the questions are not in order then I will indicate that is my view. We will just have to proceed step-by-step.

Senator JACINTA COLLINS—Okay. Mr Tune, does Treasury provide guidance to other departments in relation to their policy on publishing forward estimates? Or is that a matter for other departments?

Mr Tune—It is a matter for other departments. The formal provision of guidance on portfolio budget statements would come via the Department of Finance and Administration, actually.

Senator JACINTA COLLINS—Did Treasury provide advice to FaCS on the information to be contained in the FaCS forward estimates?

Mr Tune—On the assumptions underlying those forward estimates, yes it would have.

Senator JACINTA COLLINS—No, did you provide advice on what information they should contain in their draft answer that, on your earlier evidence, was then reviewed?

Mr Tune—No, as I said earlier the sequence of events was that we were approached by a fairly senior FaCS person—

Senator JACINTA COLLINS—What was the name of that person?

Mr Tune—I think it was Serena Wilson—and that was to me. We had a discussion over the phone about that. She raised the possibility with me that some of the information may be confidential that underlies these estimates—some of the assumptions underlying the estimates—and I said: 'Yes, I think it is. Would you mind, when you're doing your draft answer, to send us a copy. We'll have a look at it and get back to you.' That was the agreement. They did that, we okayed it—said it was fine from our point of view—and then they did what they wanted to do after that.

Senator JACINTA COLLINS—So the draft that you saw was essentially the answer that was then presented?

Mr Tune—Yes, that is correct.

Senator JACINTA COLLINS—Did you seek advice within Treasury as to whether that answer should be provided?

Mr Tune—Some of my people spoke to others in Treasury—those that look after the budget, for example. Everybody was agreed that this was okay.

Senator JACINTA COLLINS—Who was everybody in this case?

Mr Tune—Other people in Fiscal Group.

Senator JACINTA COLLINS—Can I have the names of those people, please?

Mr Tune—They were people in the Budget Policy Division. I could not tell you the names of them.

Senator WONG—Do you mean you do not know the names?

Mr Tune—I am not entirely sure, to tell you the truth. One of my people handled the discussion with the Budget Policy Division. I would have to check with that person as to whom they spoke to.

Senator JACINTA COLLINS—When you were considering this, were you aware that it had been routine practice for FaCS to provide this information?

Mr Tune—I am not sure, I could not tell you. It may have been mentioned in the discussion I had with Serena Wilson, but prior to the discussion I certainly had not been aware of it. It may have been alluded to in that discussion, but I cannot say for certain whether it was or was not.

Senator JACINTA COLLINS—Is there anything unique in this round of forward estimates as opposed to previous years as to why the information or the underlying assumptions would be regarded as confidential?

Mr Tune—No. I cannot think of anything different from this year to others.

Senator JACINTA COLLINS—Is there a public interest argument for FaCS to be told not to provide the information in forward estimates that has been provided in previous years? If so, what would that argument be?

Mr Tune—FaCS was not told to do something by Treasury. That is not the case. We agreed to a draft answer that they provided to us.

Senator JACINTA COLLINS—Is there a public interest argument for not providing information that may reveal underlying assumptions to these forward estimates?

Mr Tune—If there is a decision for those assumptions not to be released, yes, there is.

Senator JACINTA COLLINS—In this case, what would that public interest argument be?

Mr Tune—It is a decision of the government. That is all I can say. They do not release that information. Therefore, we have to comply with the decision.

CHAIR—I do not think it is fair to ask a public servant that question. Perhaps it might be fair to ask the minister.

Senator JACINTA COLLINS—This is where we are actually crossing a critical point. Mr Tune has said to me that they had discussions within the budget policy division but he has now said to me that this is a decision for government.

CHAIR—I am not sure that those are inconsistent statements.

Senator JACINTA COLLINS—When was this matter referred to government?

Mr Tune—I thought you were asking me a very different question. You were asking me whether there is a case for releasing or not releasing. I was not commenting on that. I was

saying that the government has made the decision about what it releases. My job is to then ensure that the government's policy is complied with.

CHAIR—Mr Tune's opinion on a process issue is just not relevant, I do not think, and not something he can be held responsible for either. The minister can, obviously, but I do not think it is fair to ask a public servant that.

Senator JACINTA COLLINS—Mr Tune, how do you understand the government's decision? How do you characterise the government's decision about what information is to be released and what is not?

Mr Tune—How do I characterise it?

CHAIR—I think what Senator Collins is asking—and if my understanding is right I think it is a proper question—is what you understand to be the principle under which you are operating.

Mr Tune—The principle under which I operate is that the government has made a decision to release certain types of information in its budget material.

Senator JACINTA COLLINS—I am sorry; in this budget material?

Mr Tune—In budgets, not just this one; in budgets in the past. My job is to comply with that government decision and to implement that government decision. So the advice or assistance I was providing to FaCS was based on my understanding of what the government's policy is about the release of the assumptions underlying the forward estimates for FaCS's—

Senator JACINTA COLLINS—I am sorry; you do not release the assumptions underlying the forward estimates?

Mr Tune—Yes. That is the government decision. They are not released, not all of them.

Senator JACINTA COLLINS—This is the part I do not understand. The earlier discussion was that you would take on notice whether the government is prepared to release the assumptions. That is not what appears to have occurred in this case.

CHAIR—A witness can take the question on notice not merely because they do not immediately have the answer to hand but also because they want to consider their position in relation to a response.

Senator JACINTA COLLINS—That is right, and it is the consideration of that issue that does not seem to have occurred in this case, because the request about the answer to this question was not: 'These are the forward estimates and there are X, Y and Z assumptions that underlie them. Is the government happy to release that material?' The draft answer that was run by Treasury was: 'Estimates of future years administered expenses and the assumptions underlying them are confidential; blanket.' I am trying to understand what appears to be the case—that is, we are being told that no underlying assumptions are to be made available. If that is the case, I am asking what the public interest case for that is, to the extent that Mr Tune may understand it.

CHAIR—If that is where you are going, as I said earlier, I do not think that is a fair question to the public servant because what you are really asking him to do is a pretty direct violation of privilege resolution 1.16—that is, asking him to give a opinion about policy.

Senator JACINTA COLLINS—No, I am asking if he is—

CHAIR—The relevant policy is, as you assert, a policy not to release this information, and you are asking him what the public interest argument is in support of other policy. You are asking him directly to give an opinion about policy. You can ask the minister about that, but that is just out of order. I will read it to you just so we are talking about the same thing. Privilege resolution—I think it is under subresolution 16—says:

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

If it is the case that it is the policy of the government not to release certain categories of information, a question to a public servant: 'What is the public interest argument for this policy?' is about as obvious a case of asking the public servant to give an opinion about a matter of policy as I can think of.

Senator JACINTA COLLINS—We can deal with these two ways, Senator Brandis. I can ask the officer whether he is aware of the government's policy rationale for this principle or I can ask the minister what the public interest argument is.

CHAIR—I have suggested to you that you should ask the minister and, if you ask the minister that question, I think it is plainly a proper question. But it is not a proper question to an officer.

Senator JACINTA COLLINS—Maybe you could circumvent this process, Minister.

Senator Coonan—I am happy to answer. The public interest is that executive government has to be in a position where it can actually function by preparing a budget. You choose information that you publish in the budget. There is obviously other confidential information that goes into one's thinking and assumptions that go into the preparation of the forward estimates that traditionally are not for publication. The position in relation to an officer, as I understand it, is that if they wish to take a question on notice, they can do so. In this case, the assumptions are not mine—they are not within my knowledge—and the relevant minister is the Treasurer, who is in a position to say yes or no in relation to this. But I do think it is fair to say that executive government simply could not operate if you could not have any private deliberations about how you prepare estimates and you could not make choices as to what you put in your budget that is published.

Senator JACINTA COLLINS—Yes, Minister, but that does not appear to be what has occurred in this case. The traditional arrangement has been that government has provided the forward estimates for FaCS.

Senator Coonan—I am not sure about that, Senator. That is why I made the comment a little earlier. I do not know what happens in other committees. I do know what happens with Treasury, which is what I can deal with, and that is the rationale that you asked for.

Senator JACINTA COLLINS—On this occasion, rather than it being treated as it might ordinarily be treated in these discussions as a question on notice and as part of that notice process it being considered whether it was appropriate or not to release that information, in

this case just a blanket ruling has been taken that it is not in the budget papers and therefore it is not going to be out there.

Senator Coonan—If it makes any material difference to you—and I would not in any way pre-empt the answer—we can certainly take it on notice as a committee and we can ask the Treasurer. Clearly, there has to be confidentiality surrounding some of these processes. I would have thought that is unexceptionable. It is the only way that governments can operate, including governments before this one.

Senator JACINTA COLLINS—I do not think it is unexceptionable either. However, what does appear to be exceptional is a blanket ruling that has been applied in this case, which is: everything is confidential. That is not appropriate.

CHAIR—Senator Collins, say—just to give a hypothetical example—that the officers, in the course of developing ideas for the budget, made some working notes and in the course of developing those ideas they considered in a particular area of expenditure a variety of different policy options and ultimately elected to recommend to government option (a) and to reject options (b), (c), (d) and (e). Do you say this committee could, as it were, go behind the budget and not ask questions about what was in the budget but ask questions about what anterior policy choices were made, including by the rejection of alternative options in the course of preparing the budget?

Senator JACINTA COLLINS—No, I am not saying that at all.

CHAIR—All right, that is good. We have got that straight.

Senator JACINTA COLLINS—What I am saying is that the government has chosen an option and has costed an option and in that costing has built in assumptions about forward estimates.

CHAIR—So you are saying that the committee can test the costing?

Senator JACINTA COLLINS—The committee should be able to see what assumptions have been applied in the forward estimates in budget estimates—that is what I am saying.

Senator WONG—It is consistent with what has been referred to the committee for consideration.

CHAIR—I understand the point; I just wanted to make it as clear as can be. As I understand it, in response the officers have said that they will take that question on notice and consider their response. No doubt if their considered view is that they wish to maintain a ground of objection, then they will express that in writing and if you or the opposition are not satisfied with that you know what course you can pursue.

Senator JACINTA COLLINS—Let me wind up trying to clarify the process so that we can fully understand this before I go back to FaCS. Mr Tune, under whose authority did Treasury clear the answer?

Mr Tune—Mine.

Senator JACINTA COLLINS—Was it at any stage referred to the minister?

Mr Tune—No.

Senator JACINTA COLLINS—Has Treasury intervened in the approach taken by other departments in relation to the provision of forward estimates?

Mr Tune—No, we have not because we were not asked to.

Senator JACINTA COLLINS—You have not been asked?

Mr Tune—No.

Senator JACINTA COLLINS—So this was the first time, the first occasion, on which you have been asked?

Mr Tune—It is the first time that anybody has come near me to say, 'Is this okay?'

Senator JACINTA COLLINS—As far as you are concerned, the FaCS estimates are owned by FaCS?

Mr Tune—Certainly.

Senator JACINTA COLLINS—Not, as FaCS told us the other day, owned by Treasury?

Mr Tune—They are not owned by Treasury. You might be able to make an argument that they are jointly owned with Finance but they are not owned by Treasury, I can assure you.

CHAIR—This word 'owned' is vernacular.

Senator JACINTA COLLINS—It was not my word; it was Mr Sullivan's word.

CHAIR—You mean 'take responsibility for'?

Mr Tune—Exactly, and I do not think that is the case either.

Senator JACINTA COLLINS—So the Treasurer's office were not involved?

Mr Tune—No.

Senator JACINTA COLLINS—Were they apprised of the advice to FaCS?

Mr Tune—No, I do not think so. It was during the course of the budget and there were many other priorities.

Senator JACINTA COLLINS—Was anyone else within government departments or ministerial offices involved in this decision?

Mr Tune—I can only speak for the Treasurer's office, and the answer is no.

Senator JACINTA COLLINS—Was anyone else within government departments or ministerial offices, to your knowledge, made aware of this decision?

Mr Tune—No, not to my knowledge, other than the people I have spoken about in Treasury that were consulted in coming to a view.

Senator JACINTA COLLINS—Yes, but in your view that all falls within your authority?

Mr Tune—Yes.

Senator JACINTA COLLINS—You are the one taking responsibility?

Mr Tune—I was the one in effect that was signing off the thing.

Senator JACINTA COLLINS—Yes, for the Treasury side. Let me clarify this. This is the first time that someone who is from FaCS has said, 'Is this okay?' and you have said no.

Mr Tune—That is correct.

Senator JACINTA COLLINS—Have you been asked on other occasions or on other questions?

Mr Tune—No.

Senator JACINTA COLLINS—This is the only question?

Mr Tune—The only question—any question of any kind?

Senator JACINTA COLLINS—No, in terms of FaCS estimates. Is this the only time FaCS has said to you, 'Should we be releasing this sort of information'?

Mr Tune—To my knowledge that is the case, yes.

Senator JACINTA COLLINS—That is very interesting. Are you are aware of what prompted the question?

Mr Tune—I have no idea. Sorry, is this the question to me or the question on notice?

Senator JACINTA COLLINS—No, the question to you.

Mr Tune—No, not really, other than that I assume that some person was alerted to the fact that there may be some sensitivities about what was involved in the assumptions underlying the data that was going to be released. Somebody came to a view that 'we had better check with Treasury'.

Senator JACINTA COLLINS—So if another department such as DEST had asked you the same question, would you have said to them, 'Don't release your forward estimates'?

Mr Tune—I think it depends on what they are. As I was saying earlier, it is the assumptions that are implicit in them that are the issue here. The estimates themselves are of no concern to us whatsoever; they are someone else's responsibility. It is the fact that the assumptions, which are Treasury assumptions which the Treasurer and the government have decided not to release, could be found out about through the release of this data that is of concern to us—nothing more. So if the DEST estimates did not have anything about these assumptions in them they would be absolutely no business of mine whatsoever.

Senator JACINTA COLLINS—The DEST estimates deal with things such as forward estimates for Abstudy—that might be about the best example. Those Abstudy estimates would have drawn on those assumptions, wouldn't they?

Mr Tune—They could well do. I am not familiar with the arrangements for the Abstudy forward estimates.

Senator JACINTA COLLINS—You might get a call from DEST.

Mr Tune—I hope not.

Senator JACINTA COLLINS—So do we, because if we have gotten to the stage where we cannot see forward estimates of how the government's budget decisions play into the future then we are essentially wasting our time being here.

Mr Tune—I should clarify for the record that the four years of budget decisions are provided through Budget Paper No. 2 on both the outlays and the revenue side. It is for the

forwards estimates of the base where only the current year we are entering is provided. So for a new measure, four years are provided. You will see that in Budget Paper No. 2.

Senator JACINTA COLLINS—I understand that but, as I said, it is usual for many portfolios to provide their particular forward estimates, and this is what has not occurred in this case. If I understand you correctly, it is not usually for Treasury to play this sort of clearing-house role in whether material that might contain assumptions should or should not be released.

Mr Tune—That is correct.

Senator JACINTA COLLINS—Given your experience with FaCS, did it occur to you to contemplate what other departments are doing that might be using Treasury assumptions?

Mr Tune—No, it did not.

Senator JACINTA COLLINS—So it really was a FaCS driven exercise, from your point of view?

Mr Tune—Yes. As I said, they approached us, we responded with that request and that is as far as it went.

Senator JACINTA COLLINS—So the Treasurer has never felt it necessary to advise all departments that provision of forward estimates may involve Treasury assumptions that he would rather remain confidential?

Mr Tune—I am not aware of it.

Senator JACINTA COLLINS—I am ready to move on to the baby bonus. Would that be you as well, Mr Tune?

Mr Tune—It depends on what aspects you are looking at. Part of it is a tax issue for the revenue group.

Senator JACINTA COLLINS—On a more general policy involvement issue: is there a reason that PM&C were not involved in the budget process on these measures?

Mr Tune—Not particularly. These things were all developed as a package, as you would appreciate, so there were tax elements and family benefits elements. The policy development was done in that context.

Senator JACINTA COLLINS—It surprises me, given PM&C's role in the development of the work and family task force, that they did not participate at this level. It was not because of leaked material, was it?

Mr Tune—I could not answer that. I have no idea.

Senator JACINTA COLLINS—Going back in time to the baby bonus, on 19 February 2004 Senator Mackay asked whether the estimates for the baby bonus had been revised for the 2004-05 and the 2005-06 financial years, to which the now absent Mr Smith replied:

I think the revisions would have been provided in the additional estimates if there were any, but I know there are not any there.

Exactly how does that reconcile with the Treasurer's release very shortly thereafter on 31 March 2004 of the forward estimates for the baby bonus stretching all the way out to 2007-08?

Mr Tilley—I will have to check. I do not know the answer to that. The measure was recosted at some point. Obviously, the Treasurer made that information available. I am not sure exactly how that happened, but we can check.

Senator JACINTA COLLINS—You are aware that Labor announced its baby care payment policy, complete with offsetting savings, on 31 March 2004.

Mr Tilley—Yes, I am aware of that.

Senator JACINTA COLLINS—Are you aware that one of those savings was abolishing the baby bonus.

Mr Tilley—Yes.

Senator JACINTA COLLINS—Is it normal for Treasury to provide daily updates to the Treasurer on the forward estimates of programs?

Mr Tilley—No. I am not saying that we did that on that occasion.

Senator JACINTA COLLINS—No, I did not ask that question. Is it normal for Treasury to provide weekly or monthly updates on the forward estimates for programs?

Mr Tilley—We provide revisions to the budget forecasts on a regular, basically quarterly, basis; but we do specific costings at different times, depending on what we are requested to do and depending on particular circumstances, including things that are announced.

Senator JACINTA COLLINS—When were you requested to provide the update on that occasion?

Mr Tilley—I cannot recall when we were requested. Obviously, we provided that advice to the Treasurer at that time. I am not sure about when the costing was done.

Senator JACINTA COLLINS—Can you take on notice when that request was made?

Mr Tilley—Yes.

Senator JACINTA COLLINS—Do you tend to do it as a matter of course or just generally on request?

Mr Tilley—Do what?

Senator JACINTA COLLINS—Revised estimates.

Mr Tilley—We revise the revenue estimates generally, basically on a quarterly basis around the national accounts.

Senator JACINTA COLLINS—But in relation to particular measures—such as, in this case, the baby bonus—when would you ordinarily provide revised forward estimates?

Mr Tilley—There is no sort of general process by which we revise original costings. Normally, when a measure is announced, we provide a costing of that measure, which is announced at the same time. We do not, as a matter of course, go back and revise those costings subsequently. What typically happens is that that measure then becomes part of the

revenue base which it affects, and we then forecast that revenue base taking that changed policy into account.

Senator JACINTA COLLINS—It was a Mr Gallagher who signed off the note in this matter. Is Mr Gallagher not here?

Mr Tilley—No. Mr Gallagher works in my division. He is not here today—in fact, he is not in the country this week.

Senator JACINTA COLLINS—We will persist with your understanding, then, at this point. How long did it take for Treasury to confirm the forward estimates of the baby bonus provided to the Treasurer on 31 March?

Mr Tilley—I cannot recall the exact timing of what advice we would have provided. But, if it helps, my understanding is that it is not the situation that we did a re-costing at that point.

Senator JACINTA COLLINS—When had you done the re-cost?

Mr Tilley—That is what I said I would take on notice before. I do not know the exact timing of when these things happened. Some things are re-costed; this was re-costed. I do not know the exact context of that re-costing, but I have taken that on notice.

Senator JACINTA COLLINS—When did Mr Gallagher go overseas?

Mr Tilley—He is attending OECD meetings which are on this week. I cannot remember the exact day that he departed.

Senator JACINTA COLLINS—What date was the note signed by Mr Gallagher provided to the Treasurer's office? On that day?

Mr Tilley—I do not recall that, but I think that that minute was actually tabled in the parliament, so that would be a matter of public record. March 31 is the date on this note, which I assume is the minute that was tabled by the Treasurer in the parliament.

Senator JACINTA COLLINS—Yes, but was the briefing note provided to the Treasurer early in the day or late in the day?

Mr Tilley—I have no idea.

Senator JACINTA COLLINS—Mr Gallagher would know, would he?

Mr Tilley—He may recollect.

Senator JACINTA COLLINS—Do you know if it occurred before the Treasurer's press conference at 4.30 p.m. on that day, where he alleged that there was a hole in Labor's baby care payments costings?

Mr Tilley—I do not know what time of the day the minute was provided.

Senator JACINTA COLLINS—You will take that on notice and consult Mr Gallagher for me, then?

Mr Tilley—I will take that on notice.

Senator JACINTA COLLINS—Can you table a copy of the note?

Mr Tilley—What I have got here is something which is half-photocopied onto a page with some other material, but my recollection is that the Treasurer has already tabled this note.

Senator JACINTA COLLINS—The document you are referring to?

Mr Tilley—Yes.

Senator JACINTA COLLINS—Was what was provided to the Treasurer an update in response to a request from the Treasurer, or was it Treasury simply showing its initiative?

Mr Tilley—I do not recall the exact circumstances in which we provided that advice.

Senator JACINTA COLLINS—So you will consult Mr Gallagher again?

Mr Tilley—I will take that on notice.

Senator JACINTA COLLINS—Is it normal for the full forward estimates of programs already announced to be made public?

Mr Tilley—No, as I was saying before, in the normal course of events we do not do re-costings of measures—they are just incorporated in the forward estimates. It is only in particular circumstances, if we are requested or if there is some other particular circumstance, that we would do a re-costing.

Senator JACINTA COLLINS—How soon might you be able to consult Mr Gallagher's recollection on these issues? Would it come back to us for tomorrow?

Mr Tilley—I do not know whether I can get in touch with him or what the circumstances are. All I can say is that I will take your request on notice.

Senator JACINTA COLLINS—He is working hard for us at the OECD. I presume he is provided with a telephone.

Mr Tilley—He is attending a number of meetings, not just at the OECD in fact.

Senator JACINTA COLLINS—So you will attempt to contact him?

Mr Tilley—I will take the question on notice.

Senator JACINTA COLLINS—Did Treasury or the ATO do the original costings of the baby bonus in 2001?

Mr Tilley—I do not know the specific circumstances of that costing, but the normal process would be that we would do costings in consultation with the ATO. Treasury and ATO work together to do the costings.

Senator JACINTA COLLINS—Is it of concern, in terms of the accuracy of your costings, that this costing turned out to be so wrong? I think the costings were overblown by around $545 million over the forward estimates.

Mr Tilley—I do not know the exact circumstances. I was not here when the original costing was done. I do not know the exact circumstances of how it was done and what assumptions were made.

Senator JACINTA COLLINS—So you are just not aware of this issue?

Mr Tilley—I not aware of the circumstances of how the original costing was done.

Senator JACINTA COLLINS—Or, indeed, how the revised costing was done?

Mr Tilley—We obviously have more knowledge of how the revised costing was done given that was a lot more recently.

Senator JACINTA COLLINS—Is there someone here who was involved?

Mr Tilley—I have an officer here who was not directly involved, but we can give a general description of the approach that we take to such costings if that would be helpful.

Senator JACINTA COLLINS—I am sure that if you are that far out, a review of your original assumptions and an attempt to ascertain what went wrong would be undertaken. Are you telling me that these costings have not been evaluated to determine where the error was?

Mr Tilley—I am sure that we would be aware of why there was a difference in the original costing from the re-costing.

Senator JACINTA COLLINS—Why was that?

Mr Tilley—I assume that the assumptions in the original costing would have turned out to be different from the actuality.

Senator JACINTA COLLINS—So what were the assumptions in the original costing?

Mr Tilley—That I am not familiar with.

Senator JACINTA COLLINS—Are you not familiar with it or is that confidential?

Mr Tilley—I am not familiar with it. That is the bit I definitely know.

Senator JACINTA COLLINS—Is there someone here who is familiar with it?

Mr Tilley—No, the costing was done some time ago. I am happy to take these questions on notice, but I cannot provide any more detail than that. I am simply not aware.

Senator JACINTA COLLINS—How about the revised costing? Is there someone here who is familiar with the change in the assumptions in the revised costing?

Mr Tilley—I am happy to take the question on notice if you have a particular question about the assumptions underlying a costing.

Senator JACINTA COLLINS—Yes, but is there someone here who is familiar with them?

Mr Tilley—Not sufficiently familiar to talk in detail about it.

Senator JACINTA COLLINS—I think this reinforces the earlier point we addressed sometime back. The parliament is unable to scrutinise a $545 million black hole on the basis—fair enough on this occasion the officer tells me that the relevant officer is overseas—that 'we really do not want to talk about what our assumptions are'. I know that is not the case in this particular instance.

Mr Tilley—That is not what I am saying.

Senator JACINTA COLLINS—I know you are not in this particular instance, but in the cases we discussed earlier today that is essentially what would be the case. In the course of public scrutiny of government expenditure, that would be, essentially, outrageous—for the parliamentary process not to be able to review a shift from first assumptions to revised assumptions and understand what has explained that shift. On page 11 of Budget Paper No. 2,

savings from abolishing the baby bonus are listed as $50 million in 2005-06, $100 million in 2006-07 and $140 million in 2007-08. How do these figures relate to those provided by the Treasurer on 1 April 2004?

Mr Tilley—It is not the same set of numbers. As I understand, the re-costing that was provided to the Treasurer and tabled by the Treasurer was the costing at that point in the forward estimates for the baby bonus. The costings you have just referred to are the costings for the phasing out of the baby bonus—so the difference between the two would be the effect of the phasing out of the baby bonus.

Senator JACINTA COLLINS—Do they include the cost of grandfathering?

Mr Tilley—The cost of grandfathering would explain the difference between the two sets of costings.

Senator JACINTA COLLINS—But do they incorporate the same figures for the cost of the baby bonus on the same assumptions as those released by the Treasurer on 1 April or have you had a further revision of assumptions?

Mr Tilley—To be sure, I would need to check that. But given that the two are not a substantial period apart, I would assume that it would be the same or close to the same.

Senator JACINTA COLLINS—We only had a relatively short period of time between 19 February 2004 with respect to Senator Mackay's question and 31 March. So on the basis of past experience, there is no reason why assumptions would not have just shifted.

Mr Tilley—I did not say that there was definitely no difference; I was saying I would not expect there to be significant difference between the two costings you have referred to. But I am happy to check that.

Senator JACINTA COLLINS—I do not think that it is an unreasonable expectation. Our expectation on 19 February and the answer that was provided to us then we thought was quite reasonable and were very surprised when very shortly afterwards on 31 March the Treasurer came forward with considerably different figures. I cannot understand why on 19 February Senator Mackay was not advised that in Treasury's view there was likely to be a significant shift in the assumptions. You will be dealing with that on notice?

Mr Tilley—If that is a question, I am happy to take any question on notice.

Senator JACINTA COLLINS—Yes, it is. It is a question that follows the earlier comments. Just to pin down this issue of the present figures, do the present figures reflect the cost of the baby bonus as stated by the Treasurer on 1 April or were there further revisions that have not been made public? If they reflect the estimates released by the Treasurer, from that we can deduce that the cost of grandfathering for the baby bonus is $210 million in 2005-06, $200 million and in 2006-07, and $110 million 2007-08. But you will yet need to clarify for me whether there has been a revision in the assumptions since Treasurer's April statement.

Mr Tilley—I will take that question on notice.

Senator JACINTA COLLINS—When you take that on notice, is it then reasonable to deduce that the cost of grandfathering is as I just stated a moment ago?

Mr Tilley—If I understand your question, if there is no change in the underlying assumptions, then the difference between the two sets of costings—the costings provided by the Treasurer and the costings in Budget Paper No. 2 for the abolition of the baby bonus—will be the impact of the grandfathering.

Senator JACINTA COLLINS—Okay, we are correct in that deduction.

Senator SHERRY—I have only been watching part of this on television. I want to pick up an issue. Is Mr Gallagher the officer responsible for costing?

Mr Tune—Costing what, Senator Sherry?

Senator SHERRY—I only picked up part of it. You were talking about the officer being on leave?

Senator JACINTA COLLINS—No, working at the OECD.

Mr Tilley—We talked about Mr Gallagher not being here.

Senator SHERRY—He is not here?

Mr Tilley—No.

Senator SHERRY—Why not?

Mr Tilley—He is attending meetings at the OECD and in London this week.

Senator SHERRY—That raises issues with respect to not just this issue but also a whole range of assumptions made on costings of a whole range of budget measures about which we all have questions. That presents us with a very significant difficulty, doesn't it?

Mr Tilley—That depends on the questions, I guess. Mr Gallagher works for me, in my division, and I am here to answer those questions.

Senator SHERRY—We will see how we go with the questions—

Senator JACINTA COLLINS—We have not been going particularly well.

Senator SHERRY—I did not think you were. I notice that Mr Gallagher was the one who signed off the minute. I expected that. I have just looked at the list of witnesses, and he is not here. So I thought I had better come and double-check that because I think we are going to be presented with a significant problem. You cannot go through the spreadsheets and the various factors that were assumed in the way Mr Gallagher has done when he has given evidence at previous hearings. You are not able to do that, are you?

Mr Tilley—I am not sure what the questions are. We will answer the questions—

Senator JACINTA COLLINS—In this area you have had much more information in previous hearings, have you?

Senator SHERRY—Yes. Mr Gallagher is, if anything, very knowledgeable about the assumptions he makes. I just wanted to clarify whether it was Mr Gallagher because I did not hear the name of the officer when I was watching. We will see how we go later.

Senator JACINTA COLLINS—Does Mr Gallagher usually talk quite freely about what assumptions he makes in costings?

Senator SHERRY—I think he is relevant and forthcoming. Anyway, we will see how we go.

Senator JACINTA COLLINS—I was close to winding this up, but I will just make sure that one of the critical questions I wanted answered is dealt with. Did the Treasurer request new costings with respect to the baby bonus on 31 March?

Mr Tilley—As I understand it, I have taken that question on notice about the general issue. I cannot remember how you have previously phrased the question, but I think I have effectively taken that question on notice about the circumstances around the re-costing of this measure.

Senator JACINTA COLLINS—You do not know the answer to that question?

Mr Tilley—No, I do not know the answer to that question.

Senator JACINTA COLLINS—Despite the fact that Mr Gallagher works for you—

CHAIR—Hang on. You cannot go behind that. He said he does not know. Unless you are challenging his credibility, which I am sure you are not, that is a complete and self-sufficient answer.

Senator JACINTA COLLINS—No. You said unless I am challenging the credibility; I want to put this before the committee. Mr Gallagher works for Mr Tilley. We are talking about a request for a costing on the day on which Labor made its baby care announcement.

CHAIR—What does Labor have to do with it? This is the budget.

Senator JACINTA COLLINS—No, this has to do with revisions—

CHAIR—You are trying to make a political point, Senator Collins.

Senator JACINTA COLLINS—No, I am not at all. I am saying that, on a point of credibility, I find it difficult to understand that an officer would not recall a request from the Treasurer for a costing on a measure on the day on which a major announcement had been made.

CHAIR—That is a matter for you, Senator Collins. I am very strict in not allowing the integrity or the good opinions of officers to be attacked by innuendo. I think you have crossed that line. You have asked Mr Tilley a straightforward question. He has given you a straightforward, unambiguous, almost monosyllabic answer, and that is it.

Senator SHERRY—And the officer who could answer is not here.

CHAIR—And that point has been made elaborately and is well and truly on the record.

Senator SHERRY—On what date is Mr Gallagher due back to work?

Senator Coonan—He is working, Senator Sherry. You mean when he is coming back to Australia.

Senator SHERRY—Yes. When is he due back in Australia to work?

Mr Tilley—He is away until the end of next week.

CHAIR—So that is well within the period within which questions taken on notice must be answered.

Senator SHERRY—I think in this area questions on notice are not satisfactory when you do not have an officer and you cannot follow through in detail. But that is a debate we need to have.

CHAIR—That is an issue for another time.

Senator SHERRY—You will see what degree of information we get in other areas as we go along.

Mr Tilley—I would like to make the point that Mr Gallagher is very knowledgeable but he does not do these things alone. As he often says, he has a team of people working on these issues.

Senator SHERRY—And the proof will be, whether or not the other members of the team can respond to the questions. We have a limited response in this area. We will see how limited the response is in other areas as we progress.

Proceedings suspended from 6.25 p.m. to 8.00 p.m.

ACTING CHAIR (Senator Watson)—We will resume.

Senator WONG—Before the dinner break I understand the officer who deals with GST matters was unavailable for us. Perhaps I should start with you, Mr Mann.

ACTING CHAIR—Senator Wong, do any of your questions require the presence of the minister?

Senator WONG—That is always an open question. I do not think so, and I am happy if you think that they do—

ACTING CHAIR—We might just have to defer them to get the show on the road.

Senator WONG—Mr Mann, I wanted to ask you about the budget measure at page 264 of Budget Paper No. 2, the small business annual payment lodgment of GST.

Mr Mann—It is probably more appropriate to ask that question of Treasury, if it is a policy related matter.

Senator WONG—Sure. In the description on page 264 the measure describes taxpayers who voluntarily register for the GST. Can you give me a bit more detail about the characteristics of such taxpayers? Who is answering—Mr Mann or Mr Free?

Mr Mann—I will give you some background to the scheme of the GST system. Voluntary registrations relate to taxpayers that have no legal requirement to register under the GST system. The Australian system allows a voluntary registration. There is a threshold for business of a $50,000 turnover, so for businesses under that threshold there is no requirement to register, and there is a higher threshold of around $100,000 for charities and not-for-profit organisations. So I presume this measure is targeted at that group.

Senator WONG—Is that right?

Mr Free—That is correct.

Senator WONG—As I understand it, if your annual turnover is less than $50,000, you can lodge your BAS and therefore pay your GST liability annually. Is that right?

Mr Mann—At the moment there is normally a quarterly obligation for those people who either pay on their actual GST turnover, or, in some circumstances, they can elect to pay by instalment. But generally it is a quarterly obligation at the moment.

Senator WONG—But this measure would mean that businesses turning over less than $50,000 can do so annually. Is that correct?

Mr Free—That is correct.

Senator WONG—Can I ask why the measure utilises a notion of small business as one with less than $50,000 turnover? Generally a business is still considered small if it has a turnover of up to $2 million. Is that not the case?

Mr McCullough—That question, if I understand it correctly, really goes to the fundamental design question of the GST—who was going to be registered and who was not going to be registered.

Senator WONG—No, it is a question about the definition of what constitutes a small business, I think, actually.

Mr McCullough—Sorry, I opened that badly. This measure is directed at those people that are voluntarily registered for GST, and it just so happens that, in the model of voluntary registration for GST, that happened to be a $50,000 test. It was not specifically picked as a small business figure. It was not supposed to represent anything other than a figure that, on balance, would bring a large number of people into the system, which was the goal, but keep the people who were really trivial out of the system.

Senator WONG—So it is a trivial business measure, not a small business measure. Is that it?

Mr McCullough—I think the tax office for various purposes has probably three or four definitions of small business. That happens to be a threshold, that is all, for compulsory entry to the GST.

Senator WONG—All right. I assume you are able to tell me a little bit about the actual numbers involved in the application of this measure. Do we know how many businesses there are, at an estimate, that would benefit from this measure?

Mr Tilley—Budget Paper No. 2, which you referred to, gives the numbers—740,000 small businesses and up to 30,000 non-profit organisations.

Senator WONG—How many small businesses exist between the $50,000 and the $2 million turnover mark? Do we have figures on that? Mr Carmody must have those.

Mr Carmody—I am sure we do, but I do not have them on me.

Senator WONG—You were rolling your eyes, so I anticipated that that might be a difficulty, but is there anyone here who could assist on that?

Mr Mann—I would hazard a guess that it would be slightly more than two million.

Senator WONG—So two million small businesses under—

Mr Mann—Two million entities.

Senator WONG—Sorry, two million entities under $2 million turnover, of which 740,000 will actually receive the benefit of this measure. Do I understand that correctly?

Mr McCullough—It does sound a little high to me, but I will take Mr Mann's word for it. It is about that ball park. It was a million and a half last time I looked, but it has probably grown.

Mr Mann—That is why I referred to entities, as some of those would be a member of a group owned by a common owner.

Senator WONG—What figures are you citing here or relying on?

Mr Mann—Just registration figures for entities that declare turnovers less than that amount that you mentioned—$2 million.

Senator WONG—ABNs issued for people whose turnover is less than that amount?

Mr Mann—Yes, it would come from the Australian business number register.

Senator WONG—How many businesses with a turnover of less than $50,000 paid GST last year?

Mr Mann—I cannot tell you how many paid. I think, the figures we are talking about—there are 740,000, and I can tell you that they are mostly in a net paying situation, so mostly they would be remitting tax to the tax office.

Senator WONG—Mr Carmody, can you assist us?

Mr Carmody—Not further than that.

Senator WONG—Are you able to get figures?

Mr Mann—I probably can take that on notice. The majority, however, would be paying tax.

Senator WONG—So the majority of the 740,000?

Mr Mann—Yes.

Senator WONG—So, on your figures, the majority of small business, if we take the $2 million turnover as being the dividing line—that is reasonably accepted, isn't it?

Mr Mann—I do not know that it is. If you ask small businesses you would probably get a wide range of definitions from—

Senator WONG—I am asking what the government uses, or the tax office.

Mr Mann—The tax office has three categories of business. We talk about microbusiness taxpayers, which are largely sole traders and small family companies typically with turnovers up to $2 million annually. So we would classify those as microbusinesses. Obviously they are a kind of small business. Between the $2 million and $100 million turnover we have what we call small to medium enterprises, and they typically are privately owned companies, but they may have two to six entities as part of an economic group. I think there are 12½ thousand groups, if you like, in that tier. And the third group is the large business, which obviously is over that.

Senator WONG—So, even utilising the most conservative of your categories—the microbusiness—that is the $2 million threshold. Is that what you are saying?

Mr Mann—Correct.

Senator WONG—So this measure assists less than a half of those?

Mr Mann—All of the voluntary registrants, I think is the population.

Senator WONG—But there are 740,000, and if there are two million paying entities in the microbusiness category, as you have outlined, have I misunderstood something?

Mr McCullough—Without complicating things, again the tax office's definition of microbusiness is for their purposes. I can think of a definition in the law, for example, that has a million dollar turnover test as a pseudo small business test for the purposes of the simplified tax system.

Mr Mann—If I could just clarify, part of the issue is, as I mentioned, that many small businesses have more than one entity, so I am just counting single entities.

Senator WONG—I appreciate that.

Mr Mann—And if you are the Australian Bureau of Statistics or Office of Small Business, you would generally group those up, and you would come up with a figure somewhere between 1.1 and 1.4 million, I think.

Senator WONG—I assume this is a question for Treasury, but can you explain why it is that the states need to be compensated for this measure?

Mr Tilley—The GST is paid to the states—

Senator WONG—Yes, I understand that.

Mr Tilley—and the intergovernmental agreement around those arrangements requires the agreement of the federal government and all of the state governments for any change to the GST. This is a change to the GST which we consider would come under the terms of that agreement. There are other GST measures in here where the budget—

Senator WONG—That is not really an answer to my question, Mr Tilley. I understand the arrangement you are describing. I am asking why it was felt necessary to compensate the states for this measure. I am not questioning it. I am just trying to understand the decision.

Mr Tilley—The government is offering to compensate the states for this measure in order to seek their agreement to the measure. The government wishes to make this change to the GST. It is proposing it. As part of seeking the states' agreement, it is offering to compensate them for the deferral of revenue.

Senator WONG—But what is the compensation paid for—just for the agreement or because there are some imputed revenue implications for them?

Mr Carmody—There is a deferral of revenue.

Senator WONG—I understand that. That is the answer, is it not—that there is a deferral of revenue?

Mr Tilley—Yes.

Senator WONG—So it is that they are being compensated for?

Mr Tilley—Yes.

Senator WONG—In Budget Paper No. 2 there is a reference to negotiations with the states about future compensation. Why is there a need for ongoing compensation?

Mr McCullough—Just on a clarification point, is that in relation to this measure still?

Senator WONG—Yes. I will tell you when I move off this measure.

Mr Tilley—Just reading from the measure, it says, 'Compensation in 2004-05 will cost $330 million.' The next sentence reads, 'Future compensation will be subject to further negotiation with the States, and provisions have been made in the Contingency Reserve.' There is a deferral effect in the first year, which is the initial deferral of the $330 million.

Senator WONG—There is a timing effect.

Mr Tilley—That is right. As the GST base grows, you will get a small deferral in each of the out years as a result of the growth in that base. So it is basically just a one-off deferral in the first year, but the growth in the GST causes a small deferral in future years as well.

Senator WONG—And what is the costing on that?

Mr Tilley—I do not have the costing on that. It is not very significant, but it is—

Senator WONG—But presumably you have done it. You must have done it.

Mr Tilley—Yes. It has been allowed for in the contingency reserve, as it says here.

Senator WONG—So can you provide those future deferral costs for me?

Mr Tilley—I can take that question on notice. We have got it somewhere. It is there. It has been provided in the contingency reserve. This is not the part we are involved in, but our Commonwealth-state relations division would have arranged for the discussions, and I understand the Treasurer has written to the states on this matter.

Senator WONG—In terms of the basis of the calculation of the compensation payment in the 2004-05 budget, I assume that there is a forgone interest element in that calculation.

Mr Tilley—What you are seeing here is the deferral of the $330 million from 2004-05. That is the impact we cost of the deferral of the amount of GST.

Senator WONG—Yes, and what is the basis of the calculation?

Mr Tilley—The basis of the calculation was simply the amount of GST that those small businesses, as stipulated in here, would have made in their instalments in 2004-05 that will now not be paid until the following year.

Senator WONG—Is there a forgone interest element to that amount?

Mr Tilley—If you move that money from 2004-05 into 2005-06, there is a deferral saving which you could interpret as an interest saving to those small businesses which will now be borne by the government.

Senator WONG—Could you say that last part again?

Mr Tilley—In terms of what the benefit to the businesses is from this deferral, effectively it is the interest saving for them on the deferral of this $330 million spread across this large number of businesses. The impact of that will be borne by the government.

Senator WONG—You have referred in your answers and the budget measure refers to provision having been made in the contingency reserve. What amounts?

Mr Tilley—I think that is the question I have taken on notice. I do not know the amounts. I do not have those figures here.

Senator WONG—You do not have those figures?

Mr Tilley—No.

Senator WONG—You cannot tell me what is being referred to when it says 'provisions have been made in the Contingency Reserve'?

Mr Tilley—I can only say that that small amount—small compared with the $330 million—results just from the growth in the GST base. Effectively, what is happening here is that $330 million is moving from 2004-05 into 2005-06, and another $330 million and a little bit is being pushed out the other end of 2005-06, and it goes down the chain into perpetuity. As the GST base grows—the amount of GST that will be paid by these businesses—it will not be $330 million; it might be $340 million in the next year, as a result of the growth in the GST base. What I do not know is what the difference is—what that growth in this $330 million is. But this $330 million will grow in line with the growth in the GST paid by these businesses.

Senator SHERRY—Mr Tilley, perhaps Mr Carmody or someone from the tax office can tell us: what is the projected growth rate of the GST?

Mr Tilley—I can answer that question about the total growth rate in the GST, but that will not necessarily be the same growth rate. It is the growth rate for the GST paid by these businesses. You would expect it to be broadly the same, I guess, but you cannot—

Senator SHERRY— I am not suggesting it is identical, but similar.

Mr Tilley—Do you want the figure?

Senator SHERRY—If you have got it, yes.

Mr Tilley—Apparently, on average, it is about 5½ per cent. That would be in Budget Paper No. 3, if you wanted to look at the exact number.

Senator SHERRY—Thank you.

[20.19 p.m.]

Senator WONG—I turn now to the petroleum resource rent tax.

Mr McCullough—Just on a point of clarification, is that all on the GST?

Senator WONG—From me, but maybe not from Senator Sherry. I would not go away, Mr Mann. I do have some questions later on which you may be able to assist, but I would prefer to do some of these matters first. So can we go to the petroleum resource rent tax. Page 30 of Budget Paper No. 2 refers to the budget measure providing an immediate uplift for exploration and expenditure in designated offshore frontier efforts. Who am I asking?

Mr Tilley—Me in the first instance, but Mr Mullins is the—

Senator WONG—Was a cost-benefit analysis carried out in relation to this budget matter?

Mr Mullins—No.

Senator WONG—So what was the evidence relied on that suggested the level of exploration of our petroleum resources was suboptimal? We are putting in place a measure to try to increase this sort of exploration, so I assume somebody somewhere made a decision that we were not doing it enough. Am I wrong?

Mr Mullins—A decision was taken on this measure based around a general industry view that there has been a decrease in exploration expenditure on petroleum, and there is evidence to show that that is the case, and there has been a push, as I said, by industry for that measure to basically find new oil fields. And it was seen as an incentive to try to find those new oil fields.

Senator WONG—A push by industry, so presumably industry put this view to government.

Mr Mullins—Not necessarily this measure, but industry have put forward broad measures, and the Department of Industry, Tourism and Resources have for some time said that our stock of resources are declining and that there is a need to find new petroleum sources. This is an incentive measure to try to encourage firms to go out into new areas. There is some drilling in areas around the existing wells, but the idea was to go to more remote areas to see if there is any oil there.

Senator WONG—You referred to evidence that there had been less exploration than previously. What is that evidence?

Mr Mullins—I have not got the evidence with me—

Senator WONG—So where did it come from?

Mr Mullins—We have ABS statistics about levels of exploration and so on. There are published figures. We do not publish them. They are published by—

Senator WONG—Were those relied on?

Mr Mullins—Yes, they were, as part of that.

Mr Tilley—It is a measure developed in conjunction with the Minister for Industry Tourism and Resources, who perceived a need to provide some additional encouragement in these very far out fields. These are fields that are, I think, more than 100 kilometres from existing oil discoveries.

Senator WONG—Yes, I have read that.

Mr Tilley—You know, the ones right out there. He felt the need to provide some additional assistance, and I do recall seeing the data that supported that, and this is a measure designed to do that.

Senator WONG—Was there any analysis done which indicated that this would actually improve exploration activity? What I mean by that is: is there evidence to show that we were

not actually simply subsidising through this measure exploration which would have otherwise occurred in any event?

Mr Mullins—I think there is evidence to suggest that there has been very little drilling outside this 100-kilometre radius. As far as I am aware, there was one other attempt tried—in recent times anyway, it might even have been last year—in the Great Australian Bight, which I think cost a fair amount of money but did not find anything.

Senator WONG—What was that measure?

Mr Mullins—It was just one of the companies that went out and drilled. The government was not involved in that. It was just that one of the companies went out. It was unsuccessful, and I think, with that lack of success, the industry was taken aback a little bit and a bit reluctant to go out to some of these remote areas to drill.

Senator WONG—Which company was it?

Mr Mullins—I am not sure which company it was.

Senator WONG—Were they involved in lobbying the government for this measure?

Mr Mullins—I am not sure.

Mr Tilley—I am sure the minister talks to many different interests.

Senator WONG—Apart from this anecdotal evidence, Mr Mullins, that you refer to, was there an analysis done about whether or not this would actually encourage exploration that would otherwise not have occurred?

Mr Tilley—That is the intent of the measure.

Senator WONG—I appreciate that that is the intent of it. What I am trying to test is whether that was actually tested.

Mr Tilley—It is not something you can test in advance. The idea of an incentive like this is to make it more attractive to do exploration in these areas. There is no guarantee that anyone will find anything. There is no guarantee that this will be the difference between doing exploration and not doing it, but there was seen to be a need to provide some additional incentive for that type of exploration, and this is an attempt to do that.

Senator WONG—Are there any projects the government is aware of that are ready to commence?

Mr Mullins—In these areas? No, because they have actually got to identify what we call red spot areas—I am not sure how they are defined. The minister has to actually determine the designated areas.

Senator WONG—The 100 kilometres—

Mr Mullins—We know the 100-kilometre areas. They are already on the map for the 2004 year, but the industry minister has not yet actually said, 'These areas are the specific ones where we are going to provide the concession incentive.'

Senator WONG—Is there any other definition other than the 100-kilometre area et cetera referred to in this which would define the red areas?

Mr Mullins—It says that the minister will determine the designated areas each year, which will be more than 100 kilometres form existing oil discoveries, so there are a number of areas out there that are obviously more than 100 kilometres from existing wells or existing permit areas. And the idea is that each year he makes a release, and I think he has already done that for this year. But of those areas that he has released, he will then identify a number as being designated areas where this incentive will be available.

Senator WONG—Was consideration given to providing this assistance through an outlay rather than tax expenditure?

Mr Tilley—I am not aware of any such consideration. This was the most obvious way to do it.

Mr Mullins—Certainly not through us. The department of industry may have considered that, but it is a revenue matter and—

Senator WONG—But industry provided you with this proposal.

Mr Mullins—we would be only considering a tax concession, not an outlay, and this was the matter that we looked at. The industry department may have. You may have to ask them whether they have considered an outlay

Senator WONG—But what came to you from them as a proposal was only this tax measure, not an outlay.

Mr Tilley—There was interest in doing something of this nature. There was development of that idea effectively jointly between the two ministers and this is the particular measure that the government decided on.

Senator WONG—There is no reason why this assistance could not have been provided through an outlay, is there?

Mr Tilley—There are different ways to provide assistance. This is the one that the government chose for this situation.

Senator WONG—From a tax design and budget scrutiny perspective, is it not better to use outlays rather than tax expenditures where possible?

Mr Tilley—I think that depends on the particular circumstances. Sometimes a tax measure is better; sometimes an outlays measure is better.

Senator WONG—So you can explain to me why a tax expenditure is better than an outlay in this situation?

Mr Tilley—As Mr Mullins has already indicated, I am not sure what, if any, consideration has been given to particular outlay measures by the industry department. This is the measure that the government decided on.

Senator WONG—Does using a tax expenditure lower the tax to GDP ratio?

Mr Tilley—I think we have got $17 million here. Less tax means—

Senator WONG—But as a general rule.

Mr Tilley—Reductions in tax will, all other things being equal, reduce the tax to GDP ratio.

[20.28 p.m.]

Senator WONG—We will turn now to the income tax cuts. Is that you still, Mr Tilley?

Mr Tilley—In the first instance.

Senator WONG—Does Treasury accept the concept of bracket creep?

Mr Tilley—It is a commonly referred to term.

Senator WONG—Being the extra tax government collects as a result of inflation?

Mr Tilley—I think there are different definitions—people seem to use different definitions of bracket creep. That is certainly one of the definitions.

Senator WONG—And have you ever calculated the magnitude of bracket creep in recent times?

Mr Tilley—There are different estimates around, under the different measures, of bracket creep. We do not publish any estimates of bracket creep.

Senator WONG—But internally you prepare them?

Mr Tilley—Obviously we look at these things, yes.

Senator WONG—How often? Would you have an annual or quarterly set of estimates that you do?

Mr Tilley—No. Any time that we do the revenue forecasts obviously we take that into account—

Senator WONG—You would have to build that in to your revenue forecasting, wouldn't you?

Mr Tilley—You would take into account the progressive nature of the personal income tax rates scale in doing those forecasts.

Senator WONG—So would you have to do them at least twice yearly?

Mr Tilley—We publish the forecast in the budget and MYEFO and then roughly every three years in the pre-election economic and fiscal outlook.

Senator WONG—So you would have used these calculations in preparation for this budget.

Mr Tilley—What I am saying is that we forecast all revenue heads, including personal income tax, and that obviously has to take into account the progressive nature of the personal income rates scale.

Senator WONG—Is that code for saying, 'Yes, we calculated bracket creep for the forthcoming financial year'?

Mr Tilley—When we do the forward estimates, looking out into the out years, that is one of the factors—the growth in incomes given a given set of rate scales.

Senator WONG—So have you estimated the value of bracket creep in the forward estimates?

Mr Tilley—We do not publish any specific separate estimates—

Senator WONG—I am not asking what you have published.

Mr Tilley—I have explained to you the way we do our revenue forecasts.

Senator WONG—And I think that your evidence is that you have to take into account bracket creep in order to do that. Am I right?

Mr Tilley—You have to take into account the effects of bracket creep in order to do that, yes.

Senator WONG—So you presumably, therefore, have estimates as to the value of bracket creep over the forward estimates of this budget.

Mr Tilley—Mr Greagg has just joined me and I can get him to give some more expert answers. It may be a situation where we can take a question on notice, but Mr Greagg may be able to add something. We do not publish any estimates of bracket creep. I can point you to other organisations that do publish those estimates to give you an order of magnitude.

Senator WONG—I will come to that. What I am saying is that, as I understand your answers, you obviously have to estimate the value of bracket creep over the forward estimates in order to properly—

Mr Tilley—We incorporate the impact of movement across the rate scales in our revenue forecasts.

Senator WONG—And are you able to provide them?

Mr Tilley—The revenue forecasts are in the—

Senator WONG—Not the revenue forecasts—the calculations which underlie them.

Mr Tilley—No. I think I have already said, Senator, that we do not publish—

Senator WONG—That is the issue. This is a Senate estimates hearing. It is not what is published.

Mr Tilley—Well, Senator, we have been—

Senator WONG—I am asking for the calculations which underpin the forward estimates.

Mr Tilley—We can go into that again if you like, or we can take the question on notice now.

Senator WONG—What was the first part of the answer?

Mr Tilley—We can go around through the same discussion we have been having over the last two days about whether we will provide unpublished estimates.

Senator WONG—The issue is not whether it is published, Mr Tilley. It is a Senate estimates process, so the Senate can determine the appropriations which are presented to it. That is the purpose of these hearings. If there is a basis, such as advice to government, you may try to argue that, but the fact that it is not published publicly is really not an answer.

Mr Tilley—Maybe Mr McCullough can run through again the previous discussions in this committee on this issue. Otherwise, I could ask Mr Greagg to give some further elaboration—

Senator WONG—Are you going to give me the calculation of magnitude of bracket creep over the forward estimates, Mr Greagg?

Mr Greagg—I forecast Commonwealth tax revenue. I can explain to you how we forecast what is called income tax withholding revenue, and it certainly takes into account the interaction of the existing pay scales and the existing cohort data for taxpayers. But, as Mr Tilley was indicating, we do not actually produce an estimate of what you are describing as bracket creep.

Senator WONG—Why is that?

Mr Greagg—We do not need to. The way we forecast income tax withholding, we take into account the changes in employment, the changes in average wages, and the relationship between those changes and total revenue for that particular revenue head. So you do not need to actually estimate what you have described as bracket creep.

Senator WONG—That is not really an answer to my question.

Mr Greagg—Senator, I volunteered to explain to you how you forecast income tax withholding, which is I think what you were pressing Mr Tilley on.

Senator SHERRY—Sorry, Mr Tilley has just said it is not published.

Senator WONG—He has not said you do not do it.

Mr Tilley—We do not publish estimates of bracket creep.

Senator SHERRY—But you have not said you do not do it; you just do not publish it.

Mr Greagg—I said I do not have an estimate—

Senator SHERRY—I am not referring to your evidence. I am referring to Mr Tilley's.

Mr Tilley—I certainly did not say that we do not do any estimates of bracket creep. I have said that we do not publish them.

Senator WONG—And I am asking you to provide them.

Mr Tilley—I can take that question on notice, Senator.

Senator WONG—Well, the budget does not provide, as you have pointed out on a number of occasions, estimates of bracket creep. Does the budget provide information on the drivers of income tax revenue over the forward estimates?

Mr Tilley—Yes, it does.

Mr Greagg—Budget statement 5 indicates the broad parameters that we take into account. Budget statement 3 talks about the parameters that govern our view about the macro-economy. So that statement is not quite correct.

Senator WONG—It was a question. It was not a statement.

Mr Greagg—My answer is that those parameters are in there.

Senator WONG—Are changes in earnings and changes in employment—where are the assumptions on those to be found in the budget papers?

Mr Greagg—I will just need to refer to budget statement 3.

Senator WONG—Sorry, I have got 1, 2 and 4. I do not have 3.

Mr Greagg—Budget Paper No. 1, statement 3.

Senator WONG—Thank you.

Mr Greagg—Page 3-6 gives you a page of macroeconomic variables. In addition to that, statement 5, on page 5-7, has a number of parameters—things like nominal GDP, average earnings growth, wage and salary employment et cetera. In the particular question that you are pursuing here, average earnings and wage and salary employment growth are the two things that we take into account when forecasting income tax withholding.

Senator SHERRY—Has the Treasurer or the Treasurer's office ever issued a direction or instruction not to publish so-called bracket creep if you were asked at an estimates hearing—as a matter of fact.

Mr Tilley—No, not that I am aware of.

Senator WONG—So why are you not providing them?

Mr Tilley—What we were trying to explain are the estimates that are provided in the budget. There is no estimate of bracket creep there.

Senator SHERRY—Yes, we know that. That is why we are asking about it.

Mr Tilley—I am not aware of any other published estimates of bracket creep. I am happy, if you wish, to take it on notice.

Senator SHERRY—The question was: has the Treasurer or any of the staff in his office issued a direction or an instruction to you or to other of your officers not to provide—

Mr Tilley—For Treasury not to—

Senator SHERRY—For Treasury not to provide estimates of so-called bracket creep?

Mr Tilley—I am not aware of any such specific instruction.

Senator WONG—So why are you taking the question on notice?

Mr Tilley—We have been through this—

Mr McCullough—Could I have one more chance to try to explain it, Senator? The government, in publishing quite a lot of material, chooses the level of disaggregation of a range of figures. It chooses what to put in there, and it is officially the Treasurer's document. We believe that the convention has been for a long time that the question of further disaggregation of the material in the budget paper—because it formally belongs to the Treasurer—ought to be, whether he specifically requested it or not, and he has not in this case as far as we are aware, as a matter of courtesy passed by the minister for his opportunity to decide whether to release those figures.

Senator WONG—These are not his papers in that sense. I mean, these are the budget papers of the government.

Mr McCullough—This particular measure is circulated by the authority of the Treasurer and the Minister for Finance.

Senator WONG—They are presented to the Senate in order to enable us to consider passing the appropriations.

Mr McCullough—Senator, I can only explain our reasoning.

Senator WONG—Anyway, you have taken it on notice

Senator SHERRY—Okay. Well, on your reasoning, if that were the case, you could refuse to answer anything that is not detailed in the budget papers—full stop.

Mr Tilley—We are not refusing to answer things, Senator.

Senator SHERRY—You are picking a convention—

Mr McCullough—We are taking the questions on notice—

Senator WONG—That is exactly what you are doing. You are saying, 'We do these calculations, but we are not going to provide them to you because we have to go and check with the Treasurer.' That is essentially what you are saying

Mr Greagg—I made it quite clear, I thought, that we do not calculate what you call bracket creep.

Senator SHERRY—That is your reason, is it?

Mr Greagg—Sorry?

Senator SHERRY—You do not calculate it. Well, Mr Tilley said—

Senator WONG—How do you do revenue forecasts if you do not?

Mr Greagg—Senator, I thought I explained that we take into account what is expected in terms of changes in employment and changes in average wages, and, taking those two things with the known relationship between changes in average wages and what the revenue yield from that is, that is how we do the revenue forecast for income tax withholding.

Senator WONG—Mr Greagg, you referred me to 5-7.

Mr Greagg—Yes.

Senator WONG—It goes through the major economic assumptions underpinning the revenue estimates. Is there a specific discussion anywhere in the budget papers of the extent to which earnings and employment growth respectively affect income tax revenue estimates?

Mr Greagg—No, there is no specific discussion of that in the budget papers as far as I am aware.

Senator WONG—What is the relative importance of these two components—earnings and employment—on estimates of the growth in income tax revenue?

Mr Greagg—The relative importance of them? Changes in employment have a rough one to one type relationship, so if you get a one per cent change in employment you get something like a one per cent change in income tax withholding. A one per cent change in average earnings gives more than one per cent change in income tax withholding but less than two per cent.

Senator WONG—So are you able to give me a quantified answer of the extent to which earnings and employment growth respectively affect income tax revenue estimates?

Mr Greagg—I just explained a rule of thumb. Mr Tilley has just drawn my attention to something that might assist you. It is on page 2-18, and it is the sensitivity analysis that is always provided as part of the budget papers. I draw your attention to the bottom, where it

talks about wages and it just basically outlines the conditions that we applied there—a one per cent change. Then table C1 shows you the revenue yield from a change in wages and then a change in employment.

Senator WONG—Mr Tilley, you referred to forecasts, or estimates, done by bodies other than Treasury on this issue.

Mr Tilley—Yes.

Senator WONG—I assume you are aware of estimates from Access Economics?

Mr Tilley—You had better remind me of the numbers, but I am aware that they have done these estimates.

Senator WONG—Are you aware that Access Economics published certain estimates in their *Budget Monitor* publication? They indicated that the value of bracket creep over the forward estimates period was $18.4 billion.

Mr Tilley—I do not recall that. If you are saying they published that, I am sure they did. I do not have a specific recollection of the numbers they published.

Senator WONG—Did you have an intervention, Minister?

Senator Coonan—No, I am just interested to know the assumptions.

Senator WONG—I am assuming that, despite taking it on notice, you will continue to refuse to release any estimates of your own assumptions or estimates of bracket creep. Would you accept that the Access Economics estimates are the most reliable available to the public?

Mr Tilley—I would not want to make any comment about someone else's estimates. But they have a rule of thumb, I think, of about a billion dollars a year for bracket creep.

Senator WONG—The figures I have been provided with from that *Budget Monitor* publication are significantly more than that—2004-05, 2.5; 2005-06, 3.9; 2006-07, 5.3; and 2007-08, 0.7.

Mr Tilley—As I say, if that is their forecast, obviously that is the case, but it depends on the assumptions. I am not in a position to comment on the Access Economics—

Senator WONG—Is anyone here able to—

Mr Tilley—I do not think there is anyone here from Access Economics.

Senator WONG—If Treasury disputes that these are reliable figures, do you have other public estimates of bracket creep which you would regard as reliable?

Mr Tilley—I am not willing to comment on the reliability or otherwise of the Access figures, but, depending on the assumptions you use, depending on what definition of bracket creep you use, you will get different results, and you can get some—

Senator WONG—I understand that. What I am asking you is: do you have any figures that are publicly available which you regard as the most reliable public estimates of that?

Mr Tilley—There are no other figures that I would want to make comment on. We will talk about our own estimates. I do not want to talk about other people's estimates.

Senator WONG—Tell me what your estimates are and we can have the discussion.

Mr Tilley—I think I have already taken that question on notice.

Senator WONG—According to the Access Economics estimates of bracket creep, can you confirm that the tax cuts in the budget are actually less than the bracket creep over the forward estimates period?

Mr McCullough—In terms of the Access Economics estimates, I do not think we can help you. We might be able to do the maths if we have actually got their estimates in front of us, but I do not know that that is going to help.

Senator WONG—Are you prepared to do that?

Mr McCullough—I do not know that we have got them in front of us.

Senator WONG—No, on notice.

Mr Tilley—I am sure that there is a statement—I do not want to misquote something; if I have a moment I could probably find it—in the budget papers about the relationship between bracket creep and the tax cuts. I will see if I can find it.

ACTING CHAIR—Should the officers be asked to comment on other people's estimates based on what methodologies they may have chosen or what assumptions are behind them when you have not made anything available to them? It is fairly dangerous, I would have thought.

Senator WONG—Chair, if the government refuses to release its own estimates of the effect of bracket creep on revenue forecasting on the forward estimates, it seems that is what we are left with.

ACTING CHAIR—It is certainly a good debating point for the chamber, but I think it is an inappropriate question which over the years Treasury officers have refused to answer. It has been an established precedent for all governments.

Senator SHERRY—I seem to recall Mr Tilley leading us into this area.

ACTING CHAIR—Over the years senators have tried to get behind some of these figures, sometimes with some degree of success but generally—particularly in past years—with very little success, I must say.

Senator WONG—That probably says something about the attitude that the government takes to providing this information.

ACTING CHAIR—All governments.

Senator WONG—You yourself pointed out that you have worsened the position.

ACTING CHAIR—Pardon?

Senator WONG—I think you yourself pointed out that the convention has been worsened in recent years. Well, let us do it this way. The figure that Access Economics has identified as bracket creep over the 2004-05 period is $2.5 billion. Do you confirm the value of tax cuts to be $1.925 billion for that financial year?

Mr Tilley—I can comment on the second part of that, which is the value of the tax cuts. If you are saying that is what Access Economics has estimated the bracket creep at, then I am sure you are right

Senator WONG—Are you going to comment on the second part of the question?

Mr Tilley—That the cost of the tax cuts in 2004-05 is—

Senator WONG—The value.

Mr Tilley—I can confirm that—

Dr Rothman—I have the Access Economics figures in front of me, and they are as you say, but they are cumulative. There are a couple of points. One is that they are cumulative. They do use this rule of thumb that in a typical year the cost of bracket creep rises by about $1 billion. So there is a degree of cumulation in those figures, particularly in the 2003-04 year. And, as Senator Watson alluded to, they are very sensitive to the assumptions you make, particularly about the CPI. My briefing is that their assumptions about CPI are higher than they are in the budget papers, and therefore—

Senator WONG—What does your briefing say the assumptions about CPI are?

Mr Tilley—We give our forecast of the CPI in the budget.

Senator WONG—Dr Rothman—

Dr Rothman—I do not have in front of me what theirs is. I am just informing you that it is higher.

Senator WONG—Can you confirm, then, Dr Rothman—let us try and do this quickly, shall we, so that we can move on to the next thing—that the value of the tax cuts over 2004-05 is $1.925 billion?

Mr Tilley—I have looked that up, and I can confirm that part.

Senator WONG—Thank you. Bracket creep over the same period, on the Access Economics figure, is $2.5 billion.

Mr Tilley—I think what Dr Rothman was just trying to explain is that that is a cumulative effect, not—

Senator WONG—Particularly over the—

Mr Tilley—I think they say something around a billion dollars.

Senator WONG—In 2005-06 bracket creep, on the Access Economics figures, is $3.9 billion, and the value of tax cuts is $3.8 billion.

Mr Tilley—But you are comparing a cumulative, now three-year, effect with a one-year costing of the tax cuts. If you go another year, you will compare a cumulative four-year effect to a one-year costing of the tax cuts.

Senator WONG—That is $5.3 billion as against $4.25 billion.

Mr Tilley—You are making comparison of the cumulative bracket creep effect to a one-year cost of a tax cut.

Senator SHERRY—Why don't you give us your estimate so that we can see what the accuracy is?

Mr Tilley—I can give you our estimates of the tax cuts.

Senator SHERRY—I thought for a moment I had broken through and you were going to correct Access Economics and point out where they are wrong in the figures.

Mr Tilley—I am aware that in their *Budget Monitor* they give a rule of thumb of around a billion dollars a year for bracket creep.

Senator WONG—Just so I understand you correctly, Dr Rothman: are you criticising the Access Economics assumptions on the basis that they are cumulative?

Dr Rothman—That is correct, yes. For a one-year change, their rule of thumb is that it is $1 billion.

Mr Tilley—We are not criticising Access Economics on that count; we are just trying to explain to you that you are taking their cumulative figure, two-year figure, and trying to compare it to the one-year cost of the tax cuts. It is not that Access Economics have misrepresented their—

Senator WONG—Well, what do you say the relevant figures are then?

Mr Tilley—For the tax cuts?

Senator WONG—No, of the Access Economics figures that Dr Rothman says—

Mr Tilley—They give a rule of thumb—around $1 billion a year is their rule of thumb.

Senator WONG—I understand that the figures that I have from their *Budget Monitor* are a one-year figure.

Dr Rothman—Well, it is not my understanding. It is not my briefing; it is not my understanding.

Mr Tilley—You can check that with Access Economics, I am sure.

Dr Rothman—It is certainly not the way we understand it. And if that is a one-year figure, I can tell you that, from what I know, they would be a long way out.

Senator WONG—How far out?

Dr Rothman—I cannot say. We are saying that $1 billion is wrong, so $5 billion is much more wrong.

Senator WONG—Are you saying that bracket creep is less than $1 billion year?

Mr Tilley—No, we are not saying anything about what bracket creep is.

Senator WONG—I have noticed that, Mr Tilley.

Mr Tilley—We are trying to explain to you that you are taking a cumulative figure out of the Access—

Senator WONG—That is not my advice.

Mr Tilley—I suggest you check with Access Economics.

Senator WONG—I am happy to do that, and ask them again.

Mr Tilley—I am also trying to explain to you that they do give a rule of thumb for a one-year effect, and their rule of thumb is around a billion dollars. That is in their *Budget Monitor*. If you want to compare—

Senator WONG—Which you said you did not have in front of you. Do you have it now?

Mr Tilley—I have not got the *Budget Monitor*, but I have a note which quotes their *Budget Monitor*.

Senator WONG—Well, if I am right and these are one-year figures, not cumulative, then on their figures, Dr Rothman, the value of the tax cut is outweighed by bracket creep over the forward estimate period.

Mr Tilley—We are not accepting the premise of what you are saying. We are saying—

Senator WONG—I did say 'if'. I was very polite.

Mr Tilley—There is no point answering a question when we are totally convinced that your premise is incorrect.

Dr Rothman—We strongly believe that.

Senator WONG—What do you strongly believe?

Dr Rothman—That those figures, or Access Economics estimates, of the value of bracket creep since 2000-01, in the absence of the 2004 budget tax cuts, were done on that basis. That is the advice I have, and I am fairly confident that that is the case.

Senator WONG—So do I understand you to be saying that the Access Economics figures cannot be compared to the size of the annual tax cuts in the forward estimates? Is that your proposition?

Mr Tilley—We are saying you are making an incorrect comparison.

Senator WONG—Then explain why. Are you saying—

Mr Tilley—Because you are taking a cumulative Access Economics figure—

Senator WONG—So you are saying that the access figures are a cumulative calculation. Correct?

Mr Tilley—I think I have said it seven or eight times now. Maybe I should take—

Senator WONG—You can get tetchy with me and we can sit here all night and tomorrow as well, or we can just go through the questions.

Mr Tilley—I have offered to take the question on notice. We have answered it several times now.

Senator WONG—Okay. Perhaps you will want to take this on notice. I want to be really clear that I understand. What you are saying is that you dispute the Access Economics figures because you say the figures that I have given you are cumulative and not one-year figures.

Mr Tilley—That is correct.

Senator WONG—I will leave super for Senator Sherry. Are there any new taxes in the budget?

Mr Tilley—Not that I am aware of.

Senator WONG—What is the foreign withholding tax on page 23 of Budget Paper No. 2?

Mr Tilley—Which are the two measures that you are referring to? There are two foreign resident withholding measures there.

Senator WONG—Let us start with the second one—'The government will require amounts to be withheld from certain payments made to foreign residents, with effect from 1 July 2004'.

Mr McCullough—Is that the foreign resident withholding one?

Senator WONG—Yes.

Mr Miller—This is not a new tax; this is a withholding. It is not a final withholding tax. This is just a collection mechanism.

Senator WONG—A collection mechanism?

Mr Miller—Yes.

Senator WONG—Isn't that what a tax is?

Mr Miller—No. A tax is already levied on these foreign residents.

Senator WONG—So you are going to pay it back?

Mr Miller—Yes—if they lodge a tax return it is a credit against their tax return.

Senator WONG—What underpins the costings here?

Mr Miller—That is on the basis that we find that they generally do not.

Senator WONG—Is it correct that you are going to be withholding some income that people are not going to then get back?

Mr Miller—No. It is totally up to them. We withhold the tax that has already been levied on them—and this is not a new tax; they have to pay tax anyway. If they want this money back, they just have to lodge their tax return and that is a credit against their normal tax. There is no new levying of any tax here.

Senator WONG—Isn't this a tax, and now we are raising more from it?

Mr McCullough—I forget the actual origin of this idea, but I think it dates back to something like the review of business taxation, or something around that time—several years ago anyway; it is been on the books for a while. Tax is supposed to be paid by these people. At the moment, some of them are not complying. This withholding mechanism collects tax that ought to have been paid by these people. It is not a final tax. It is just like an ordinary instalment for an employee, if you like. When they put in a tax return, they get credit for that tax against the tax that they would otherwise have to pay.

Senator SHERRY—What about offsetting amounts?

Mr McCullough—Well, their liability to pay this amount would be established by the ordinary tax system. This is a withholding mechanism, and the reason it was costed—I will have to check with Mr Tilley here—is that over time the base against which these things are costed, the revenue base, was considered to have eroded. This mechanism will collect the tax that should have been due and should have been in the forward estimates.

Senator SHERRY—So it is extending an existing tax?

Mr McCullough—The best analogy I can give is that people on salaries are subject to income tax and the fact that they have something withheld as they go through during the year does not make the withholding a tax in itself. At the end there is a balancing and, if I have had so much withheld and I owe so much, the two are offset against each other.

Senator SHERRY—So there is no gain in revenue? If we do not pass this, it does not matter. There is no gain in revenue.

Mr McCullough—The fact that it has got a cost means that against the forward estimates there would be a gain.

Senator SHERRY—Okay. Thank you.

Mr McCullough—That is saying that, like any other integrity measure, the base that ought to have been there over time has been eroded.

Senator SHERRY—You have an extended base. Don't argue about it, but you have extended it.

Mr Tilley—No, we have not extended the base. The base is exactly the same. This is a different way of withholding—collecting—that tax. So it is a withholding arrangement on an existing tax, tax that is already due and liable. It is simply an enforcement mechanism to improve the chances of collecting that revenue.

ACTING CHAIR—While there is a break in proceedings, let me say that the committee has observed the absence of Mr Greg Smith, the former executive director of the Revenue Group. Upon inquiry, we found that he has resigned from Treasury after 21 years of distinguished service to the public sector. Although some senators found Mr Smith to be a hard cookie, he served governments of all persuasions with a great deal of dedication. His role in putting together budgets with very accurate forecasts I believe was a skill that had few equals. At estimates he was certainly very firm in his approach towards senators, but at the same time I think he upheld the highest traditions of Treasury and was widely respected. I would like to pay a special tribute and give thanks to him after 21 years.

Senator WONG—Budget Paper No. 1 at 4-39 makes a statement that the budget includes a package of major initiatives to address directly these demands through increasing participation and productivity. It concludes by saying that this includes measures to further reduce welfare traps for low- and middle-income families and deliver tax cuts that will increase rewards from work and increase incentives to take on additional work, seek advancement and acquire skills. I presume Treasury would argue that this budget is well targeted towards the objectives of productivity and participation.

Mr Tilley—They seem like appropriate claims for the measures. The Treasurer has presented this in his budget and it seems like an appropriate position to take.

Senator WONG—Justifiable?

Mr Tilley—Yes.

Mr McCullough—We are only being hesitant because statement 4 is not technically a Revenue Group responsibility. I do not have any problem with it.

Senator SHERRY—Whose responsibility is it?

Senator WONG—Whose responsibility is it? Where are they?

Senator SHERRY—Someone must have thought it up.

Mr Tilley—This is with the Macroeconomic Group, under outcome 1, I think.

Senator WONG—I am going to be asking some questions about this. Have they all gone?

Mr Tilley—We will do our best to answer questions.

Mr McCullough—We will do as well as we can.

Senator WONG—Would you describe the current tax and family payment package as significantly reducing welfare traps?

Mr Tilley—You are in outcome 2.1 now—

Senator WONG—You asked me to go back to outcome 2.

Mr McCullough—We are 2.2.

Senator WONG—Is outcome 2.1 here?

Mr McCullough—They have been here twice now.

Mr Tilley—Three times, I think.

Mr McCullough—Three times, and they just been dismissed again.

Mr Tilley—Senator, I am not disagreeing with your—

Mr McCullough—We will have a bash.

Mr Tilley—We are not disagreeing with your statement. We just want to make it clear we are not the experts.

Senator WONG—Has Treasury factored in any increase in revenue resulting from increased productivity and participation in the forward estimates?

Mr Tilley—We can get Mr Greagg back if we get technical, but let me have a go first. The revenue forecasts in the budget are done on the basis of the economic parameters presented in the budget. This is how we put the budget together. The economic parameters which underpin the fiscal forecasts are prepared. So what is assumed in terms of productivity and participation in the budget package is what underpins our revenue forecasts.

Senator WONG—What are those assumptions?

Mr Tilley—On productivity and participation?

Senator WONG—Yes.

Mr Tilley—I am not sure I can quote them to you, but they are presented in statement 3 in terms of economic growth and labour force participation.

Senator WONG—It was 5-7, was it not?

Mr Greagg—Those two pages I referred you to before—3-6 and 5-7—have got those factors that we have taken into account when formulating the revenue forecasts. They are some of the factors that we have taken into account.

Senator WONG—What measures do you point to that suggest that will increase productivity and participation?

Mr Greagg—Well, in the case of participation, that would be captured by the changes in employment. In terms of productivity—

Senator WONG—What budget measures do you point to in order to justify the assertion that it will increase productivity and participation?

Mr Greagg—You are asking a different question. It is not an output.

Mr Tilley—The particular measures, particularly in regard to positive participation effects, are, in particular, the More Help for Families package and, in particular, the family tax benefit and income tax measures in that package.

Senator WONG—Are they going to increase productivity and participation?

Mr Tilley—Participation. The tax cuts in particular simply reduce tax rates and, therefore, reduce effective marginal tax rates, which would be expected to have positive effects on participation.

Senator WONG—Is the assumption that people do not work hard just because they might go to another tax bracket?

Mr Tilley—It is a general proposition that reductions in effective marginal tax rates will have beneficial effects on participation. You can debate the extent of that.

Senator WONG—What about productivity? What measures can you point to which will increase productivity?

Mr Greagg—The extension to the innovation programs would be specifically ones that come to mind.

Senator WONG—Sorry?

Mr Greagg—The changes to innovation arrangements. As we have said, we do not advise in this area, but that is the type of thing that you would expect would have a positive impact on productivity.

Senator WONG—Presumably when you were doing your revenue forecasts you made assumptions about participation and productivity. Is that correct?

Mr Greagg—As I mentioned before in my earlier evidence, we take into account changes in employment and changes in wages.

Senator WONG—Does that include participation and productivity rates?

Mr Greagg—It certainly takes into account participation.

Senator WONG—So did you calculate, as part of your forecasting, the enhanced productivity and participation effects of budget measures?

Mr Greagg—I think probably the way to answer that correctly is that it is the whole package of things. That is why I referred you to page 3-6. It has all those macro-economic variables that underpin our revenue forecasts. So the government takes into account all those

things when producing these particular taxation parameters that I then use to produce the taxation revenue forecasts.

Senator WONG—Can you point me to where in the budget papers we can see the impact of budget measures, other factors held constant, on productivity and participation?

Mr Tilley—I do not think you can point in the budget papers to any specific quantification of such impacts of particular measures. What Mr Greagg was trying to explain is that the budget is a package as a whole. It is a set of macro-economic forecasts which underpins the revenue forecasts. In outcome 2, we do not do the macro-economic forecasts.

Senator WONG—Can you tell me how much the budget measures will increase participation? Has that been quantified?

Mr Tilley—No. There is no quantification of that. This is a very difficult area to make quantifications of, as a general concept.

Senator WONG—So you did not quantify it? It is not quantified?

Mr Tilley—No.

Senator WONG—What about productivity? Is that quantified?

Mr Greagg—As I mentioned, in particular, if you were interested in productivity, you would see it show up, relative to an unchanged situation, as, for example, a change to GDP.

Senator WONG—I am asking you if you quantified the productivity impact of any budget measures.

Mr Greagg—As I mentioned, there is a whole package of macro-economic forecasts that underpin the revenue forecasts that take into account the whole of the government's budget package.

Senator WONG—So how can we be sure, given your answer and looking at the budget papers, the budget measures have actually increased participation assumptions?

Mr Tilley—We are presenting a proposition that reductions in effective marginal tax rates will have positive effects on participation. We are not making an assertion about the quantification of that impact. But it is a general proposition which would be generally accepted.

Senator SHERRY—On that logic, Mr Tilley, if everyone benefited from the tax cut, could we assume, then, that it would be greater?

Mr Tilley—As a general proposition, reductions in effective marginal tax rates will have beneficial effects, all other things being equal.

Senator SHERRY—On the basis of your logic, if people earning below $52,000 received a tax cut, we would in fact be increasing it, would we not?

Mr Greagg—You would also have to take into account the changes to the family arrangements.

Senator SHERRY—Yes. But we are dealing with the tax cuts here.

Mr Greagg—But I believe the Treasurer and the government have presented this as a package.

Senator SHERRY—But I am not going to that. I am going to the logic of Mr Tilley's argument.

Mr Tilley—Your general proposition is correct. As a general proposition, reductions in effective marginal tax rates would be expected to have positive effects on participation. People will argue about the quantification of that, whether it is greater at some points than others, but as a general proposition, that would seem reasonable.

Senator SHERRY—But on that logic, if you extend it, then you will increase the outcome.

Mr Tilley—If you had greater reductions than in the budget paper—

Senator SHERRY—Yes.

Mr Tilley—you would expect greater participation, all other things being equal. It does not mean you can just halve revenue and—

Senator SHERRY—I understand that—but on that logic, yes.

Senator WONG—I do understand from these answers that Treasury has not actually quantified the impact of the budget measures on participation and productivity. The Treasurer simply made the statement in the budget papers that those two factors are enhanced.

Mr Tilley—We do not do measure-by-measure quantifications of—

Senator WONG—I am happy if you would have done it for the totality of the budget measures.

Mr Tilley—participation and productivity effects. We are partly, in the other parts of the package, more about outcome 2.1. But listening to Mr Tune earlier, I think he was saying there is ongoing work on the participation issues.

Senator WONG—I will turn now to put some questions on tax expenditures and, in particular, the difference between tax expenditure statement 26, tax offsets for taxpayers with dependants, and TES A29, which is the tax offset for a housekeeper who cares for a prescribed dependant.

Mr Tilley—I am just trying to catch up. Which page of the tax expenditure statement did you say?

Senator WONG—It is A26. It is TES A26 and TES A29.

Mr Tilley—TES A26? I have page 26. I do not have an A26 as such. Is that the capital gains tax benchmark?

Senator WONG—It is tax offsets for taxpayers with dependants and tax offset for housekeeper who cares for a prescribed dependant. It is measure A26.

Mr Tilley—I am finally catching up. It is the tax offsets for taxpayers with dependants.

Senator WONG—Measure A26?

Mr Tilley—Yes.

Senator WONG—Are we on the same page?

Mr Tilley—Yes, finally.

Senator WONG—And measure A29, which is the tax offset for housekeeper who cares for a prescribed dependant. Which tax expenditure is the dependent spouse offset, no children, included in?

Mr Tilley—I am not sure we are going to be able to answer the questions, but why don't we get as far as we can.

Senator WONG—Which tax expenditure is the dependent spouse offset, no children, included in?

Mr Tilley—I am not sure I understood the question.

Senator WONG—Which tax expenditure is the dependent spouse offset, no children, included in? Is it A26 or A29?

Mr Tilley—I think we are just going to try to read this hurriedly and respond.

Senator WONG—Can you take that on notice?

Mr Tilley—I am happy to take it on notice, of course.

Senator WONG—Is the dependent spouse offset refundable?

Mr Tilley—Maybe the tax office knows that.

Senator WONG—We are coming back tomorrow, are we not? I think we are.

Mr Tilley—We are, but if there is someone who knows the answer we may as well give it.

Mr Carmody—If the dependent spouse offset takes it into credit then, yes, there is a refund of that amount. Perhaps Raylene Vivian will be able to give you an accurate answer.

Senator WONG—Are you able to answer the question that was just taken on notice?

Mr Carmody—The question was whether the offset is refundable.

Senator WONG—There were two questions.

Mr Carmody—Raylene can answer only the second one.

Senator WONG—Is the dependent spouse offset refundable?

Ms Vivian—The dependent spouse tax offset is supplied as a credit against any tax paid to the extent that you have tax payable.

Senator WONG—So if you are in credit—

Mr Carmody—That sounds as though if what you are taxed outside the offset is less than the total amount of the offset you only get the amount of the tax that is the offset.

Senator WONG—Mr Tilley, on the other question—measure A26 and measure A29—can you come back tomorrow with that answer?

Mr Tilley—I will certainly try to.

Senator WONG—Can we turn now to page 29 of Budget Paper No. 2. The measure is personal income tax—simplifying the foreign employment exemption. Can you just confirm

for me what this measure relates to. Is it tax expenditure A5 and A6, the income tax exemptions for those working overseas under certain situations?

Mr Tilley—Do you want an explanation of what this measure is effectively about?

Senator WONG—No. Does this measure relate to tax expenditures measures A5 and A6, being the income tax exemption for those working overseas under certain circumstances?

Mr Tilley—It might be simpler if we take it on notice and see if we can come back with a response tomorrow.

Senator WONG—Could you do that. In what situations do these people get an income tax exemption?

Mr Tilley—These are pretty technical tax advice type questions.

Senator WONG—In what situation do these people get an income tax exemption?

Ms Vivian—Which people?

Senator Coonan—People who travel overseas to work.

Senator WONG—We are talking about the foreign employment exemption. Perhaps Ms Vivian could be shown page 29 of Budget Paper No. 2 so she knows what—

Mr Tilley—Is there a context that might help us in all this? These are just technical interpretations of the tax law questions, unless there is something broader that we can answer.

Senator Coonan—There are several conditions. I just cannot bring them to mind, but I can certainly get that for you.

Senator WONG—My question is: does it relate to measures A5 and A6 in the TES? I think that is what you are going to come back with tomorrow. Is that right?

Mr Tilley—Unless the tax people can answer it now.

Ms Vivian—We will take it on notice.

Senator WONG—Can you also take on notice in relation to those two measures that I—

Mr McCullough—If we are looking confused, my confusion is simply because the tax expenditure statement is a historical record of the tax expenditures that are there.

Senator WONG—Correct.

Mr McCullough—The budget, of course, in setting out revenue measures, sets out new measures. So your question of whether it relates to something in the past—

Senator WONG—I think that is what I am trying to determine—the relationship between the measure which exists and the budget measure that has been announced.

Mr McCullough—Yes. I am still struggling with the meaning of 'relate to'.

Senator WONG—How does it affect it? Is it a change to this measure, or does this measure continue and this is a new measure as well? That is what I am struggling with.

Mr McCullough—Would the number change in one of these tax expenditure statements?

Mr Tilley—It will not change because there is no number.

Mr McCullough—Because there is no number. We can answer that simply.

Senator WONG—No. It is not the number. There is no cost to revenue identified in Budget Paper No. 2. We will stick to the tax expenditure statement. Are you able to give me a cost breakdown between the two measures A5 and A6?

Mr Tilley—I can take that on notice.

Senator WONG—Again, are you able to give that to me or Senator Sherry tomorrow?

Mr Tilley—I will take it on notice. I do not know how difficult some of these are. I am not familiar with these measures. I can read it here, but I cannot give an immediate answer. I will just take it on notice.

Senator WONG—I am not sure if this is tax office or Treasury, but does measure A5 in the TES not apply to projects approved by the minister for trade?

Mr Tilley—I would not have a clue.

Senator WONG—You do not know. Does the tax office know?

Mr Tilley—You need a genuine expert on these specific provisions to answer some of these things. The tax officers are the only ones with any hope of knowing answers like that.

Mr Carmody—We can give you some information tomorrow.

Senator WONG—These are the questions that I need answered. Does measure A5 apply to projects approved by the minister for trade? What types of projects are we talking about? For example, are they aid projects? Can we please get a list of projects supported under this measure?

Mr Tilley—I think I can answer one of your questions. I am quite proud of myself. On the one about A5, the tax expenditure statement says specifically, 'To be approved, projects must be considered to be in the national interest by the Minister for Trade or the minister's delegate.'

Senator WONG—Correct, yes.

Mr Tilley—Does that answer your question?

Senator WONG—No. I want to know what sorts of projects they are and whether we can get a list of projects that are currently supported under this measure.

Mr Tilley—It looks like I cannot answer your question.

Senator WONG—Someone behind you is shaking their head. Is it not possible for the government to tell me what the minister or his delegate has identified as a project to which this tax measure relates?

Mr Tilley—I will take the question on notice.

ACTING CHAIR—The committee will have a break in five minutes.

Senator WONG—I have quite a few questions on the WET. Do we want to start them? I am happy to start them.

ACTING CHAIR—If you would like to have a break now—

Senator WONG—I do not particularly want a break. I am happy to keep going. Let us keep going.

ACTING CHAIR—We will have a break for 10 minutes.

Proceedings suspended from 9.26 p.m. to 9.37 p.m.

Senator WONG—The new rebate for the wine equalisation tax is scheduled to start on 1 October. Presumably, the government is aware of industry concerns that sales will be delayed until after that date to the detriment of wineries' cash flow.

Mr Tilley—We are aware of the issue.

Senator WONG—Presumably it has been put to you that some wineries are very concerned about the impact on their cash flow of the start date.

Mr Tilley—I think the issue here is: what is the earliest practical day that we can commence this measure in terms of getting the tax arrangements in place?

Senator WONG—Why is that the earliest date?

Mr Free—Legislation will be required. By the time that is prepared, introduced and passed and to allow the tax office to make the arrangements with industry, the judgment was made that the earliest that could be done was 1 October. That aligns with the three-monthly business activity statement cycle because the way the assistance is delivered is through the BAS.

Senator WONG—Let us start from the beginning. Has the legislation been drafted?

Mr Free—It is currently being drafted.

Senator WONG—When were drafting instructions provided?

Mr Free—Very soon after the budget. I would have to take the exact day on notice. But it was within a day or two of the budget being handed down.

Senator WONG—If the legislation is not passed prior to the start date, will the rebate be retrospective?

Mr Free—We have not considered that issue yet.

Mr Tilley—We are obviously hopeful that the parliament will pass the legislation quickly to enable us to avoid any problems like that.

Senator WONG—All sorts of things happen notwithstanding people's best intentions. You have not ruled out the possibility of retrospective legislation, presumably?

Mr Tilley—We are planning on a 1 October start date with the legislation passed before that.

Senator WONG—So you do not have a plan B?

Mr Tilley—We have a plan A, which is to have the legislation passed.

Senator WONG—I think a plan B assumes there is a plan A first that has not worked.

Mr Tilley—We have answered the question, Senator.

Senator WONG—Presumably, the government is committed to a 1 October start date?

Mr Tilley—That is the date the government has announced.

Senator WONG—So if legislation, for whatever reason, is not passed until after that date, presumably, it will be retrospective?

Mr Tilley—The government would have to consider the situation if it came to that.

Senator Coonan—With respect, that is a hypothetical.

Senator WONG—Is there any reason why the start date could not be 1 July, assuming that retrospectivity is not a problem?

Mr Tilley—I think Mr Free answered that question. In order to put the necessary arrangements and legislation in place and the business activity statement requirements, 1 October is the earliest practical start date.

Senator WONG—Let us leave aside the legislation issue. What I am suggesting is whether there is any reason other than the legislative program for there not being a 1 July start date?

Mr Tilley—Mr Free explained the issue with the tax office putting the appropriate arrangements in place, including with the BAS statement cycle.

Senator WONG—Mr Carmody?

Mr Carmody—Clearly, it is preferable to have people know the application of the law and to prepare their activity statements on the basis of that law. It would complicate matters for people. When the law is not enacted, what do they do in terms of completing their activity statements? It would place complications and people would need guidance on that. It may involve some refunds. But at a practical level, it can be done.

Senator WONG—So the only thing that has locked the government into 1 October is the legislative issue, given Mr Carmody's response. Is that right?

Mr Tilley—We have answered the question about the issues that the government has taken into account. The government has made a decision to have a 1 October start date.

Senator WONG—And I am trying to get at the basis of that decision. As I understood Mr Free's evidence, he says there are two reasons—basically getting the legislative program through parliament; and the tax office arrangements. Mr Carmody says, 'It would be more complex but it is possible that you could have a retrospective start date.' So given that, what I am saying is, therefore, the main basis for the 1 October start date is the legislative program?

Mr Tilley—Both issues are relevant in the government's decision in announcing a 1 October start date.

Senator WONG—And the government obviously saves money by having 1 October as opposed to a 1 July start date?

Mr Tilley—I do not think that was the relevant consideration.

Senator WONG—I am not asking you what the consideration was. It is a matter of fact, is it not?

Mr Tilley—Yes.

Senator WONG—You would at least agree on that?

Mr Tilley—The cost to revenue in 2004-05 is less if the start date is later.

Senator WONG—Thank you. Why did the government choose to provide small wineries relief from WET as a rebate and not as an exemption?

Mr Free—The existing cellar door scheme is actually delivered through a rebate—

Senator WONG—Yes. I am familiar with it.

Mr Free—and through the business activity statement. If you provide the assistance through an exemption and if you track some of the results of that as far as the invoicing of wine, you find that the system you have to have on the tax payment of wine becomes quite complicated, whereas a system where you actually rebate taxes paid has got some certain administrative features which are more desirable. The government made the judgment that they would deliver what is an effective exemption through rebating up to $290,000 annually.

Senator WONG—But it is the case, is it not, that the rebate does result in cash flow problems, particularly for some wineries, because they pay the WET and then they have to claim it back even if their WET liability is zero for the year? That is how it works, is it not?

Mr Free—My understanding, and the tax office will correct me if I am wrong, is that on the business activity statement there is a box for WET payable and there is another box for WET refundable. If the WET refundable is such that it equals the WET payable, they do not actually have to pay it and claim it back but it nets out at zero.

Senator WONG—So wineries can make claims on their BAS statements such that they will only need to make a WET payment net of their rebate? Is that how it will be set up, Mr Carmody?

Mr Reardon—That is correct.

Senator WONG—And that is for both cellar door sales and sales to distributors?

Mr Reardon—They claim the cellar door sales on the same label on the BAS and other sales as well on the labels on the BAS.

Senator WONG—For both sales to distributors and cellar door sales?

Mr Free—That will be under the new law. Under the existing law, it is only cellar door sales, which is what—

Senator WONG—Yes. I appreciate that.

Mr Free—the tax office administers at the moment.

Senator WONG—I am asking about the administrative arrangements associated with the new measure. As I understood your evidence, this will be administered such that wineries can make claims on their BAS statements and will only need to make the WET payment net of the rebate. Is that correct?

Mr Reardon—That is correct.

Senator WONG—And that will be for both cellar door sales and sales to distributors?

Mr Reardon—As I understand the proposed legislation, that is correct.

Senator WONG—And the intention from the tax office's administrative end is to replicate, I suppose, the existing mechanism on the BAS?

Mr Reardon—That is correct.

Senator WONG—With the extended application?

Mr Reardon—That is correct.

Senator WONG—Will the rebate on sales to distributors be at the ex-winery price or the distributors' wholesale price?

Mr Free—That will be a matter of detail which is in the legislation, which is yet to be finalised and approved by the government.

Senator WONG—Well, you have provided drafting instructions and you have announced it as a budget measure. Presumably you know which price is going to be the basis for it.

Mr Free—I would observe that it is a rebate to producers.

Senator WONG—I am supposed to understand what that is code for, am I?

Mr Free—Which means—

Senator WONG—I am sorry; I am being genuine. I do not understand what you mean.

Mr Tilley—I think it is a detail that will be finalised as the legislation is finalised. Some of these things are matters of fine detail. The legislation will be presented to the parliament with all of the detail provided.

Senator WONG—This is a budget measure you have announced. You have already provided drafting instructions. You ought in these estimates committees be able to tell me the price on which the rebate will be calculated. It is a very simple question.

Mr Tilley—Well, I certainly cannot tell you that. But it will be in the legislation.

Senator WONG—Can anyone tell me that?

Mr Free—I can tell you what is in the drafting instructions, but I am at a disadvantage in that, while drafting instructions can be given and a draft bill can be prepared, that bill has not yet been approved by the government.

Senator WONG—Well, what do the drafting instructions say?

Mr Tilley—The government will present its legislation to the parliament when the legislation is ready.

Senator WONG—You have a budget measure here. Are you not able to tell me the price on which it will be calculated? Is that right?

Mr Tilley—I cannot tell you that exact detail, but when the government presents the legislation to the parliament, it will no doubt make its final decisions and clarify issues such as that.

Senator WONG—It is a budget measure. I would have thought you should be able to tell me the price on which the rebate is calculated.

Mr Tilley—Clearly, I cannot tell you every detail about the legislation.

Senator WONG—It is not an insignificant detail, Mr Tilley.

Senator Coonan—Senator, I do not think that has been announced yet. But it will be apparent.

Senator WONG—So Mr Free says it is in the drafting instructions, but you are not prepared to disclose it?

Senator Coonan—No. Certainly not. But the bill will be presented shortly.

Senator WONG—How do you do the costings for the measure? Surely you have assumed the prices for the purposes of costing this rebate.

Mr Tilley—We will make assumptions in doing the costings. They do not always depend—

Senator WONG—But you have already done costings. Do not tell me you will. You have.

Mr Tilley—We do as a general proposition. We do not necessarily always know all the exact, fine details.

Senator WONG—All right. Tell me what is the price assumption contained in the costings in the budget measure?

Mr Tilley—I do not know the exact detail on that.

Senator WONG—Who does?

Mr Tilley—If you would like us to take the question on notice, we will do that.

Senator WONG—I do not want you to. I think the minister is instructing you to. Is that right?

Senator Coonan—That is right.

Senator WONG—On the BAS statement, will there be a differentiation between the cellar door sale and sales to distributors components?

Mr Reardon—That is not a decision that we have yet made. But we are pretty keen to look at the legislation. Once we have that, we will work through some of those administrative arrangements. Currently, we have not asked for that level of detail in the current BAS.

Senator WONG—Would there be any reason for a differentiation?

Mr Reardon—It is not something that we have actually worked through yet.

ACTING CHAIR—I want to ask one question. Will you have a separate BAS statement for winegrowers compared with ordinary people, or will you incorporate it in one standard form?

Mr Reardon—Again, we have not worked through that level of detail.

ACTING CHAIR—I suggest you have perhaps a separate one for just wine producers. Otherwise, it might add to more confusion for other taxpayers.

Mr Carmody—As Mr Reardon has said, we have not been through that detail. But I think we have quite a multiplicity of BAS forms at the moment, so we will have to see which is the best way.

ACTING CHAIR—Thank you.

Senator WONG—I presume the rebate is payable to the winery and not the distributor. Is that the intention?

Mr Tilley—The rebate, I assume, is paid to the person who is liable for the wine equalisation tax, which is the wine producer.

Senator WONG—Is that correct? Not the distributor?

Mr Free—Yes.

Senator WONG—Are you able to give an indication of what would be an equivalent value to the rebate of an exemption expressed in litres if you assumed a small winery selling at an average price of $20 per bottle retail?

Mr McCullough—I will take that on notice.

Senator WONG—The Treasurer stated that 90 per cent of wineries will be effectively exempt from WET. Is that right?

Mr Tilley—That is correct.

Senator WONG—What are the numbers on that? What is the number of persons actually beneficially affected by the measure?

Mr Tilley—It is 90 per cent of—

Senator WONG—The numbers, not percentages.

Mr Tilley—I do not have that. I am not sure whether Mr Free does.

Mr Free—No. It just refers to 90 per cent of wine producers. It is generally accepted that there are about 1,800 wine producers in Australia. But as to the exact figure that was used we would have to take that on notice.

Mr Tilley—We can take it on notice. We may be able to give you an answer like that tomorrow if we can just find the relevant bit of information.

Senator WONG—Do we know how many?

Mr Reardon—I might be able to help you. In the 2002-03 year, approximately 2,300 entities paid or claimed WET credit.

Senator WONG—Do we know how many litres of wine the largest of these wineries produce?

Mr Reardon—It is not something we collect on the BAS. We do have people who would be happy to do some field research in that area.

Senator WONG—Yes. But perhaps after tonight we might not want to know. Is it not the case that the value of the $1 million rebate will be eroded over time by inflation?

Mr Tilley—We will take that on notice. I am just not sufficiently familiar with the detail of what the legislation has got.

Senator WONG—Who is? I am talking about a budget measure. I am not asking about the legislation now.

Mr Tilley—I do not want to give an answer when I am not sure.

Senator WONG—Will this rebate be eroded over time by inflation?

Mr Tilley—I will take that on notice and give you a response.

Senator WONG—On what basis? Why do you need to take that on notice?

Mr Tilley—Because I do not want to give you an answer when I am not sure of the answer and potentially give you a misleading answer.

Senator WONG—Do you not know the answer?

Mr Tilley—No.

Senator WONG—You do not know the answer—

Mr Tilley—No.

Senator WONG—to whether or not the rebate will be eroded over time by inflation?

Mr Tilley—No. But I will certainly seek to get an answer and provide it to you.

Senator WONG—Is the rebate indexed?

Mr Tilley—Is the threshold indexed? I think that is the same question.

Senator WONG—Yes.

Mr Tilley—It is the same question. I will seek to provide an answer on that.

Senator WONG—You are not able to tell me whether in this budget measure your costings assume any indexation or not?

Mr Tilley—I cannot tell that you here, but I will seek to get clarification of that and provide it to you.

Senator SHERRY—Wine creep. You are very sensitive about creeps, are you not?

Mr Tilley—Me too.

Senator SHERRY—I would have thought it is a pretty straightforward question.

Senator WONG—I am quite astonished. The question is whether the measure referred to at page 39 of the budget measures document, Budget Paper No. 2, is indexed. You have costed it.

Mr Tilley—We will seek to get an answer for you.

Senator WONG—When do you think you will be able to do that?

Mr Tilley—I will take it on notice and get it as soon as possible.

Senator WONG—There is a reference to state government cellar door rebates. Have any states indicated they will return money to the Commonwealth for any state rebates below the $1 million wholesale rebate level?

Senator Coonan—There has been some contact with the states on that level. I am not able to just give you any kind of progress report, but it is obviously something that has to be done.

Senator WONG—But no agreements as yet?

Senator Coonan—Not that I am aware of.

Mr Tilley—I might be able to add to that, in that I understand that all of the states have previously written—not all but certainly most—to the government offering to provide any savings to the government if they introduced a measure like this. The Treasurer has written back to the states, I understand since the budget—

Senator WONG—Saying, 'Yes, please.'

Mr Tilley—saying, 'Yes, please', of course.

Senator Coonan—I can tell you personally that Mr Foley from your state, Senator, is very keen.

Senator WONG—That is a good thing. No states have refused to do so, have they?

Senator Coonan—No, I do not think so. But I am just not in a position to confirm that the agreement has been made.

Senator WONG—I presume that savings from the states returning this money was factored into the budget measure.

Mr Tilley—I will confirm this, but I do not think that is the case. I think that the cost that is provided here is the outright cost of the rebate and then separately the removal of the accelerated depreciation is—

Senator WONG—That is separately identified, is it not?

Mr Tilley—They are presented as separate measures.

Senator WONG—So the actual cost of the measure is—

Mr Tilley—You have to subtract the cessation of the Commonwealth's cellar door rebate, but I do not think it includes a saving from the money returned from the states.

Senator WONG—Have you done any calculations or assessment of those savings to the Commonwealth as a result of the states' likely agreement to the scheme?

Mr Tilley—I am not sure to what extent that has been done exactly. We have a basis for making those calculations, but that is subject to negotiation with the states. It is a matter of estimating the cellar door rebates that they pay.

Senator WONG—About how much is it, just as a matter of interest?

Mr Tilley—I cannot recall.

Senator WONG—Do you know, Mr Free?

Mr Free—I cannot give an exact figure, but our understanding is that in total it probably is getting towards $30 million a year.

Senator WONG—About $30 million.

Mr Free—Across all states.

Senator WONG—That is across all states. Have any states confirmed that they will continue to pay their state rebates above the $1 million wholesale level?

Mr Tilley—Not that I am aware of. I am not sure what commitments the states have made in that regard.

Senator WONG—Can I just clarify your answer. You are saying you are not aware of any state rebates that exist above the $1 million wholesale level?

Mr Tilley—I thought your question was whether they have made commitments to continue to pay above the $1 million. I am not aware of that. All I am really aware of is the Treasurer has written to his state counterparts and there is a process of discussion about what they will do about their cellar door rebates and how they will provide savings to the Australian government.

Senator WONG—In the preparation of this measure, was DFAT consulted by Treasury on the introduction of the rebate?

Mr Tilley—I am not aware of exactly what consultation processes there were.

Senator WONG—I should be fair to you and say that DFAT's evidence was that they were not consulted with.

Mr Tilley—That they were not?

Senator WONG—Yes.

Mr Tilley—Okay. They are probably right then.

Senator WONG—Are there not implications under the CER of this rebate?

Mr Tilley—I think that is something that DFAT would be in the best position to give a view on.

Senator WONG—But you did not ask them?

Mr Tilley—You have asked these questions to DFAT, obviously. I do not have any basis for disagreeing with whatever they have said.

Senator WONG—Did DFAT provide any written advice to Treasury on the imposition of the tax?

Mr Tilley—Not that I am aware of.

Senator WONG—Is there a reason why Treasury chose not to consult DFAT given it does have some trade implications?

Mr Tilley—I am not sure they would agree it has those implications.

Senator WONG—Who is 'they'—DFAT?

Mr Tilley—In a tax measure, it is not immediately obvious that you would consult DFAT.

Senator WONG—So is it your view or Treasury's view that there are no implications for the CER of this measure?

Mr Tilley—That is really for the trade people to make an assessment of. I do not know what the answer to that is. But, if you have asked them those questions, I am sure they have given answers.

Senator WONG—Presumably someone must have made a decision to not consult them; therefore, presumably, it is on the basis that they did not think it was relevant. Is that right?

Mr Tilley—I am happy to take the question on notice and check what DFAT have said.

Senator WONG—I presume Treasury is aware of the CER?

Mr Tilley—Indeed.

Senator WONG—And that we do import New Zealand wines, for example.

Mr Tilley—And wines from many other countries as well.

Senator WONG—No-one in Treasury turned their mind to whether or not this tax would have some implications on the CER?

Mr Tilley—I am not sure. I am happy to take the question on notice and check with the Trade people what their view is on that.

Senator WONG—There are some reports that the New Zealand government believes the rebate breaches the CER. Are you aware of that?

Mr Tilley—I have seen those media reports.

Senator WONG—When did you first become aware of this issue, Mr Tilley?

Mr Tilley—I cannot remember the exact date, but whenever it was that—

Senator WONG—Post the budget, presumably.

Mr Tilley—Post the budget?

Senator WONG—Yes.

Mr Tilley—Yes.

Senator WONG—So did anyone turn their mind to this prior to this measure being announced?

Mr Tilley—I am not aware of that, no.

Senator WONG—And, as far as you are aware, no-one from Treasury who was dealing with this matter checked with DFAT what any implications might be?

Mr Tilley—Not that I am aware, no.

Senator WONG—Since you have become aware of it from the media reports, has Treasury sought advice from DFAT?

Mr Tilley—I can take that on notice and check with—

Senator WONG—Mr Tilley, who deals with this issue? With all due respect—

Mr Tilley—We do not deal with the trade issues.

Senator WONG—I understand that, but you have said yourself you have seen media reports since the budget announcement about some concerns expressed by the New Zealand government. As a result of that, has Treasury sought advice from DFAT?

Mr Tilley—Not that I am aware of, but I could take it on notice to check.

Mr Free—Treasury has had discussions with DFAT. I do not know whether you would describe that as seeking advice.

Senator WONG—Who conducts those discussions? Is that you, Mr Free?

Mr Free—I have not been directly involved in the discussions. The general manager of the division that I work in, who—this may sound like a familiar refrain—is actually at an OECD meeting at the moment, was involved in those discussions.

Senator WONG—When did they occur?

Senator Coonan—There is a vote from Mr Carmody that we all go to Paris.

Senator WONG—Other people have got into trouble with the Paris option before.

Mr Free—I would have to take on notice the exact dates. As I said, I was not directly involved.

Senator WONG—But presumably it was subsequent to these media reports?

Mr Free—Certainly subsequent to the budget announcement.

Senator WONG—How does this usually work? If there are matters that might particularly affect the CER, would that be something Treasury would normally seek advice from DFAT about or do you assess the implications yourself?

Mr Tilley—I am not aware of how CER issues are dealt with, but I can take that on notice, if you like, and seek some further clarification.

Senator WONG—One of the articles in the CER talks about fair competition. I suppose the New Zealand argument would be that this rebate gives Australian wine producers a cost advantage vis-a-vis their New Zealand competitors.

Mr Tilley—I understand that that is the issue that has been raised by the New Zealand Treasurer.

Senator WONG—Didn't anyone consider that before the budget measure was announced?

Mr Tilley—I think I have answered that question.

Senator WONG—Which was?

Mr Tilley—I am not aware of this being a consideration in the development of the measure.

Senator WONG—Perhaps on notice you can find out whether there was any advice from DFAT about the implications for CER of the budget measure that has been announced. If so, on what date?

Mr Tilley—Okay.

Senator WONG—Mr Carmody, back in November, I asked you some questions about overdue business activity statements. I do not recall you actually lodging those in any questions on notice. You answered my questions about what I think you called insolvency debt. You gave me some figures on that. I asked a separate set of questions, including about how many business activity statements are overdue as at 6 November and how many were due at the end of last financial year. Mr Carmody answered:

I certainly do not have those figures here. We can look at what we can provide for you on notice.

I might have missed them coming through.

Mr Carmody—I am sure we answered them.

Senator WONG—Does anybody have them, because I have looked for them? I also asked you to take on notice how many of those activity statements were overdue for more than a year and how many taxpayers who had registered for the GST had never lodged an activity statement as at the end of 2002-03.

Mr Carmody—I am sure we answered all of those.

Senator WONG—Can the committee assist me, because I tried to find them last week and we could not find them. I will come back to that, Mr Carmody. Do the majority of trusts hold ABNs in the name of the trust? Is that how they applied for them?

Mr Carmody—It would be in the name of the trustee, I would imagine.

Senator WONG—I would hope so because they are the legal entity. In the rush to get all the ABNs registered, is it the case that quite a number of trusts actually were issued with ABNs in the name of the trust and not the trustee?

Mr Carmody—I am not aware of that.

Senator SHERRY—You are getting conflicting nods behind you.

Senator WONG—Yes, you are.

Senator SHERRY—There are yes nods and no nods.

Senator WONG—Are the relevant officers here? You do not know.

Mr Carmody—The shaking is that they do not know, as far as I can work out. We can find out. Obviously, the trustee is the legal entity. But I do not know.

Senator WONG—How many actions have you actually taken against trusts for non-payment of GST?

Mr Carmody—We have taken many activities against people for not lodging their activity statements and paying their GST, but I do not have in my mind the distinction between the number of those that were trusts and other forms of business.

Senator WONG—We have looked at this and there are not a hell of a lot of reported cases of trusts being prosecuted as opposed to other entities.

Mr Carmody—But prosecutions are only the very small tip of the iceberg of the lodgment enforcement that we take. The bulk of lodgment enforcement is carried out through demands and other action.

Senator WONG—Do you have an officer who perhaps deals with this?

Mr Carmody—I doubt that anyone here would be able to tell you how many. Over the period, we would probably talk in terms of millions of individual activity statements that we have demanded. We just do not have here the number that would be trustees as opposed to other entities.

Senator WONG—Have you been advised that, due to a number of trusts whose ABN is issued in the incorrect legal name, there are difficulties in prosecuting quite a number of trusts for GST non-payment?

Mr Carmody—I am not aware of that as an issue.

Senator WONG—There is no such advice?

Mr Carmody—I said I am not aware of it. None of my officers look like they are aware of it, but we can follow up on the issue for you.

Senator WONG—So you are saying there is no problem with referring trusts for prosecution?

Mr Carmody—I said that I am not aware that there has been any issue and none of my officers here are aware that there has been any issue, but we will follow up and see whether there has been an issue.

Senator WONG—The audit office report entitled *Australian Tax Office Collection and Management of Activity Statement Information* on 3 March found amongst other things that one in five or 2.66 million BAS cannot be processed mechanically and must be hand-checked. The specifications of the computer systems that run the automatic processing of BAS forms have not been updated since the introduction of the new tax system. Since receiving this report, what steps have you taken to improve your processing systems?

Ms Holland—In relation to the ANAO report, four of the recommendations have been fully implemented. There has been a QA program introduced, as requested. A single national exception management system has been purchased. We have introduced a consistent integrated approach to planning and reporting. The risk assessments have been completed as well.

Senator WONG—Do you now have written specifications for your processing machines?

Ms Holland—I understand that is the case. I understand so, yes.

Senator WONG—You do now. So you are now actually able to record what your processing machines are doing?

Ms Holland—Yes.

Senator WONG—Have any systems been put in place to ensure that when modifications to those specifications are made they are recorded?

Ms Holland—I understand so, yes.

Senator WONG—It is a concern, is it not, where you are looking at one in five business activity statements not being able to be processed? It is very concerning.

Ms Holland—At the commencement of the systems, those exceptions at the time of the report were high. The actual exception rate in our system now is a lot lower. About 47 per cent of them are built in by the tax office in relation to having a look at activity statements themselves. Our exception rate now is quite low.

Senator WONG—What is it now?

Ms Holland—It ranges between seven and nine per cent.

Senator WONG—Your exception rate, meaning hand-checked?

Mr Carmody—First of all, for the record, the ANAO did find that our current system's processes and controls provide a sound basis for the efficient and effective administration of activity statements. I will say that just to put things into perspective. But half of the exceptions are, as Ms Holland has already pointed out, actually caused by us putting in controls to review claims made under activity statements.

Senator WONG—So how has the 20 per cent hand-checking level impacted on the time taken to issue GST refunds?

Ms Holland—We have a turnaround of 24 hours in relation to manual interventions. Where they are refund cases, within the actual exception rate, the aim is to have the actual refund out within 14 days.

Mr Carmody—I think the figures are that, on a numerical basis, 92 per cent or 94 per cent—

Ms Holland—About 94 per cent are refunded within 14 days.

Mr Carmody—are issued within 14 days. That is on a numbers basis. Obviously, on the dollars basis it is lower.

Senator WONG—There are 110,000 refund claims each year not processed within the time frame. Is that right?

Mr Carmody—We do not have that figure. In terms of numbers as opposed to dollars, they are held up for different reasons. Some of them are integrity checks to make sure that the refunds are genuinely available. Because refunds have to be paid into bank accounts, a large proportion in terms of numbers are because we do not have the bank account details. That can often cause delays in doing that. In the discussion, we mentioned earlier our new electronic service for refunds coming in in mid-August. Where people use that service, if the bank account details are not available, they will get an automatically generated message at the time they lodge and be able to rectify that problem. So that will help in that area.

Senator WONG—The 110,000 figure I was quoting comes from the Inspector-General of Taxation.

Mr Carmody—I think probably if you take all the monthly and quarterly statements—and we get several million each time—it could be that that is the figure, but we just do not have that in front of us. We get millions and millions of activity statement lodgments through the years—about 12 million.

Senator WONG—I presume the ATO does appreciate the importance, particularly to small business, of businesses receiving their GST refund in a timely fashion.

Mr Carmody—Absolutely. That is why steps like the electronic initiative will help improve our service there and why we are doing it.

Senator WONG—Of the questions on notice that I referred to, again, the committee are not able to help me in providing them.

Mr Carmody—I am sure we can make them available tomorrow for you. I am sure they were lodged. I can remember.

Senator WONG—I did actually check on them a number of times. It is possible they got lost in the system. I asked for them prior to the last estimates rounds.

Mr Carmody—They were certainly prepared and cleared and my understanding is they have been lodged. But we will have them available tomorrow.

Senator WONG—Perhaps you can give me the answers you did lodge. Are you also able to give me your most up-to-date figures in the same categories?

Mr Carmody—We know the categories. We have the questions. We will have available for the committee tomorrow the questions we prepared and we believe we lodged and then we will take on notice updating those figures.

Senator WONG—Thank you. You and I had a discussion in November about uncollectible debt. Do you remember that discussion?

Mr Carmody—It was the percentage of collectible debt?

Senator WONG—Yes. I think your answer to a question on notice described it as insolvency debt. I think that is what you said.

Mr Carmody—Yes. That was my response. It was.

Senator WONG—It was the discrepancy between disputed debt and collectible debt.

Mr Carmody—Yes. And we provided a written answer after that.

Senator WONG—And total debt. Do I understand that all of the insolvency debt is subject to insolvency action, for want of a broad term—so a company in liquidation or having been liquidated and being insolvent? Well, what is the definition of insolvency debt that you are using? It was not in the annual report, obviously.

Mr Topping—In the insolvent category is debt that we are aware of and about which we have received a notification from an insolvency practitioner to say that it is subject to action.

Senator WONG—Is that in respect of the entirety of that component? As I recall, it was one and a bit billion—$1.19 billion—was it not?

Mr Topping—It was $1.9 billion, yes.

Senator WONG—Nearly $2 billion?

Ms Holland—It was $1.12 billion.

Senator WONG—It was $1.12 billion. So you are saying in respect of all of that debt you have received such a notice?

Mr Topping—The insolvency debt is the debt of an individual taxpayer who has been made a bankrupt or of a company that has been liquidated and includes the debt of taxpayers subject to other forms of insolvency administration. Example arrangements are under part 9 and 10 of the Bankruptcy Act and deeds of company arrangement and the appointment of a receiver.

Senator WONG—So of the categories you have identified, does the entirety of that debt fall into those categories?

Mr Topping—Those taxpayers would be subject to those actions, so the entirety of their debt is within that category.

Senator WONG—And how are we tracking with the insolvency debt now? Those figures you gave me of about $1.12 billion were as at the end of last financial year. Presumably you do track these at least on a six-monthly or quarterly basis.

Mr Topping—Yes, we do.

Senator WONG—Are you able to give me more up-to-date figures?

Mr Carmody—As at 30 April 2004 it was $1.38 billion.

Senator WONG—For 2003-04?

Mr Carmody—No. As at 30 April 2004.

Senator WONG—So it is a cumulative figure? Because the $1.12 billion amount—

Ms Holland—That is the end of the financial year 2002-03.

Senator WONG—So what is this figure here? This is the 2003-04 figure to date?

Ms Holland—To 30 April.

Senator WONG—So it is already more than the previous year. And what is the total value of debt?

Mr Carmody—Can we just clarify that. I think that is $200 million in addition, not a further $1.3 billion.

Senator WONG—Is that right?

Mr Topping—That is correct. That is just the total.

Senator WONG—So it is cumulative from the 2002-03 year?

Mr Topping—That is right.

Ms Holland—That is right.

Senator WONG—And the total debt?

Ms Holland—Collectible debt?

Senator WONG—No, total debt. Do you not in your annual report give a total debt figure and then break it up into collectible and disputable? You get a value of debt.

Ms Holland—At 30 April 2004, the total debt holdings was $17.125 billion.

Mr Carmody—And at 1 July 2003, it was $17.291 billion.

Senator WONG—And these are cumulative figures?

Mr Carmody—At the moment, there is a turnover.

Senator WONG—I appreciate that, yes.

Mr Carmody—So the actual figure at 30 June—

Senator WONG—This is not new debt?

Ms Holland—No.

Senator WONG—This is net debt, as in bits you have, and new debt is what you have accumulated.

Mr Carmody—There would be a lot more that is new but then there would be a lot that has been collected.

Senator WONG—So it is $1.38 billion and—

Mr Carmody—No. At 1 July 2003, it was $17.29 billion.

Senator WONG—I was referring back to the other figures.

Mr Carmody—So the other figures are: at 1 July 2003, insolvent was $1.11 billion.

Senator WONG—Which has now gone on to $1.38 billion.

Mr Carmody—It is $1.38 billion.

Senator WONG—And the other one was $17.29 billion, which is now down to $17.1 billion?

Mr Carmody—It is $17.1 billion, yes. But there are periods in the year where cycles are different, so I am not cracking champagne corks.

Senator WONG—Well, I am sure. We will see how we are at the end of the financial year.

Mr Carmody—Yes, I know. That is why I made that qualification.

ACTING CHAIR—There is a difference between the income tax amendment period for income tax and for fringe benefits tax. In the case of income tax, unless there is fraud or evasion, the Australian tax office amendment period is limitless. However, in other cases, the tax office has four years from the due and payable date of an assessment. But in the case of a fringe benefits tax, the tax office has seven years from the due date of amendment of the assessment. What is the reason for that? I think there is good cause nowadays for the two time periods to be the same.

Mr Carmody—That is a fair observation. I am not sure why there is a difference. I am not sure of the policy behind that. I do not understand why that should be different. I cannot help you, I am afraid.

ACTING CHAIR—Can you take it on notice?

Mr Carmody—I will take it on notice and see what the original policy reason was.

ACTING CHAIR—Thank you very much.

Mr Carmody—I am being reminded that I was involved in the preparation of the legislation. I reckon that is cruel. They are impudent staff!

ACTING CHAIR—It shows how long you have been around and how successful you are.

Mr McCullough—I was asked a question earlier about play groups by I think Senator Collins. I have an answer that I am ready to share at any time. I am not sure whether it will advance the cause a great deal.

ACTING CHAIR—If nobody is present, perhaps you might like to table it and we will incorporate it.

Senator SHERRY—Is it in writing?

Mr McCullough—No. There is a qualification, of course. The question was whether play groups fall under the statutory extension of a charity where their dominant purpose is to provide child care. Well, they can, but where parents accompany the child, as is the practice in most play groups, as a matter of logic, it would be hard to say that the purpose of the group was the dominant purpose of providing child care because the parents actually accompany. So while that matter is not specifically addressed, and of course the question of interpretation of the law once it is passed would be a matter for the ATO, I suspect that in practice parents accompanying the child would not be constituting a dominant purpose in providing child care. So those sorts of play groups would not be covered.

Senator SHERRY—That is play groups where one or the other parent stays with the child at the play group. What if they leave the child there?

Mr McCullough—Then that reason for excluding from the dominant purpose of being child care would not apply. They could easily qualify.

Senator SHERRY—What if it is mixed, where some parents stay and others do not?

Mr McCullough—Then that would be a difficult question of interpretation.

Senator SHERRY—I must declare a personal interest in this, having been to a few play groups in the last couple of years. I will be going to a lot more, by the look of it.

Mr Carmody—It sounds like a charity.

Mr McCullough—It is an extension of the definition of a charity.

Senator SHERRY—I have some questions on the compliance program. Mr Carmody, in a speech you gave on 28 May, you stated you expected to raise around $3 billion from additional tax and penalties from big business as a result of audit activity. Is that forecast included in the bottom line in the budget?

Mr Carmody—There have been discussions on this before as to how forecasting is done. Certainly these results can be very lumpy. But within the budget forecasting—I am sure my colleagues from Treasury will assist on this—there is a reasonable projection that where audit outcomes are expected to be unusual, that would be taken into account. As far as I know, there is no particular impact on the budget outcome predicted for 30 June from our audit results of large business. So I do not see that as altering the budget outcomes for this year.

Mr Greagg—I can confirm that we definitely take into account the commissioner's debt collection profile.

Mr Carmody—This will get me into a complicated area of cash and accruals and other things, but the $3 billion I am talking about there is raised in terms of audit assessments, not necessarily dollars in the door. You would appreciate that many of these large corporate adjustments end up in the courts and elsewhere.

Senator SHERRY—You have nominated the figure of $3 billion in the speech. What happens if you do not collect all of that money? You must do some sort of assessment of your success or otherwise.

Mr Carmody—A pattern has developed over the years as to when revenue will come in. That is sort of a fairly standard estimating pattern that is used for the estimates.

ACTING CHAIR—It has been suggested this methodology tends to overestimate what you expect to collect because the settlements will often result in less than the actual assessment.

Mr Carmody—I am the first to concede that we do not win every case, and sometimes it is appropriate to settle cases. That is a reality. In terms of a pattern, without being quite specific on any individual one, these things tend to wash out in the way the estimating is done. If you look at corporate tax collections over the past number of years, in terms of all the factors that go into that, we have turned out to be collecting more than original estimates on corporate tax over the last few years—there was one dip, but as a general trend.

Senator SHERRY—That brings me to the issue of the taxes and penalties on big business. The ATO levied $3.5 billion last year in tax and penalties on big business.

Mr Carmody—A bit over $3 billion, I think.

Senator SHERRY—But it only collected $1.2 billion. Is that correct?

Mr Carmody—Yes; and this year so far we have collected, I think, about $1.7 billion. This gets to the point that Senator Watson was just raising. If you take the collections this year of $1.7 billion, a fair proportion of that is from assessments that were raised a number of years ago where there has either been a settlement or a court decision and we have won. At times we lose those and so a gap evolves. But to give you an idea of the magnitude, we have about $6.9 billion—I think that is the figure—that is in dispute with corporate Australia. There is always going to be a difference and a lag between assessments raised and collections.

Senator SHERRY—I was actually going to get to that figure of $6.9 billion because the level of debt owing since 1999—only five years ago—has more than doubled from $3 billion to $6.9 billion. Doesn't that indicate a greater problem of debt recovery?

Mr Carmody—Most of it is in dispute. The figure I used of $6.9 billion is in dispute. Some of that has actually been paid, because when we get to a certain stage of the dispute we seek an arrangement whereby they pay part of the amount that is in dispute. The fact that the amount in dispute is rising is, in large measure, a product of the fact that our adjustments have been rising.

Senator SHERRY—As I said, on the figures I have, it has more than doubled since 1999.

Mr Carmody—I do not have the answer here but we provided an answer to a question previously which showed the amount raised in our large corporate area. That has been going up fairly dramatically in the last few years. If you go back and look at that I think you will find that.

Senator SHERRY—How many audits does the ATO plan to have completed of big business by the end of this financial year?

Mr Carmody—I cannot give you exactly the number completed. Our large corporate is over $100 million turnover. At the current time, we have something like 160 audits going on for large corporate groups.

Senator SHERRY—Could you get me historical data going back to 1995-96?

Mr Carmody—I will attempt to provide it. I will take it on notice.

Senator SHERRY—Yes.

Mr Carmody—We have provided already to the committee data that goes back a number of years on the amount raised and collected, but I do not think we have provided the actual number of audits.

Senator SHERRY—It is the number of audits.

Mr Carmody—I would have to take that on notice and get back to you.

Senator SHERRY—Yes. And the same with medium-sized businesses?

Mr Carmody—The same?

Senator SHERRY—The same data.

Mr Carmody—Yes. I would signal to you that for medium-sized business we are increasing it because—I will be frank with you—I do not believe that our coverage has been high enough in that area in the past. We are increasing our coverage there. Indeed, the government gave us additional funding in the last budget to assist us in that.

Senator SHERRY—When you say 'coverage'—

Mr Carmody—That is the number of audits. What I am saying to you is we have found it necessary to increase that coverage.

Senator SHERRY—What was the coverage and what are you looking at?

Mr Carmody—I do not have the precise figures here. I am just signalling that it is an area where we believe we need to pay greater attention.

Senator SHERRY—You referred to additional resourcing in the last budget. Which budget item is that in?

Mr Carmody—It is under the heading of 'Compliance challenges', I think. It is this latest budget.

Senator SHERRY—That is what I thought you were referring to. Which budget measure is it?

Mr Tilley—It would be in Budget Paper No. 2 in the expense section. I think it is page 260.

Senator SHERRY—That is the taxation and superannuation compliance?

Mr Carmody—That is one of the compliance challenges. There was a series of them. There was employer obligations—

Senator SHERRY—The program you have just referred to—

Mr Carmody—The extra funding is part of it.

Senator SHERRY—I had quite a lot of questions on that anyway, so I have come to it through a side process. What constitutes medium-sized business?

Mr Carmody—It is $200 million. But the area of my concern is probably up at the higher end. It is probably the $50 million to $100 million where I am most concerned about whether we have had adequate coverage there.

Senator SHERRY—You said that frankly and you obviously believe this. Are there any new factors that have emerged that have caused you concern?

Mr Carmody—Where I have directed and we have paid a lot of attention to is the over $100 million, and we are seeing the results of that. It is the experience with that that says, 'If you fall under that, say, $99.9 million, is it going to be particularly different?' What I am saying to you is that we need to bring the experience that we have brought to bear and the learnings that we have got from the large corporate program to expand our operations in the medium area, particularly the larger end of that. To that objective, quite apart from the funding, I have already brought in one of my senior people with experience in the large corporate area to run our program for the future in that medium market.

Senator SHERRY—So obviously that includes new staff and additional expertise?

Mr Carmody—There is some additional staffing reflected in this. But, as much as anything, it is bringing the expertise and knowledge that we have developed in dealing with the over $100 million group to bear in that market. I am not saying we have not been auditing there; I am just saying we believe we can enhance that.

Senator SHERRY—Have you made any press release or speech about this matter?

Mr Carmody—I think I signalled at the start of the year that this was an area I saw as requiring focus. As a result of that, it has led to these organisational arrangements and proposals to government to enable us to get some funding to assist with that.

Senator SHERRY—My next question goes to the audits on micro-sized businesses for the same periods. I assume you will take that on notice.

Mr Carmody—I will.

Senator SHERRY—On the auditing of small business in 2003-04, what is the amount that the ATO would expect to collect? In 2002-03, I think it was $920 million.

Mr Carmody—I do not have the figures of the year to date on me.

Senator SHERRY—You have no idea whether it would be similar or less?

Mr Carmody—I think it would be more than last year, if you look across the market. In fact, I am sure it would be more than last year. We need to check these figures. But we expect it to be higher.

Senator SHERRY—I assume you are aware that the Inspector-General of Taxation announced on 21 April a review into small business debt collection processes by the ATO?

Mr Carmody—Yes, I am certainly aware of that.

Senator SHERRY—The press release states:

Last financial year, the total overdue collectable debt managed by the ATO increased by 25% to $6.9 billion. About 60% of that debt comes from a number of unspecified businesses in the micro-business sector. This sector comprises 2.5 million businesses with annual turnovers of under $2 million. Given

that this sector only contributes 10% of the total Commonwealth revenue and remits 16% of all employees' PAYG and superannuation withholdings, 60% of collectable debt is an extraordinarily disproportionate amount.

Has the ATO reviewed why such a large proportion of collectable debt comes from micro-businesses?

Mr Carmody—I am not sure that it is so extraordinary that micro-businesses are the ones that get themselves into debt. I am not talking about generally. It is a segment where businesses start and often fail. The success rate is not that high. But the figures we have at the moment indicate that, yes, there is certainly almost $7 billion at the moment of debt in the small area and 66 per cent is in micro-businesses, but that is about 700,000 cases and many of those—108,000—are under $100 and 414,000 are under $2,500. So what you are seeing is a large number of relatively small debts in a segment of the community where cash flow is sometimes an issue. We are certainly conscious of the debt position there. I will, for example, in the very near future be introducing an initiative that will hopefully enable businesses that are viable to clean up existing debt and get onto an ongoing basis because we are conscious of this issue. But I think we have to be realistic in saying that in this market there is always going to be a large number of businesses that are in debt, and it is not just with the tax office that they are in debt.

Senator SHERRY—You mentioned considering an initiative for viable businesses to clean up the debt. What criteria do you apply to determine if something is viable and can be cleaned up?

Mr Carmody—We have made it clear that we are becoming firmer in our debt collection action. This is an important issue, not only from a revenue or a Taxation Office perspective but also a business competitiveness issue. If some people are not paying their tax they are gaining a competitive advantage. So we have signalled that we are going to get firmer. What I am trying to do is develop an initiative that gives people the opportunity, while we are getting firmer, to clean up their existing debts in consequence. Inevitably, we face situations where people cannot pay their tax on the spot and we enter into arrangements. We have about $1 billion under payment arrangements at the moment. Our officers have to make decisions when entering into those arrangements of whether it is a viable business or it is to no-one's advantage to attempt to enter into an arrangement because they will just fail on that also. They are difficult decisions for our officers to make, but they are decisions they have to face up to. That comes to an analysis of their trading position, their cash flow position and whether they can viably meet a payment arrangement that is realistic or whether it is just impossible.

I would say to you that this is obviously a sensitive area. Equally, if a business is viable, we do not want to put them out of business unnecessarily. In companion with the fact that we are getting firmer in this, and with the other initiative I foreshadowed, we have already engaged one of the larger accounting firms to act as a sort of quality review of our decisions when it comes to whether we should proceed to bankruptcy or liquidation. They have done a review of 100 cases to see—and there are some specific questions—whether we took the right steps, whether we gave them an opportunity, whether it could have been done otherwise, or whatever. I am quite happy to say that we will publish that report when it comes out, because we are doing it so that we can make sure that we are doing the right thing and learn from it.

Senator SHERRY—That will be used in terms of the foreshadowed initiative you have mentioned?

Mr Carmody—That will be a companion, because we will keep that going. Debts get to be emotional issues, and tax offices around the world get accused of being heavy-handed in these areas. We are going to be firmer and we are going to offer people the opportunity to collect, but we want to make sure that we are making proper decisions. Again to be candid with you, Senator, we want to demonstrate to those who would claim—and often it is too easy to claim—we are being too heavy-handed that, in fact, we have quality controls in place to do that and to assist our staff in learning.

Senator SHERRY—I do not want an exact date or day, but when do you expect some sort of time frame for this initiative that you have foreshadowed?

Mr Carmody—Within the next week or two. We are sort of piloting. We have piloted with a few accountants and their clients to make sure we have things tied down at the moment.

Senator SHERRY—I am sure you are aware of comments by a retired ATO auditor, Mr Fitton, who accused the ATO of bias by treating the big end of town leniently while handing out rough justice to ordinary taxpayers. I will not go to all of the comments. What is your response to that criticism?

Mr Carmody—I do not accept it, obviously. We have just had a discussion about the very substantial adjustments that we are making at the large end of town. It looks like over the last two years we will have raised audit assessments with taxes and penalties of a combined amount of over $6 billion. I am the first to acknowledge, as I already have, that large amounts of those will be disputed. We have talked about the collections lag from that. We are one of the few countries that has a high wealth individuals task force dedicated to reviewing wealthy people and their associated entities, and we report in our annual report over $800 million collected from that while it has been in place. I recently announced an initiative of a joint task force with the US, Canada and the UK directed at initially the boutique financial arrangements of the larger business entities.

We have just talked about, on the debt side, the actions that we are taking to give small business—that initiative is directed at small business—the opportunity to clean up their debts and also the steps we have taken to ensure that any action on insolvency or other action is well balanced. If you look at the intensity of our operations at the large end, the top 100 companies, the vast bulk of them—probably into the 90s—have almost got something going on at an audit level all the time. We discussed the sort of coverage earlier with Senator Murray at the lower end of the market, with smaller investors and so on, which is nowhere near that.

When it comes to penalties, I have, for example, a guarantee in *Tax Pack* that we only ask that people understand *Tax Pack* and its related productions and that if they make a genuine attempt at that they will not face penalties. All these things just reflect a balancing of our approaches that I believe is appropriate and is the exact opposite of what is being suggested. Those are some observations on it.

Senator SHERRY—Nevertheless, Mr Fitton was a person of some lengthy service with the ATO. Do you carry out some sort of internal assessment about the auditing approach of your auditors within the tax office?

Mr Carmody—We have quality reviews of a range of our products, including audits, yes.

Senator SHERRY—How do you go about that review? Do you look at people's activity performance over periods of time?

Mr Carmody—Not of our auditors. We look at the audits and ensure that appropriate processes were carried out. The other thing you could do is have a look at our published compliance program, and have a look at and analyse where we put our resources and the sorts of coverage and activities that we undertake. It would reinforce the message that I have just given you.

Senator SHERRY—I notice one of your officers moved to the table. Did he want to give some additional information?

Mr Carmody—He was just going to comment on the intensity of coverage we have in large business, but I think I have covered that.

ACTING CHAIR—Before you go on to your next question, Senator Sherry, I might intervene to say that we understand that the questions on notice referred to by Senator Wong to the commissioner, Mr Carmody, were actually from the November round rather than the February round. We understand that the tax office has undertaken to supply those documents to the committee at the commencement of the proceedings tomorrow. However, we must say that the committee secretariat does not have ready access in this hearing room to the answers from the November hearings and, hence, the committee's response.

Senator SHERRY—Does that mean they have been provided or they have not, or that we just cannot find out?

ACTING CHAIR—The point is we do not have ready access to them because they may be down in the files; we do not know. We gave an answer to Mr Carmody that they had not been provided. I just felt that perhaps we owed that explanation that they were not from the February round, they were from the November round. Our answer was on the basis that the secretariat thought that they were from the February round.

Senator SHERRY—Okay.

ACTING CHAIR—As it is almost 11 o'clock maybe we should adjourn because we are going to have a big day tomorrow.

Committee adjourned at 10.58 p.m.