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Official Committee Hansard

SENATE

ECONOMICS LEGISLATION COMMITTEE

ESTIMATES

(Supplementary Budget Estimates)

WEDNESDAY, 2 NOVEMBER 2005

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SENATE
ECONOMICS LEGISLATION COMMITTEE
Wednesday, 2 November 2005

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

Senators in attendance: Senators Allison, Brandis, George Campbell, Chapman, Conroy, Joyce, Marshall, Mason, Nash, O'Brien, Parry, Sherry, Trood, Watson and Webber

Committee met at 9.02 am

INDUSTRY, TOURISM AND RESOURCES PORTFOLIO

In Attendance

Senator Minchin, Minister for Finance and Administration

Department of Industry, Tourism and Resources

Executive

Mr Mark Paterson, Secretary

Mr John Ryan, Deputy Secretary

Ms Patricia Kelly, Deputy Secretary

Mr Tim Mackey, Deputy Secretary

Outcomes and Outputs

Mr Drew Baker, General Manager, ICT Services Branch, e-Business Division

Ms Tricia Berman, General Manager, Innovation Policy Branch, Innovation Division

Mr Chris Birch, General Manager, Research, Development & Commercialisation, Aus-Industry

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

Ms Chris Butler, General Manager, Business Development, AusIndustry

Mr Peter Chesworth, Acting Head of Division, Office of Small Business

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

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

Ms Sarah Clough, General Manager, Industry Sustainability Group, Tourism Division

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

Mr John Dicer, Chief Legal Counsel

Mr Ivan Donaldson, Executive Director, Australian Building Codes Board

Ms Robyn Foster, General Manager, Business & Ministerial Services Branch, Corporate Division

Dr Michael Green, General Manager, Advanced Manufacturing, Action Agendas and Building Branch, Manufacturing, Engineering and Construction Division

Mr Tony Greenwell, General Manager, Policy, Office of Small Business
Mr Paul Griffin, General Manager, Business Entry Point Branch, e-Business Division
Mr John Griffiths, General Manager, Offshore Resources Branch, Resources Division
Ms Kerri Hartland, Head of Division, e-Business Division
Mr John Hartwell, Head of Division, Resources Division
Mr David Hughes, Acting General Manager, Business Development Group, Tourism Division
Dr Barry Inglis, Chief Executive and Chief Metrologist, National Measurement Institute
Ms Beryl Janz, General Manager, Corporate Communications Branch, Corporate Division
Mr Barry Jones, Executive General Manager, Invest Australia
Mr Mike Lawson, General Manager, Aerospace, Defence & Industry Participation Branch, Manufacturing, Engineering and Construction Division
Mr Terry Lowndes, Head of Division, Industry Policy Division
Ms Melissa McCluskey, Chief Financial Officer
Mr Brendan Morling, General Manager, Industry Policy Branch, Industry Policy Division
Mr Peter Morris, General Manager, Tourism Market Access, Tourism Division
Ms Janet Murphy, Head of Division, Corporate Division
Mr Philip Noonan, Head of Division, Tourism Division
Mr Steve Payne, General Manager, Minerals and Fuels Branch, Resources Division
Mr Bill Peel, Executive General Manager, AusIndustry
Mr Craig Penniford, Head of Division, Innovation Division
Mr Ken Pettifer, Head of Division, Manufacturing, Engineering and Construction Division
Ms Christine Pitt, General Manager Applications Branch, e-Business Division
Mr Paul Ross, General Manager, Biotechnology Australia, Innovation Division
Mr Michael Schwager, General Manager, Pharmaceuticals and Biotechnology Branch Innovation Division
Mr Paul Sexton, General Manager, Customer Services, AusIndustry
Mr Sam Skrzypek, General Manager, Small Business and Tourism, AusIndustry
Mr Steve Stirling, General Manager, ICT Infrastructure, e-Business Division
Ms Marie Taylor, General Manager, MCE Secretariat Branch, Energy and Environment Division
Mr Bruce Wilson, General Manager, Environment Branch, Energy and Environment Division
Ms Judith Zielke, General Manager, Innovation and Collaboration Programs, AusIndustry

Geoscience Australia
Dr Clinton Foster, Chief of Petroleum and Marine Division

Dr Chris Pigram, Deputy Chief Executive Officer and Chief of Geospatial & Earth
Monitoring Division

Dr Neil Williams, Chief Executive Officer

Mr Len Hatch, Acting General Manager, Corporate Branch

Mr Paul Trezise, Chief Information Officer

Tourism Australia

Mr Geoff Buckley, Director, Strategy and Research

Mr Sasha Grebe, General Manager, Corporate Affairs

Mr John Hopwood, Executive General Manager, Corporate Services

Mr Scott Morrison, Managing Director

CHAIR (Senator Brandis)—Good morning, I declare open this public hearing of the Senate Economics Legislation Committee. I have been asked to remind everybody that mobile phones should be turned off or to silent operation while you are in the hearing room. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. I also remind witnesses and senators that questions are only admissible if they are relevant to the consideration of the estimates.

Giving false or misleading evidence to the committee may constitute contempt of the Senate. I remind officers and senators that an officer 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. Officers also have a right to object to answering a question in circumstances that are consistent with the Senate's privilege rules, copies of which are available. All officers appearing before the committee are protected by parliamentary privilege.

In accordance with standing order 26(10) a number of senators have given advance notice of matters they wish to raise. The committee will conduct this hearing in accordance with the agenda that has been circulated. Today we will begin with the Industry, Tourism and Resources Portfolio, and I expect to be in a position to commence the Treasury portfolio this afternoon. The committee has determined that the deadline for answers to questions taken on notice is Friday, 16 December 2005. I welcome to the table Senator Minchin representing the Minister for Industry, Tourism and Resources. Senator Minchin, do you have an opening statement?

Senator Minchin—Not an opening statement, Mr Chairman, but I just mention that I may have to go to another meeting at 10.30, but if I do Senator Abetz will replace me for the duration of that meeting.

CHAIR—Thank you. Senator Campbell.

Senator GEORGE CAMPBELL—Thank you, Mr Chairman. Before we go to dealing with general matters relating to this department, there are a number of questions I put on notice at the last estimates hearing, some of which we have not yet had responses to and some on the surface would appear to have been easily answered. Can you tell us why, Mr Paterson,

those questions have not been answered and whether or not there are officers here this morning that are in a position to answer them?

Mr Paterson—To the best of my knowledge, and as I am advised, we have answered or responded to all questions that were put on notice.

Senator GEORGE CAMPBELL—To my knowledge, I have not received answers to questions B1 05/11, B1 05/12, B1 05/13 and B1 05/55. That was as at 5 October.

Mr Paterson—We will check our records on the responses to those. As I said, as I understand it, they have been responded to, but we will check it and come back to you this morning.

Senator GEORGE CAMPBELL—Mr Paterson, I want to start off with some general questions. Are you aware of the article written by the *Australian Financial Review* columnist Peter Roberts entitled ‘Industry department struggles to remain relevant’ and published on 18 October?

Mr Paterson—I have read that article.

Senator GEORGE CAMPBELL—You are aware of his description of your 2004-05 annual report in that article?

Mr Paterson—I am aware of his description.

Senator GEORGE CAMPBELL—He said:

You have never seen a sadder or less ambitious annual report than the latest from the federal Department of Industry, Technology and Resources.

He went on to state that the report confirms the increasing irrelevance of DITR under the coalition since it came to power in 1996. What is your response to these comments of Mr Roberts?

Mr Paterson—My personal response is that they were an individual venting some bile that made no valuable contribution to anything.

Senator GEORGE CAMPBELL—Why would Mr Roberts want to vent bile on the Department of Industry, Tourism and Resources?

Mr Paterson—Maybe you might like to invite Mr Roberts to come along and answer your question, Senator.

Senator GEORGE CAMPBELL—Unfortunately I cannot ask him.

Mr Paterson—I am not going to answer for him.

Senator GEORGE CAMPBELL—Has he had a run-in with the department?

Mr Paterson—Not that I am aware of.

Senator GEORGE CAMPBELL—I just wonder what justification he would have for wanting to expend bile on the department if he has got no axe to grind. He certainly would not appear to have.

Mr Paterson—He may have an axe to grind. I am not aware of any run-in that he has had with us, but it did not appear to be a particularly well-informed, well-constructed or well-argued piece.

Senator GEORGE CAMPBELL—But it is an extraordinary indictment of the state of your department, isn't it?

Mr Paterson—No, not at all.

Senator GEORGE CAMPBELL—It is not?

Mr Paterson—It is one individual's opinion; it is not an indictment.

Senator GEORGE CAMPBELL—I have to say to you it is more than one individual's opinion. There are a lot of individuals of that opinion out there in the general community.

Mr Paterson—Other than people who are taking—

Senator GEORGE CAMPBELL—He is in the position to be able to express it publicly.

Senator Minchin—Senator Campbell, it is a bit rough to just slander the department with unnamed, unattributed sources who say this department to be found wanting. That is not fair on this department. Can I just say in relation to Mr Roberts that in my three years as industry minister he was well-known to me as someone who was a constant critic of our government. He does take a view, which I know others, perhaps like you, share, that the Australian government should have a much more interventionist, proactive industry policy than this government has decided to have. That is reasonable for him to advocate such a policy course, and he has done so for years and years. It is not a view we share, but it is pretty rich of Mr Roberts, in pursuit of that policy agenda, to attack the industry department which is the servant of the government of the day. He is perfectly entitled to attack the government over its industry policy—and he does so—but I thought that was a pretty outrageous article to attack the department, which is there to serve the government and to implement government policy, and it does it very well.

Senator GEORGE CAMPBELL—I have to agree with you, Minister—he should be attacking the government because the government has been derelict in terms of dealing with the issue of industry policy.

Senator Minchin—All I said was that he is entitled to attack the policy; that he is entitled to a view.

Senator GEORGE CAMPBELL—Perhaps he ought to attack you more often, and I would encourage him to do so.

Senator Minchin—He is entitled to attack the policy and advocate an alternative policy, one with which we profoundly disagree, but he should not—

Senator GEORGE CAMPBELL—I find it quite remarkable that a journalist—and I certainly have not seen it in my time—should pick up the annual report of a department and feel so strongly about what he sees as a document that is irrelevant. It demonstrates the irrelevance of the department.

CHAIR—Order! Senator Campbell, I am just struggling to see how the private opinions, or the published opinions for that matter, of a journalist are relevant to the estimates.

Senator GEORGE CAMPBELL—They are relevant to the extent that we are dealing with the annual report.

CHAIR—You are certainly at liberty to ask any questions you like about the annual report.

Senator GEORGE CAMPBELL—It is a criticism of the annual report.

CHAIR—You can ask any questions you like about the annual report.

Senator GEORGE CAMPBELL—That is right, and before the minister intervened and gave his little homily, I was about to ask Mr Paterson what the department has done or is doing in order to combat the damaging perceptions that were presented in that article.

CHAIR—You can certainly ask Mr Paterson about any activities the department is undertaking.

Mr Paterson—On a regular basis we undertake a very detailed, independent stakeholder survey to ascertain what the considered views are of the industries and the industry sectors that we serve, as well as the companies and the associations that are involved with our dealings. I can say to you that overwhelmingly those independent stakeholder surveys present a very positive picture in relation to the portfolio, a very positive picture in relation to the activities undertaken, and a very positive picture in relation to the officers that serve within the portfolio. The fact that Mr Roberts does not subscribe to all of those views by and large is irrelevant. The reality is that the people that we are engaged with have a very different view.

Senator GEORGE CAMPBELL—I understand you take those surveys. I have not seen the surveys and I have not seen the questions that are asked in the surveys. But I come back to my question: have you taken any action in respect to counteracting these comments of Mr Roberts?

Mr Paterson—None whatsoever, nor would I intend to.

Senator GEORGE CAMPBELL—You do not intend to. You just intend to let them swing out in the ether? That is fine.

Mr Paterson—I doubt that he is going to influence any of the people that we serve.

Senator GEORGE CAMPBELL—I do not know who he influences, quite frankly, but you have answered my question: you do not intend to take any action in respect of them. I have got a number of questions in relation to the budget. Who is here to answer those?

Ms McCluskey—I will.

Senator GEORGE CAMPBELL—Am I correct in understanding that the reduction in the appropriations for 2005-06 is \$99.13 million or six per cent?

Ms McCluskey—You are, Senator.

Senator GEORGE CAMPBELL—I understand that some of this reduction is in relation to the movement of Tourism Australia out of departmental appropriations. I think there is a figure of \$16 million.

Ms McCluskey—That is correct.

Senator GEORGE CAMPBELL—Can you explain to us how the rest of it is accounted for?

Ms McCluskey—Yes. I refer you to the PBS. Pages 24 to 26 detail the summary of the measures disclosed in the 2005-06 budget, and the impact of those on the 2005-06 year is a reduction of \$51.3 million. On page 28 of the PBS you will see there are details of the movement of administered funds from 2004-05 to 2005-06, and the impact on the 2005-06 financial year is an increase of \$122.9 million. Pages 29 to 30 detail variations in administered expense appropriations, and the impact of those is \$9 million. There is then some movement in the capital funding for the department and capital funding for our administered activities of \$146 million. They are detailed on pages 65 and 70 of the PBS.

Senator GEORGE CAMPBELL—How much of the \$99 million is an actual outright cut to the department's appropriation?

Ms McCluskey—The reduction in our appropriation is detailed in the measures pages on pages 24 to 26. The most significant would be the details of the reduction in the textile and clothing strategic investment program—savings of \$57.7 million.

Senator GEORGE CAMPBELL—But you give me a figure of \$51.3 million.

Ms McCluskey—That is when you add the total effect of all the measures—that is just one measure I have detailed there.

Senator GEORGE CAMPBELL—I am still trying to get what is the exact figure that has been cut from the appropriation. It is an actual cut—discounting Tourism Australia.

Ms McCluskey—Yes, there is a reduction in our departmental appropriations.

Senator GEORGE CAMPBELL—So the reduction would what—\$83 million?

Ms McCluskey—Senator, how are you getting the \$83 million?

Senator GEORGE CAMPBELL—The \$16 million is the figure relating to the movement of Tourism Australia out of the department's appropriations, so is it true to say that the actual cut in dollar terms to the department's appropriations for the financial year is \$83.13 million?

Ms McCluskey—The total movement in appropriation for the 2005-06 financial year is \$99 million.

Senator GEORGE CAMPBELL—Yes, but the actual cut is \$83.13 million, but excluding Tourism Australia.

Ms McCluskey—Yes, exactly.

Mr Paterson—Are you combining both administered appropriations and departmental appropriations, Senator?

Senator GEORGE CAMPBELL—Yes, I am just looking at what the total cut has been in the appropriations to the department.

Mr Paterson—There is a reduction in the appropriation for the transfer of the Tourism Forecasting Council and BTR out of the department, which is departmental appropriations over Tourism Australia.

Senator GEORGE CAMPBELL—That is not a cut; it is a shift to somewhere else.

Mr Paterson—Then there are changes in the appropriations in relation to administered items—

Senator GEORGE CAMPBELL—That is right.

Mr Paterson—which Ms McCluskey has taken you through in terms of the PBS.

Senator GEORGE CAMPBELL—Yes, but what I am looking at is what the total impact of the cuts is.

Ms McCluskey—I guess there are savings that were identified in the textile, clothing and footwear program of \$57.7 million, and there was appropriation in our departmental funding that was transferred to Tourism Australia.

Senator GEORGE CAMPBELL—Yes. You told me that my figure of \$99.13 million or six per cent was correct.

Ms McCluskey—Yes, that is right.

Senator GEORGE CAMPBELL—That was the reduction in appropriation.

Ms McCluskey—That is right.

Senator GEORGE CAMPBELL—I discount Tourism Australia from that and I take it that the actual reduction in appropriations to the department was \$83.13 million.

Ms McCluskey—I am sorry, I am getting lost as to where you are getting the \$83 million from.

Senator GEORGE CAMPBELL—You said that the reduction in appropriations in 2005-06 was \$99.13 million.

Ms McCluskey—The \$83 million you are talking about is just our administered funding and the \$16 million is the impact on departmental funding, so the \$99 million includes the administered and the departmental appropriation funding for the department.

Senator GEORGE CAMPBELL—Yes, so it is all the appropriations for the department.

Ms McCluskey—That is right.

Senator GEORGE CAMPBELL—That is the total package?

Ms McCluskey—That is right.

Senator GEORGE CAMPBELL—So when you take Tourism Australia out of that the cut in the department has been \$83 million?

Ms McCluskey—Correct.

Senator GEORGE CAMPBELL—Can you tell me what that represents as a percentage cut of the 2004-05 appropriation?

Ms McCluskey—Certainly, I will just come back to you on that in a moment.

Senator GEORGE CAMPBELL—Can you also indicate to me which divisions in the department have taken cuts in their share of the appropriations? There have been cuts to programs which account for part of the cuts—is that right?

Ms McCluskey—There has been movement in funding in the cut to one of our administered programs.

Senator GEORGE CAMPBELL—There have been cuts to some programs?

Ms McCluskey—Savings identified in that program.

Senator GEORGE CAMPBELL—Yes, and there have been cuts in terms of administration?

Ms McCluskey—There has been a transfer of funding to Tourism Australia.

Senator GEORGE CAMPBELL—Can you explain to me what the \$83 million is made up of?

Ms McCluskey—The \$83 million is made up as a detail before the movement in our measures funding, as well as the movement of funds between financial years.

Senator GEORGE CAMPBELL—So you have had a cut of \$83.13 million?

Ms McCluskey—A change in our administered appropriation.

Senator GEORGE CAMPBELL—Can you explain to me how the share of that \$83.13 million is spread across the divisions and which divisions have been—

Ms McCluskey—That is administered funding and it is related to programs that we deliver. It is not related to the funding for our divisions. It is administered funding.

Senator GEORGE CAMPBELL—Does that mean that it all comes out of AusIndustry?

Mr Mackey—The funding for the divisions in terms of their running costs comes out of departmental expenses, not out of our administered items. So the fact that there may have been a reduction in our administered items does not necessarily flow on to a reduction in departmental expenses or in the funding applying to individual divisions.

Senator GEORGE CAMPBELL—We have gone a long way to get to this point. But are you saying that the \$83.13 million is a cut to specific programs?

Ms McCluskey—It is a movement in funds for some specific programs.

Senator GEORGE CAMPBELL—What do you mean by a movement in funds? There has been a cut in the appropriations.

Ms McCluskey—Yes, but in some cases it has been that we have moved funds from the 2004-05 financial year into the forward financial years.

Senator GEORGE CAMPBELL—But the impact has been that the budget available to the department has been cut by \$99.13 million—excluding Tourism, which was a shift of funds somewhere else, it has been cut by \$83 million.

Ms McCluskey—Yes.

Senator GEORGE CAMPBELL—So there is actually \$83 million less in the budget this financial year than there was last year?

Ms McCluskey—Yes.

Senator GEORGE CAMPBELL—How does that relate to the movement of funds?

Ms McCluskey—Part of the reduction in the appropriation funding for the financial year relates to movements in funds from one financial year to the other, and those are detailed on page 28 of the PBS.

Senator GEORGE CAMPBELL—So are you are saying that, because the funds were not spent in the last financial year, that has reduced the amount of money that is required in this financial year?

Ms McCluskey—That is the situation in some cases.

Senator GEORGE CAMPBELL—So that in effect means—or could mean; it may not necessarily mean—that the funds available for specific programs have been reduced.

Ms McCluskey—In this particular financial year that may well be the case.

Senator GEORGE CAMPBELL—It may well be the case for the whole of the program?

Ms McCluskey—You would have to look at a specific program. There will be differences for each of the programs that the department administers.

Mr Paterson—Senator, it seems to me that you are looking for a summary response to a series of changes in relation to programs that are administered by the portfolio and the consequences of each of those movements, which has a net effect of the 99.13 that you are talking about, but the detail of each of those movements is outlined in the PBS.

Senator GEORGE CAMPBELL—Yes, and I am trying to understand what the impact of it is in terms of the appropriations and the programs.

Mr Paterson—The largest component of the 83 that you referred to is the savings that were identified in the TCF SIP, which was a saving of 57.7.

Senator GEORGE CAMPBELL—So that is money that has been moved out of the SIP?

Mr Paterson—At the conclusion of that program, which was a defined number of years, as I recall—

Mr Peel—Perhaps I could try and shed some light on it. You will recall that at previous estimates we discussed the design of the TCF SIP program. The idea was that any unspent money in each of the years of the program would be carried forward to the final year of the program, which we have now reached. The total amount of money available in the final year of the program is just over \$200 million. Our estimate is that we will only need about \$143 million of that, so there is \$57 million left over which has been declared as savings in the PBS. So \$57 million of that amount is money we will not need for TCF. If it turns out that we get claims above our estimate, we are able to claw back all or part of that \$57 million if we need to.

In relation to the other programs, I think the changes are detailed on pages 28 and 29 of the PBS. They are not actual cuts to the program; they are just moving money from 2004-05 to 2005-06 and 2006-07 to line up with the demands of the businesses that are accessing the programs. For example, in some of our programs our estimates of expenditure are based on the plans that companies have to undertake projects that we are funding. If their projects slip, they will not spend the money this year so we need to move it forward to a future year. I think it is not true to say that there have been cuts to programs as such; it is really just that we have just rearranged the funding to match the expectations of the businesses that are accessing the program—although there will potentially be a fair level of saving for the TCF SIP.

Senator GEORGE CAMPBELL—If I understand what you are saying, in terms of those other programs, if I go back and look at the PBS over a period of years, I should be able to reconcile that there has been no money cut out of the original allocations for those programs. There may have been some shift or movement going on from year to year—

Mr Peel—In relation to the discussion we are having now and in relation to those programs that I have mentioned on pages 28 and 29 of the PBS, it is true that there have not been any cuts to those programs; there is just movement of funds. From time to time the government has other priorities and does move money out of programs, but I am just talking about the issues that you have raised this morning.

Senator GEORGE CAMPBELL—Yes, and that is what I am trying to get at—an understanding of where this difference comes from. Over a period of time, as you well know, in this department there have been a series of announcements about Backing Australia's Ability. Originally it was \$3.2 million and \$3.5 million and then there was a package of \$5.3 million. If you add the total up, it was something like \$13 million over a period. But trying to find out what the actual figure was is something different, because there was money shifted out of each of those packages into the new packages as they were announced.

Mr Peel—That is right, and after Backing Australia's Ability came out, I recall the estimates hearing shortly after that. We did provide you with a sheet reconciling all of those movements of funds across the years. It was either you or Senator Carr; I cannot remember now.

Senator GEORGE CAMPBELL—Yes, you did provide a sheet to Senator Carr, but we still have not been able to get a bottom line figure on what the actual moneys spent on those programs have been.

Mr Paterson—The actual new money in BAA 1 and BAA 2 was \$8.3 billion in total.

Senator GEORGE CAMPBELL—Yes, but some of that was money that was carried forward from other programs.

Mr Paterson—The \$8.3 billion was new money in BAA 1 and BAA 2.

Senator GEORGE CAMPBELL—As opposed to announced expenditure in each of those programs overall.

Mr Paterson—Correct. You might recall that when BAA 2—

Senator GEORGE CAMPBELL—What was the announced expenditure?

Mr Paterson—In BAA 2, when it was released—and I do not have the documentation with me—there was an A3 coloured sheet of the whole series of programs and the out years where the various expenditures were in the changes in relation to programs, as I recall it.

Mr Peel—Senator Carr had a copy at the time. As Mr Paterson has explained, there was a significant amount of new money allocated by the government for Backing Australia's Ability. Also added to that new money were the remaining funds available from programs like R&D Start et cetera. There were no actual cuts of any significance at that time. We did provide that reckoning sheet to Senator Carr. It said, 'Here is the new money from BAA; here is what we

had left from R&D Start and these other programs; and here is the total.’ We did that across a period of years—out to 2010-11, I think.

Mr Paterson—The \$8.3 billion—just to clarify it—was the total amount to all agencies, not the amount that came to this portfolio.

Senator GEORGE CAMPBELL—Sorry.

Mr Paterson—It was the total amount for all agencies that were covered by BAA 1 and BAA 2. It was not \$8.3 billion to this portfolio; it was the total announced new money in BAA 1 and BAA 2.

Senator GEORGE CAMPBELL—Yes, I understand that element of it. Mr Paterson, are you able to give us a breakdown of the appropriations by division in 2004-05 and 2005-06?

Mr Paterson—Certainly. That is part of the departmental side of the budget. We move resources between and amongst divisions depending on the priorities that are established by government from time to time, but certainly as internal working documents there is detail of what we allocate to individual divisions to undertake the tasks, and we modify that during the year as priorities change.

Senator GEORGE CAMPBELL—Can you provide us with those figures and also the appropriation for Tourism Australia in 2005-06?

Mr Paterson—I am sure we can.

Senator GEORGE CAMPBELL—Are you able to take those figures back for each financial year to 2001?

Mr Paterson—There have been a number of structural changes in relation to divisions; it does make comparisons over time quite challenging. There were movements of the whole of the science function out of the portfolio in 2001, and we moved in what is now the e-Business Division, which at that point was the Business Entry Point. The Office of Small Business came in. We have restructured a number of the divisions. There was organisation restructure in 2002. We went through that in some detail at the estimates in 2002. Comparisons over any extended period of time are somewhat misleading, and in some cases very difficult to try and present, because of the changes of structure within the organisation.

Senator GEORGE CAMPBELL—I understand that. I have got a number of—

Mr Paterson—Even if we looked at AusIndustry, which has existed as a division within the portfolio, the appropriation that we allocate to AusIndustry to administer the programs has varied quite significantly over time because the number and the nature of the programs they are being asked to administer varies over time. Bald comparisons in a historical sense are a bit meaningless.

Senator GEORGE CAMPBELL—Yes. I can nominate the divisions that I am interested in.

Mr Paterson—Why don’t you try that and I can see how we can respond to it.

Senator GEORGE CAMPBELL—Do you want me to do that now or do you want me to give it to you in writing?

Mr Paterson—I am comfortable either way.

Senator GEORGE CAMPBELL—I will give it to you in writing rather than run through each.

Mr Paterson—I will respond to the best of our ability. If there are caveats or areas of explanation that are required in relation to differences between them, I will try and outline them in the answer.

Senator GEORGE CAMPBELL—I understand there has been a lot of movement around and I understand your caveats.

Ms McCluskey—You asked about funding for Tourism Australia. I refer you to page 179 of the PBS. That details the appropriations and other revenue for 2005-06 for Tourism Australia.

Senator GEORGE CAMPBELL—Yes. I also wanted the figure for 2004-05—going back.

Ms McCluskey—Okay.

Senator GEORGE CAMPBELL—Mr Paterson, in your last annual report, on page 2, it states:

The significance of the Department's role in seeking to create a favourable environment for business is highlighted by the strong contribution of the resources sector during 2004-05 and the importance of the international competitiveness of industry to the rebalancing of growth to external sources in 2005-06.

Can you demonstrate to us just how the department contributed to the success of the resources sector?

Mr Paterson—There is further detail clearly provided in the report. I can get people from the Resources Division to respond in some detail. There was significant activity undertaken in engagement with countries and parties outside Australia to facilitate negotiations—with active involvement from ministers, at a number of levels in government, who engaged in negotiations with parties outside Australia. Obviously, the eventual deals are commercial deals done between the commercial parties who have a lease over the resources and the eventual purchases, but there is a lot of facilitation work undertaken by officers and people within the portfolio. If you want to go to the specific detail of measures, that may be a more productive way of doing it.

Senator GEORGE CAMPBELL—Does Mr Hartwell want to do that?

Mr Hartwell—I can do that. In terms of contribution to growth within the resources sector, we of course have a number of responsibilities. Our responsibilities encompass petroleum, both upstream and downstream, and also all coal and mineral issues. In that context, we have at least six action agendas which apply to the resources sector. I can go through each of those and indicate to you some of the progress that has been made under those. As well, as Mr Paterson has indicated, we have a number of initiatives in relation to exploration—

Senator GEORGE CAMPBELL—Sorry, Mr Hartwell, could you just outline the six action agendas in the resources sector and what areas they cover?

Mr Hartwell—Yes. Essentially, minerals exploration, light metals, LNG and downstream petroleum. It is not really an action agenda, but we have a uranium industry framework. It is similar to an action agenda. That is just an indication of some of them. One of my colleagues reminds me of mining tech services. They involve a number of issues which we are addressing in terms of the impediments going forward for the resources sector. As the secretary indicated and as I have just mentioned, we have a number of issues related to exploration which we are addressing. And broadly, we are always looking at the administrative framework. We administer close to 20 pieces of legislation which are relevant to the resources sector within the division and we are always looking at refinements there which will create a framework where we can maximise work creation for all Australians out of the resources sector.

Senator GEORGE CAMPBELL—Do I understand that officers of the division travel overseas—get involved in activities with overseas players?

Mr Hartwell—We do have a wide range of international engagements, yes.

Senator GEORGE CAMPBELL—Is that in conjunction with industry?

Mr Hartwell—That is often in conjunction with industry. We have a number of bilateral resource dialogues which involve industry—with our major customers.

Senator GEORGE CAMPBELL—What sort of activities do the officers get engaged in overseas?

Mr Hartwell—At a government-to-government level we would address issues that may be relevant to increased two-way trade investment between a number of countries that we deal with. We would be looking at all sorts of issues where government has a role in terms of looking at impediments—things of that nature. Many of these issues are brought to us by industry.

Senator GEORGE CAMPBELL—Can you give us some examples?

Mr Hartwell—We would look at issues that might be affecting investment in a recipient country. We would be looking at issues that might be impacting on trade. They can be conventional types of trade barriers, but they can also relate to what you might call non-tariff barriers—various import licensing regimes and things of that nature.

Senator GEORGE CAMPBELL—So it is mainly on a government-to-government basis, is it?

Mr Hartwell—It is. Our role in terms of these government-to-government frameworks is certainly to address those issues which are relevant to government. Many of the issues, however, are brought to us by companies who may have difficulty in operating in certain contexts and things of that nature. While our role is to conduct the government-to-government negotiations—they are not always negotiations; they are often just dialogues and trying to at least air the issues—the issues, as I have said to you, are often brought to us by industry.

Senator GEORGE CAMPBELL—In dealing with some of these issues at a government-to-government level, would it involve travelling overseas with representatives of the companies that may be experiencing difficulties?

Mr Hartwell—It can often involve that.

Senator GEORGE CAMPBELL—Do those companies make a contribution for that activity?

Mr Hartwell—Not in that specific sense.

Senator GEORGE CAMPBELL—So the department funds its own expenses in relation to dealing with these matters and the companies cover their own expenses?

Mr Hartwell—That is correct.

Mr Ryan—Could I just make one clarification. The engagement that we have takes place at several levels, whether it is at a multilateral level, a regional level or an individual country level. In some instances, we do seek that industry makes a contribution. In a particular subject area like a particular commodity like steel, they would be making a contribution to an activity that is multilateral rather than bilateral in that sense. We also do seek some industry support in areas where we might be conducting some research and analysis, and get their contribution in there as well.

Senator GEORGE CAMPBELL—So there are circumstances where companies are required to contribute?

Mr Ryan—In the full picture, but it is quite minor in the overall scheme of things.

Mr Paterson—Senator, I took your question to be a question in relation to travel, which is the way I think you framed the question.

Senator GEORGE CAMPBELL—I suppose I meant expenses in the broader sense of the word. We did have a program at one stage here—the status of it escapes me at the moment—which was for funding the executives of companies travelling overseas and some of which funded some executives to go back to their own company headquarters. I was just wondering what was happening in this particular resource sector.

Mr Paterson—It is not something in my time that I am aware of.

Senator GEORGE CAMPBELL—I think it might have been in your time. Maybe it was before your time. I am not too sure.

Mr Paterson—It will be.

Senator GEORGE CAMPBELL—It may well have been.

CHAIR—Not before your time, Senator Campbell.

Senator GEORGE CAMPBELL—I distinctly remember the Boeing officials getting funded to go to Seattle.

Mr Paterson—One of the other areas of activity that Mr Hartwell has not touched on is the acreage release, which we have spoken about a number of times before at estimates. That is a joint exercise between the Resources Division and Geoscience Australia which is the annual acreage release offshore for petroleum and gas exploration. That acreage release and the pre-competitive data that is provided to people who bid for that acreage also underpin the sort of observations that I made in the annual report.

Senator GEORGE CAMPBELL—At page 3 of the annual report, you state:

The Department played a role in attracting or facilitating 90 new investments valued at \$10.9 billion with the potential to create or safeguard 4,997 jobs and generate \$3.7 billion in export earnings.

What are these 90 new investments?

Mr Paterson—Mr Jones from Invest Australia will respond to the detail of that question, but our involvement in relation to the projects that we report is verifiable assistance provided to individual investments that are either attracted to Australia or retained in the face of competition from elsewhere.

Senator GEORGE CAMPBELL—I think Mr Jones provided me with a list of Invest Australia activities. I do not know whether the 90 investments talked about here are the same as the ones on the list that you provided to me in response to a previous question on notice. Do you recall that?

Mr Jones—I am not sure that I have yet provided you with a list of the successes of 2004-05. I think the lists we provided you with in the past have been in respect of earlier financial years. I am happy to now provide you with a list of the successes for the 2004-05 financial year.

Senator GEORGE CAMPBELL—Thank you. Can you tell exactly what role the department played in these 90 new investments?

Mr Jones—The role varies. In all cases, we get verification from the company that we have assisted in some way with them making the decision to invest in Australia. The role that we play ranges from being able to verify that, without us, the investment would not have gone ahead—that is, we played a key role in bringing the investment to Australia either by making this country known to them in the first place or by making a compelling argument that they should locate something here. In other cases, we have simply provided some form of assistance which has either helped to make the investment happen faster than it otherwise would have or happen in a more efficient manner for the company.

Senator GEORGE CAMPBELL—How do they identify to you that they have been successful? I looked through that previous list. Some of them were direct investments, which required infrastructure et cetera, which you can clearly demonstrate that you played a role in. Some of them are a bit more nebulous than that—for example, opening an office in Sydney. So how do you demonstrate that you have been responsible for that occurring?

Mr Jones—We ask the company to verify that we have had a role.

Senator GEORGE CAMPBELL—So they provide you with a letter to that effect?

Mr Jones—We ask them to fill in a form. We have a success verification form that we require them to put their signature on.

Senator GEORGE CAMPBELL—That is your basis for identifying these 90 new investments and the fact that you have played a role in them?

Mr Jones—It is the basis for us claiming a success. We are aware of the investments because we have been working with the companies. At the appropriate time, we ask the company to verify our role in their decision to invest here.

Senator GEORGE CAMPBELL—Does that mean there could be many more than 90 new investments in the country?

Mr Jones—Certainly.

Senator GEORGE CAMPBELL—These 90 are only the ones that you have been directly involved in?

Mr Jones—That is correct. These are only the ones that we have had involvement in. In fact, there are some investments that we have had involvement in that, for one reason or another, the company may not want to acknowledge.

Senator GEORGE CAMPBELL—Do you keep data on all new investments that occur?

Mr Jones—We do not. There are a range of data sources available for the totality of investment in Australia. The Australian Bureau of Statistics would monitor most new investments, but most of that data would be confidential and not available. A lot of new investments are notified to the Foreign Investment Review Board and, again, some of that data is available and some of it is not. There are also a number of commercial services which provide lists of investments which have occurred in-country. We keep tabs on the different sources of those lists of investments, but we do not compile a master list ourselves.

Senator GEORGE CAMPBELL—So there is no way of knowing what percentage of total investment those 90 new investments that you claim some responsibility for represent?

Mr Jones—No, it is very difficult to do that.

Senator GEORGE CAMPBELL—Is it possible to do it through the Foreign Investment Review Board, in terms of the dollar value of investments?

Mr Jones—The difficulty is that we claim a success when the company announces its decision to invest, not necessarily when it is actually established. The Foreign Investment Review Board notifications are on a slightly different time scale—that is, when the company requires the approval to go ahead—but, again, the actual investment can follow some time after, so matching up the years is a little difficult.

Senator GEORGE CAMPBELL—So not all of the 90 that you claim success for may actually take place?

Mr Jones—It is possible that they will not take place, but it is certainly the case that they will not all take place in the year that we claim them.

Senator GEORGE CAMPBELL—So the extent to which they advise you is an intent rather than an actual investment?

Mr Jones—That is correct.

Senator GEORGE CAMPBELL—So you do not base your figures on actual investments—when hard currency is being put into holes in the ground or whatever?

Mr Jones—That is correct, because, as I said, there can be quite a delay between the time of the announcement and the time that the actual investment takes place.

Senator GEORGE CAMPBELL—Do you keep many records, over the period of time, of the number of companies who have provided you with an intent to invest but have not subsequently gone through with the investment?

Mr Jones—We have started to do that. We now try to track the successes that we have claimed and determine whether or not they lead to an actual outcome.

Senator GEORGE CAMPBELL—What period are you doing that for? At what point have you started keeping that?

Mr Jones—We have made an attempt to do that in a serious fashion over the last couple of years. There would not yet be a time series that establishes any meaningful data, but we are hoping to get that in the next couple of years.

Senator GEORGE CAMPBELL—So there is nothing you can provide to us now that would give us anything sensible in terms of being able to make a value assessment?

Mr Jones—There is nothing specific. I can certainly say that the majority of announced successes would actually take place. It is also fair to say that, of the foreign investments on the list, the ones that we touch would account for only a minority of the foreign investment in Australia. The bulk of the foreign investments that we touch are relatively small and they are only a small proportion of the \$5 billion to \$10 billion a year or so of foreign investment that comes into this country.

Senator GEORGE CAMPBELL—Have you given any consideration to the statistical data that is kept on this area? Have you talked to the ABS about whether or not sensible figures can be kept?

Mr Jones—Yes, we have regular discussions with the ABS. One of the difficulties we face in this area is the need to preserve the confidentiality of the information the ABS collects, but we are always talking to them about what additional information can be made available.

Senator GEORGE CAMPBELL—I understand that, but aggregated figures would be sufficient for the purpose of making an assessment.

Mr Jones—Aggregate figures on the value of foreign investment flows into Australia are certainly available from the ABS, but I do not think the actual number of investments that make up that flow is available.

Senator GEORGE CAMPBELL—But the actual numbers would not breach confidentiality, would they? You would not be asking for the names of the companies and where they had invested. If they said X number of investments were made, to a value of X dollars, that would not seem to be a difficult task for them to engage in.

Mr Jones—It would not seem to be. I am not sure that we have ever asked that particular question of the ABS.

Senator GEORGE CAMPBELL—You might like to think about taking that on board and asking that particular question of them.

Mr Jones—That is a good idea.

Senator GEORGE CAMPBELL—You also claim in your annual report that the new investments will create or safeguard 4,997 jobs and generate \$3.7 billion in export earnings. How do you make those calculations? That is a very precise figure.

Mr Jones—For each individual success that we claim, we ask the companies again to verify the number of jobs that they expect to be created from the project and the dollar value of their investment.

Senator GEORGE CAMPBELL—So these are not actual jobs; it is an assessment by them?

Mr Jones—Yes, that is correct. It is an assessment by them of the number of jobs that they will create once the investment is operational.

Senator GEORGE CAMPBELL—I suppose it is an assessment by them of how successful they expect to be.

Mr Jones—That is true. We ask them what level of jobs they expect when they are fully operational. We do acknowledge that it can take two or three years before the investment is fully operational.

Senator GEORGE CAMPBELL—In terms of the jobs and the money amounts, is there any checking to see whether or not they have actually met those targets?

Mr Jones—In the past we have not done that but we are now instituting a program to go back and track the progress of those investments over time.

Senator GEORGE CAMPBELL—When will that throw up any meaningful data?

Mr Jones—Probably in the next year or two.

Mr Paterson—It is worth noting that Invest Australia in its current form was largely put together in 2002, and the activities of Axiss were transferred out of the Treasury portfolio into Invest Australia in 2003. So it does not have a very long tail of verifiable data but all of the numbers that we claim in the annual report, and have claimed over time in relation to Invest Australia, are verifiable back to the individual company's certification.

Senator GEORGE CAMPBELL—I understand that the transfer took place. I am trying to identify whether these are real or estimates—the reality is that they are estimates—and whether there is any checking to see whether what the companies have claimed has actually eventuated as a result of whatever activity we engaged in.

Senator MARSHALL—What would be the normal lead time from this to the actual dollars on the ground?

Mr Jones—It is very difficult to give you an answer as to what a normal lead time is. It depends on the scale of the project, for example, and the industry it is in. So in some of the smaller successes we claim—in service areas, for example, where it is just a matter of setting up an office in Australia—the lead time can be weeks, whereas at the other end of the scale, in major resource projects, the time between announcement and completion of the project can be five to 10 years in some cases.

Senator MARSHALL—There must be some level of ability to verify your claims of success up until now for those with short lead times. Do you have any data you are able to give us about verification of your success claims?

Mr Jones—As I said before, we are instituting a process to systematically look at what we have claimed in the past and determine whether or not they have come to pass. I would not be confident now about giving you any meaningful data on that. In the next year or two I would be confident about giving you meaningful data on that. As the secretary has indicated, part of the problem is that, for data from earlier years, it is difficult now to go back and verify things that happened some years ago.

Senator MARSHALL—I thought you were only going to go back to 2003, anyway.

Mr Jones—We are going to go back as far as we can. Some of our records extend well beyond 2003. I think the more meaningful data will come from the last couple of years.

Senator MARSHALL—Do you have any data at all?

Mr Jones—We have some data but it would be partial at the moment. I think it would be better to provide you with meaningful data, which I hope to do, say, next year, rather than now.

Senator GEORGE CAMPBELL—I want to come back to the issue of external consultants, Mr Paterson. I do not know whether that is Ms McCluskey's area. The Roberts article, which we referred to earlier, said that in 2004-05 the department used consultants on 175 occasions, at a cost of \$11.6 million. You provided me with a list of consultants used by the department, I think, to the value of \$10,000 or more. My figures do not equate with his figures. There may be a different time period we are looking at anyway.

Mr Paterson—What number did Mr Roberts assert?

Senator GEORGE CAMPBELL—In his article he said you used consultants on 175 occasions, at a cost of \$11.6 million. I presume he has got those figures out of that report.

Mr Paterson—In the annual report, a table starts on the bottom of page 71 and goes over to page 72. We published there 218 consultancies for \$11.8 million. He could have read those numbers straight from the annual report and published them accurately in his article if he chose to, but he chose not to.

Senator GEORGE CAMPBELL—You provided me with a list of consultancies for 2004-05 at the May budget estimates but they were for a value of \$10,000 or more. There is a difference in my figures and the numbers, but I am not necessarily arguing that anything really hinges on that. It is a question of what time frame you may be looking at.

Mr Paterson—On the bottom of page 71, just above the table, we say that a list of all consultancy contracts let to the value of \$10,000 or more is available on our web site. So that is always accessible.

Senator GEORGE CAMPBELL—Which is probably the list that I have.

Ms Foster—Yes. In accordance with the guidelines, the annual report expenditure reports all consultancies with a zero value and greater. The list on the internet under the reporting requirements is the same set of data but from the value of \$10,000 and greater. So the

numbers never line up exactly. I think your gap is probably the consultancies between zero and \$10,000.

Senator GEORGE CAMPBELL—Yes, I think that is right. Not a lot hinges on that, so it is not a concern for me. I have looked at the issue of consultancies across a number of departments. The amount of expenditure in industry is fairly significant—about 3.9 per cent of your total departmental expenses.

Ms Foster—Yes, that is right. I equate it to rounding up to 3.8 per cent of departmental resourcing. I would not say that that is a large percentage of our departmental resourcing. It is also worth noting that the amount spent on consultancies in 2004-05, as detailed in the annual report, is 14.6 per cent less than what it was in the two previous financial years. So the amount we have spent on consultancies has actually decreased.

Senator GEORGE CAMPBELL—But it still seems to be fairly excessive when you look at some other departments like Treasury, which is 1.1 per cent, and Employment and Workplace Relations, which is 0.8 per cent.

Mr Paterson—Those sorts of cross-departmental comparisons looked at baldly do not add much value. You need to look at the nature of the consultancies, why people are being engaged and the differences between portfolios. You are very well aware that within this portfolio there is a very broad spread of activity, and we use a mixture of consulting activity across the divisions.

Senator GEORGE CAMPBELL—My question was whether or not you believe the department does not have the requisite in-house expertise in a range of areas.

Mr Paterson—We know that we cannot hold in-house expertise across every field of endeavour on which we might be called on to provide advice or support at any point in time, and we try to strike the right balance. Do we have excessive use of consultancies within the portfolio? No, we do not. I believe we strike the right balance between holding ongoing resources within the portfolio to respond to the majority of needs that will confront us and having the opportunity to seek and obtain specialist expertise where we require it.

Senator GEORGE CAMPBELL—Can you explain to me why there is a preponderance of consultancies? For example, in innovation there are 27 consultancies at a value of \$1.2 million. And in manufacturing, in particular, there are 51 consultancies at a value of \$1.8 million.

Mr Paterson—We can take you to the detail of each of those if you want, but you are looking at the total number of consultancies. If you look at manufacturing, engineering and construction, 27 of those 51 were engaged prior to the current financial year, so some of these activities blend between financial years.

Senator GEORGE CAMPBELL—I understand that. I am not arguing so much about the figures; I am concerned to know why there is a preponderance of consultancies in those two particular areas. There may be good reason for it.

Mr Pettifer—The great bulk of the consultancies that are there for MEC Division are actually for the Australian Building Codes Board. Out of the 51 consultancies that are identified there, 39 are for the Australian Building Codes Board. The reason they have a lot of

consultancies is that a lot of the work they do is very technical in nature. There has been a lot of work going on on the issue of disability access; there has been a lot of work going on in relation to energy efficiency in buildings. It is technical sort of work and we need to rely on outside technical expertise for input on those sorts of things. That accounts for the consultancies in the MEC area. MEC Division itself had eight consultancies if you net out the ABCB consultancies.

Senator GEORGE CAMPBELL—In the disabilities area, is that a short-term thing?

Mr Pettifer—The disability access issue?

Senator GEORGE CAMPBELL—Yes.

Mr Pettifer—It is a work in progress. We have received advice from the Australian Building Codes Board on that particular issue. We received that advice in June. They have been asked to provide some further details in relation to their particular recommendations and to provide some costings of the particular proposals. That work is under way and further input is being provided. When all of that input is in, the government will consider its position.

Senator GEORGE CAMPBELL—I will have some questions later on specific to that issue. Do you see the consultancies that operate in that area simply as short term while this issue is being resolved?

Mr Pettifer—ABCB does technical sort of work, so there are always quite a lot of consultancies in that area. You would not want to have a full-time employee dealing with that particular technical expertise: the particular task you have asked them to do would come and go, but there would be another question you might want to ask.

Senator GEORGE CAMPBELL—What about the 27 consultancies in innovation?

Mr Pennifold—The consultancies within the division actually represent the spread of activities that we are doing in that area. I am looking at a list of those that were done valued at \$100,000 or more. They range from the engagement of the Economist Intelligence Unit, which was doing an international benchmarking study on international pharmaceutical industries—indeed, that is being launched at an event today—through to some economic work that we had ACIL Tasman doing, evaluating the contribution of biotechnology to the economy, and some media tracking work, for example, that we had done under Biotechnology Australia about community attitudes to particular aspects of that type of technology. It does represent the spread of activities in the division. We would not have, for example, international expertise on detailed costing of different parts of the pharmaceuticals value chain in six or seven overseas markets.

Senator GEORGE CAMPBELL—The biotechnology one you are talking about—is this the one by Eureka Strategic Research?

Mr Pennifold—Eureka is one of the contracts that we have let.

Senator GEORGE CAMPBELL—That was for \$166,000?

Mr Pennifold—Yes.

Senator GEORGE CAMPBELL—What did that involve?

Mr Pennifold—That involved tracking community attitudes towards biotechnology. It is a biennial survey that Biotechnology Australia produces and it is available on the web site. It is a tracking of community attitudes.

Senator GEORGE CAMPBELL—What sort of sampling is involved in that?

Mr Pennifold—As I understand it, it was a sampling of just over 1,000 people and involved quite intensive engagement with small groups and large groups, putting particular questions to them.

Senator GEORGE CAMPBELL—So it was done in a focus group?

Mr Pennifold—Yes. I have a copy of the report here. This was one of the reports that they did on community attitudes to stem cell research. It talks about a computer assisted telephone interviewing survey involving 1,067 respondents between the ages of 18 and 75.

Senator GEORGE CAMPBELL—So it was telephone interviewing? That is substantial—166,000.

Mr Pennifold—No; 1,067.

Senator GEORGE CAMPBELL—It was \$166,000 for the contract.

Mr Pennifold—Yes; that is correct.

Senator GEORGE CAMPBELL—That must have been more than just telephone calling.

Mr Pennifold—I will clarify that. I believe it was more than telephone calling—it did involve focus groups. But I will clarify that for you.

Mr Paterson—At the start of estimates you asked some questions in relation to questions on notice. We have checked the detail and are in a position to respond to that issue if you would like to go to that now.

Senator GEORGE CAMPBELL—Sure.

Mr Pennifold—I am advised there were the telephone interviews and that was followed up with a series of focus groups as well. At least 13 of those focus groups drew from a wide range of communities. So it dealt with issues in the broad, and then also delved into attitudes in a more specific way.

Mr Noonan—I was head of the Corporate Division at the time when these questions were answered. We feel that we have answered all except one question on your list. In some cases I think the reason for the confusion may be that we answered written questions on notice from Senator Carr that were substantially identical to the questions that you had asked during the hearing. I think there was probably a matter of cross-referencing more effectively. Coincidentally, today the committee secretariat and the department have been talking about using similar sets of index numbers so that we do not have confusion again. I could take you through that. Most of the answers are quite short, so if you like I could read them out here.

In the first question, which is BI O5/11, you ask how many of the staff who are on AWAs are being paid more than the pay band for their classification under the certified agreement. The answers were: for the executive 2 level, 58; at the executive 1 level, 36; and in the APS 1 to APS 6 level, 15. You also ask why these staff were not simply promoted to a higher

classification, rather than being placed on an AWA. I think I did answer that in the *Hansard*, where I referred to the need to address temporary situations and particular projects where permanent promotion would not be appropriate and where an AWA fitted the situation.

The second question was BI 05/12, where you asked me how many staff in the agency are eligible for performance pay. The answer was that 125 employees receive performance pay.

Senator GEORGE CAMPBELL—Do you have the classifications of those 125 staff?

Mr Noonan—Yes, I do. There are two at APS levels 1-6, 34 EL2s, 53 SES1s, and 18 SES2-3s. You asked for a breakdown of the aggregate performance based pay outcomes by classification and by gender, and whether performance pay is available under the certified agreement as well as under AWAs. I said it was not. The breakdown of performance pay is as follows: at APS levels 1-6, where I mentioned there were two people, the minimum was \$2,528 and the maximum was \$3,458; at EL1, the minimum was \$1,594 and the maximum was \$6,100; at EL2, the minimum was \$730 and the maximum was \$16,878; at SES1, the minimum was \$2,267 and the maximum was \$10,813; at SES2-3, the minimum was \$8,466 and the maximum was \$27,055. The only remaining component of the question is the gender breakdown. At APS levels 1 to 6, there are zero males and two females; at EL1, there are 13 males and five females; at EL2, there are 27 males and seven females; at SES1, there are 41 males and 12 females; and, at SES2-3, there are 13 males and five females.

Senator GEORGE CAMPBELL—Do those figures reflect the gender breakdown in the department?

Mr Noonan—I think we discussed this last time. At most levels it quite closely corresponded to the proportions. I do not recall the exact numbers, but these numbers are not out of whack with the proportions at the different levels. They are probably a little low on the female side at EL1.

Senator Lundy asked Ms Weston about some methodologies involved in a survey. We have acquired some information from the Department of Finance and Administration, but the answer is about four or five paragraphs long. Do you want me to provide a copy to the secretariat?

Senator GEORGE CAMPBELL—That would be the easiest thing.

Mr Noonan—In question BI 05/47, you asked Mr Hartwell about who is on the interdepartmental working group on a particular issue, and he took the question on notice at that time. Later in that session, Ms Constable provided the names. That is on page E22 of the proof *Hansard*, which will be different from the final *Hansard*. You then asked Mr O'Brien for a range of estimates relating to the excise payable on condensate from the North West Shelf. The answer to that is 20-odd lines long, so I might provide a copy if that is okay.

Then you asked Mr Hartwell some questions about Syntroleum depreciation. Initially he said he would take them on notice, but subsequently, after the extracts that you cite in your list, he gives them explanation. You were asking particularly how we derived the depreciation figure of about \$1 million a year. He explained that the asset value at that moment of the estimates would be around \$10 million, he believed. If you took it forward for 10 years—the licence ends in 2015—by 2015, if we are not successful in commercialising it, it would take

the asset off our books anyway, because they would repay moneys and it would be down to zero. So \$1 million a year. He then went on to confirm that that was in accordance with ANAO guidelines.

Senator GEORGE CAMPBELL—I didn't take it that he was confirming that. I thought he said it was over a 10-year period, or a 15-year period, and it is \$15 million, so it is \$1 million a year. That is what he had to confirm—why that was the way in which the calculation was made. Is that what you are now confirming?

Mr Noonan—Yes. He said:

We have had advice that this—
what I have just described—

is the appropriate way to depreciate the asset. It is consistent with ANAO guidelines.

We have had discussions with the department of finance on this.

Senator GEORGE CAMPBELL—I didn't pick that up.

Mr Noonan—The last one on your list was a question directed to Tourism Australia by Senator O'Brien about current campaigns, and this one has, apparently, slipped through the net. But I have asked Tourism Australia to be in a position to talk about it if they cannot immediately answer it when they appear later during the day.

Ms McCluskey—I have some answers to the questions you asked on the funding for Tourism Australia for the 2004-05 financial year. Tourism Australia commenced operating on 1 July 2004. Prior to that it was the Australian Tourist Commission. The funding for the Australian Tourist Commission was, in total, \$145 million, and that is made up of appropriation funding of \$121 million and other revenues of \$24 million. You asked me as well about the percentage reduction of total outlays, the \$83 million. That is 5.1 per cent.

Senator GEORGE CAMPBELL—That is 5.1 per cent of the 2004-05?

Ms McCluskey—That is correct.

Senator GEORGE CAMPBELL—Coming back to the consultancies, on page 2 of the list that was provided to me—which I presume came off the website—there is a consultancy for construction control—88. There is a consultancy for the integrated design consultant to design the fit-out and lay-out in the new building. There is a figure of \$371,000. Two lines below that, there is a consultancy for LFA (ACT) Pty Ltd for a fit-out design for the new building of \$218,000. Can you explain why two companies were engaged to design the fit-out for the new building?

Ms Foster—There will be different components of the fit-out that they would be designing. Construction control works on largely the base building site, and LFA would be doing the fit-out on the internal design of the building. They would be engaged to design the internal fit-out, looking at—

Senator GEORGE CAMPBELL—The partitions?

Ms Foster—That is right. Those sorts of things, and the colours and designs that you would usually get architects to do: carpets, colours of paints, assisting us with the designs of

workstations and those sorts of things. Construction control is on the base building designs—bathrooms, wet areas and those sorts of things.

Senator GEORGE CAMPBELL—Where is this new building?

Ms Foster—The new building is in Binara Street in Civic. If you are familiar with where we are in Allara Street at the moment, in the current four premises—

Senator GEORGE CAMPBELL—Yes.

Ms Foster—it is adjacent to 20 Allara Street. It is the new construction going up on that site.

Senator GEORGE CAMPBELL—Okay. I presume this is a rental operation?

Ms Foster—It will be a lease arrangement over 15 years. In the current buildings in Canberra that we are in at the moment our lease runs out at the end of December 2006, and there were no options to renew on those leases. So, the February before last, we undertook a lengthy exercise in going through a tender process to look at where we could relocate to. We entered into a precommitment, 15-year lease with the developers. We will move in between October and December 2006.

Senator GEORGE CAMPBELL—Why was the department up for the costs of the design of the layout of the building, the toilets and so forth? That is normally a cost—

Ms Foster—The base building part of it, yes. The total fit-out for the building is \$19.4 million. A number of tender packages go out for that. It is an integrated fit-out with the building. There is your lease cost expense, and your capital component is your \$19.4 million fit-out. We have an integrated fit-out with the building going up.

Senator GEORGE CAMPBELL—But I am just wondering why that cost is associated with the department. That would normally be a cost that would go to the construction company or whoever is building the building.

Ms Foster—I would have to get the detailed breakdown of those two consultancy costs for you—and I am happy to do that—so you can see what is covered in both.

Senator GEORGE CAMPBELL—Yes, can you do that?

Ms Foster—I am happy to do that, yes.

Mr Paterson—You would appreciate that, in these negotiations, if you include a component in a larger number, it is going to be in the transaction somewhere. It may be specified as an individual consultancy, which was the course of action that we took in negotiating the arrangements with the people who are developing the building, but it is going to appear somewhere in the cost structure for the development of the building.

Ms Foster—Yes, that is right.

Mr Paterson—What we have done is to separately articulate individual components so that it is quite clear.

Senator GEORGE CAMPBELL—Yes, I understand. But the way in which this is laid out would draw you to the conclusion that we have paid two companies to do one and the same layout.

Ms Foster—No, it is not that.

Mr Paterson—Rest assured, we are not going to pay two companies to do the same thing, and we are not going to pay for the same thing twice.

Senator GEORGE CAMPBELL—I am not suggesting that you are. That is why I am asking the questions: to make sure you are not. Sillier things have happened, you know.

Ms Foster—Definitely not.

Senator GEORGE CAMPBELL—There is a consultancy on page 3 for Alphawest Services for \$185,000 for ‘Slipstream enhancement and strategic development’. Can you explain what that is?

Ms Foster—Slipstream is our ministerial workflow system. Alphawest are the consultants who are contracted to make technical changes to that piece of software. From memory, those changes would have been developing some new models and maintaining the system.

Senator GEORGE CAMPBELL—So this is for software packages?

Ms Foster—This is a software package, yes.

Senator GEORGE CAMPBELL—It relates to what?

Ms Foster—It is a workflow package that allows us to electronically workflow briefs and those sorts of things—question time briefs, correspondence, briefings for the minister’s office—

Senator GEORGE CAMPBELL—With the minister’s office?

Ms Foster—That is right.

Senator GEORGE CAMPBELL—I have asked you about the Eureka one. What about the ‘SME information pack and media articles—pilot project’, \$120,000, for Morris-Walker?

Ms Berman—The SME package is part of the national innovation awareness program funding. It is identified as a separate consultancy. But the consultancy was done with the Australian Industry Group and funding from the program. I believe the packages are going to be released next Thursday here in Parliament House.

Senator GEORGE CAMPBELL—When you say it was done with the Australian Industry Group, what was their involvement in it?

Ms Berman—Part of the NIAS program, the national innovation awareness program, is that people come forward after a call for competitive grants to build innovation awareness across Australia for companies, SMEs and the broader community, particularly students in terms of future careers that they may adopt. This was one of those competitive grants that was funded.

Senator GEORGE CAMPBELL—And this is on innovation awareness.

Ms Berman—That is correct.

Senator GEORGE CAMPBELL—Does the AiG get funding for this?

Ms Berman—I believe the AiG put forward a competitive bid and that was the way the funding was supported.

Senator GEORGE CAMPBELL—So they actually have the contract to produce this.

Ms Berman—They assisted, yes. I do not think they got the total contract, but they contributed towards the content and a number of case studies, fact sheets and so on, which are part of the pack.

Senator GEORGE CAMPBELL—Do you know what the break-up was between what Morris-Walker was paid was and what AiG was paid?

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

Senator GEORGE CAMPBELL—Can you do that.

Ms Berman—Yes.

Senator GEORGE CAMPBELL—What does the pilot project entail?

Ms Berman—Can I have a few moments to find that out for you?

Senator GEORGE CAMPBELL—Sure. On page 7 there is a consultancy for ‘Constructive Concepts’, which is for ‘the provision of specialist regulatory technical services for the development of mandatory energy efficiency measures for buildings’, for the amount of \$272,800. On page 8 there is another consultancy for exactly the same, with Pacific and Australian Consulting Engineers, for exactly the same amount. Can you tell us what these two consultancies entail?

Mr Pettifer—These are consultancies within the ABCB that relate to the energy efficiency project that I mentioned earlier on.

Mr Donaldson—It is not a duplication; it refers to the same consultant being engaged over a long period of time. There were two competitive processes that were run—I think one in 2001 and another in 2004—and that consultant was successful in both instances. It is a continuation of consultancy support that we have specialist services that have been assisting us in developing minimum mandatory provisions for energy efficiency measures for houses and commercial buildings. That is a project that has been under way since 2001 and it continues. We still draw on those services. The expenses that you see there represent services provided over that period. They are the sorts of services that we could not justify having in house on a permanent basis. They involve quite sophisticated support in relation to analysing the performance of buildings, using engineering and architectural services for that purpose.

Senator GEORGE CAMPBELL—I am not questioning the work that they are doing; I am questioning why it is two different companies with the same contract and the same funding.

Mr Donaldson—We are dealing with commercial buildings and houses. They are quite separate exercises. One of the consultants is focusing specifically on housing, and the other consultant is focusing, most of the time, on performances related to commercial buildings. There are two parallel projects going on at the same time. There are two separate companies, two separate consultants, but they are not duplicating their work at all.

Senator GEORGE CAMPBELL—Both of them refer to ‘efficiency measures for buildings’.

Mr Donaldson—Yes, but one is commercial and one is housing. They are separate.

Senator GEORGE CAMPBELL—If that is the case, then it seems to me, Mr Paterson, there is a need to look at some of the terminology that is being used in some of these descriptions.

Mr Paterson—We are happy to try and provide slightly more, if that assists.

Senator GEORGE CAMPBELL—I do not want to be chasing you down every estimates because things have not been given adequate descriptive terminology. Is there a reason why the contracts were for exactly the same amount?

Mr Donaldson—The contracts that were let were of a similar order. We are paying the same hourly rates. They are there for the same period of time, so it is not surprising that they are the same.

Senator GEORGE CAMPBELL—Don't tell me that consultants are pattern bargaining these days!

Mr Donaldson—We have been to competitive bid on this one, I think, three times. It is a specialised area, and it is very difficult to get a better deal than what we have got, I assure you.

Senator GEORGE CAMPBELL—It would not be right of me to suggest there might have been collusion amongst them?

Mr Donaldson—No, certainly not.

Senator WEBBER—It is just a happy coincidence.

Senator GEORGE CAMPBELL—These things happen. The Allen Consulting Group was the consultancy for the evaluation of Invest Australia in this operation. What did that involve?

Mr Jones—The base funding, if you like, for Invest Australia lapses at the end of this financial year. As is required for all lapsing government programs, we need an evaluation of Invest Australia in order to justify continued funding for the program, so the Allen Consulting Group was engaged earlier this year to conduct an external evaluation of Invest Australia.

Senator GEORGE CAMPBELL—How often do these evaluations take place? I know you have evaluated a whole range of programs in recent times, particularly in the innovation area. Is this a three-yearly program?

Mr Paterson—Lapsing programs require an evaluation prior to reconsideration of future funding. Some programs have specified review periods in relation to evaluations. Most programs are evaluated towards the end of the program, if they are not lapsing programs, to be able to assess the impact that the program has had. It does vary a bit. We publish material each year on the evaluations that are likely to be undertaken in key program areas.

Senator GEORGE CAMPBELL—Is it always the case that you use external consultants to carry out these evaluations?

Mr Paterson—No, it is not the case. Some of the evaluations of programs are undertaken by a unit within our Corporate Division. Often we second staff from outside a program delivery area and within the department to evaluate a particular program. In relation to Invest Australia we went to the marketplace and sought competitive bids to undertake the evaluation.

Senator GEORGE CAMPBELL—Why was that? It is not that big a team that works in Invest Australia, is it?

Mr Paterson—We make a judgment in relation to each case as to whether we should bring external support in. The Invest Australia activity is ostensibly a whole-of-government activity which is about inward investment attraction. You might recall that when we created Invest Australia we brought resources from Austrade, from the communications portfolio and from the industry portfolio and subsequently added Axiss from the Treasury portfolio to it. So our judgment was that, given the whole-of-government interest in it, undertaking an evaluation with a competitive tender from an external source was the best way to proceed.

Senator GEORGE CAMPBELL—When is that evaluation due to be completed?

Mr Jones—The evaluation has been completed. We have the final report from the Allen Consulting Group and it will be going to government as part of the consideration of future funding for Invest Australia.

Senator GEORGE CAMPBELL—So there is no point me asking you for a copy of it yet—it has not been to government?

Mr Jones—Not at this stage.

Senator GEORGE CAMPBELL—You will refuse to give me one, if it is currently before government. What is the consultancy for the Nous Group? It says:

To build on the Winning Investment course material and feedback and to develop a training program

That is a quarter of a million dollars. I presume that Winning Investment course is to do with your portfolio area?

Mr Jones—Correct. Winning Investment is essentially a training program that we run for staff from Invest Australia but also from state and territory government investment promotion areas. We have also started to open that up to local government investment promotion professionals. It is something that is run about every six to nine months. We engage external providers essentially to organise the course, prepare course materials—arrange the curriculum, if you like—for that course.

Senator GEORGE CAMPBELL—That is a pretty substantial contract for arranging a curriculum and course materials.

Mr Jones—It is over a number of years. The \$250,000 is not an up-front payment; I cannot recall exactly how many courses, but it is over a number of years.

Senator GEORGE CAMPBELL—What period would that be?

Mr Jones—It is about three years, from memory. We also recover some of those fees from the participating agencies. It is not a net cost to Invest Australia.

Senator GEORGE CAMPBELL—This is a current contract?

Mr Jones—Yes.

Senator GEORGE CAMPBELL—When was that contract let?

Mr Jones—I would have to check the specifics. I think it was either early this year or late last year.

Senator GEORGE CAMPBELL—When was the contract for the Allen Consulting Group let?

Mr Jones—Early this year.

Senator GEORGE CAMPBELL—Why would you do an evaluation of the whole of the Invest Australia program and in the process of doing that let a contract for training programs and course material and training three years into the future? What happens if the government decides not to continue with Invest Australia—take a worst-case scenario? What happens to all that course material and courses? That just goes down the gurgler?

Mr Jones—The consultant would not be paid for the courses that we do not require them to run. If Invest Australia were abolished at the end of this financial year, it does not mean that we would pay the entire amount of that contract. The service provider has been engaged essentially on the basis of providing materials for the courses that we require over the next few years.

Senator GEORGE CAMPBELL—So the contract is actually to provide training courses at given points in time and to provide that material for those training courses; it is not generic material that is going to run over a period of three years?

Mr Jones—That is right.

Senator GEORGE CAMPBELL—Again it is a problem perhaps of the shorthand description of the contract. It is misleading.

Mr Jones—The courses are held every six to nine months.

Senator GEORGE CAMPBELL—They are paid for each course as a separate unit?

Mr Jones—Yes.

Senator GEORGE CAMPBELL—So if they do a course in November and Invest Australia gets wound up in January, they would only be paid for that course: there would be no further payments?

Mr Jones—That is correct.

CHAIR—Senator Campbell, I was going to take a morning tea break about now. Does that suit you?

Senator GEORGE CAMPBELL—Yes, that would be fine, but Ms Berman might want to finish her answer.

CHAIR—Sorry, Ms Berman. Do you want to say something further?

Ms Berman—Yes. I apologise for having to go and check some data. I would like to correct what I said before. I said it was a part of the competitive grants element of NIAS. It is not part of the competitive grants element. It is a part of grants which are made on the basis of the National Innovation Council, which oversees NIAS. On this occasion, there was a selective tender process. Six companies were approached; five responded. The one that was successful was Morris Walker, trading as PR Works. The relationship with the Australian Industry Group was that the project was done in collaboration with the Australian Industry Group. They did not receive any funding. Rather, they contributed towards identifying the

case studies in the package. Altogether, about 10,000 copies of the package will be released. It is called a pilot project because there is going to be an evaluation when this is released later this year. If it proves successful, more copies will be printed. I hope that has helped.

Senator GEORGE CAMPBELL—What does the pilot project involve?

Ms Berman—It is terminology. It just means that this was undertaken with 10,000 copies to be produced. That is the pilot project element of it.

Senator GEORGE CAMPBELL—With these information packages, I do not know what the media article side of it is; that must be the media around their launch, is it?

Ms Berman—No, there are media articles being placed in trade magazines and other places to announce this.

Senator GEORGE CAMPBELL—So 10,000 SMEs will get this package.

Ms Berman—That is right.

Senator GEORGE CAMPBELL—What are they then supposed to do with it?

Ms Berman—Because of the arrangements that are going through the trade magazines and so on, the particular package is significant, because 12 SMEs actually talk at length about the importance of innovation for their effectiveness and the growing of their business. Those people are happy to be identified. In fact, I think two of them are coming to the launch next week. It is a marketing campaign type thing in order to build awareness in SMEs of the advantages to their bottom line from being proactive in the innovation area.

Senator GEORGE CAMPBELL—Does the contract involve follow-up with those 10,000 SMEs that get the package?

Ms Berman—The follow-up is that there is going to be an evaluation of the effectiveness of it. That is when there will be decisions made about whether more copies will be produced.

Senator GEORGE CAMPBELL—How long is it from the distribution of the packages until the evaluation?

Ms Berman—I would have to take that on notice. That is not in the information I have here. But presumably it would be within the next few months, allowing time to do more copies this financial year if necessary.

Senator GEORGE CAMPBELL—What is the industry break-up?

Ms Berman—The industry break-up of those receiving them?

Senator GEORGE CAMPBELL—Yes.

Ms Berman—I will have to also give that to you separately.

CHAIR—Thanks. Senator Campbell, before we adjourn for morning tea, are there any officers or topics you have now finished with?

Senator GEORGE CAMPBELL—I have a number of questions on the venture capital review. I have a number of questions on auto industry funding. There is the China free trade agreement, the auto industry strategic group, a number of other auto industry issues and some matters dealing with industrial relations. At this stage, I do not think so.

CHAIR—Thanks.

Proceedings suspended from 10.49 am to 11.11 am

CHAIR—I have been told that we will not require Geoscience Australia and any questions to them will be placed on notice, so those officers are excused.

Senator GEORGE CAMPBELL—At the previous round of estimates it was stated that the cost of the Venture Capital Review would be approximately \$200,000. Is that still an accurate figure?

Mr Morling—That figure of \$0.2 million was put in the budget document *Making Australia stronger: delivering our commitments 2005-06*. That figure is still around about what we would expect the review to cost, but due to delays in the commencement of the review—you will recall it was an election commitment, but the minister did not announce the start of the review until budget night itself—some of that expenditure will roll over into this financial year.

Senator GEORGE CAMPBELL—Can you give us an update on the review?

Mr Morling—Sure. The expert group, which the minister and the Treasurer agreed to appoint—Mr Brian Watson, Mr David Miles and Mr Gary Potts—are in the final stages of their deliberations. We would expect them to report to the ministers by the end of the year.

Senator GEORGE CAMPBELL—How many submissions were received?

Mr Morling—We received 59 submissions. Some groups, such as AVCAL, the industry body, put in two submissions.

Senator GEORGE CAMPBELL—When can we expect this report will be made public?

Mr Morling—That will be a decision for the government. I am not aware that the government has made any decision yet.

Senator GEORGE CAMPBELL—So it may never be made public?

Mr Morling—I just do not know at this stage.

Senator GEORGE CAMPBELL—Was there a consultation process that took place following the receipt of the submissions?

Mr Morling—Yes, there was.

Senator GEORGE CAMPBELL—Can you outline how that consultation that occurred?

Mr Morling—Sure. The expert group itself wrote to a number of targeted groups seeking their participation in consultation. It was also generally open, I recall, to anybody that wanted to participate in consultations to come forward and do so. In the end, the expert group conducted direct consultations with 23 parties in Sydney, Canberra and Melbourne. There were a range of industry associations, venture capital investors themselves and some other interested parties.

Senator GEORGE CAMPBELL—How did these consultations occur? Was it a roundtable type format?

Mr Morling—No, it was not a roundtable. Each party came in individually and addressed the expert group, then the expert group had a chance to ask questions.

Senator GEORGE CAMPBELL—So they were all dealt with individually?

Mr Morling—The 23 were done as individual sessions, yes.

Senator GEORGE CAMPBELL—On 18 October an article appeared in the *Financial Review* entitled ‘Flawed rules hurt investment’. In that article, Andrew Green, chief executive of Australian Venture Capital Association Ltd, states that the rules governing foreign private equity investment in Australia are so frustrating they would normally be associated with undeveloped economies. He is quoted as saying, ‘We told the government that it wouldn’t work the way it was set up and it hasn’t,’ and that, ‘It’s like dealing with Botswana.’ What is the department’s view on Mr Green’s comments?

Mr Morling—They are his opinions. AVCAL was closely involved in the development of both the initial legislation and the amendments that were put through in June 2004. They were actively involved in the development of those two things. AVCAL has a well-known campaign that it has three or four major issues with the current VCLP vehicle—that it would like to see removed so-called restrictions. I guess the main one is the \$250 million investment limit.

Senator GEORGE CAMPBELL—Did AVCAL make submissions to the expert group?

Mr Morling—Yes, they did; they made two submissions. One was essentially on the issue of the restrictions on the VCLP. The other was a supplementary submission dealing with issues associated with early stage venture capital investment.

Senator GEORGE CAMPBELL—So the expert group have heard from them what their concerns are in this area and presumably will deal with those issues when they make their recommendations.

Mr Morling—Yes. The expert group has met twice with AVCAL now.

Senator GEORGE CAMPBELL—I assume that that has been a part of their general concerns.

Mr Morling—Yes, it has.

Senator GEORGE CAMPBELL—Can you comment on why only one out of the eight venture capital limited partnerships has received any foreign investment?

Mr Morling—It may be better if one of my colleagues from AusIndustry answers that. Currently there are 10 registered VCLPs, and of about 15 per cent of the capital commitments associated with those 10 registered VCLPs, 15 per cent is from foreign sources.

Senator GEORGE CAMPBELL—I am told that only one of the VCLPs has foreign investment.

Mr Peel—The figures I have substantiate that. There is \$915 million available, and \$135 million of that, or 15 per cent, is from foreign sources.

Senator GEORGE CAMPBELL—But is it true that it is only one of them?

Mr Peel—I do not have that information here. I would have to take that on notice and let you know.

Senator GEORGE CAMPBELL—Can you do that?

Mr Peel—Yes.

Senator GEORGE CAMPBELL—So it is \$135 million of the total.

Mr Peel—Yes, there is \$915 million in capital commitments, \$780 million from domestic sources, or 85 per cent, and \$135 million, or 15 per cent, from foreign sources.

Senator GEORGE CAMPBELL—And you will track whether that is—

Mr Peel—We will check where that \$135 million is, yes.

Senator GEORGE CAMPBELL—What is the rationale, Mr Morling, for preventing VCLPs from investing in the financial services sector?

Mr Morling—I was not involved in the initial development of the program, but my understanding is that at the time it was not raised as a particular issue for the industry. Further to that, I guess there is also an issue of whether the financial services sector is able to raise investment capital from other sources readily enough. While it is a fairly broad restriction not allowing you to invest in financial services, you can undertake some financial investment.

Senator GEORGE CAMPBELL—Is this an issue that has been raised with the expert group?

Mr Morling—Yes, that is one of the restrictions that have been raised with the expert group.

Senator GEORGE CAMPBELL—And that is one of the issues that they will consider?

Mr Morling—They will consider it, yes.

Senator GEORGE CAMPBELL—Are you aware that the industry is saying that it is having difficulty with the rule that 75 per cent of the production of targeted investment companies has to occur in Australia?

Mr Morling—We are aware of that particular restriction. I am not sure where the 75 per cent comes from. Under the VCLP, to be an eligible investment the company has to have 50 per cent of its EER assets and employees in Australia at the time of investment and for 12 months following that. There is scope under the legislative regime for the PDF board to alter that, but you would have to make a specific application setting out the circumstances to do that.

Senator GEORGE CAMPBELL—Is that an issue that has also been raised with the expert group?

Mr Morling—Yes, that is also an issue.

Senator GEORGE CAMPBELL—So it is one that has come forward for consideration. They have also raised the issue about the \$250 million restriction.

Mr Morling—Yes. That is a well-known issue for the industry body and that is an issue that has been considered by the experts.

Senator GEORGE CAMPBELL—And that has also been put in front of them.

Mr Morling—Yes.

Senator GEORGE CAMPBELL—Because of these restrictions, companies are having to adopt tax structures that are more expensive and inefficient. That is one of the factors discouraging foreign investment. Has that issue been put before the expert group?

Mr Morling—Yes, that issue has been put before the expert group. Essentially, what we have been told is that not only have they registered a VCLP structure, but associated with that VCLP structure is a parallel unit trust structure. Essentially we understand the issue is that you cannot hold ineligible investments through a VCLP, so if you raise a fund, and some of those funds you want to put somewhere that would not be an eligible investment, then the industry is setting up a unit trust structure to undertake that investment.

Senator GEORGE CAMPBELL—Is the expert group giving consideration to what extent they treat the venture capital industry and private equity market as two different things—how they treat them differently?

Mr Morling—I don't want to pre-empt the expert group, but that is certainly an issue that has come forward in their deliberations.

Senator GEORGE CAMPBELL—I am trying carefully not to ask you to pre-empt them and tell me what you think they will decide, but I am concerned, now that these issues have been placed before them and are under active consideration by them—

Mr Morling—Certainly the distinction between the private equity sector, venture capital, and what might be called later stage private equity has been brought before the expert group. They are well aware of it and it has featured in their deliberations.

Senator GEORGE CAMPBELL—The 18 October article in the *AFR* entitled 'Minister eyes incentives for venture capital' indicated that an industry player has suggested that the private equity sector is underdeveloped in contrast to the United Kingdom, where 18 per cent of private sector employees work for entities owned by private equity or venture capital funds, whereas in Australia one to two per cent of staff work for a private equity backed organisation. Can you comment on why that is the case?

Mr Morling—Not especially. My only thought there would be that the UK private equity industry is probably a little more developed, a bit more mature, than in Australia. One of the issues that has come forward through the deliberations of the expert group is that the later stage private equity sector does seem to be undertaking a lot of fundraising at the moment. You are probably aware that CHAMP Investments—Castle Highland Australian Mezzanine Partners—has just closed a \$950 million fund. We also have the three so-called listed cash boxes, which will be looking to undertake private equity investments, although not necessarily in Australia. So as we go forward, because of the reasonably strong upswing in investment raisings that we are currently seeing, you may see more investment by private equity in Australian companies and you may see that situation improve.

Senator GEORGE CAMPBELL—Again, there was an article on 22 September in the *Financial Review* entitled 'Federal funds still needed if fledgling is to fly'. Ron Finkel, principal and manager of IIF backed Momentum Investment Group, stated that further rounds

of government funding were required to get the venture capital industry through its first 10-year cycle and establish its track record. The article also states that in March Victor Bivell, editor of the *Australian Venture Capital Journal*, wrote:

The second IIF round was in October 2000—4½ years ago. Since then, the sight of fully committed managers sitting on their hands for two or three years, and possibly more, just waiting for an exit so they can free up some cash is not what venture capital should be about.

Further comments were then made about it. What is the department's view on this issue? Those IIF funds do seem to have stalled.

Mr Peel—That is a common comment that we get from the IIF fund managers, that they would like to see new funds created. That is an issue that will be looked at as part of the venture capital review. We are also currently undertaking an evaluation of the IIF program, which will inform any future government decision on that. That is a common view that is put forward. Four of the fund managers, though, have in fact gone on to raise funds of their own as a result of their participation in the IIF. So more funds have emerged as a result of the program.

Senator GEORGE CAMPBELL—Is one of the issues that the funds are too narrowly focused?

Mr Peel—The funds have a reasonable breadth. There is no restriction on the industry sectors they can invest in to any great degree. They are focused on the small end, as you would expect for venture capital—small companies, less than \$5 million.

Senator GEORGE CAMPBELL—But there was an overfocus on the IT sector in the early days.

Mr Peel—One of the funds does focus exclusively on IT, that is true. But there is a good mixture between the funds of various industry sectors.

Senator GEORGE CAMPBELL—When is the review that has been taken into the IIF funds likely to be completed?

Mr Peel—It is imminent; by the end of the calendar year.

Senator GEORGE CAMPBELL—Is it currently before the minister?

Mr Peel—No.

Senator GEORGE CAMPBELL—At the last estimates hearing—I think it was Mr Clarke but I am not too sure who it was—reported that the minister for workplace relations, the minister for industry and officials of both the partners were meeting to discuss improving productivity in the automotive industry. Can you tell us what is the status of those meetings, whether those meetings have taken place and whether there have been meetings with the industry as a result of those discussions.

Mr P. Clarke—It is a difficult question to answer because a lot of what that leads to is cabinet-in-confidence. I would like to take some advice on how far I can answer that. Just to update you, I think I gave you last time some details of the meetings that had been held by our department with the component producers. Subsequent to that last Senate estimates we have had meetings with Holden, Ford, Toyota and Mitsubishi. That was from 8 to 10 June.

Senator GEORGE CAMPBELL—Did that involve also officials from the department of industrial relations?

Mr P. Clarke—Yes.

Senator GEORGE CAMPBELL—So it was a joint working party.

Mr P. Clarke—Yes.

Senator GEORGE CAMPBELL—So you have met with both the components sector and the plant producers with respect to issues relating to improving productivity. What has been the result of those consultations?

Mr P. Clarke—It is providing input to government.

Senator GEORGE CAMPBELL—What form of input?

Mr P. Clarke—The minister for workplace relations has advised publicly that he and the Minister for Industry, Tourism and Resources are reporting to cabinet on workplace relations and productivity improvements. The work that was done at that time was with a view to assembling material for that report.

Senator GEORGE CAMPBELL—In the discussions that took place with the plant producers and with the component suppliers, was the issue of the government's proposed industrial relations changes which have been introduced this morning raised in respect of improving productivity?

Mr P. Clarke—I am not in a position to answer that question. I was not present at the meetings with the component producers. It is a question you might properly direct to the Department of Employment and Workplace Relations. In any event, those discussions were pretty heavily confidential, so I am not quite sure how I can answer that.

Senator GEORGE CAMPBELL—Presumably you were at the meeting with the plant producers?

Mr P. Clarke—I was, yes.

Senator GEORGE CAMPBELL—Was the issue of the government's new industrial relations system raised in the context of discussing improving productivity?

Mr P. Clarke—No.

Senator GEORGE CAMPBELL—It wasn't?

Mr P. Clarke—Not in any detail, no.

Senator GEORGE CAMPBELL—Not in any detail?

Mr P. Clarke—There may have been mention that the government had in mind some agenda on industrial relations. I do not recall anything beyond that.

Senator GEORGE CAMPBELL—Was there anyone from the department who was at the meeting with the auto component suppliers?

Mr P. Clarke—Not here, no.

Senator GEORGE CAMPBELL—Not here?

Mr P. Clarke—No.

Senator GEORGE CAMPBELL—But there was someone from the department—

Mr P. Clarke—Yes, but they were even earlier in the year.

Senator GEORGE CAMPBELL—Yes, but there was someone from the department—

Mr P. Clarke—At a number of the meetings, yes.

Senator GEORGE CAMPBELL—That individual from the department, was that someone who you are responsible for, Mr Clarke?

Mr P. Clarke—Yes.

Senator GEORGE CAMPBELL—Did they report back to you?

Mr P. Clarke—In general terms yes, they were assembling material.

Senator GEORGE CAMPBELL—Did they report to you that the issue of the government's new industrial relations framework was discussed in the context of improving productivity in the auto components?

Mr P. Clarke—No.

Senator GEORGE CAMPBELL—They didn't?

Mr P. Clarke—No.

Senator GEORGE CAMPBELL—They did not mention if there had been any mention of it at all?

Mr P. Clarke—As I say, it gets down to what mention you have got. If you are after some detail that there was some outline of what the material might have been or what might have come out of it—

Senator GEORGE CAMPBELL—I have not asked you that. I have asked you: was it discussed in the context of discussing—

Mr P. Clarke—Not to my knowledge, no.

Senator GEORGE CAMPBELL—Not to your knowledge?

Mr P. Clarke—No, I do not believe it was.

Senator GEORGE CAMPBELL—And your person who reported to you did not report on that aspect?

Mr P. Clarke—No.

Senator GEORGE CAMPBELL—Are you aware of any consideration to linking the promotion of the government's industrial relations agenda with funding or future funding onto the ACIS?

Mr Pettifer—I think you are asking questions about deliberations which are going to provide advice to government in relation to a cabinet matter.

Senator GEORGE CAMPBELL—No, I am not.

Mr Pettifer—I think you are.

Senator GEORGE CAMPBELL—I am not asking what advice you are providing to the government.

CHAIR—Sorry, I was distracted. What was the question?

Mr Pettifer—And we are unable to answer.

CHAIR—Excuse me, Mr Pettifer. What was the question, Senator Campbell?

Senator GEORGE CAMPBELL—I asked Mr Pettifer whether or not there was any consideration being given to linking the promotion of the government's industrial relations agenda to future funding to the ACIS. I did not ask him what advice he provided the government.

CHAIR—Whoever responds to that question should be careful, but I think to some degree it could be responded to.

Mr Paterson—I would like to question whether it can. We are being asked whether consideration has been given. Consideration by whom? We presume that the question is consideration by government—

Senator GEORGE CAMPBELL—By the department.

Mr Paterson—and I do not think that we are in a position to do that. If you are asking whether we are considering something, the answer is no.

Senator GEORGE CAMPBELL—Sorry, I am asking the department—

Mr Paterson—If you are asking us, the answer is no.

CHAIR—I assume, Mr Paterson, the question was whether the department was considering something. The question has been answered, Senator Campbell.

Senator GEORGE CAMPBELL—The answer is no, is that right?

Mr Paterson—That is correct.

Senator GEORGE CAMPBELL—Do any of your programs now have industrial relations requirements built into the criteria used to assess applicants?

Mr Peel—No.

Senator GEORGE CAMPBELL—Are there any plans Mr Peel, before you sit down, to introduce IR requirements into any future DITR programs?

Mr Peel—Not to my knowledge.

Senator GEORGE CAMPBELL—I understand, Mr Pettifer, that the minister convened an auto industry strategic group on 12 August. Is that correct?

Mr Pettifer—That is correct.

Senator GEORGE CAMPBELL—Can you elaborate on what the purpose of this group is?

Mr Pettifer—I can. It is a group that is aimed at strengthening cooperation within the automotive industry, in particular between the motor vehicle producers and the component

producers, with a view to strengthening the overall competitive positioning of the industry and helping the industry to secure some new opportunities in global supply chains.

Senator GEORGE CAMPBELL—Who was involved in the meeting?

Mr Pettifer—The meeting that was held on 12 August involved all the chief executives of the motor vehicle producers and a range of representatives from the components industry. I can run through the list if you want me to, but it might take a little while.

Senator GEORGE CAMPBELL—I will be happy if you just provide us with the list.

Mr Pettifer—I can do that. Also involved in the meeting were representatives from the Victorian and South Australian industry ministers.

Senator GEORGE CAMPBELL—Are you able to tell us what the outcomes of the meeting were?

Mr Pettifer—You have referred to it as the automotive industry strategic group. The way I have interpreted that is that, at that meeting, they agreed to establish an automotive industry strategic group. That is going to meet next week, on 9 November. As a result of that meeting, a working group was also set up which would provide advice to the strategic group. That working group has had one meeting to date, on 24 October.

Senator GEORGE CAMPBELL—Who comprises the working group?

Mr Pettifer—The working group has on it representatives from each of the motor vehicle producers. It has representatives from the automotive industry association and the components industry association, and it also has some representatives from the component industry on it. Also, there is an official from the industry departments of the South Australian and Victorian governments.

Senator GEORGE CAMPBELL—Are you aware, Mr Paterson, that on 16 August your minister said, in part, on the Alan Jones program, ‘We’ve got to ensure that industrial relations reform continues so we have the labour prices of New Zealand’? Are you aware of those comments?

Mr Paterson—I did not hear the comments made by the minister. I saw some reporting at the time. As I recall the position, there were clarifications made by the minister in relation to his observations, but I do not have the material with me and I did not hear the interview.

Senator GEORGE CAMPBELL—You are aware that the comments were made?

Mr Paterson—I am aware that there was reporting that comments of that nature were made.

Senator GEORGE CAMPBELL—Did the department advise the minister on the subject of his statement?

Mr Paterson—You know that I cannot answer that question.

Senator GEORGE CAMPBELL—Can you comment on the rationale behind the comment?

Mr Paterson—I am not going to comment in relation to that.

Senator GEORGE CAMPBELL—I know what answers I am getting. Has the department conducted any studies or done any economic modelling that would underpin that comment?

Mr Paterson—I think the answer to that question is the same as the earlier observations.

Senator GEORGE CAMPBELL—I think it is different. I am asking if the department actually carried out—

CHAIR—With respect, Senator Campbell, the questions are a little bit tendentious. You could have asked, I think, whether the department has done any economic modelling in relation to that matter, but I think you are implying a relationship of causality which is not conceded.

Senator GEORGE CAMPBELL—I am happy to take your correction, Senator.

CHAIR—I just think your questions were a little—

Senator WEBBER—That is assistance, I think!

CHAIR—I think that, if your questions were a little less tendentious, Mr Paterson might have more wiggle room, but he might have to answer something.

Senator WEBBER—I told you it was assistance.

Senator Minchin—Would you like to rephrase your question, Senator Campbell?

Senator GEORGE CAMPBELL—I will ask the question that Senator Brandis just rephrased.

CHAIR—Can I ask a question for you, Senator Campbell?

Senator GEORGE CAMPBELL—Have you conducted any economic modelling on the issue of labour prices, particularly New Zealand labour prices, and its relationship to improving productivity.

Mr Paterson—With respect to?

Senator GEORGE CAMPBELL—With respect to the comment that the minister made—

Mr Paterson—I am not going to comment—

CHAIR—I think that is the problem, Senator Campbell. You can ask him whether he has conducted economic modelling on a topic.

Senator GEORGE CAMPBELL—I just have.

CHAIR—That is a proper question.

Mr Paterson—I want to be clear what the topic is.

CHAIR—You define the topic, Senator Campbell.

Senator GEORGE CAMPBELL—The topic is whether or not reducing labour prices in Australia to the level of those in New Zealand would lead to improved productivity.

Mr Paterson—Have we done explicit modelling on that? No.

Senator GEORGE CAMPBELL—I said ‘any’ modelling, by the way.

Senator WEBBER—Not exclusive.

Mr Paterson—I said ‘explicit’.

Senator GEORGE CAMPBELL—In other words, the argument that reducing wages in Australia to the level of wages in New Zealand would increase productivity is not supported by any work the department has done.

Mr Paterson—I have answered your question, and I am not in a position to respond to any question that links a comment that may or may not have been made by the minister with any advice that might have been provided. You asked an explicit question in relation to modelling, which I have responded to.

Senator GEORGE CAMPBELL—That was in respect to modelling—

Mr Paterson—Yes, and I have responded to that.

Senator GEORGE CAMPBELL—The question I just asked you is broader than that.

Mr Paterson—And I am not responding to it.

Senator Minchin—Senator Campbell, you can draw whatever conclusions you want to from the answers given, but it is not appropriate for you to try to, as you are, embarrass the department in relation to any comments that Mr Macfarlane may have made. You are free as a politician to draw conclusions, tendentious as they may be, but that is not fair question to ask the department.

Senator GEORGE CAMPBELL—I am not trying to embarrass the department; I am trying to distance the department from what the minister said.

Senator Minchin—No, you are deliberately trying to link the department to those remarks.

Senator GEORGE CAMPBELL—No, I am not. In fact, I am trying to do the reverse.

CHAIR—What you can do is pretty simple. You can ask Mr Paterson anything about what the department has done other than in relation to advice to government.

Senator GEORGE CAMPBELL—I have just done that. I have asked him, and he is refusing to answer the question.

Senator MINCHIN—No, you are going beyond that.

Mr Paterson—No. With respect, you asked—

Senator GEORGE CAMPBELL—You are refusing to answer.

Mr Paterson—You changed the question and linked it to advice being provided to the minister—

Senator GEORGE CAMPBELL—No, I did not.

Mr Paterson—Could we have the question read back?

Senator GEORGE CAMPBELL—I asked you a question about economic modelling, which you responded to by saying you had not done anything explicit.

Senator WEBBER—Whereas we asked generally.

Senator GEORGE CAMPBELL—I then asked you whether or not the argument that improving productivity in this country could occur if we reduced wages to the level of New Zealand wages was underpinned by any work the department had done.

Mr Paterson—No.

CHAIR—You are asking him to comment on the validity of what is said to be a remark of the minister. That is the point, and I do not think that is a proper question. You can ask him as much as you like about what modelling the department may have done in relation to that, but the link between that and what the minister may or may not have said is inadmissible evidence.

Senator GEORGE CAMPBELL—I did not mention what the minister had said—

Senator Minchin—You did in your last question.

Senator GEORGE CAMPBELL—No, I did not. I raised the issue—

Senator Minchin—You did. You linked it directly, in fact.

Senator GEORGE CAMPBELL—I also asked that in the previous question on modelling, and Mr Paterson's response was not explicit.

Senator Minchin—You asked that without reference to the minister's remarks, but in your last question you linked it to the minister's remarks.

Senator GEORGE CAMPBELL—I referred to the link to improving productivity by reducing labour prices in this country down to level of New Zealand's.

Senator Minchin—Your last pertinent question directly linked that matter to the minister's remarks, and it is not appropriate for you to put that to the department.

Senator GEORGE CAMPBELL—The only difference between the two questions was that one referred to modelling and the other one referred to broader work.

CHAIR—Why don't you just ask him what modelling the department has done? Why don't you pursue that?

Senator WEBBER—Because we were not getting anywhere.

CHAIR—With respect, Senator Campbell, I do think it is pretty clear. You can ask about what the department has done. You cannot ask about advice to government and you cannot ask for comment on the government's policy positions. Nor can you do it obliquely by trying to draw a negative inference.

Senator GEORGE CAMPBELL—Mr Peel, on the innovation programs: as I understand it, the department has undertaken a rephrasing of program appropriations into the forward years which has included, amongst other things, some movements and new measures and the amalgamation and renaming of different programs. In the process of doing that, can you identify any programs administered by the innovation division that have been cancelled or cut prior to the scheduled termination of the program.

Mr Peel—In relation to the programs administered by AusIndustry on behalf of the innovation division, I think what you are referring to probably relates to the new Commercial Ready program, which picks up funding arrangements that were previously part of the R&D

Start program, the Biotechnology Innovation Fund and the Innovation Access Program. Funding for those types of activities are now part of the Commercial Ready program. Although we have ongoing grants from those previous programs that we are still administering, future funding will come from the Commercial Ready program.

Senator GEORGE CAMPBELL—So they have all been rolled into the Commercial Ready program.

Mr Peel—Effectively, yes.

Senator GEORGE CAMPBELL—But there have been some programs that have been cut out or that will terminate as a result of that, haven't there? Some elements of them might be picked up by Commercial Ready.

Mr Peel—There is no program called the 'Biotechnology Innovation Fund' anymore, for example. But if you want funding for proof of concept for biotechnology innovation you can do it through the Commercial Ready program.

Senator GEORGE CAMPBELL—Can you explain to us what has happened with the roll out of Commercial Ready so far?

Mr Peel—I guess there was a lull at the beginning of the program, which I think we discussed at the last estimates, which we expected.

Senator GEORGE CAMPBELL—But at that stage I think you were in the process of going through public consultations.

Mr Peel—At the last estimates the program was actually on foot and we were talking about the fact that the rate of applications at that stage had not reached the level that we previously experienced under R&D Start. One of the reasons for that was that there was a rush of applications at the end of the Start program. Then it took a while for people to get used to the new program. However, I am happy to report now that levels of interest in the Commercial Ready program have now reached those of the former R&D Start program and the program is travelling along fairly well.

Senator GEORGE CAMPBELL—On your web site you state that there has been a change to the date from which eligible expenditure can be claimed for those applications accepted on or after 1 September 2005. It goes on to say, 'Please contact your customer service manager to discuss'. Can you explain what that means?

Mr Peel—Yes. Under the former R&D Start program projects could be funded from the date upon which applicants lodged their applications. So they could apply for a grant, be successful and get paid for any work they had done since the date that they lodged their applications. When the Commercial Ready program came in it was decided that payments would only be made from the date upon which applicants signed their grant contracts. After the program had been running for a while we went out and consulted with people who had been involved with the program. We were looking at the reasons for that lull that I was talking about.

One of the reasons put forward was the payment arrangements for Commercial Ready. So as a result of those consultations the minister agreed that we could change the payment date for Commercial Ready back to the old R&D Start arrangement—that is, grant funding was

now available from the date of application for a successful grant rather than the date upon which the contract is signed. So that was the principal change and that is why the documentation has changed for the program.

Senator GEORGE CAMPBELL—What impact will that have on the roll-out of the program—any?

Mr Peel—No, it will not have any effect overall. We will still end up paying out the same amount of money, but the first payment under a grant will be higher now if we are paying back to the date of application rather than the date the contract is signed. So, as we do every year, we look at how much money we have got available and seek approvals for rephasings if we need to. That will be a factor we will need to take into account in the future.

Senator GEORGE CAMPBELL—So there is still the flexibility of the program to accommodate the demand, so to speak?

Mr Peel—Yes.

Senator GEORGE CAMPBELL—I understand that the Forbes Global CEO Conference held in Sydney on 30 August was funded by Invest Australia; is that correct?

Mr Paterson—Not explicitly. The conference was run in conjunction with Forbes, and both Invest Australia from within this portfolio and the Department of State and Regional Development from New South Wales were involved in the presentation of that program. Mr Jones has got some of the explicit detail; but to suggest that we funded it is not accurate.

Senator GEORGE CAMPBELL—Mr Jones, can you tell us what the contribution of the department was towards the cost of the conference?

Mr Jones—Yes. Invest Australia was a host sponsor of the conference. We provided \$1.3 million of our budget to secure the conference for Australia. That money basically came out of our regular promotional and advertising budget, because the benefits we received for that sponsorship included 11 full-page full-colour advertisements in the *Forbes Global Business and Finance* magazine over a 12-month period. If we had bought those advertisements at the normal rates from Forbes that would have cost us \$1.32 million. In addition, we gained the benefit of the opportunity to host the conference's welcome dinner. We received two business networking dinners in the US arranged by Forbes as well as promotional opportunities and benefits associated with the conference itself, including free attendance et cetera.

Senator GEORGE CAMPBELL—What did the \$1.3 million contribution by the department represent in terms of the total cost of running the conference?

Mr Jones—I am not sure that I know the answer to that. The Forbes organisation organised and paid for the conference, so I am not sure that we know what their total budget was.

Senator GEORGE CAMPBELL—The department was not part of the organising committee of the conference?

Mr Jones—As I said, we were a host sponsor for the conference, so we were certainly involved in discussions with Forbes and with the New South Wales Department of State and Regional Development about the form of the conference, the venue and arrangements for it et cetera. But it was a Forbes event and the Forbes organisation were the ones who organised the

conference, invited all the speakers, and invited the delegates and so forth. So we had input but there was not an organising committee as such, because it was a *Forbes* conference.

Senator GEORGE CAMPBELL—But you do not know what your contribution was as a share of the total cost of running the conference?

Mr Jones—That is correct. I can take it on notice whether we do know the answer to that. I think the answer is that we do not know what our contribution was to the total cost.

Senator GEORGE CAMPBELL—Perhaps you can take it on notice and, if you can provide us with an answer, provide us with an answer. I would like to know the total cost of the conference as well as your percentage share of it. Were there any specific outcomes or performance indicators applied against the funding of this conference?

Mr Jones—There have been a number of outcomes. As I said, one of the major benefits that our sponsorship package provided was advertising opportunities in the *Forbes* magazine and follow-up coverage that has been generated through the *Forbes* media group following the conference. As usual, the benefits of that kind of promotional expenditure are greater exposure to Australia. We measure that through the amount of press generated. It contributes to increased visitation to our web site et cetera. In terms of direct benefits from the conference, we generated a number of investment leads at the conference and, as a result of follow-up over the next 12 months or so with delegates at the conference, we would be expecting a number of other investment leads to flow. In addition, New South Wales generated a substantial number of investment leads at the conference, I understand.

Senator GEORGE CAMPBELL—Have you been able to measure what the benefits have been as a result of the \$1.3 million investment? Have you been able to demonstrate any tangible benefits so far as a result of sponsoring this conference?

Mr Jones—As I said, the tangible benefits were delivery of promotional opportunities for us that otherwise we would have had to pay for.

Senator GEORGE CAMPBELL—Yes, you said that. But has there been any consequences to that occurring?

Mr Jones—In terms of investment successes, as we were discussing before, resulting from leads generated at the conference, not yet. It is too early for that kind of outcome.

Senator GEORGE CAMPBELL—So there has been no specific inquiries to you as a result of your activities in this conference that you are aware of?

Mr Jones—No, as I said, there were a number of specific investment leads generated at the conference. The concrete outcome so far is that we are engaged with a number of the delegates who came to the conference about possible investments in Australia. That is what we will be following up intensively over the next year or so.

Mr Paterson—It is also fair to say that the two precursor events that were hosted by *Forbes* in the United States that Mr Jones referred to also provided promotional opportunities and potential investment leads to follow up with business people who were associated with those events in the United States.

Senator GEORGE CAMPBELL—Thank you. I might leave it there. Further questions I have I can put on notice.

CHAIR—We still have the resources and tourism divisions. Other than those two areas, all other officers are excused. Thank you very much indeed.

[11.58 am]

CHAIR—We will now move to the Resources Division.

Senator O'BRIEN—In February last year Senator George Campbell asked Mr Hartwell whether it was correct that condensate produced in association with natural gas on the North West Shelf was not excisable. Mr Hartwell told him that that was correct. Senator Campbell then asked:

If the same excise provisions were applied to condensate produced with natural gas as are applied to condensate produced with oil, what value could be assigned to forgone revenue from this source for the period from 1 July 2003 to 31 December 2003?

Mr Paterson, you responded by saying that extracting the treatment of one element of a production excise and royalty regime from the treatment under the petroleum resource rent tax regime is not something that can be easily done. Isn't it a fact that an estimate can quite easily be made, although it would need to be appropriately qualified? For example, can you provide the production figures for condensate produced on the North West Shelf in association with natural gas for the last two financial years?

Mr Paterson—I will take the question on notice.

Senator O'BRIEN—Do you know if you have that information?

Mr Paterson—If I had the information, I would provide it to you.

Senator O'BRIEN—Sure. It is available in the department, surely?

Mr Paterson—I cannot answer that question. I will take it on notice. You are putting a proposition to me which says that the answer that I gave you last time is wrong. So, to ensure that there is no uncertainty in relation to the question you are raising and the answer that I gave on the last occasion, I will take the question on notice and respond to it.

CHAIR—You say you do not accept the premise on which the question is put, do you?

Mr Paterson—I was confident in the answer that I gave on the last occasion. Senator O'Brien is raising questions in relation to it. I want to see the question that he has framed and I will respond accordingly.

Senator O'BRIEN—I am basically asking: isn't it possible to provide a range of estimates of excise payable by treating the condensate as if it were—I will put it this way—old, intermediate or new oil?

Mr Paterson—I answered the question on the last occasion and you are questioning the answer that I gave on the last occasion. I will look at the detail of the question that you are now putting and respond formally to you.

Senator O'BRIEN—In doing that, can you tell me now whether the department has figures for condensate produced on the North West Shelf in association with natural gas for the last two financial years?

Mr Paterson—We would have those numbers, I am advised. We do not have them with us.

Senator O'BRIEN—Okay. The proposition that has been put to me is that, if you have that information, you could provide a range of estimates of excise payable.

Mr Paterson—It is a technical question, and I am more than happy to provide a detailed response to your question. I am not prepared to speculate on the response to your question.

CHAIR—You are just taking it on notice, aren't you?

Mr Paterson—Yes.

Senator O'BRIEN—If you are taking it on notice, I am asking you, as that information is available, to provide a range of estimates, which include appropriate qualifications on how they were determined? But, if you are not prepared to do that, can you provide the production figures for condensate produced in association with natural gas for each offshore field and the relevant excise rates or calculations for condensate when it is produced with oil?

Mr Paterson—I will take that question on notice.

Senator O'BRIEN—In February 2004 Mr Hartwell told the committee that crude oil excise changes in 2001 had resulted in forgone revenue of \$140 million between July 2001 and February 2004. I would like to find out what the value of forgone revenue between February 2004 and the present time is.

Mr Paterson—We will take that question on notice. If there is a series of questions related to this, I am happy to take them on notice. Mr Hartwell is not here at this moment, so if this is a series of questions I am happy to have them tabled.

Senator O'BRIEN—Is Mr Hartwell going to be here sometime?

Mr Paterson—He is. He was called to the minister's office. He was here earlier today and will be returning.

Senator O'BRIEN—And he is the person who can answer these questions.

Mr Paterson—I am not sure. You are asking for a series of calculations to be made. We have provided you with some answers and you are asking for some additional information. I am happy to provide it to you if we have information available, but doing calculations on the run is not a sensible way to respond to your question.

Senator O'BRIEN—In relation to LNG projects, is Mr Hartwell the person we need to ask questions of?

Mr Paterson—It depends on the nature of the question.

Senator O'BRIEN—Australia has five other potential LNG projects presently in play—the Greater Gorgon project, the Sunrise project, the Scarborough project and one or two further projects in the Browse Basin. Do the very favourable arrangements which currently apply to the North West Shelf place these other projects at a competitive disadvantage?

Mr Paterson—Not that I am aware of.

Senator O'BRIEN—So the excise arrangements are not disadvantageous?

Mr Paterson—As I understand it, if those projects proceed, the petroleum resource rent tax would be the regime that is applied to them.

Senator O'BRIEN—Can we be assured that there is no need for any assistance from government to redress any disadvantage that these projects have in comparison to the others?

Mr Paterson—You can never be assured that individual project proponents will not approach government for assistance, and they may use any number of bases to—

Senator O'BRIEN—We can almost be assured that they will, but the question was: can we be assured that government assistance is not necessary to redress any imbalance?

Mr Paterson—I am not aware of any competitive imbalance between the arrangements that apply to the North West Shelf—which was a project at a point in time—and the subsequent introduction of the petroleum resource rent tax. I think that, for the majority of the projects you are talking about, the acreage release and the development of those projects was at the same time that the petroleum resource rent tax was applicable to the treatment of those projects. But I am not aware of any assertion that there is a particular competitive disadvantage.

Senator O'BRIEN—Can I take it that no approach has been made to government for assistance by any of those projects on the basis of their perception that there is a disadvantage?

Mr Paterson—I will check to see whether that is the case. It is not something that would normally pass my desk, in every respect, but I will examine the question and respond.

Senator O'BRIEN—Would it go through this department or would it go somewhere else?

Mr Paterson—It would normally go through this department.

Senator O'BRIEN—Perhaps you could advise us, on notice, if there is any information relevant to those questions I have just asked. I want to be sure that government is not going to be asked to assist these developments on the basis of providing a level playing field vis-a-vis others that are on the go at the moment.

Mr Paterson—As I said, I can never provide an assurance that individuals will not ask for something and use particular bases to assert a position, but we will examine the questions you have raised and respond.

Senator O'BRIEN—Given that the Gorgon project announced last week a heads of agreement with a major Japanese LNG customer and has stated its intention to make a final investment decision on the project next year, have the proponents of that project approached the Commonwealth for any form of strategic investment incentive or other assistance from this department—existing government programs or other special measures?

Mr Paterson—There have been discussions with the proponents of that project over an extended period of time and a detailed examination by both the Australian government and the Western Australian government in relation to the environmental approval processes that need to underpin the development of that project, but the detail of the discussions that have

gone on between individual proponents and the government is not something I can go into at this stage.

Senator O'BRIEN—The nature of your answer seems to be that there had not been any approach for any strategic investment incentive.

Mr Paterson—As I said, I could not go into the approaches that have been made, but there have been conversations in relation to the development of Gorgon and Greater Gorgon over an extended period of time. I would expect those conversations to continue.

Senator O'BRIEN—Is the Commonwealth considering any contribution to the cost of geosequestration for the Gorgon project?

Mr Paterson—The issue of geosequestration is a key feature in the development of that project, and we have examined a variety of issues in association with it. If we are currently considering an application for funding in relation to that, I am not aware of it.

Senator O'BRIEN—Could you find out, if you are not aware?

Mr Paterson—I am happy to. I am now told there is no formal application before us.

Senator O'BRIEN—You said it is under discussion.

Mr Paterson—I have already indicated we cannot go into the detail of discussions that have taken place, but we have no formal application before us.

Senator O'BRIEN—Why can't you go into that detail? Is there some commercial-in-confidence basis?

Mr Paterson—No doubt. Any company that is preparing to develop a major project and go to a final investment decision would have commercial-in-confidence discussions. We have no application before us that we need to respond to at this stage, but I do not rule out the possibility that somebody might approach us.

Senator O'BRIEN—As I said, you can almost be certain that there will be approaches. I am interested to find out whether the government thinks there would be merit in providing such assistance.

Mr Paterson—That is a matter for the government to determine. It does not have an application before it.

Senator O'BRIEN—That is why I want to know whether there were discussions about it. You said lodgment of an application might be subsequent to extended discussions about what might or might not be able to be considered.

Mr Paterson—This is highly speculative. There is no application before us. Government has not taken a decision because it has no application before it. What the government might do, if an application were presented before it, I cannot answer. What advice we might provide to government in that process, I cannot answer either.

Senator O'BRIEN—Regardless of whether or not any consideration is being given to assisting with geosequestration for the Gorgon project, has the government done any work to ascertain the relative costs of geosequestration for the Gorgon and/or other gas projects around the country?

Ms Constable—Certainly we have taken on board the costs that have been publicised on carbon capture and storage geosequestration that have been published by the International Energy Agency. The Cooperative Research Centre for Greenhouse Gas Technology and the Cooperative Research Centre for Sustainable Development of Coal have certainly been looking at the costs associated with carbon capture and storage over a period of time. We are at a stage now where we will be looking at those costs more closely to determine what they might involve in terms of projects in Australia. There are a number of projects in Australia that are currently considering carbon capture and storage. You mentioned the Gorgon project. Certainly, there are a number of other proposed projects at this stage, but none of those projects has come to fruition.

Senator O'BRIEN—So, if there is work being done, it is more in the nature of the CRC work. Is that how I should understand your answer?

Ms Constable—The department works very closely with the cooperative research centres. Any work that is being done by the cooperative research centres is certainly shared by the department. It is an issue that we will be examining very closely over a period of time. Certainly the proponents are doing the same thing.

Senator O'BRIEN—Were any special incentives provided for the Bayu-Undan project in the Timor Sea through this portfolio?

Mr Paterson—None that we are aware of.

Senator O'BRIEN—Are there any agreements with the Timorese government with regard to special fiscal incentives for that project?

Mr Griffiths—The Bayu-Undan project is wholly within the joint petroleum development area that Australia shares with East Timor. It is actually covered by a different regime and subject to a production sharing contract. It is totally different to the petroleum resource rent tax. But no special deal was done, although that contract was subject to negotiations between the governments and the company involved.

Senator O'BRIEN—So those arrangements are entirely about the sharing of access to revenue rather than any assistance arrangements?

Mr Griffiths—Yes, it is basically about sharing the revenue and the sorts of operating arrangements that would apply to that development. In Australia we have the Petroleum (Submerged Lands) Act, which governs all the operating arrangements for our offshore developments whereas we do not have a legislative regime covering the joint petroleum development area. All those sorts of operating arrangements are covered in the production sharing contract as well as the revenue sharing. As you are probably aware, the revenue split between Australia and East Timor is 90 per cent to East Timor and 10 per cent to Australia.

Senator O'BRIEN—Thank you for that. Is there any reason why the fiscal regime for offshore gas projects and LNG projects should not be completely transparent and accountable to the public? Why is there a need for secrecy in any arrangements between the companies and the Commonwealth?

Mr Paterson—I am not aware of any lack of transparency in relation to the arrangements that apply. Mr Griffiths just indicated the Petroleum (Submerged Lands) Act governs those

projects that are in Australia's waters. There is no legislative regime for the joint development area, and that is sorted out in negotiations, but it is entirely transparent.

Mr Griffiths—I think that is regarded as one of the virtues of the Australian system—that it is actually a very transparent tax regime and general operating regime.

Senator O'BRIEN—So, where there are concessions for resource rental tax, we should be able to ascertain exactly what the cost to the Commonwealth is by project. Where can we find that information?

Mr Paterson—There are no concessions in relation to petroleum resource rent tax that I am aware of.

Senator O'BRIEN—I think the area we were talking about, the North West Shelf, is an area we were trying to explore earlier. You say there are no concessions and that we will not see any concessions in the way the regime is applied.

Mr Paterson—I sought to respond to your questions that you put earlier. I am not aware of any concessions in relation to the petroleum resource rent tax. A different regime applies in relation to the North West Shelf, and we have gone through that in detail in the past. The petroleum resource rent tax does not apply to the North West Shelf.

Senator O'BRIEN—I suppose I was using that term as a comparison, but the regime applies to certain fields and another to another and using the PRRT as a comparison benchmark or whether effectively there is assistance for one group field as against another. In that context, there is the question about transparency and how you judge the cost to the Commonwealth of the different arrangement.

Mr Paterson—I have taken on notice that series of technical questions you asked earlier in relation to the North West Shelf and treatment of condensate and the other elements. In relation to the PRRT, as I understand it is an entirely transparent arrangement and I am not aware of any concessions in relation to it.

Senator O'BRIEN—I will await those other answers. We will have to make our own calculations if the department cannot make them on the information you provide. Can someone update the committee on the status of the Syntroleum technology licence and perhaps give us a final update on the exposure in terms of losses to the Commonwealth?

Mr Paterson—Can I get Mr Hartwell to respond to that explicitly on his return?

Senator O'BRIEN—Yes, you certainly can. He is the person to ask the questions to with regard to Syntroleum?

Mr Paterson—He is, and he has consistently responded to questions over time for Syntroleum.

Senator O'BRIEN—Is the LNG action agenda being updated?

Mr Griffiths—The LNG agenda has been completed but there are some recommendations that came out of an evaluation of that. We continue to work with the LNG industry to overcome various impediments to that industry.

Senator O'BRIEN—You are implementing those recommendations?

Mr Griffiths—Yes. One of them was talked about—continuing to work on addressing various impediments to the industry's competitiveness and also supporting the government's efforts to support the marketing of LNG exports.

Senator O'BRIEN—Is it fair to say that the global LNG market has gone through some fairly dramatic changes over recent years?

Mr Griffiths—I think it would be fair to say that, particularly in the last 12 months, there has been quite a shift in the market. If you looked at the situation three or four years ago, it was very much a buyers market. Now people are saying it may have shifted to becoming a sellers market. Certainly towards the end of this decade, there are anticipated to be shortages of LNG. I think the main driver of that has been the emergence of China and the United States as potential very large buyers of LNG.

Senator O'BRIEN—In that circumstance, isn't there some need to have a good strategic look at the action agenda and see whether there is a need to make some strategic changes?

Mr Griffiths—I think one of the recommendations of the review was to conduct a strategic assessment of the LNG industry and what the government's role is in assisting that industry. We have not formally conducted that strategic review but we are doing preparatory work towards that.

Senator O'BRIEN—Is there a plan to actually do it if you are doing the preparatory work, or is it preparatory work in case you do it?

Mr Griffiths—It is probably more that we are doing it in an informal way at this stage. Because the market is changing, and there are always things happening, we are trying to address some of those issues. One of the issues has been that previously we had just the one project and it made it very easy for the government to push the one project, but now we have various competing projects and we have to be careful that we are not seen to be supporting one project in particular but that we are really supporting 'Australia Inc.' in a generic sense.

Senator O'BRIEN—Is there somewhere built into this process an assessment of the national LNG need for the future? There is an international market—there is no doubt—and we have a significant resource. What assessment has been made of our national need?

Mr Griffiths—Work has been conducted by ABARE, which is looking at our natural gas needs. I think that was done a couple of years ago. Some work has been commissioned through the Ministerial Council on Mineral and Petroleum Resources to look at the national supply and demand for gas over the next 10 to 20 years.

Senator O'BRIEN—I do recall some discussion—maybe speculation—about the role for compressed natural gas as an alternative fuel, given the rising costs of petroleum products. Has any work been done on that and the potential national need?

Mr Paterson—I do not know the detail of all of the background to that. My understanding is that compressed natural gas has significant limitations in terms of its potential use. It is likely to be a prospect where you have depot-to-depot activity within metropolitan areas. The infrastructure standing behind it is not something available in remote or regional areas. It has been trialled in buses and it has been trialled in garbage collection vehicles and the like—heavy vehicles that can carry the weight of the compressed natural gas tanks. It is not

something that is likely to be taken up in terms of regular domestic transport or automotive use.

Senator O'BRIEN—I had thought that, but there has been some media comment. Indeed, a business claimed to be, or proposed to be, involved in domestic vehicle conversion. That is why I asked the question, given the debate about the use of the fuel more widely.

Mr Paterson—I am not conscious of that. It would be counterintuitive for me. We can certainly take on notice whether we are aware of it anywhere in the portfolio, but it is counterintuitive to suggest it would be taken up or available or economic in normal automobile use. But we can examine that issue.

Senator O'BRIEN—I do recall a 35c per litre figure being cited.

Mr Paterson—CNG or LPG?

Senator O'BRIEN—CNG; definitely not LPG.

Mr Paterson—We are not aware of it. We will take it on notice.

Senator O'BRIEN—In 2001 I think the department conducted an investigation into the gas-to-liquids option for developing Australia's gas fields. That produced a discussion paper in June last year, but no final paper or recommendations were ever produced—or at least made available if they were. What plans are there to review those opportunities and re-look at that industry, particularly in light of our current concerns about oil and refinery products supply security?

Mr Paterson—It is not currently being examined. There was a commitment made at the time of the government's release of the energy white paper to look at energy security issues, which include liquid fuels, and that is currently being developed. But there is no explicit work that I am aware of in relation to a gas-to-liquid strategy.

Earlier you asked a question in relation to Syntroleum. I know Mr Hartwell has not returned yet and I am conscious of the time. We can provide a response to the current status of Syntroleum in relation to the written-down value of that licence. It is published in the annual report on page 157. The written-down value is \$10,083,000, and it is depreciated at the rate of \$83,333 per month. There have been no further developments in relation to the licensing and technology.

Senator O'BRIEN—Do I take it that there is no planned activity to develop the technology?

Mr Paterson—We hold a technology licence and, I think on the evidence provided previously by Mr Hartwell, the company continues to explore opportunities for the take-up of that licence, but there is nothing currently in play.

Senator O'BRIEN—So the Commonwealth and Syntroleum are in communication about potential developments, at least.

Mr Paterson—'Have been in communication', I think is probably a more accurate description. I am not aware of any current communication that would differ from the response that Mr Hartwell provided on the last occasion. I am not aware of any further development since that time.

Senator O'BRIEN—In shorthand, nothing has changed since the last estimates.

Mr Paterson—That is a fair comment, except that it has depreciated by \$83,333 a month.

Senator O'BRIEN—Going back to the action agenda status, is the downstream petroleum action agenda subject to review or updating?

Mr Payne—That action agenda also has been completed, and an evaluation of it has been conducted internally in the department.

Senator O'BRIEN—What did that find?

Mr Payne—There were a range of issues identified in the action agenda report. Quite a few of those are addressed in the government's current downstream petroleum reform package and, from memory, there were no other recommendations arising from that evaluation which required further action by the government.

Senator O'BRIEN—If the action is not already in train, there is nothing further needed?

Mr Payne—That is correct.

Senator O'BRIEN—Is the department able to tell the committee how shortages in the resources industry are impacting on industry projections for the future, or projections for future labour shortages on capital cost increases? In essence, what impact on the industry now and for the immediate future are skills shortages expected to have?

Ms Constable—I can answer that question. Certainly the skills shortages in the oil and gas and the mining sectors in Australia are having a substantial impact, as they are in many sectors across Australia. There has been a marked increase in the capital and labour costs of projects. We are working very closely with other agencies and with industry to address skills shortages. The department is very active in the national skills shortage program that is run out of one of the other agencies, the Department of Education, Science and Training, and there is representation by the department on that particular committee. We are working very closely with the Minerals Council of Australia and the Australian Petroleum Production and Exploration Association to look at the impact of skills shortages on our industries.

Senator O'BRIEN—Has there been any quantification of particular areas of skills shortage?

Ms Constable—Some studies have been conducted on skills shortages. I cannot recall the exact study at the moment, but a study that has been conducted under the national skills shortage program has recently done some quantification on the cost of the skills shortage to some of the professions.

Senator O'BRIEN—Is it the traditional trades and professional area generally, or can we isolate it a bit further than that?

Ms Constable—Traditional trades and professional areas are all affected by the skills shortages in Australia.

Senator O'BRIEN—Has there been any discussion as to why the professional area is so affected?

Ms Constable—A number of discussions have occurred across Australia on the impact of professions. As we have had a resource boom of late, the professions have been drained of skills available in Australia, and we have been sourcing from overseas for projects in Australia.

Senator O'BRIEN—Has an assessment been made of whether the graduate programs, through the higher education system, are producing sufficient for the industry, or is it just that people have left the industry because of the bust-boom cycle?

Ms Constable—We have been part of discussions with the education, science and technology portfolio, which has responsibility for higher education, of course. As part of the national skills shortage program, we have had some discussions with that portfolio, but that question is probably better directed to that portfolio.

Senator O'BRIEN—On another subject, can someone tell me what activities the department or the minister has undertaken with respect to assisting companies with LNG marketing overseas?

Mr Paterson—The portfolio and the minister have been active in promoting the take-up of Australian LNG. The minister has had recent visits to the United States, Mexico, Korea, Chile, China and Japan. All of those trips focused on promoting the take-up of Australian LNG. He does not act as an advocate for a particular project or individual company proponent but often points to the stability and security of supply that Australia has been able to demonstrate—more than 1,600 cargoes over more than 16 years, on time, without disruption. That clearly demonstrates the stability of the economy and promotes the opportunity in government-to-government and other opportunities wherever possible.

Senator O'BRIEN—Has the department any idea of the volume of LNG we are shipping to other markets at present and what the projections are for future growth in those shipments?

Mr Griffiths—I can dig out some of that information, but certainly we have had ABARE do some work looking at various projections of export potential in the years ahead. At the moment, I guess our productive capacity is around 12 million tonnes per annum, but there are some projections that we could increase up to over 40 million tonnes per annum by 2020. The LNG action agenda spelt out a vision of getting 30 per cent of the Asia-Pacific LNG trade by 2020. At the moment, we look like we could well exceed that target, which was probably seen as ambitious then.

Senator O'BRIEN—Where is the shipping infrastructure coming from for that trade? We do not have any domestic capacity, as I understand it.

Mr Griffiths—No. I think a lot of it is being built in Korea.

Mr Paterson—Korea and China, as I understand it. They are the two dominant locations.

Senator O'BRIEN—Certainly there are plenty of shipyards, but that does not mean that that is where the vessels are owned or operated from.

Mr Griffiths—With the North West Shelf venture, I think most of the ships there are owned and operated by that joint venture. It depends on the contract. With the China contract, I think the Chinese are planning to build some of those ships and operate them.

Senator O'BRIEN—These are clearly high-consequence dangerous cargoes, aren't they?

Mr Paterson—No.

Senator O'BRIEN—They are not?

Mr Paterson—No.

Senator O'BRIEN—Why is that?

Mr Paterson—Because they are quite stable.

Senator O'BRIEN—A lot of things are stable, but they are still high-consequence dangerous goods. Are you saying they are stable in the sense that they are not combustible?

Mr Paterson—Yes.

Senator O'BRIEN—I thought that was a property that was sought in these products. They are energy, aren't they?

Mr Paterson—Not in the form that they are transported in. They are not combustible as a liquid.

Senator O'BRIEN—There is no special provision that needs to be made for their shipment into major ports?

Ms Constable—As far as the shipping of any petroleum products is concerned, the ships are particularly designed to carry such products. We are very mindful of the conditions of specific ports when the products are transported, and certainly every company in Australia firmly adheres to those provisions.

Senator O'BRIEN—But they are all international shippers. We do not regulate them; they come into our ports and go.

Ms Constable—Mr Griffiths has just indicated that certainly the North West Shelf have specific ships that relate to their projects.

Senator O'BRIEN—But they are not Australian registered vessels.

Mr Griffiths—We can take that on notice.

Senator O'BRIEN—I would appreciate that. That was my understanding and I could be wrong, but I am sure I have been told that there are no Australian registered vessels in that trade.

Mr Griffiths—We will check on that. But I know that certainly the North West Shelf own and operate those vessels. Whether they are registered here, I am not 100 per cent sure of that.

Senator O'BRIEN—Regarding incentives for refiners for the next round of clean fuels investment, how will the next round of such incentives be handled?

Mr Payne—The government has announced that they will be funded from general revenue.

Senator O'BRIEN—Is there a precise figure? Is it a known cost, or is it a cost which may vary depending on the changes to the production?

Mr Payne—The actual calculation and provision of the means by which the incentives will be funded is a matter for Treasury. The government had certainly indicated an indicative cost for the next round of clean fuels, but I am just not certain whether that had been ultimately confirmed as the final cost.

Senator O'BRIEN—What is the legislative timetable for the oil code and petrol retail reform?

Mr Payne—The government will introduce the legislation early next year.

Senator O'BRIEN—By early next year, do you mean in the autumn session?

Mr Payne—In the autumn sittings.

Senator O'BRIEN—When do the parties to the Asia-Pacific Partnership on Clean Development and Climate intend to meet?

Mr D Clarke—I think Mr Downer made a statement in the House of Representatives during question time yesterday in which he advised that the first ministerial meeting will be held in Australia in January next year.

Senator O'BRIEN—Has the agenda been prepared?

Mr D Clarke—The details of the meeting are currently being worked through by officials of the six countries, so that has not been locked in yet. But the broad structure of the meeting has been discussed and generally agreed to by officials.

Senator O'BRIEN—Are you referring to the broad structure of the agenda or how people will be seated?

Mr D Clarke—It is understood that, since the only document for the partnership currently on the public record is the vision statement, a primary task of the first ministerial will be to consider the charter—the formal specifics of the partnership—and some initial indications of its work plan.

CHAIR—Senator O'Brien, can you give us an indication of whom we may now excuse?

Senator O'BRIEN—Resources can be excused now and I will complete tourism after lunch.

CHAIR—All officers, other than those concerned in tourism, are now excused. Is that right?

Senator O'BRIEN—In the absence of Mr Hartwell, yes.

Proceedings suspended from 12.47 pm to 1.50 pm

Mr Paterson—Senator O'Brien, before you start your questions in relation to Tourism: you asked a question immediately before the adjournment in relation to the North West Shelf Shipping company and the ships. There have been 1,700 cargoes since 1989. There are currently nine LNG tankers in that fleet. The first eight were built in Japan. The most recent, which is the ninth, was built in Korea. Four are registered and flagged in Australia; three are registered and flagged in the United Kingdom; and two are registered and flagged in Japan. Understanding the structure of that joint venture might lead one to conclude why they are flagged in the way that they are.

Senator O'BRIEN—The UK? Yes.

Mr Paterson—Four are flagged in Australia, three in the UK and two in Japan, and there are partners in that venture from—

Senator O'BRIEN—Thank you for that.

[1.51 p.m.]

Tourism Australia

Senator O'BRIEN—I want to start by asking about the issue of yields in the tourism sector. Some research indicates that there is no real revenue increase in inbound tourism and there has not been since 2001—and that there has not been a real revenue increase in domestic tourism since 1998. I am told that the latest research indicates that expenditure has been falling. So, whatever the level of arrivals, which may be increasing, the actual amount of money coming in is not. If we are talking about recovery since SARS and the Ansett collapse, how can we say that, when the figures do not bear that out? What is being done to address this?

Mr Morrison—The need to focus on yield is probably the most significant challenge we face as an industry and, more specifically, as a marketing organisation. The figures that you have broadly outlined are accurate. The key measure of economic value of tourism into Australia is a measure which has been developed by Tourism Research Australia. It is called 'total inbound economic value'. The forecasts that are prepared by the Tourism Forecasting Committee and the various reports that are prepared by Tourism Research Australia refer to that measure. That measure was developed earlier this year, and that was only one of quite a range of initiatives, which has been put into place to get a greater focus and understanding of the yield challenge facing the industry. There are many ways that 'yield' is understood within the industry. 'Yield' to some means gross revenue; 'yield' to others means the profitability of businesses. I think one of the challenges we have is trying to get some common language around what we are referring to when we say 'yield'.

What have Tourism Australia done about this? Tourism Australia have set the issue of inbound economic value as our primary industry target measure, and the dispersal of inbound economic value across Australia as basically what we are aimed at doing. It is the basis upon which we assess the performance of our markets. It is the basis upon which we select markets in which to conduct our activities. The spend, and thereby economic value which is derived from markets, is something we interrogate very seriously through our segmentation studies, our qualitative research and basically every other piece of consumer insight we seek to gain. We target the markets, and individuals or groups within those markets, on the basis of that. It really arises out of the issue that you have identified—that is, it is good to have an increasing number of visitors coming into the country, but what creates jobs is economic value, and that is what our organisation is absolutely focused on from a corporate planning point of view and from a marketing planning point of view in market.

Senator O'BRIEN—The former tourism minister, Minister Hockey, presided over the portfolio at a time when a report called 'Growing the yield for Australian tourism' was commissioned. The chairman of the Australian Tourism Export Council, Mr Mazitelli, expressed his concern recently about the fact that it appears that no action has been taken on

this report. He is quoted in the CRC for Sustainable Tourism report entitled *State of the Tourism Industry 2005* last month. He said that there were a number of reasons why yield had fallen, but, he said, 'not marketing to the high end of the market is a key factor'. He said:

Tourism Australia has 'not adequately grasped the situation. Industry did a lot of work on a yield paper for the Minister, but every recommendation in that paper has been set aside.'

Of even more concern, the minister's spokesperson was asked by the *Financial Review* about the whereabouts of this report in September but did not even know that it existed. Will that report ever be made public or available to the industry?

Mr Morrison—Maybe I can answer from the TA point of view regarding Mr Mazitelli's comments and then pass to my colleagues in the department regarding ministerial issues, unless they want to go first.

Mr Paterson—I will say first that the report is not an accurate report. Mr Mazitelli refers to material that was prepared for an in-confidence consultation on the implementations of the recommendations of the white paper. I regard the observations as, firstly, a breach of confidence; secondly, inappropriate; and, thirdly, inaccurate. The assertion that none of the recommendations had been taken up is inaccurate. Both Mr Morrison and Ms Kelly will respond to the elements of it that have been taken up. But it was, in my view, a breach of confidence. We had confidential consultations with representatives of the industry. The report that he refers to was part of that exercise. That was picked up in the CRC report. Firstly, that the comment had been made in the first place was inappropriate; and, secondly, it is inaccurate. We can identify the detail of where some of the recommendations have been taken up.

Senator O'BRIEN—I will take that as a precursor to the answer to my question.

Mr Morrison—As to the report, the secretary has pretty much outlined the status of what that document is. It is not a report that came, to my knowledge, to the ATC, which was our predecessor organisation, nor to Tourism Australia for that matter, so it is not something I can discuss. However, I was totally mystified by Mr Mazitelli's comments. I spoke directly to Mr Mazitelli on the day and have written to him since, as well as to the CRC. In my answer to the previous question I outlined quite a number of the initiatives that we have undertaken for Tourism Australia to be very focused on the issue of yield and inbound economic value. This has been the platform of our corporate plan and corporate strategy for the past 12 months at least, and I can only speak for that period of time.

In addition to that, the outworkings of that corporate plan have been discussed at innumerable industry meetings. In fact, I made a presentation to the ATEC symposium in April in Alice Springs which articulated the very points I outlined earlier. At various other industry forums and meetings, we have done the same thing and Mr Mazitelli has not read our web site or has not been attending the presentations where this information was provided or has not read the corporate plan which was sent to him. So I can only say I am totally baffled by Mr Mazitelli's comments because the actions of our agency, I think, speak to the absolute contrary of his comments.

Ms Kelly—What I would add, just to give a bit of context, is that the previous minister did ask for a paper on definitions of yield and how they might be more effectively addressed in

the way that we spent our tourism marketing money. The paper that was presented to the industry group, the IIAG, went very much more broadly than that—it went broader than the remit that the minister had given it.

On the issue of both measuring yield and incorporating yield into the way we distribute marketing funds, as Mr Morrison has already indicated, that was very much taken up, not perhaps exactly in the way recommended in the paper. But further work was done, and these measures that Mr Morrison has outlined are now very much central to the way marketing money is distributed through Tourism Australia. So I would argue that the key element of that paper around yield, the one that the paper had been commissioned to address, has very much been taken up.

Senator O'BRIEN—So the report itself has been made available to the industry advisory group?

Ms Kelly—It was a report for the Industry Implementation Advisory Group, which is an industry group that looks at implementation of the white paper.

Senator O'BRIEN—That is the report entitled 'Growing the yield for Australian tourism?'

Ms Kelly—That is right.

Senator O'BRIEN—I asked whether the report will be made public. Can the committee have a copy of the report?

Ms Kelly—I can take that question to the minister, but when the report was commissioned it was not intended that it would be a public document. It was intended to be a working document for the industry-government monitoring group.

Senator O'BRIEN—I understand what the initial intention may have been. Clearly there must be some knowledge of it in the industry?

Ms Kelly—The members of that group who represent industry peak bodies are aware of it, yes.

Senator O'BRIEN—Given that this area is substantially publicly funded, I am interested to know that there is some means of judging the performance. If there is a benchmark mechanism, in fairness we should have access to it; so I wonder if that could be conveyed to the minister.

Mr Paterson—I think Mr Morrison has already outlined the benchmark mechanisms. Benchmarks were adopted as a result of that activity, not exactly the same as the—

Senator O'BRIEN—So they are in the recommendations?

Mr Paterson—Recommendations were made, not all of which were taken up—recommendations that went well beyond its remit. But I think both Ms Kelly and Mr Morrison have already indicated that there are measures of yield which have been taken up and implemented. I think they are the relevant measures. The implementation advisory group is an advisory group for the minister. But the actual yield benchmarks for a publicly funded TA have been adopted.

Ms Kelly—For the first time, this year, we now forecast yield. When the tourism forecast publication comes out from Tourism Research Australia using the measures Mr Morrison has

set out, there is now a forecast of yields. So there is a public benchmark against which we can measure how we are doing. That has been the kind of outcome of the work that was done.

Mr Morrison—The samples for the international visitor survey and the national visitor survey, which are the primary ways of collecting information on tourism spend, which then fit into a broader statistical process, have been doubled through the funding in the white paper. That has meant better data on spend, which has translated into better measures on yield. All of these measures are then translated into all of our planning documents and processes. So I would say that the industry, in making those arguments about yield, which they have for a long period—and TA and our predecessor organisation had strong sympathies with those views—have been remarkably successful in getting the organisation to focus on it. I think we have shown leadership on that point, and it was the sort of leadership I would have hoped Mr Mazitelli would have encouraged.

Senator O'BRIEN—You say the industry now has the benefit of a yield forecast. Which yield are you forecasting, given Mr Morrison's comments about how various—

Mr Morrison—Inbound economic value is forecast in both nominal and real terms by market.

Ms Kelly—The Tourism Forecasting Committee recently put out a publication which projected that for the period 2005-14 the tourism inbound economic value will grow at an average annual rate of 6.4 per cent, from \$18 billion to \$32 billion, while the tourism domestic economic value, which is the domestic equivalent, will grow from \$55 billion in 2005 to \$62 billion in 2014, an average annual growth rate of 1.3 per cent. They are the current yield forecasts that are now on the public record.

Senator O'BRIEN—So until 2014 the domestic sector is going to be very flat? Declining in real terms I suppose might be a better way of putting it.

Mr Morrison—The forecast has been outlined.

Senator O'BRIEN—What is Tourism Australia's response to these forecasts?

Mr Morrison—Firstly, at an international level, I think our response has been in the way we actually approach the market and the way we select our targets and the markets that we select to be active in. To give you a good example of that, for many years the tourism industry used to talk about New Zealand being our largest market. That was on the basis that it had the largest number of visitors. We do not use that description. The UK is our largest market. It far and away delivers the greatest amount of inbound economic value to Australia, followed by Japan and the United States. New Zealand, I think on those figures, comes in around fifth.

So, firstly, by changing the way you look at markets and assess them and prioritise the amount of resources you put into different markets is one way you respond to it. Secondly, you respond to it within markets in terms of the segments that you target. Tourism Australia has done extensive segmentation and qualitative research throughout all of our major markets, and has just recently completed another round of that. That enabled us to target segments which have a higher disposition to spend. That is where our marketing activities are focused. It is about lifting the average spend.

Within our own corporate plan we talk about a headline measure of inbound economic value which we want to achieve in gross terms. But to do that you need to get the right mix of length of stay and average spend per visitor. From that perspective we look at and track the sorts of visitors we are getting through the international visitor survey and other measures to ensure that our activities are targeted at those types of visitors. So it is a targeting process, it is a planning process, it is a market selection and prioritisation process.

Senator O'BRIEN—What about the domestic—

Mr Morrison—I should have also said that the inbound economic value is impacted by exchange rates and those sorts of issues. We have done a bit of work on trying to look at the movement in spend, for example, out of the US market. While it has been quite flat from an inbound economic value point of view, when you do it in host country exchange rates the performance is actually much better. So from time to time exchange rates will impact on the total amount people actually spend. They may be spending the same amount in American dollars but they will not be worth as much when they come here.

Senator O'BRIEN—I would have thought that was self-evident. From personal experience, you go overseas with a limit on your credit card or an amount of dollars. You have bought those dollars with your own currency and, if they buy less, you have less to spend.

Mr Morrison—But that is partly my point. We have talked about how inbound economic value has been flat in recent years, and it has been a time of a fairly strong currency for Australia. That is not the reason always, but these things obviously have an impact on the total amount that is actually spent.

At a domestic level, Tourism Australia have a range of domestic activities that we are now engaged in under our act. We ran a campaign earlier this year which used the same methodology for trying to target a section of the Australian community which was travelling overseas predominantly. While that target market represented about, I think, only 20 per cent of the actual travelling public, they would actually spend on their travels three to four times more in total. Our activities were designed to address that market.

So effectively it is the same answer. We use it to target. We go after people who will have a predisposition to spend more in total. I stress 'total' because a backpacker, for example, will spend six months here, potentially. What matters is not how long it took them to spend but how much they actually spent. So we look at all of those measures in terms of how we target.

Senator O'BRIEN—That is the international market. What about the domestic market?

Mr Morrison—The campaign I was just referring to was a domestic campaign.

Senator O'BRIEN—For inbound domestic market users. You are talking about backpackers and the like. You have completely abandoned the idea of working on the domestic population's use of the domestic tourism market?

Mr Morrison—No, not at all. The campaign we embarked on earlier this year was targeted towards a high-spending component of the Australian community as travellers—those who had a higher disposition to travel offshore. The campaign was focused towards them but through the broader activities of those campaigns, publications of tourism product, our web

site and various other things. Australians backpack around Australia as well. Not only inbound visitors do backpacking.

Senator O'BRIEN—You describe the UK, Germany, Japan and the US as the highest yielding markets, I think, if I interpret your answer correctly. Exactly how are we targeting those markets? What specific measures have we put in place?

Mr Morrison—Again, it is through our segmentation work. We are able to develop profiles of consumers that we are seeking to reach. Those consumers have particular media consumption habits, and through our research we are able to identify how we get messages to them. So we profile these consumers and their habits and we tailor our campaigns to meet them. As an example, the youth strategy we followed in Europe this year did two things. First, it worked off the back of the working holiday visa policy announcements, and we sought to publicise that within the European markets. We also understood from our research that when young Europeans are backpacking they often spend most of their time deciding where they are going to go when they are sitting in cafes and bars. So we took out advertising on the back of bar coasters, literally. You have to be where they are, and we learn that information from the work we do in our research and consumer profiling.

Senator O'BRIEN—I am told that at the Tourism Futures Conference on 4 October Geoff Carmody described the domestic tourism industry as 'a bit of a dog'. Pretty harsh terminology, I will concede, but how do you react to such a high-profile person describing our domestic tourism industry in this way?

Mr Morrison—I do not know whether it is for me to make judgments about colourful comments made at conferences. But in terms of the significant—

Senator O'BRIEN—It is a significant colourful comment for the industry you are associated with.

Mr Morrison—Absolutely. My point is that the Australian domestic tourism sector represents, by spend, around 70 per cent of our tourism industry, and it continues to. The domestic industry, whilst not growing significantly, has continued to provide the base for our tourism infrastructure and tourism employment all around the country. It is in a very flat spot. It is up against some very strong competition. We are in competition against other disposable income items, against trends in expenditure in other areas, such as home renovations or various other types of consumer durables and so on. So it is a very competitive market. Naturally, when you have a market with more options in it, domestic has to fight harder just to keep the share that it has. I would argue strongly that, even though it may not be growing, it is not in freefall either. It continues to provide the bedrock of the tourism business for the vast majority of tourism operators all around the country. So I could not really agree with Mr Carmody in relation to the colourful way he has described it because I know for a fact that that industry generates the vast majority of the 550,000 jobs which are in the industry.

Mr Noonan—I would certainly support what was just said. I am not aware of Mr Carmody's comments, but more than three-quarters of the industry comes from domestic tourism, a \$73 billion industry, the whole industry covers 5.6 per cent of total employment and 56c in every dollar spent on domestic tourism benefits regional Australia. So that is a very substantial industry—under pressure but hardly appropriate to deride.

Senator O'BRIEN—I tend to agree that it is a very strong comment. Given that the information on domestic air travel indicates a significant increase in the amount of domestic air travel, one would have thought that would have tended to flow into benefits for the tourism industry. If the fares are lower, one would have thought that would distribute the available spend into other products such as accommodation, food et cetera.

Mr Morrison—I would argue at the same time there have been innovations in almost every other consumer spending category—for example, free finance over five years. The options to buy a holiday on that basis did not exist in the tourism industry, but you are competing with household goods and other things where consumers can access that. So commercial innovations have taken place everywhere.

Senator O'BRIEN—Absolutely, that is right. The banks asking people to borrow more against their growing equity was a way of converting discretionary expenditure into debt and repayments to a financial institution. But the point I was making was that, even though all of that has been going on for some time, we have seen a significant growth in domestic air travel.

Mr Morrison—That is true; and, if you break down the composition of domestic travel over the last five years, you see quite a strong growth in visiting friends and relatives travel, which has been taken up by the opportunities provided predominantly by low-cost carriers and others. We have seen some destinations, such as Tasmania, as you would be aware, do very well out of domestic tourism. Their story over the last seven years has been a very good story, fuelled significantly by air access and other issues that have brought about some of that growth. Even today we are seeing new point-to-point destinations open up as a result of some of the changes in aviation. Hervey Bay is probably the most recent of those, as is the Fraser Coast. So there is a swings-and-roundabouts story within the domestic travel industry: there are opportunities, but there are also threats. But that is a commercial reality this industry has understood since year dot.

Senator O'BRIEN—One of the arguments the industry put forward was that cheaper airfares changed the profile of the travellers in a market and, if you replaced a full-service airline with a low-cost airline, certainly you changed the volume but you also affected the proportion of high-yield visitors to the market.

Mr Morrison—I think what we are seeing is the market transition with these new services coming into place. It takes a while for different segments of the market to get used to some of these new services. But over time I think we are seeing those sorts of issues dissipate. We are seeing some other main-line services come back onto particular routes. But these are just the commercial realities of the industry. These will change and come and go. I think one of the things the tourism industry continues to learn is, despite all these shocks, changes and all the rest of it, the best thing it can continue to do is to focus on the performance of its individual product.

Senator O'BRIEN—In February, Mr Morrison, you told us you could see a gap in pitching Destination Australia to Australians because each of the states is promoting its own state and Tourism Australia markets overseas. Is Tourism Australia or the department doing something with regard to marketing the whole of the country to Australians?

Mr Morrison—To Australians or to overseas visitors?

Senator O'BRIEN—To Australians.

Mr Morrison—Our organisation has a history of being involved in only inbound, but what we have learnt from this new role of Tourism Australia in domestic is that in working with the states we have been able to add a lot of value in terms of their understanding of the domestic market. A lot of the issues and trends that you have talked about today have come out of, I can only assume, the sorts of reports and information that have become available on domestic tourism. In my discussions with the CEOs of the various state tourism organisations I have found one very valuable role they believe we play is continuing to conduct research into the habits and behaviours of Australian travellers. There is an opportunity for the Australian government to look well beyond the state boundaries and the specific issues the state marketing organisations do, to provide a lot more context and to provide a lot more valuable knowledge to help them in their marketing activities; and we have been doing that. We have been researching a whole range of issues on their behalf and sharing the results with them regularly and openly. We have also tried to provide platforms for them to engage in some broader national marketing initiatives as well, which they have received well and it is a strong partnership.

Senator O'BRIEN—So is it the view now that the best way that Tourism Australia, the Commonwealth tourism arm, can work for the domestic market is to add value to the states' role in promotion and targeting?

Mr Morrison—I think not just to the states but to the industry more broadly. But I would say that the predominant marketers of Australian destinations to Australians are the states and, with only one or two exceptions, the budgets of the state tourism authorities have been incredibly flat—flatter, I would argue, than the domestic tourism figures. One area that certainly would help would be the states' capacity to more aggressively market their own destinations. We would only welcome that, in the same way we have welcomed the increased investment we have had from the Australian government to boost our international activities. Western Australia have actually increased their investment, but they are fairly isolated in that decision.

Senator O'BRIEN—I would have thought Victoria were particularly successful in the way that they market the state, which is basically event based.

Mr Morrison—I think they have been quite successful over a long period. But I would argue the amount of promotion we have seen more recently from some of the states, including Victoria, particularly in the last six to 12 months, has been a lot lighter than it has been in previous years.

Senator O'BRIEN—I keep seeing their brochures in Tasmania. I do not know what happens everywhere else, but they are certainly persistent in that market. What is the status of the Uhrig review for Tourism Australia?

Mr Noonan—That review is getting under way at the moment and is due to report in the early part of next year.

Senator O'BRIEN—Who is being interviewed as part of the process?

Mr Noonan—The exact process under which the review will be conducted is still being considered and at the moment is the subject of discussions with the minister.

Senator O'BRIEN—So it is at a very early stage?

Mr Noonan—Yes. Certainly we have not aired proposals at this stage. We are some way away from that.

Senator O'BRIEN—Tourism New South Wales has folded back into the New South Wales department. Has that been a matter for observation in the context of the Uhrig review, and can you give us a view of how it is operating by comparison to other states?

Mr Noonan—I am not able to express a view about operations in New South Wales, but the Uhrig review will have to be conducted against the Commonwealth framework, which of course is a whole-of-government framework. I am not sure of the thinking that led to the change you referred to in New South Wales, but we will be seeking to apply to this exercise the whole-of-government framework from the Commonwealth.

Senator O'BRIEN—So the occurrences in other bureaucracies are irrelevant, are they?

Mr Noonan—I think the whole-of-government framework looks at the functions of particular bodies and the governance arrangements within that. I am not sure how relevant that would be because I do not know the detail of how state bodies are administered. What we will need to address is the Commonwealth situation.

Senator O'BRIEN—I am just interested because of the performance of the department in New South Wales vis-a-vis Tourism New South Wales. Would what has happened be taken into account, whether it is true that New South Wales has been losing market share to other states and whether the structure of the government's role is relevant to that?

Mr Noonan—We would certainly be looking to take into account any relevant lessons we can learn. But primarily we are focusing on applying the Commonwealth framework.

Senator O'BRIEN—What is the basic purpose of the review as you see it, Mr Noonan? What is it supposed to achieve?

Mr Noonan—It is a question that you really perhaps should direct to the finance portfolio, but I think it is to put in place appropriate governance arrangements for a very wide range of Commonwealth bodies, Tourism Australia being one of those.

Mr Paterson—We are required to review the government's arrangements for all agencies within the portfolio. The review of Tourism Australia is but one of those reviews.

Senator O'BRIEN—I guess I am trying to find out how relevant performance issues are in this review—in other words, whether you are looking at governance arrangements at the same time as having regard to best practice performance arrangements.

Mr Paterson—I think you are aware that the Uhrig review, which the government has accepted, identified two templates to measure the governance of agencies against. A report will be provided to government on that basis.

Senator O'BRIEN—I understand that the skills or labour shortages in the tourism sector are quite serious. Mr Morrison, can you give us a sense of the size of the problem?

Mr Morrison—That question is probably better directed to my colleagues. Tourism Australia focuses largely on the marketing issues, so the policy side of those issues is covered off by my departmental colleagues.

Mr Noonan—Certainly in some particular areas there are identified areas of need, for instance in relation to chefs and cooks in particular. There have been some recent moves by the minister for immigration relating to temporary work visas, which should assist with tourism employment shortages. I think this issue will also come under consideration in the national tourism investment strategy, which is currently being developed.

Senator O'BRIEN—Is there anyone looking at the nature of the work and security and payment issues, and how that all impacts on the career view of young people? Is this department looking at that?

Mr Noonan—I might have to ask you to be a bit more specific.

Senator O'BRIEN—Whilst at the upper level being a chef can be a very high-profile, very well-paid profession, at many levels it involves unsociable working hours with pressures to work nights and weekends regularly. It has an impact on relationships and the like, and is also associated with businesses that are not as stable as some other businesses. I just wondered whether there is any research into the perceptions of young people—do they really want to seek a career in an industry they perceive that way—whether those perceptions are wrong, and whether they are having an impact on the industry's ability to recruit.

Mr Noonan—These kinds of issues were addressed in the Restaurant and Catering Industry Action Agenda, which I think is currently in its implementation phase. So that is certainly a relevant area where those issues were looked at.

Senator O'BRIEN—So what role has the department taken in implementing that strategy?

Mr Noonan—We are supporting the implementation group, which is an industry body. The industry body is chaired by Mr Con Castrisos. Essentially we are monitoring the implementation group as it goes about its work, and a member of the department is actually on the implementation team.

Senator O'BRIEN—What is the estimated shortage of cooks and chefs at the moment?

Mr Noonan—I do not have those numbers before me.

Senator O'BRIEN—That is something that this department works on?

Mr Noonan—I am not aware of particular numbers that we have available to us, but they are listed in the migration categories for preferred access for visa arrangements.

Ms Kelly—I think it is fair to say that, while we have an interest, it is primarily a DEST issue and the Australian hospitality skills council would be the main body taking that kind of analysis forward to action.

Senator O'BRIEN—I do not recall having too many conversations with sectors of the industry where the skills problem has not been one of the first problems raised. Do I understand your response to be that the skills issue in tourism is an issue for another portfolio rather than this one?

Mr Noonan—No, I do not think I was meaning to imply that. The particular area where it would come up for us is in the restaurant and catering area, which raises many of the issues that you mentioned. We have examined that, and an action agenda has been developed and is being implemented.

Senator O'BRIEN—What are the steps in the action agenda?

Mr Noonan—There are a number of recommendations in it. I do not have a copy of it with me. It was signed off a couple of years ago now, and the implementation group has been working on it since early 2004.

Senator O'BRIEN—And the department is on the implementation group?

Mr Noonan—That is right. It is represented as a member.

Senator O'BRIEN—Is it possible to get on notice a report from the department's perspective as to how the implementation of the strategy is progressing?

Mr Noonan—There is a progress report.

Ms Murphy—There is a progress report that is in the stage of being released. The implementation group finalised its annual progress report to government in August this year. It is being made available, so we can make a copy available to you.

Senator O'BRIEN—Thank you very much for that. Mr Morrison, has any section of the industry approached Tourism Australia about its broader involvement in assisting it with the skills shortage problem in the tourism industry?

Mr Morrison—Not directly to me, or not that I am aware of. It comes up in industry discussions but with no direct sort of suggestion for a role for TA.

Senator O'BRIEN—With regard to available skills, an instance was drawn to my attention where a tourism operator in Darwin recently hired two Filipino nationals to do admin and bookkeeping because of the lack of available skills and despite extensive advertising. That would indicate the skills shortages are broader than just in the catering side of the sector, wouldn't it?

Ms Kelly—We currently have a national tourism investment strategy and an emerging market strategy under way, and in both of those strategies skills is one of the issues being raised with the groups running those strategies. In the emerging market strategy it tends to be around language skills, guiding skills for people from other cultures. When those strategies are completed we expect to have further information on where the hot spots are, if you like, where the key potential skills shortages might be. They are looking at the kind of infrastructure that we need to have in place to keep growing our potentially biggest growth markets, and skills are certainly a key part of that. So, yes, in that sense we are focusing on where we will need to develop up skills to facilitate future growth.

Senator O'BRIEN—I understand that tourism workers have not been considered in the Australian management plan for pandemic influenza. Have the department had any involvement in the consideration of whether they should or should not be considered in that context?

Ms Kelly—Certainly we are involved on a couple of interdepartmental committees that are there to monitor and progress the national strategy for dealing with pandemic influenza. You will be aware that in June an interim pandemic influenza plan was made available by the department of health. At that stage that was made available as a template for consultation. We are having a consultation with the tourism industry in Sydney on 17 November where we hope to draw out a range of those issues, the aim being that those kinds of consultations will feed into finalisation of a plan early next year.

Senator O'BRIEN—So it is not finally determined whether there will be a special plan for tourism workers in the case of an influenza pandemic?

Ms Kelly—No, I do not think that has been finally determined. We do have a national tourism response plan, which we have sort of activated to actively monitor the situation level, I think from blue to green. So we are keeping a very close eye on the issue, because tourism of course is one of the industries that would be hit very early by any such developments.

Senator O'BRIEN—So there has been no need to modify that national tourism incident response plan, considering the possibilities of a pandemic?

Ms Kelly—We have, as I say, activated it to the 'actively monitor' level. We are, for example, now providing by email regular—I think they are fortnightly—bulletins to industry, letting them know of any developments that may have an impact and any changes within government, things like the upcoming consultation. So we have certainly stepped up that level of communication with the industry.

Senator O'BRIEN—One of the recommendations of the white paper was a review of the passenger movement charge. Do you know whether such a review has been conducted?

Ms Murphy—A review of customs charges is planned for this financial year, 2005-06. I understand that the passenger movement charge will be included in that review.

Senator O'BRIEN—The charge has been altered a few times in the last five years.

Mr Noonan—Not for a number of years, I think since 2001.

Senator O'BRIEN—It was increased with the intention of funding some of the changes to our customs and immigration regime at airports?

Mr Noonan—I think that was at that stage the link. It was meant to be a cost-recovery measure. But I imagine whether that is a valid link would be one of the questions for the review.

Senator O'BRIEN—As I understand it, some of the expenditure in the budget is timed to end at the end of that review.

Mr Noonan—I could not comment on that.

Senator O'BRIEN—Not necessarily in this portfolio—

Mr Noonan—That is right.

Senator O'BRIEN—Have you any idea of the surplus of the passenger movement charge over cost recovery for aviation passenger services provided by government agencies?

Mr Noonan—That is a difficult question to answer. I do not have that information.

Senator O'BRIEN—Could that be ascertained from anywhere?

Mr Noonan—It would have to be collected from a number of areas.

Ms Murphy—The passenger movement charge is essentially the responsibility of the Australian Customs Service.

Senator O'BRIEN—Page 178 of this year's PBS shows a total budget appropriation of \$137.823 million. Could you give me a breakdown of that appropriation into marketing expenditure and administration expenditure?

Mr Hopwood—I have a rough, approximate set of figures to break that down for you. The marketing would approximate \$72.6 million. That is the marketing in the overseas offices and domestically in Australia. What we call the marketing support, which is the research, the development behind the marketing et cetera, would be \$17.6 million. The remuneration, depreciation, rentals and all other aspects to support that would be \$47.5 million, or \$47.6 million—around that.

Senator O'BRIEN—How much is being spent on accommodation?

Mr Hopwood—I can give you an actual figure for last year. I do not have the actual detailed budget this year for accommodation. It is approximately \$3.8 million.

Senator O'BRIEN—Mr Morrison, can you tell the committee how much the business events sector is worth to Australia in terms of exports and domestic tourism?

Mr Morrison—I am happy to take that question on notice. I do not have that figure in front of me. It is a very high-yielding sector of our tourism markets. In particular we have had quite a lot of success, particularly out of the Asian markets, for business events, particularly the Amway visits, particularly out of China, new ones out of Taiwan, Korea and so on. Our business event activities have been very successful.

Senator O'BRIEN—Is tourism events a high-yield area?

Mr Morrison—Yes.

Senator O'BRIEN—What is the funding allocated for Tourism Events Australia, which I understand is supposed to assist the business events sector?

Mr Morrison—It is \$3.4 million. I should stress that the vast majority of those activities are in trade engagement activities. Where our marketing has a greater cost is obviously when you are involved in advertising and these sorts of things. The success of achieving working with the states and bureaus, things like the Amway incentives and these sorts of things, comes very much from your in-market operations. So the figures I have referred to are the direct costs of running trade missions, trade events and these sorts of things. But we find one of the great advantages, particularly in markets such as Taiwan, Thailand and Malaysia, is actually having our people on the ground working those markets, engaging with the distribution system. So in addition to that I would add an overhead proportion. In Taiwan, for example, pretty much the vast majority of what they do is focused upon business events. So those figures of course are not factored into the marketing expenditure that I have just referred to.

Senator O'BRIEN—Given the fact that this is a high-yield area, I am interested to understand the proportion of yield to the Commonwealth financial commitment to the sector. Is it disproportionately high or disproportionately low?

Mr Morrison—I would argue it is consistent with our role. We are not the only organisation that is active in this space. The state organisations and the convention bureaus in each of the major capital cities also have staff based in those offices. Take an event like TABEE, which we run up in the eastern hemisphere markets. We do that in conjunction with an organisation called Team Australia, which is basically our working together with each of the bureaus where we pool our funds, run major events, bring people into market and bring together sellers and buyers. So we play as part of a team. If there is one thing we have learnt very significantly by operating in this sector, it is that we all need to understand our roles. For example, the convention bureaus play a much more significant role in the bidding process, which is the expensive part of the exercise. That is linked to the convention centres themselves and the budgets which are brought to bear on that by state governments and the infrastructure that sits around those bureaus.

We play the role more in the incentives side of things as well as the smaller business meetings and then, I would stress, trying to provide a facilitating and research role as well. But, going forward, as part of our marketing activities both this year and next year we will be looking to do some more consumer based advertising in business media as well as a new part of what our role is.

Senator O'BRIEN—What is industry saying to Tourism Australia about its role?

Mr Morrison—Tourism Events Australia was launched recently. It was well supported on its launch. We are particularly supportive of the appointment of a manager of Tourism Events Australia. So there is a very clear focus of a dedicated unit within the organisation now which deals not only with business events but also with leveraging major events and engaging major events such as the Commonwealth Games to seek to leverage Australia's advantage from those activities, working particularly closely with the Victorian government at the moment. So the establishment of Tourism Events Australia was a key initiative of the white paper which the business events industry was very involved in putting together.

Going forward, they would obviously like to see us continue to be more active in that area. But at the same time the message they give us is, 'Stick to your role.' They do not like to see an overlapping or duplication of effort and resource in this area. So keeping that strong teamwork approach with the states, with the bureaus and with the industry is a constant balancing act. They say to us it is very important that we maintain that.

Senator O'BRIEN—Is any of that part of the \$72.6 million for marketing overseas identifiably focused specifically at the business event market, or is the business event marketing simply built on the generic brand 'Australia' advertising?

Mr Morrison—That is in addition to that figure.

Senator O'BRIEN—I thought it was. It is not advertising so much as marketing?

Mr Morrison—Correct. But you could equally mount a case for putting the two figures together. The bit that is missing in both of the figures that I have talked about is the overhead

proportion of actually having experienced business event people in-market, and we have quite a number of those. Particularly in our Asian offices we have quite a few people who work full time on those areas. In our Los Angeles office as well as in our UK office we have dedicated staff working full time on promoting business events and liaising with the states.

Senator O'BRIEN—So you could pull out an additional amount to cover those costs as well, could you?

Mr Morrison—Out of the overhead to add to the figure that I have mentioned? Yes.

Senator O'BRIEN—If you would, I would appreciate that.

Mr Morrison—Sure.

Senator O'BRIEN—I am given to understand that, at the request of Tourism Events Australia, industry have put their branding of Australia as a business events destination on hold for two years. Why is that?

Mr Morrison—Are you able to expand on that a little more?

Senator O'BRIEN—It obviously does not ring a bell with you. That is the information I have been given.

Mr Morrison—As part of the white paper and as part of our marketing initiatives going forward there was always an indication that we would move into a direct consumer advertising phase. That is what we have been working on, and that is what we intend to put into the market next year. But that is a new role for us.

I can see no reason why any venue or any operator working in that area would have held back. Australia as a tourism events or business events destination as a brand is what it is. A brand exists. It is not created. I do not think there have been any major impediments to their actually doing their business. My observation is that they have been doing their business and they have been doing it very successfully working with us. Next year the consumer component of those activities will move into a new phase, which I know they are excited about and they are keen to engage with us on. An industry advisory panel was set up—we discussed it in our last session—which focuses on this area. That will be a discussion for their next meeting later in the year.

Senator O'BRIEN—This is not an area where Tourism Events Australia is looking to develop a separate brand?

Mr Morrison—I would not say 'brand'. We will develop a campaign. We will develop a consumer-oriented campaign in the business events area, because you are dealing with different media and you are dealing with a slightly different customer base as well from your leisure visitor. So we would develop a campaign to address a business visitor which would be targeted towards business media—the Forbes types of things.

Senator O'BRIEN—I think as of this week the department was reporting the break-up of the \$235 million under the white paper as \$120.6 million, international marketing; \$45.5 million, domestic; \$21.5 million, research; \$3.8 million, business-ready program for Indigenous tourism; tourism and conservation, \$4 million; and the Australian Tourism Development Program, \$31 million. That seems to add up to \$226 million. Firstly, the

difference between \$226-odd million and \$235 million is about \$9 million. Where would that be allocated, or is that for the department? That was off your web site yesterday.

Ms Murphy—There are a couple of areas. I might address one or two that you said. There was membership of the World Tourism Organisation, which is around \$1.4 million. There was funding for administration, implementation and coordination of the white paper, which was about \$1.5 million. I am not sure whether in your list you mentioned niche segment development.

Senator O'BRIEN—I did not.

Ms Murphy—That is around \$14.7 million.

Senator O'BRIEN—How much of the tourism white paper money remains to be spent?

Mr Noonan—Spending is proceeding in accordance with the schedule that was set out initially. Of course on any one day money is being spent. So it is a difficult question to answer precisely.

Senator O'BRIEN—Perhaps you could take that on notice. In terms of the marketing campaign, what is the Saatchi contract worth and how much has been paid to date?

Mr Morrison—The annual fee is \$5.667 million over three years. That is paid in equal monthly instalments—one-twelfth of \$5.667 million. We have paid until the end of September, so three months; one-quarter of the \$5.667 million.

Senator O'BRIEN—When will the KPMG audit report or report auditing the tender be available?

Mr Morrison—No request has been made. The report is finished.

Senator O'BRIEN—When will it be made available? Is it intended to keep it in-house or has it been published?

Mr Morrison—It is an internal document that has been provided to our board. I am sure there are the usual provisions for making requests for those types of documents.

Senator O'BRIEN—I will start by making one now.

Mr Morrison—I will take it on notice.

Senator O'BRIEN—I understand that former Senator Aden Ridgeway has been hired to assist Tourism Australia in Indigenous tourism.

Mr Morrison—Correct.

Senator O'BRIEN—What is the tenure of his contract and the nature of his role?

Mr Morrison—It is a three-year contract based on a number of days per month. It is an executive chair role for Indigenous Tourism Australia. He is based in our office in Sydney and works with the members of that committee.

Senator O'BRIEN—Was there a selection process, or was a decision taken that—

Mr Morrison—A recommendation was made by our organisation to the minister that he be appointed to that role. The terms of the contract and its duration et cetera were negotiated directly by our organisation.

Senator O'BRIEN—Was he approached prior to leaving parliament?

Mr Morrison—I would have to check my schedule, so I will take that on notice.

Senator O'BRIEN—I understand he works two days a week.

Mr Morrison—No, it is seven days per month.

Senator O'BRIEN—What sort of remuneration is involved?

Mr Morrison—He is paid \$50,000 a year.

Senator O'BRIEN—Has Indigenous Tourism Australia been completely established?

Mr Morrison—Yes.

Senator O'BRIEN—Who is on the Indigenous Tourism Leadership Group, or is that information available somewhere?

Mr Morrison—Yes, that announcement was made recently by the minister. Aden Ridgeway is the executive chair. There is John Morse, who is the Chairman of Tourism Victoria; Mr Graham Paterson, who is the Head of Corporate Responsibility and Sustainability for Westpac; Ms Rhoda Roberts, who is the Festival Director of The Dreaming; Ms Judy Freeman, who is the director of marketing for Tjapukai Aboriginal Cultural Park; Mr Jeff Sharpe, who is the Managing Director of Autopia Tours; Mr Athol Guy, who is a marketing consultant; Mr Grant Hunt, who is the CEO of Voyages; and Mr Bruce Harvey, who is the Chief Adviser, Aboriginal and Community Relations for Rio Tinto Ltd. There are also members of my staff and the department staff engaged in supporting that committee.

Mr Noonan—Senator, did you ask about the Indigenous Tourism Leadership Group?

Senator O'BRIEN—Yes.

Mr Noonan—What Mr Morrison just read out was the Indigenous Tourism Australia Advisory Group.

Mr Morrison—I thought the question was to the ITA.

Mr Noonan—The ITLG was a predecessor group.

Mr Morrison—The ITLG no longer exists.

CHAIR—Senator O'Brien, how much longer do you think you will be?

Senator O'BRIEN—I will put the rest of my questions on notice.

Senator NASH—I will be brief. I have some general tourism questions with perhaps a bit of a regional bent. How many international tourists came to Australia in each of the last two financial years?

Mr Morrison—The figures I have here are for the year to 31 August, which are the most recent figures—5.4647 million.

Senator NASH—That is the most recent one. The year prior to that? I am happy to take that on notice if you like.

Mr Morrison—No, I have that. The year before that it was 5.1573 million.

Senator NASH—Are you able to advise how many of those tourists actually travelled to rural and regional areas?

Mr Morrison—We can happily give you that information.

Senator NASH—We are happy to have that.

Mr Morrison—It is available through the international visitor survey where we model that, and we can provide you with those reports.

Senator NASH—I am quite happy to take any of these on notice as they come up. How many domestic tourists had a rural and regional destination?

Mr Morrison—Again, we can pull that out of the national visitors survey, and that is available in those reports and we will get that to you.

Senator NASH—How much is tourism worth to the Australian economy in general and are you able to specifically look at that worth to rural and regional areas?

Mr Morrison—We are able to break it down by domestic and international, so it is about \$73 billion in total, putting domestic and international together. We are able to then model what that split-out is into regional and to capital cities based on the work we do with the international visitors survey and the national visitors survey. We can provide that breakdown to you.

Senator NASH—That would be great. Is there any evidence in particular that can point to spin-off spending having a greater impact per dollar in the regions as compared to metropolitan?

Mr Morrison—I think you can certainly say that in particular parts of regional Australia the proportion of tourism as a percentage of the total economy can be significantly greater than it is in other places—for example, places like Far North Queensland, and Cairns in particular. The percentage of employment up there is in double digits, whereas overall it is around about five per cent plus on average. So there has been some work done which actually breaks that out by regional areas, so there are some very strong tourism regions, the far north coast of New South Wales being another.

Senator NASH—How many people does the tourism sector employ? Again, can you break that into metropolitan and non-metropolitan?

Mr Morrison—Roughly 550,000. I am not sure whether the employment figures can be broken down by regional—

Ms Murphy—We will look into it and see whether we can, but I am not sure.

Senator NASH—That would be good, thank you. Do you see any major transport obstacles that prevent, say, greater tourism out into the rural and regional areas from domestic travellers?

Mr Noonan—That is being addressed in the national tourism investment strategy: how do we get more people into Australia and then how do we disperse them to rural and regional areas? Those are certainly two issues that that committee has squarely in its sights.

Mr Morrison—I could probably talk about it more from a positive point of view. Earlier I referred to some of the innovations in the aviation sector with some of the new carriers such as Virgin, Jetstar and so on doing a lot more point-to-point into new regional areas. Hervey Bay is probably the most recent example of that. We are seeing a number of other regional destinations now become part of the itinerary because of those sorts of developments.

Equally a project we worked with out of the United States with Qantas was to promote an air pass product through a cooperative arrangement we have with Qantas in the United States, which would provide them with three Australian sectors as well as the sector across the Pacific. That was encouraging them to get beyond just the Sydney, Brisbane and Melbourne entry points, to get them into South Australia or into Tasmania or other parts of Queensland or wherever else they would like to go. That product was extremely successful.

Senator NASH—Could you just give a very quick update of the domestic marketing campaign? I believe it was called ‘all the space you need’. Whom are you targeting, what was it designed to achieve and how was it executed?

Mr Morrison—The campaign ran from April to July. The campaign targeted what we would call our Australian ideal visitor, which was a segment of the Australian community which spent quite a lot on travel. They spend the vast majority on travel each year but actually represent a much smaller number of persons, so they are a much more lucrative group within Australia who had a greater disposition to travel overseas. The campaign was really designed to try and address what was some fairly rampant outbound growth in that short term.

But the other thing we found in the research leading up to the campaign is that, while there is a great deal of advertising of Australian destinations by the industry and by states and so on—while there always could be more, I should stress—what was very true for this group is that they were literally bypassing Australia and defaulting straight to the international options. So the campaign had to be very much targeted to try and deal Australia into their consideration set, to actually get them to notice all the other destination marketing that was happening already. We did that through a range of channels. We had a media buy which targeted them by profiling that user group, using holiday tracking studies and the various other things that our media agencies had to profile them and target them.

Secondly, we had a very strong online presence which was all about engaging consumers to come and look at the space, to get a better understanding of the sorts of holiday experiences that were on offer. The key payoff line internally that we were trying to achieve was that an Australian holiday provides you with more of the experience than you thought was possible. It was very much about trying to get them to deal that in and start to consider an Australian holiday.

We went into partner publications with Fairfax in particular and worked with the *Financial Review*, the *Australian* magazine and others, again showcasing a lot of very strong experience based product for Australian holidays. The campaign worked in a variety of different mediums. It just was not in the TVC. We got involved in sponsoring programs for anything from Super Nanny to the Lions tour of New Zealand, targeting those demographics and people who are actually watching those sorts of programs, so it was quite targeted. We did see

an increase in the intention to travel as a result of the campaign from our tracking, but is a very difficult space to work in for all the reasons I have mentioned in some earlier questions.

Senator NASH—Were regional areas highlighted specifically at all during that?

Mr Morrison—Yes.

Senator NASH—Also, could you please give an update on the road tourism strategy?

Mr Morrison—The road tourism strategy is one we continue to work on with the department. The department may want to comment on that, but I have some other notes here. I am happy to take that one on notice.

Senator NASH—Yes, that is fine. I am happy to get some more detail later. Is the state of major highways like the Bruce and the Pacific proving a deterrent when you compare them to, say, similar road tourism opportunities in the United States?

Mr Morrison—One of the things we are working more on is the branding of Australian road experiences and road touring. The Savannah Way is one but the Great Green Way is another, up through Far North Queensland. The Pacific Drive is another. The Great Ocean Road is probably the most successful and I think it is the template for how these touring routes can actually be established. There is an issue of the bricks and mortar—or the asphalt, I should say—but there is also the issue of branding the experience, where you go, the tourist opportunities there are along the way, the signage and a whole range of these sorts of things. But, as a starting point through the Great Spaces campaign that you referred to earlier, one section of the site actually profiled all these regional touring routes, the things that you do along the way and the mapping software and so on that sat behind it.

So branding touring routes is an important thing for us to do for domestic tourism with this target market we have in Australia. While some may think that our major competitors were some of the South-East Asian resort centres and so on for those more lucrative tourists in Australia, our competitors are actually places like the United States and Europe—and they are going on touring holidays—and New Zealand for that matter. So the opportunity for very strong touring product in Australia is very important.

Senator NASH—It would stand to reason that the better the roads the more opportunities there are for people to enjoy—

Mr Morrison—The infrastructure is a very important part of the experience.

Senator NASH—Just finally, Senator O'Brien raised the Uhrig process. Do you see that there would be any impact on rural and regional tourism if Tourism Australia were brought in to operate from within the department?

Mr Noonan—It is probably far too early to look at issues like that when we are just getting that review under way.

Mr Morrison—We are a subject of the review, so it is probably not really appropriate for me to comment.

Senator NASH—I will have to wait and see. Thanks very much, gentlemen.

Proceedings suspended from 3.11 pm to 3.16 pm

TREASURY PORTFOLIO**In Attendance**

Senator Coonan, Minister for Communications, Information Technology and the Arts

Senator Abetz, Special Minister of State

Department of the Treasury

Dr Ken Henry, Secretary

Outcome 1: Sound Macroeconomic Environment**Output Group 1.1: Macroeconomic Group**

Dr Martin Parkinson, Executive Director

Mr David Parker, Alternate Executive Director

Dr David Gruen, Chief Adviser, Domestic

Mr David Pearl, General Manager, International Economy Division

Mr David Turvey, Manager, International Economy Division

Mr Nathan Dal Bon, Manager, International Economy Division

Mr Phil Garton, Specialist Adviser, International Economy Division

Dr Steven Kennedy, General Manager, Domestic Economy Division

Mr Jason Allford, Manager, Domestic Economy Division

Mr Luke Yeaman, Domestic Economy Division

Dr Gordon de Brouwer, General Manager, G20 and APEC Secretariat

Mr Graeme Davis, Manager, Macroeconomic Policy Division

Mr Adam McKissack, Manager, Macroeconomic Policy Division

Outcome 2: Effective Government Spending and Taxation Arrangements**Output Group 2.1: Fiscal Group**

Mr David Tune, Executive Director

Mr David Martine, General Manager, Budget Policy Division

Mr Matthew Flavel, Manager, Budget Policy Division

Mr Jason McDonald, Manager, Budget Policy Division

Mr Frank Di Giorgio, Principal Adviser, Industry, Environment and Defence Division

Mr Rob Heferen, General Manager, Social Policy Division

Mr Peter Robinson, Principal Adviser, Social Policy Division

Mr Michael Willcock, General Manager, Commonwealth-State Relations Division

Mr Ian Robinson, General Manager, Corporate Services Division

Outcome 3: Well Functioning Markets**Output Group 3.1: Markets Group**

Mr Jim Murphy, Executive Director

Mr Chris Legg, General Manager, Financial System Division

Mr Andre Moore, Senior Adviser, Financial System Division

Ms Kanwaljit Kaur, Manager, Financial System Division

Ms Vicki Wilkinson, Manager, Financial System Division

Mr Trevor King, Manager, Financial System Division

Mr Damien White, Manager, Financial System Division
Mr Olaf Schuerman, Senior Adviser, Financial System Division
Ms Caroline Walker, Senior Adviser, Financial System Division
Ms Kathryn McCrea, Financial System Division
Ms Kerstin Wijeyewardene, Acting General Manager, Corporations and Financial Services Division
Mr Matt Brine, Manager, Corporations and Financial Services Division
Ms Ruth Smith, Manager, Corporations and Financial Services Division
Mr David Love, Manager, Corporations and Financial Services Division
Mr Andrew Sellars, Manager, Corporations and Financial Services Division
Mr Steve French, General Manager, Competition and Consumer Policy Division
Ms Sandra Patch, Senior Adviser, Competition and Consumer Policy Division
Ms Louise Seeber, Acting Manager, Competition and Consumer Policy Division
Mr David Hall, Manager, Competition and Consumer Policy Division
Mr Stewart Jones, Manager, Competition and Consumer Policy Division
Mr Chris Lyon, Competition and Consumer Policy Division
Mr Simon Vickery, Competition and Consumer Policy Division
Ms Jane Benson, Competition and Consumer Policy Division
Mr Brad Archer, Competition and Consumer Policy Division
Mr Gerry Antioch, General Manager, Foreign Investment and Trade Policy Division
Mr Mike Rosser, Manager, Foreign Investment and Trade Policy Division
Mr Peter Martin, Australian Government Actuary
Mr Peter McCray, General Manager, Financial Literacy Foundation
Mr Grahame Crough, Manager, Financial Literacy Foundation
Mr John Riley, Financial Literacy Foundation

Outcome 2: Effective Government Spending and Taxation Arrangements

Output Group 2.2: Revenue Group

Mr Mike Callaghan, Executive Director
Mr Bruce Paine, General Manager, Board of Taxation Secretariat
Mr Paul McCullough, General Manager, Tax System Review Division
Mr John Lonsdale, General Manager, Superannuation, Retirement and Savings Division
Mr Nigel Ray, General Manager, Tax Analysis Division
Mr Phil Gallagher, Manager, Tax Analysis Division
Mr Colin Brown, Manager, Tax Analysis Division
Mr Peter Greagg, Manager, Tax Analysis Division
Mr Neil Motteram, General Manager, International Tax and Treaties Division
Mr Patrick Colmer, General Manager, Indirect Tax Division
Mr Colin Johnson, General Manager, Business Tax Division
Mr Geoff Miller, General Manager, Individuals and Exempt Tax Division
Mr Patrick Boneham, Senior Adviser, Superannuation, Retirement and Savings Division

Mr Alan Mallory, Manager, Superannuation, Retirement and Savings Division

Mr Nigel Murray, Manager, Superannuation, Retirement and Savings Division

Mr Tony Coles, Manager, Superannuation, Retirement and Savings Division

Australian Competition and Consumer Commission

Mr Graeme Samuel, Chairman

Mr Brian Cassidy, Chief Executive Officer

Mr Joe Dimasi, Executive General Manager, Regulatory Affairs Division

Mr Mark Pearson, Executive General Manager, Enforcement and Compliance Branch

Ms Lee Hollis, General Manager, Criminal Enforcement and Cartel Branch

Ms Rose Webb, General Manager, Enforcement and Coordination Branch

Mr Tim Grimwade, General Manager, Mergers and Asset Sales

Mr Scott Gregson, General Manager, Adjudication Branch

Mr Robert Antich, General Manager, Policy and Liaison Branch

Mr Nigel Ridgway, General Manager, Compliance Strategies Branch

Mr Michael Cosgrave, General Manager, Telecommunications Group

Ms Margaret Arblaster, General Manager, Transport and Prices Oversight

Ms Helen Lu, General Manager, Corporate Management Branch

Mr John Bridge, Chief Finance Officer

Ms Lisa Anne Ayres, Executive Branch

Ms Claire Woods, Executive Branch

Ms Colette Downie, Director, Enforcement and Coordination Branch

Ms Tanya Howitt, Director, Finance and Services

Australian Bureau of Statistics

Mr Dennis Trewin, Australian Statistician

Mr Peter Harper, Deputy Australian Statistician, Economic Statistics Group

Dr Sui-Ming Tam, First Assistant Statistician, Information Management and Census Division

Mr Garth Bode, Assistant Statistician, Labour and Demography Branch

Mr Patrick Corr, Director, Demography Section

Mr Mark Whybrow, Chief Finance Officer

Corporations and Markets Advisory Committee

Mr John Kluver, Executive Director

National Competition Council

Mr John Feil, Executive Director

Mr Ross Campbell, Director

Productivity Commission

Mr Bernard Wonder, Head of Office

Mr Garth Pitkethly, First Assistant Commissioner

Mr Michael Kirby, First Assistant Commissioner

Mr Stephen Rimmer, Assistant Commissioner

Mr Ian Gibbs, Assistant Commissioner

Australian Prudential Regulation Authority

Dr John Laker, Chairman

Mr Ross Jones, Deputy Chairman
Mr Steve Somogyi, APRA Member
Mr Brandon Khoo, Executive General Manager, Specialised Institutions
Mr Wayne Byres, Executive General Manager, Diversified Institutions
Mr Charles Littrell, Executive General Manager, Policy, Research & Statistics

Australian Securities and Investment Commission

Mr Jeffrey Lucy, Chairman
Mr Jeremy Cooper, Deputy Chairman
Ms Berna Collier, Commissioner

Australian Taxation Office

Mr Michael Carmody, Commissioner of Taxation
Mr Greg Farr, Second Commissioner
Ms Raelene Vivian, Deputy Commissioner
Mr Paul Duffus, Deputy Commissioner
Ms Donna Moody, Chief Finance Officer
Mr Neil Olesen, Deputy Commissioner
Mr Mark Jackson, Deputy Commissioner
Mr Bill Gibson, Chief Information Officer
Ms Stephanie Martin, First Assistant Commissioner
Ms Margaret Crawford, Chief Operating Officer
Ms Frances Robinson, Deputy Commissioner
Mr Geoff Robinson, Deputy Commissioner
Ms Anne Ellison, First Assistant Commissioner
Ms Erin Holland, Deputy Commissioner
Ms Elizabeth Goli, Assistant Deputy Commissioner
Mr Mark Konza, Deputy Commissioner
Mr Michael Monaghan, Deputy Commissioner
Mr Shane Reardon, Deputy Commissioner

Inspector-General of Taxation

Mr David Vos, Inspector-General of Taxation
Mr Rick Mathews, Deputy Inspector-General of Taxation

Financial Reporting Council

Mr Charles Macek, Chairman
Ms Elizabeth Alexander, Deputy Chairman

Australian Competition and Consumer Commission

CHAIR—I call the hearing to order. I welcome to the table the Minister for Communications, Senator Coonan; the Chairman of the ACCC, Mr Samuel; and officers of the commission. Mr Samuel, would you like to make an opening statement?

Mr Samuel—I crave the indulgence of the committee. I know I am somewhat renowned for making long opening statements, but today it might be slightly longer because I want to make some extensive comments about some recent public comments that have been made by

representatives of Telstra in relation to the regulatory processes that we are currently dealing with.

Senator CONROY—That is half of my questions.

Mr Samuel—I am sure you will have plenty of questions to follow.

CHAIR—If you could anticipate all of Senator Conroy's questions we would all be blessed.

Mr Samuel—So I ask for your indulgence. As we all know, on 14 September this year parliament approved the sale of Telstra and related legislation, a significant part of which related to the future competition regulation of Telstra and telecommunications. I repeat what we said on many occasions: we at the ACCC are absolutely agnostic over the ownership of Telstra. Our primary focus is on enabling and encouraging competition in telecommunications.

I guess it needs to be understood that the starting point for competition in this area is to note that Telstra has an effective monopoly over the copper wire network; that is, there is no effective substitute for that network and the services that it provides for the foreseeable future. Now, competition in the context of that copper wire network, the ULL, can occur through access to the network at fair wholesale prices to enable resale to retail customers in competition with Telstra and/or other competitive infrastructure being installed. We are seeing some elements of that in some cases at fairly early stages, clearly with mobile telephony—at the early stage 3G mobile telephony, wireless, VOIP, and most importantly the potential installation and current installation of DSLAMs; that is, DSL Access Multiplex switching devices at Telstra's exchanges. In the context particularly of DSLAMs and to the extent that that then leads to VOIP, of course issues relating to access are terribly important and indeed vital.

On access, the primary concern is the effectiveness of the regulatory levers, much of which has been addressed in recent legislation that was passed by federal parliament. The primary focus of that legislation was the concept of operational separation; that is, building into the legislation and into the regulatory processes available to the ACCC and to the minister, fundamental principles of transparency—that is, transparency between Telstra's wholesale and/or network divisions and its retail operations and Telstra's dealings with its wholesale customers who are after all its retail competitors. In addition, the regulatory processes—the regulatory regime—that was provided for in the recent telecommunications legislation focused on equivalence of pricing between Telstra wholesale and/or its networker operations in dealing with its own retail division and Telstra's dealing with its wholesale customers.

Operational separation applies to the non-price terms and conditions with transparency of dealings between Telstra's network and its wholesale and Telstra retail. Equivalence of pricing is to be developed through a working party composed of representatives of Telstra, the ACCC and the minister's department, DCITA. That working party is developing an internal wholesale pricing regime with protocols for volume discounts and the like. The other final element on access is the matter that is dealt with and has been dealt with for many years under the telecommunications provisions of the Trade Practices Act, and that is both access declaration and access pricing—in this particular case, access pricing for the ULLS.

I shall deal with some of these specific areas of the future regulatory regime in turn and provide some comments. The first I want to deal with is operational separation and the development of the framework around operational separation. I noted that on *Business Sunday* last Sunday, 30 October, Mr Don McGauchie, the chairman of Telstra said this in response to a question from Ali Moore. She said, ‘Are you any closer to finding out what that’—that is operational separation—‘will mean?’ His response was:

Well, I don’t think anyone knows what it means. I mean, it is just a nonsense concept. It really is a theoretical piece of nonsense.

With the greatest of respect to Don McGauchie, may I make the following comments. No corporation of any significance with multiple divisions can operate without separate financial accounts and interdivisional dealings and transfer pricing based on clear, transparent and commercial arms-length principles; that is, operational separation. I know of very few major corporations throughout my history as an investment banker and as a lawyer who have been able to operate without having in place these essential financial management disciplines. You cannot after all run a corporation, a major corporation, on the basis of reaching the year end and looking to see if there is any cash in the single group pool tin box to determine whether or not a profit or loss has been made. Nor can you make sensible decisions as to capital investment without being able to plan and measure the profitability of that investment and the profitability of each and every division or operational sector of the corporation in which that investment is made.

So, operational separation will provide transparency for Telstra as well as its competitors, and ultimately consumers, around how Telstra’s wholesale businesses charge its retail businesses for services. This places the retail business on a level playing field with other telecommunications companies accessing Telstra’s wholesale services. It also provides Telstra with the opportunity to obtain a greater regulatory certainty into how the ACCC investigates price squeezes. Telstra, I might note, has been arguing it wants this for some time now. Well, here is its opportunity.

The ACCC, together with DCITA and Telstra, is participating in the development of the details of the operational separation framework. As previously outlined to the SECITA legislative committee there are key issues to be resolved to ensure that operational separation delivers the fundamental objectives of transparency and equivalence and makes it easier to determine whether or not Telstra is engaging in anti-competitive conduct. Those details as outlined to that legislative committee are: the precise details and obligations of operational separation; the scope of services to be covered by an operational separation plan—for example, the designated and other eligible services; the enforcement regime to ensure effective compliance with operational separation; the ACCC’s powers to investigate whether compliance has occurred; and the development of the internal wholesale price protocols that I mentioned earlier. The ACCC notes that much of the detail of operational separation can be set out in a number of ministerial determinations. We will continue to work on price equivalence with Telstra and DCITA. We are also engaged in discussions with DCITA on a substantial range of issues regarding operational separation.

Let me move now to the second fundamental area that has been the subject of much public discussion by Telstra representatives over recent times, and I note in commentary as recently

as this morning in several items appearing in the Fairfax newspapers and in the *Weekly Times*, including an article by Doug Campbell of Telstra's Countrywide. This relates to the issue of the lower ULLs prices and the claim, for example, that it would lead to \$600 million to \$800 million in losses by Telstra. I have to say to you that no information has been provided by any party, including Telstra, on how this amount of \$600 million to \$800 million has been derived. So the basis of the \$600 million to \$800 million claim is unclear. The ACCC currently has a voluntary undertaking from Telstra for access to the ULL which I note proposes the average price based on the cost of supplying the service in different geographic areas. I will come back to the issue of de-averaging in just a moment. No final decision has yet been taken by the ACCC on this undertaking.

ULL prices, that is access prices, are based on two cost components. The first is a contribution to the recovery of network costs which average \$3.5 billion per year, which supports a regulated capital base—and the market value is typically higher—of around \$32 billion, that is for the copper network only. The ACCC and Telstra largely agree on this component. The second component of ULLs access pricing though is a component to recover service specific costs for the ULLs which amount to around \$20 million over five years. Let me re-emphasise—around \$20 million over five years. This small amount is where the main area of disagreement between the ACCC and Telstra lies. It relates to the allocation of this relatively minor cost over the forecast number of lines to be taken up by competitors under the access regime. Estimates of \$600 million to \$800 million losses have not been substantiated and it is not clear how Telstra has derived these figures. Therefore, it is difficult to see the basis of Telstra's concerns.

ACCC ULL pricing is not below cost. The ACCC must ensure that Telstra is able to price at levels sufficient to recover costs. That is part of the fundamental requirements in dealing with the long-term interests of end users; it is subject to efficient use and efficient investment criteria. The approach to setting access prices is based on the efficient economic costs of the network, including a contribution for common costs. Assumptions include that Telstra's network is rebuilt at the start of the regulatory period with predominantly brand-new assets and costed and priced on this basis. This includes an assessment of Telstra's cost of capital commensurate with a level of risk that it faces.

However, these costs estimates bear little relationship to the actual investments that have been made by Telstra, many of which were made decades ago. In many cases they have been fully depreciated and fully recovered through past prices. The ACCC essentially prices access on the basis of a new Telstra network each time it values Telstra's asset base. These accounting costs as recorded in Telstra's financial accounts are therefore considerably below the costs used by the ACCC and Telstra to estimate access prices under this methodology. The ACCC applies this, if I might say so, generous approach to provide the correct incentives to Telstra and competing providers to invest efficiently in existing and alternative networks on a forward-looking basis. However, relative to the network which is actually in place, these prices are more than sufficient to compensate Telstra for its actual investments.

Telstra's own margins, currently between 55 and 80 per cent for some fixed services, do not support its position of under-recovery or a hindrance in its ability to undertake further investment. Any reduction in the ULLs pricing is intended to promote both competition and

efficient investment in all areas of Australia by both Telstra and its competitors, ultimately leading to better quality services at cost-effective prices. Such a reduction, however, is unlikely to lead to any significant revenue burden by Telstra for a considerable time. It will not lead to Telstra being unable to recover its costs since ULLs charges are designed to recover Telstra's full economic costs, which are higher than its actual accounting costs. But it will over time reduce some of the very considerable margins that Telstra currently makes on its services. The extent of even this margin dilution, however, will not be sudden or dramatic since competitors will not be able to significantly undercut Telstra's prices unless they are materially more efficient than Telstra in providing services. Telstra is raising these arguments now because competition is starting to work. For example, we are starting to see differentiated products. They want to limit the extent of the competition.

That brings me to the question of ULLs averaging or de-averaging. The cost of supplying ULL varies significantly between geographic areas. An averaging approach would mean you would see little or no competition in the most populated areas as well as no competition in rural and regional Australia. Telstra has charged access to the ULL on a de-averaged basis since regulation began. Its current ULLs undertaking proposal before the ACCC and on the table right at this moment also proposes a de-averaged approach. This has also been adopted for PSDN interconnection charges. Any move to averaging would be a significant change to the current regulatory pricing approach. On Telstra's own estimates, it expects competitors to access only around 290,000 ULL lines, that is, out of 10.6 million lines, or 2.7 per cent, by the end of 2005-06, with this figure increasing to about 13.6 per cent of lines by 2010 on Telstra's forecast. This suggests the extent of ULLs rollout is unlikely to be so widespread as to force Telstra to reduce its retail prices to any significant extent.

Retail prices are averaged whilst wholesale PSDN and ULL prices are typically de-averaged. To the extent that there is a need to maintain average retail prices in high cost areas this can be achieved through alternative funding mechanisms. There are a number of subsidy and other USR arrangements which are designed to assist in the development of services in rural areas at reasonable retail prices. Telstra's position on the merits of its de-averaged ULLs pricing have varied along geographic lines several times since 1999.

Let me just describe some of the variations in Telstra's position in chronological order. First, is the ACCC ULLs pricing inquiry 1999-2000. At the time of the ACCC's first major look at ULLs pricing following the declaration, that is in August 1999, Telstra proposed a four-band de-averaged pricing approach. To some extent this may have been influenced by some early thinking on this issue and the ACCC's final ULLs declaration report where de-averaging was favoured on efficiency and competition grounds. However, Telstra's proposal in late 1999 was made of its own volition. This position was maintained as far as we can tell at least until early 2003. De-averaged ULLs prices were proposed by Telstra first at a meeting on 9 December 1999, when Telstra put forward four pricing principles, the first of which was de-averaged pricing, that is CBD, metro, provincial and rural remote—four bands. At a later meeting Telstra expanded on its own preference for a debate-averaged approach putting the following to the ACCC:

The average ULL price is well above the ULL costs in band 1, therefore making an average ULL price either impossible for Telstra to compete effectively or, if Telstra does reduce band 1 prices to meet

competition, impossible to fully recover costs above the ULL cost in band 2 which would result in a higher price, where most of the take-up is anticipated to occur, and below the de-averaged costs in bands 3 and 4. Therefore, applying an average price will distort the consumption of the ULL service by geographies and give rise to inefficient build-by signals.

That, by the way, is all quoted from Telstra's own submission. The ACCC's decision in its draft paper on the ULLs pricing in 2000 to adopt a four-band de-averaging was strongly supported by Telstra where it said, and I quote:

Telstra welcomes a number of the principles set out by the commission in its draft paper which support the approach adopted by Telstra for estimating and recovering the various costs incurred in providing ULLs. In particular, Telstra notes that the commission supports Telstra's de-averaged pricing approach for this service.

I move forward to December 2003 and Telstra's ULLs undertaking approach. Following the ACCC's model price determination in October 2003, Telstra submitted revised undertakings for ULLs. Consistent with the model prices Telstra reverted in these undertakings to the earlier four-band structure that I described before, but with revised charges following further modelling work on network costs and new estimates of ULLs specific costs based on revised demand forecasts. This led to the now familiar pricing matrix, which I will put on the record. In band 1, that is the CBD, \$30; band 2, metropolitan areas, \$22; band 3, that is regional areas, \$40; and band 4, that is rural Australia, \$100.

While Telstra has been changing its view on de-averaged ULLs prices, its underlying concerns over its ability to maintain average retail prices have remained. We note that these concerns are much exaggerated in order to raise ULLs charges to unreasonably high levels. However, the record is clear that Telstra have consistently used these fears to push a number of different approaches to ULLs pricing which has a similar effect to that of ULLs price averaging.

Now, in a column that appeared in the Fairfax media this morning, reference was made to a so-called OECD competition committee report. I should note that that is a staff paper released by staff members of the OECD's competition committee. Dr Daryl Biggar, who is currently a consultant to the ACCC, was a staff member of the OECD's competition committee secretariat. The OECD staff paper prepared some analyses and observations about the theory of ULLs pricing. Any use of this staff paper by Telstra to support averaged ULLs prices overstates the present status of the staff paper, which has not been adopted by the OECD's competition committee and, I have to say, misrepresents the content of the staff paper as well. A more complete extract indicates that the staff paper considers that geographically de-averaged ULL prices where ULL charges are based on actual costs is a superior method of maximising competition and ensuring the efficient investment signals, that is for bypass of Telstra's network. A quote from the staff paper is as follows:

A preferable approach is to set the price for unbundled local loop equal to the cost of those local loops and to use taxes on the retail products of the incumbent and its rivals to recover any fixed costs or access deficit. In practice, this would likely imply the establishment of some form of universal service funding mechanism.

The staff paper also notes that a key problem is that averaged ULL prices are not sustainable in a competitive environment. The paper recommends that the only solution to the problem is

for funding for these services to be sourced from the industry by way of a taxation approach on retail services; that is, I should note, equivalent to the current universal service obligation mechanism adopted in Australia.

My final comment in this area is to note some comments that have been attributed to Sol Trujillo, the chief executive of Telstra, which, if I can put in summary form without wishing to verbal him, say that regulatory pricing decisions are costing Telstra or likely to cost Telstra \$850 million in 2005-06. I should say that the ACCC's role is to ensure Telstra charges fair prices to its competitors for access to its network. A fair access price is one that reflects the efficient costs of supplying services while recognising Telstra's investment risks in building the network; that is, a combination of efficient costs of supplying services while recognising the investment risks in building the network. We understand from information that Telstra has released to the market that the \$850 million estimate of revenue losses is purely a hypothetical loss and does not represent an actual revenue loss for Telstra in 2005-06 as is being implied. The figure is based on the difference between the prices that it would have liked to charge if it were an unregulated monopoly compared to the prices that it actually charges in the market place today. If Telstra stands to lose up to \$850 million from an access pricing regime that attempts to ensure a fair price, then the margins Telstra imposes on its copper network are significant. Regulation can help to ensure fair and equitable access prices for both Telstra's competitors and telecommunications consumers.

CHAIR—Are you saying the \$850 million is the monopoly profit Telstra makes?

Mr Samuel—I am saying it is a hypothetical implied loss and it is based on its ability to charge a monopoly price in an unregulated environment. Fortunately, current legislation and current regulation by the ACCC does not permit monopoly rents to be charged.

CHAIR—Thanks. Go on.

Mr Samuel—That completes my comments on Telstra. I now want to cover just a few elements of our annual report to update since last appearing before Senate estimates on 31 May this year. First of all, let me deal with mergers. In the 2004-05 year we considered or assessed 189 mergers—32 complex matters were examined under our new informal merger guidelines. These were guidelines which commenced to operate in October last year and have operated very effectively indeed to provide both transparency as to the manner in which we assess mergers and accountability, not only on the part of the ACCC but also of course on the part of merger applicants, in the way they deal with us in the processes that we apply and, most importantly, in the determinations that we reach.

In that context it is important to note that we have in relation to complex matters issued five statements of issues. Statements of issues raise important points of issue so as to enable interested stakeholders to focus on the important issues that we are considering that may raise serious competition concerns and to provide us with additional information that may assist us in reaching a final determination on those matters. Perhaps the most recent of those, and the most illustrative of the operational statement of issues, was contained in the recent determination by the ACCC in relation to Woolworth's acquisition of some Action stores in Western Australia and Queensland. At some time prior to our final determination we issued a statement of issues which in effect was a preliminary view that we considered that the

acquisition of several of those stores—that is six in Western Australia and two in Queensland—was, in our preliminary view, likely to lead to a substantial lessening of competition and therefore would have been in breach of section 50 of the Trade Practices Act. We also asked interested stakeholders to provide us further information in relation to the fundamental impact of that acquisition on processors and suppliers, particularly in Western Australia, of perishable goods.

It was interesting that the consequence of issuing that statement of issues or preliminary view was that we received significantly more and useful information in relation to the eight stores that we had some concerns about, as a result of which our concerns were allayed and we were able in due course to give a clearance for the acquisition of those stores. More importantly, our request, our urgings, our encouragement for more information in relation to the issues that had been raised with us initially by processors and suppliers of perishable goods, in particular in Western Australia, our exhortation in that area, did not yield any more information that would have enabled us to deal with those issues and to have formed an adverse conclusion in relation to the Woolworth's acquisition and, therefore, based on the information and evidence we received, we reached a final determination that the acquisition was able to proceed. The statement of issues operated very effectively in that case, as they have in the four cases where they have been used, to draw out further information that has enabled us to make a much more informed decision and to make that decision based on all stakeholders being put on notice of the issues that were of concern to us.

We have issued 19 public competition assessments. These are detailed assessments that detail the manner in which we have reached our decision and the matters that we have taken into account, including our identification of relevant markets and identification of concerns or otherwise in relation to those relevant markets that have enabled us to reach a conclusion either that there will be or there will not be likely to be a substantial lessening of competition in the relevant markets. Those public competition assessments have been important for two purposes.

The first is they provide significant accountability of the way the ACCC makes its informal decisions. If those public competition assessments reveal that we have erred in our consideration of the matters, then one might expect that stakeholders and members of the economic and legal advisory community in this area would be quick to pounce on us and to be making public commentary that seeks to correct or to debate with us those public competition assessments. To date, of the 19 that have been issued, none has been the subject of any public or I believe any private comment of dispute as to the manner in which the assessments have been made. Most importantly as well, those competition assessments provide ongoing guidance and precedent to the business community as to the manner in which we are dealing with the informal clearance process and dealing with definitions of markets and application of the competition tests under section 50 of the Trade Practices Act in relation to merger decisions.

The ACCC has signalled now that we are very reluctant to accept behavioural undertakings in relation to merger matters and we are equally reluctant to have confidentiality of undertakings. We think that, if we accept undertakings that are confidential, it does not enable the market—and the market in this place is not just the share market but other interested

stakeholders, competitors, those who are dealing with parties who have been involved in merger clearances with us—to understand the market in which the merged entity is operating and we do not think that it is therefore appropriate, except in the most extreme of cases, to have confidential undertakings. Only two out of the 189 acquisitions submitted to us were rejected. That was Pacific Brands and Joyce and the Origin acquisition of LPG assets in Tasmania. Eleven other acquisitions were resolved through section 87B undertakings.

Moving on from mergers to cartels, we have said a lot about cartels at recent Senate estimates hearings. Let me just simply say that we are now engaged in extensive collaboration with the Director of Public Prosecutions in anticipation that the government will be in a position early next year to introduce into parliament its regime for criminal penalties in relation to cartels. The process of collaboration with the DPP is extensive. It is proving very fruitful indeed. We are working very well with the DPP and the DPP is providing extensive assistance to our staff in the process of investigation, in the process of dealing with our immunity policy, which I will cover in a few moments, and in the process that will result in our handing matters over to the DPP for criminal prosecution, recognising as we do that, while the DPP will collaborate with us and consult with us, ultimately determination of whether or not to institute a criminal prosecution will, as it should, rest with the DPP.

The impact of increased penalties and awareness campaign on the attitude of parliament, the courts, business, the media and the public is being highlighted every time that we have the opportunity to do so. I think it is quite clear now that anticompetitive activity is being regarded by the business community as serious misconduct. It has the potential to lead to jail sentences in the case of serious cartels and the business community now has it significantly on its compliance in corporate governance agenda, which is a major step forward in terms of awareness of the seriousness of anticompetitive conduct and the way the ACCC will deal with it under the Trade Practices Act.

I should mention, as we have in a number of papers, one of which appears on our web site and another more detailed paper which will appear on the web site following its delivery next Saturday week, Saturday, 12 November, that the investigations into cartel activity are very complex. They are very time-consuming. We are aware of some commentary in the daily media that raises some impatient signals about when we are going to be able to deal with certain matters that they comment upon that they believe that we are currently investigating in relation to cartel activity. We have already instituted over the past few months five court cases—five pieces of litigation—in relation to alleged cartels, some of which are currently before the courts, but it is important to emphasise that investigations into cartel activity are very complex. The process of the operation of the immunity policy and the provision of information by those who seek immunity does not present us with a simple case that can lead to prosecution. There is a lot of investigatory work that needs to be undertaken: looking at electronic records, looking at paper records and undertaking serious interrogation of witnesses. We do not want to institute litigation in relation to cartels with potentially very serious consequences for business unless we have a reasonable degree of possibility at least that the litigation will be successful. It is most important that we undertake a very rigorous process in leading to the process of institution of litigation.

Our immunity policy has been revised. It was in operation from June-July 2003 as a leniency policy. It has now been revised, starting with an extensive consultation process that applied as from November last year, and the new immunity policy applies as from 5 September this year. Some significant changes to that immunity policy have been made which provide more certainty to immunity applicants. It is a policy which probably ranks alongside some of the finest immunity policies that are used in the developed nations—that is, developed nations in terms of the development of competition policies throughout the world. We have gained a lot from our involvement in the international competition network in developing the immunity policy. It is working very well at the present time.

We need to emphasise that immunity is not simply a case of an immunity applicant coming into the ACCC and saying, ‘Have I got something to tell you.’ It involves extensive cooperation on the part of the immunity applicant in providing us with information and in maintaining confidentiality of the immunity application. An immunity, although it is automatic for the first in to advise us of a cartel, is at all times conditional until the completion of the litigation proceedings, at which time we will have then been able to determine whether or not there has been full, frank cooperation by the immunity applicant. If there has not been full, frank cooperation, then immunity will not apply and it could be expected that immunity applicants will then face their own litigation processes by the commission.

Let me move to sum up what has occurred on the enforcement and compliance side of the commission’s operations during the 2004-05 year. We received 57,308 calls to our info centre. We received 10,923 emails to the info centre. We entered over 43,000 of those calls and emails into our recording system called TrackIT. The balance is dealt with as part of the phone call where they may have been made to the wrong regulatory agency and they are referred elsewhere or they can be dealt with by a quick response by our very skilled staff in our info centre.

During the financial year just ended, we issued 487,155 notices—that is, as I think the committee are aware, subpoena notices for both the provision of written documentation and/or oral evidence. Of those, 155 were to produce information in writing, 213 were to produce documents and 117 were to appear in person and give evidence under oath. We had two authorities to enter premises and inspect documents, otherwise known colloquially as raids.

The 2004-05 year statistics indicate the following. Overall we have increased the number of matters that have been litigated or resolved through section 87B undertakings. In fact, the number of matters that have been litigated or resolved through 87B undertakings are the second highest for the past decade. Just to give you a feel over the 2002-03 year, the first instance of litigation was 39 and the 2003-04 year, where we hit a brick wall with our financing, we had 22 matters litigated. In the 2004-05 year we commenced 30 new cases. In undertaking this, there were 29 in the 2002-03 year, there were 33 in the 2003-04 year and there were 55 in the 2004-05 year. The totals, just to give them to you, in the 2002-03 year were 69, in the 2003-04 year were 55; and in the year 2004-05 we resolved, or took through to litigation or resolution through 87B undertakings, 85 matters. The only higher year in the past decade—I forget the year itself—was 91 matters. So our process of dealing with matters in

the enforcement area through litigation for 87B undertakings is at its second highest level for the past decade.

The statistics do not tell the whole story. They are not probably a true reflection of our enforcement program, but I will give you one or two just to give you a feel about the way the trend is occurring. In dividing between part IV matters—that is competition matters—part IVA matters—that is those dealing with unconscionable conduct—or part V matters, in the 2002-03 year, part IV matters comprised 31 per cent; part IVA, three per cent; and part V matters, 66 per cent. In 2003-04, the part IV matters declined to 24 per cent; the part IVA matters, five per cent; and the part V matters, dealing with the consumer protection, 71 per cent. In 2004-05, part IV matters were 14 per cent; part IVA, five per cent; and part V matters, consumer protection, comprised 81 per cent of those matters that were litigated or the subject of undertaking.

These reflect a continuing upward trend in the proportion of consumer protection and unconscionable conduct matters in our litigation profile. Litigation is an integral part of our enforcement action. However, in certain cases it has become clear that negotiating an outcome through 87Bs or administrative settlements is more appropriate. What we strike is the balance between effective outcomes for consumers and quick resolution of matters. Litigation is inevitable and will inevitably be taken with blatant and wilful contraventions, or where there is evidence of non-compliance culture on the part of business.

Senator CONROY—Are there many non-blatant contraventions?

Mr Samuel—Yes, often there are cases where a contravention has occurred as a result of ignorance or inadvertence, particularly if they are once off—that is, where the business acknowledges the mistake that has been made, rectifies the issue with consumers and does so quickly and does so in a manner that cannot be achieved through litigation. They are the sorts of matters that we tend to resolve through 87B undertakings. Where there has been blatant and wilful contravention, where there is evidence of non-compliance culture, often evidenced by repeat or serial misconduct—serial misconduct, by the way, is two or more times; it is not many more than that—we simply go to litigation, because it is ultimately the only way of teaching the business and/or the industry concerned that we will not tolerate wilful or blatant contraventions.

Matters that we litigate are designed to lead to widespread consumer outcome. We are pursuing criminal prosecutions in three areas, and this is before we have criminal prosecutions or criminal penalties available to us in relation to cartels. The first is in relation to consumer protection where we can see evidence of deliberate fraud activity. Of course, it would be well known that we took a criminal prosecution against Chubb Securities under part VC of the act in relation to the entering into contracts with consumers for the provisional security services which it was then discovered were not being provided. One of the reasons we proceed under part VC for criminal prosecutions is that they do enable us to have financial penalties. They do not, by the way, enable us to procure jail sentences—they are not available under part VC. Jail sentences in the context of the Trade Practices Act will only be available for serious cartel offences where we proceed to criminal prosecutions there.

I say, however, that there are two elements where we will be proceeding with criminal proceedings, and the first criminal proceeding which may well lead to jail sentences is contempt proceedings for individuals who breach court orders, particularly in part V cases, where undertakings have been given or otherwise where court orders have been given and those court orders are breached. We are clearly now examining circumstances where we can proceed with criminal prosecutions for the provision of false evidence to ACCC officers, pursuant to section 115 notices—that is, failure to provide relevant documentation, destruction of documentation when a 115 notice has been provided, provision of false information under oath in section 155(1)(c) investigations or, indeed, in informal interrogations, because of course it is a criminal offence to provide false information to a Commonwealth officer. We have detected too many instances of business executives providing false information to Commonwealth officers and, where we can prove those matters, we intend to proceed with criminal prosecutions, of course through the DPP where it is appropriate, and we will be doing so with the intent, where it is appropriate, of putting those offending executives in jail for provision of false information.

We are closely in cooperation with the DPP in the lead-up to the potential cartel prosecutions. This is including enhanced procedures in relation to investigation processes, but particularly the DPP is now providing extensive cooperation and collaboration with us in relation to part VC—that is, consumer protection in criminal matters—which ensures a continuous improvement of the way that we conduct our criminal investigations and improvement in our skills and timely outcomes once briefs are referred to the DPP.

The completion rates are also worth noting. In the 2004-05 year we commenced 115 part V matters—that is serious investigations—and completed 131 of them. We commenced 72 part IV matters and completed 75. We commenced 10 part IVA or part IVB matters and completed 16. We therefore have a total of 200 matters that were commenced and 227 that were completed. Of the 115 part V investigations commenced, 45 per cent were completed during the same period, that is, during that financial year. Fifteen per cent of the total part V investigations completed during 2004-05 resulted in legal proceedings being instituted, of which 40 per cent achieved a judgment within the same period. Of the 72 part IV investigations commenced, 44 per cent were completed during the same period. Nine per cent of the part IV investigations completed during the 2004-05 year resulted in legal proceedings being instituted, of which 28 per cent were achieved to judgment in the same period.

The purpose of all those statistics—of course you will not be able to gather them all in as I am delivering orally, but they will be in *Hansard*—is to emphasise that our database management process and our new process of supervising and controlling our enforcement processes is bringing about much more efficient and quicker outcomes, which was the objective which I outlined to Senate estimates, I think about 18 months ago, as we introduced these new processes for database management and management of the way in which our enforcement activity was being undertaken.

There is a greater throughput of in-depth investigations. We have an improved enforcement and litigation management processes. There is greater coordination. There is much more focus on what we are dealing with. There is speed in our investigations and litigation. There is greater efficiency and greater effectiveness. In particular, in the litigation area, I have

emphasised in a paper recently given in South Australia—it will be re-emphasised in a paper given to trade practices advisers in a week or 10 days time—that speed of litigation does not mean that we will be deterred by any delay in the litigation process imposed or attempted to be imposed upon us by respondents to ACCC litigation actions. In fact, any attempt at delay will be met with by appropriate delay avoidance techniques—that is, by our adopting processes to impede the delaying techniques and tactics that can be adopted by those that are advising the respondents to our litigation actions. It could be expected that we will show little patience for delay being adopted through the court process.

I think the only other thing I want to comment upon is our 87B undertakings and administrative resolutions. It is no secret that we have made greater use of 87Bs. They often lead to more efficient and timely outcomes for consumers and can reduce the extent of consumer detriment. In the 2004-05 financial year, of the total investigations completed, 35 per cent of the part V investigations resulted in an 87B undertaking and seven per cent of part IV investigations resulted in an 87B undertaking.

We can elicit quicker responses from traders who have been in breach of the law. It also puts firms on our radar for future monitoring, resulting in speedier resolution of matters. Repeat offenders, or those who show a cultural noncompliance, will lead to litigation in the future, as I think I have outlined. In some instances we can obtain restitution of consumer damages, which, as I think the Senate estimates committee will well appreciate, is very difficult for us to achieve in terms of the court process as a result of a number of previous court decisions. We can initiate more innovative responses than would be provided by the court after pursuing lengthy litigation and perhaps the light and mild outcomes that we have achieved in respect of the major tobacco companies give an indication of that. And we can establish a foundation for better compliance into the future. This has been done by improving and clarifying our requirements in relation to compliance programs and adopting a systematic review process to ensure the compliance programs are being properly followed through.

I think it is fair to say, Chairman and members of the committee, that our enforcement processes are still developing. In particular, our litigation processes are undergoing continuous scrutiny and improvement to ensure that our enforcement and litigation and resolution processes of noncompliance with the act are undertaken as efficiently and effectively as possible. Efficiency and effectiveness is, of course, after all the one way of keeping the sharp point of our enforcement activity even sharper and more effective.

CHAIR—Thank you very much, Mr Samuel.

Senator CONROY—I am not sure if you were an insomniac enough to either see the other night's Senate estimates with Telstra or have had a chance to read the *Hansard* or watch the tape, but Telstra seemed unwilling or unable to justify their \$800 million figure. Given the sort of information you have just outlined, does it surprise you that they continue even in the last two days since then to try and promote this \$800 million figure?

Mr Samuel—I would have to say to you that nothing surprises me in Telstra's public promotion of its case on the issue of being freed up from regulatory processes. It is one of the reasons I did seek your indulgence and spend some time in endeavouring to explain that the \$800 million figure has never been explained to us, or we believe to anyone else, by Telstra. It

is a figure that is plucked out of the air. It is a claim that is made by Telstra and I guess it is a claim that you could expect any party that is subject to regulation—to try and advance the interest of competition—would be making as part of pursuing those claims.

CHAIR—When you say ‘plucked out of the air’, you mean you are unaware of any attempt in any published source by Telstra to derive that figure?

Mr Dimasi—There are two figures that have been bandied around which seem to approximate each other: around \$600 million to \$800 million and \$850 million. One figure relates to the unbundled local loops, the ULLs, and the other figure relates to losses from regulatory decisions, so-called. It is the ULLs figure that we have been able to ascertain no information on where it has come from, so we cannot establish the base of that figure. On the other figure, the \$850 million or so that has been talked about resulting from regulatory decisions, that appears to be, as Mr Samuel said in his opening remarks, to be derived from expected losses or some hypothetical notion of losses, if Telstra were able to charge at some sort of unconstrained price. So I think we need to distinguish between those two figures. On one we do seem to have some more information on where it seems to have come from. We do not accept either of them, but there is a different basis to each of those figures.

Mr Samuel—But I think what that does reaffirm is the question that the Chairman asked and that is, ‘Has there been anything public that has been made available to us or to any other person as to the \$800 million in respect of the ULLs?’ and the answer to that is no.

Senator CONROY—Telstra has indicated that it was a three- to five-year calculation. We did invite them to table their modelling. Surprisingly, given how passionately they are promoting this figure, they were unwilling to.

CHAIR—Did they say they had more?

Senator CONROY—I am just trying to remember exactly what their words were. Senator Joyce might have been there for this part of the discussion. They did indicate that they had done some work, but they were not willing to share it with the committee, or apparently the ACCC. I did want to touch on some of the issues. I offer my congratulations. I think that in my time in the Senate that was the longest opening statement, although I do agree with you that there was a need to set a few matters straight from the ACCC’s perspective. So thank you for that, Mr Samuel. I did want to go over some of those issues you have raised. I have had to cross off a lot of my questions, but I will persevere. We learnt during the government’s pretty farcical one-day inquiry into the government’s new telecommunications regulatory regime that you will be negotiating with the government and Telstra regarding the pricing that will apply under the proposed operational separation model.

Senator Abetz—It might be helpful if you were to frame your questions in a way that Mr Samuel could understand them. I am sure he is not aware of any farcical inquiry.

CHAIR—Senator Abetz, there is one thing that I am very confident of and that is that Mr Samuel knows how to look after himself.

Senator Abetz—Yes, but I am not going to allow the record to stand, and I would have thought that you as a government senator would also not want the record to stand.

CHAIR—Senator Abetz, I am chairing this inquiry. I am sure, more than any other chair I can think of, I am a very disciplined chairman, as Senator Conroy is always chastising me for being. Senator Conroy can frame his questions with appropriate political ratbaggery as he chooses and, if they are out of order, I will so rule.

Senator Abetz—That is even more inflammatory.

Senator CONROY—I think the chair has put you back in your box, Senator Abetz, so perhaps I can go on. Have you started meetings with Telstra to discuss operational separation yet?

Mr Samuel—We have certainly been meeting with the department to deal with the issues of operational separation and I believe also the internal wholesale pricing protocols, yes.

Senator CONROY—So you have not actually met with Telstra yet?

Mr Samuel—No, we have.

Senator CONROY—So you have.

Mr Samuel—I said with the department, and I believe Telstra.

Senator CONROY—How are they going?

Mr Dimasi—It is fairly early days at this stage. There has been a number of meetings so far, and the work program is developing, so they are on the way.

Senator CONROY—You read the same quote that I have got in front of me, Mr Samuel, from Mr McGauchie on the weekend. I just got a sense from it that he really did not sound very committed to the operational separation concept. That must be difficult working with someone on a project when they quite clearly have absolutely no faith in what you are trying to achieve?

Mr Samuel—Without wanting to overstate the position, I am not sure that Telstra is committed in any way to any form of antimonopoly regulation, but that is what we deal with.

Senator CONROY—It is pretty hard given the current public statements to reach any other conclusion, though.

Mr Samuel—Certainly Don McGauchie's comments on the weekend in Sydney did not indicate a great enthusiasm for the regulatory process that currently faces Telstra under the legislation or under ACCC's application of that legislation.

Senator CONROY—Of course, the government has allowed Telstra to draft the details of the operational separation regime. After hearing Mr McGauchie's comments, how confident are you that you will be able to make the operational separation regime that Telstra produces to actually work? It is one thing to have a piece of paper that says, 'Here is what we are going to do,' but when they are so clearly contemptuous of the concept, never mind the application, it must give you some doubts.

Mr Samuel—As I have indicated at the SECITA hearing and then subsequently repeated today, there are a number of matters and processes that will be adopted over coming months to take the process of operational separation from the framework that is outlined in the legislation to its ultimate final form. That is going to involve obviously discussions and

negotiations with Telstra involving both the department, DCITA, and the ACCC, but in the event this will finally be a matter for determination by the minister, and I would have thought that the minister has shown a fair degree of rigour and determination in achieving the objectives of the government in relation to this matter to date. I cannot see any reason why that should change.

CHAIR—Senator Conroy's premise that Telstra has been allowed to draft the operational separation regime is not quite right, is it? Telstra, under the legislation, has put forward a proposal for the operational separation regime, but it is not within Telstra's jurisdiction to finally sign off on that proposal.

Mr Samuel—I am sorry, that is what I was attempting to imply by my response—that Telstra will submit a proposal that will then go through processes that are provided for in the legislation. The final form of operational separation is for the determination by the minister.

CHAIR—I thought that came out fairly clearly in the swift, but efficient, Senate inquiry over Telstra.

Senator Abetz—But it was not farcical; that was the point I was trying to make earlier.

Senator CONROY—In the 12 minutes and the four questions I was able to ask Mr Samuel, certainly some information did come out. You are right, Senator Brandis.

CHAIR—That shows what you can do when you are more focused.

Senator CONROY—It was 12 minutes and four questions. At least Mr Samuel got a chance to do an opening statement that day as well. The point I was making, and I accept the hair splitting that so befits the lawyer that Senator Brandis is, is that it is a massive advantage to write the first draft, is it not? Even Senator Brandis, as a very good lawyer, would appreciate the concept of drafting advantage. You usually set the terms of negotiation when you do the first draft.

Mr Samuel—You might, but then good negotiators that are recipients of first drafts, if they do not like them, just ignore the first draft and start again. So that then sets the terms of negotiations. I guess he or she who controls the white board and the texta that scribes on the white board is the one who controls the negotiations.

CHAIR—I would not like to be trying to pull the wool over your eyes, if I may say so, Mr Samuel.

Senator CONROY—Please; stop it or you will go blind! What I am trying to get to is you have actually got to try and work with this organisation that is clearly demonstrating that it is not committed to even the concept, never mind the implementation, of the government's regime. In fact, it is publicly campaigning against the whole thing. At the same time as publicly campaigning against it, you are sitting in a room with these people and they are just continually bagging it. On the actual negotiations, notwithstanding how hard-nosed a negotiator you are, and given that they have demonstrated over some years that it is prepared to regulatory gain extensively, how much time are you going to allow them? What is the time frame? How many first drafts do you get to knock off before you give up in frustration, not that you have given up, over some of the other decisions that you have had to make in conjunction with Telstra?

Mr Samuel—Actually I am not sure what decision we have given.

Senator CONROY—It is up to four rejections of their—

Mr Samuel—Undertaking?

Senator CONROY—Yes, of their undertaking. That is two years, four rejections.

Mr Samuel—But let me explain, of course, that we have no choice other than to simply reject an undertaking. It is put before us—rejected. Ultimately, of course, those issues, though, on pricing are determined by arbitration if a dispute is created. That is the alternative to dealing with the undertaking process. The development of the full-bodied operational separation framework will go through some—you call it difficult; I call it interesting—negotiating processes and in the end the minister will make a determination. It will be the minister to provide the full framework for operational separation. The minister has already demonstrated, despite some very significant, loud and amplified comments made by representatives of Telstra over recent times railing against the regulatory process that is both contained in the original legislation and contained in the legislation just passed by parliament, a very robust and rigorous approach to Telstra's complaints or plaintive cries in this area.

Senator CONROY—Mr McGauchie was pretty forthright in the show. I will just give you another quote. He said, 'If I can give a mark to the ACCC on policy on communications I'd give them zero.' That is a pretty low score.

Mr Samuel—Of course, that was in response I think to my own previous scoring, which was to give them 15 out of 10 for aggression and three out of 10 for effectiveness. I perhaps overrated them in terms of effectiveness.

Senator CONROY—It is getting to be a bit of a recurring theme. Mr Trujillo would describe it as, 'I have seen this movie before.' That is one of his favourite quotes. You said before that Telstra would pull their neck in eventually. You have believed that, haven't you? In fact, you have said, 'Once Telstra management recognises that it is just the ACCC's job to implement the regulatory regime that the government has developed, they will be able to just settle down and work within the framework that the government has now set.' Any sign of Telstra settling down at the moment?

Mr Samuel—But let me emphasise that the ACCC does not respond to, nor does it take much notice of, I have to say, public comments that are made by representatives of Telstra, through the media, whether it be on television or through the print media or through Collins and the print media that have been advised by Telstra as to a particular approach. We do not respond to that; we act in accordance with the requirements under the legislation and we will ultimately make determinations as we are vested with responsibility to do under the legislation.

In developing the operational separation framework, we will work with the department and with Telstra and provide all the expertise that we can to develop an effective operational separation framework. Ultimately, the minister will determine the form of that framework and, having been through the process that the minister has been through to date to get the legislation in place, I am absolutely confident that the minister well understands the objectives of operational separation and what it seeks to achieve, what he can achieve in the

development of a competitive telecommunications environment in this country in the foreseeable future, the ability it will give the ACCC and Telstra and Telstra's competitors to transparently see the way that Telstra undertakes its dealings with its own retail operations and with its wholesale competitors and, most importantly, the ability of the ACCC to enforce the provisions of part XIB of the act, the limitations of which were evidenced in our dealings with the broadband competition notice during the 2004 calendar year.

Senator CONROY—Given that the other players in the industry do not get a seat at the table, are you consulting with other industry representatives about their thoughts on the operational separation regime.

Mr Samuel—We take note of all interested stakeholders but, in the event, the primary objective that we have in the discussions with the department and with Telstra is to ensure that what is in place is a regime that fits within the legislative framework that has been set by parliament but, most importantly, enhances our ability to be able to see whether or not Telstra has been engaging in anticompetitive conduct. Clearly, to the extent that other interested stakeholders, whether they be competitors or whether they be international experts—particularly we note the expertise that has been developed albeit only recently by Ofcom in the United Kingdom—where we can gain some information and some expertise from those sources we will do so, all designed to assist the department and ultimately the minister to develop a robust operational separation framework.

Senator CONROY—I know you have put forward in the past a range of views and we did get a chance in that 12 minutes at the last inquiry to talk about some of them. What position are you putting forward as necessary for operational separation for Telstra in these negotiations? Are you starting from the same point that you had previously expressed?

Mr Samuel—I do not believe that our position has varied. Our position is exactly the same as we have previously expressed.

Senator CONROY—So, of the things that you believe an operational separation model should include, you are going into this negotiation saying, 'Here are the five things; this is what we think is necessary.' You are putting them on the table as part of the discussion?

Mr Samuel—They were put on the table at the Senate hearing and they have remained on the table and they have been repeated today, absolutely.

Senator CONROY—I have just a small number of questions regarding proposals from Telstra on the upgrading of its network. Are you aware of a recent proposal by Telstra that it made to the federal government to roll out a fibre to the node network?

Mr Samuel—Yes.

Senator CONROY—Has the ACCC undertaken any work to ascertain what the technology implications such a network would have for access based competition in Australia?

Mr Cosgrave—With telecommunications, the ACCC certainly keeps abreast of any proposals that are put publicly around network enhancement. We are thinking around those implications.

Senator CONROY—Is it correct to say that competition using DSLAMs installed in Telstra's exchanges to provide ADSL broadband products would be technologically incapable and impossible if a fibre to the node network was rolled out—they would actually become redundant?

Mr Cosgrave—That is one of the things we are examining. It is by no means clear that the proposition you put is necessarily the case. It may be. I am not discounting it, but it is not necessarily the case.

Senator CONROY—I am talking about technologically.

Mr Cosgrave—Yes.

Senator CONROY—Do you think they still might be able to actually function if one of their competitors has—

Mr Cosgrave—As I said, that is one of the things we are examining.

Senator CONROY—If one of their competitors has got a DSLAM in a Telstra exchange and they put fibre to the node, you think it is possible technologically for them to still actually use their DSLAM?

Mr Cosgrave—No, I think there are issues around location of competitor infrastructure, and that is what I was putting to you. I was putting to you that fibre to the node technology does not necessarily discount use of, for instance, unconditional local loops in the future.

Senator CONROY—If such a network involved the laying of fibre from Telstra exchanges to a RIM housing DSL equipment, would the current ULL decision permit competitors to install infrastructure in those RIMs?

Mr Cosgrave—That is one of the things we are examining at the moment.

Senator CONROY—Have you done any work to determine whether it would be physically possible to install competitive DSL equipment in such RIMs?

Mr Cosgrave—We are looking at the existing regulatory structure, and that is one of the things we are examining in that context.

Senator CONROY—No, I am asking if it is physically possible.

Mr Cosgrave—Physically possible to locate?

Senator CONROY—Yes.

Mr Cosgrave—The answer is at the moment that would depend upon the nature of the proposal and the nature of the node infrastructure that was—

Senator CONROY—That would be the size, when you say the node?

Mr Cosgrave—Yes, the size, exactly.

Senator CONROY—Would Telstra have a number of broadband compatible RIMs in operation at the moment? Would those RIMs be large enough to house competitive infrastructure?

Mr Cosgrave—Not in all cases.

Senator CONROY—Has the ACCC done any work to determine what would need to be done to ensure regulatory protection for access competition utilising competitor infrastructure on a fibre to the node network?

Mr Cosgrave—The ACCC is doing some work on that at present.

Senator CONROY—Any time line on when that will be available?

Mr Cosgrave—No.

Senator CONROY—You would agree that, given that Telstra is now floating this proposal publicly, there is a pressing need to consider this issue?

Mr Cosgrave—Clearly, there has been some form of proposal reported publicly. We are clearly thinking around the implications of that, if it is implemented.

Senator CONROY—One of the things that concerns me is that it is possible that a roll out along these lines could ultimately frustrate the ULL decision?

Mr Cosgrave—Yes, I would concede that that would be a concern to the commission if that was the result of any proposal.

Senator CONROY—Imagine that: they would get the government to subsidise their roll out and actually shaft the ACCC at the same time. Is that a piece of genius or what? You do not have to answer that.

Mr Cosgrave—I was not proposing to.

Senator CONROY—Has the ACCC provided advice to the government on the issue yet?

Mr Cosgrave—What advice we provide to the government is—

Senator CONROY—No, I just asked whether you had provided any advice.

Mr Cosgrave—Not in any detail at this time.

CHAIR—Is that the end of Telstra?

Senator CONROY—Yes, I think that is the end of Telstra from me.

CHAIR—Senator Joyce had some questions on Telstra.

Senator CONROY—I have no doubt about that.

CHAIR—If you do not mind, Senator Conroy, if Senator Joyce has questions on the same area, I might give him the call for a while.

Senator JOYCE—You have just mentioned the ACCC's drive to maintain an antimonopoly process. Do you feel that you currently have enough powers to pursue that process and do you know of any threats to that process into the future and your ability to monitor the monopoly structure of Telstra?

Mr Samuel—We think that the regulatory regime that has been in existence, as enhanced by the legislation that was passed in September, is going to provide us with a significant enhancement in our ability to enforce the processes available to us under both part IV of the Trade Practices Act and then parts XIB and XIC. You ask whether there are any issues that can impede our ability to deliver that process. Much will depend, of course, upon the

development of the operational separation framework. We have offered comments on that over the past few minutes.

In addition, the ability to deal with these issues depends upon the rigour with which we examine and deal with any anticompetitive conduct on the part of Telstra. Our ability to deal with that is going to be, we think, reasonably significantly enhanced by the operational separation provisions that were, in framework terms, legislated for back in September this year. We will of course await the outcome of the discussions and then, ultimately, the ministerial determinations in respect of those matters to see the effectiveness of those provisions and how much easier it will make it for us to be able to determine whether or not Telstra is behaving in an anticompetitive manner and, thus, enable us to exercise our powers under part XIB of the act.

Senator JOYCE—Is there anything that would, with regard to part XIB, for instance, actually assist you to do your job? Is there any strengthening of legislation that would assist you? Obviously, with Telstra you struggle. That is a fair comment as to how they have complied with what you say or how they actually work in some constructive manner with what you require. Do you have any suggested strengthening of any legislative regime that would give you more of an effective handle on someone like Telstra?

Mr Samuel—Let me by way of a precursor to providing an answer to that point out that the struggle appears to be, certainly in amplified terms, mostly on the part of Telstra. Telstra is the one that seems to be complaining most about the regulatory burden. The ACCC has not expressed, particularly since the legislation was passed in September this year, and has not indicated publicly any significant concerns with the regulatory regime. I think we will have to see how it transpires over time. But the enhancements that were provided in the September legislation do provide us with, we think, a very workable model for operational separation. Operational separation is not a means or is not an end in itself. It is a means to an end and the means is to provide transparency and equivalence in Telstra's dealings with its wholesale customers, as it does with its own retail division. We believe that the experience we had last year in dealing with the broadband competition notice showed up some weaknesses in part XIB. We think that for the most part those weaknesses have been dealt with by the legislation and the framework that was established by that legislation in September this year. I might note, by the way, that the financial penalties that are now able to be imposed on Telstra for engaging in anticompetitive conduct that falls foul of part XIB have, I think, been tripled, which imposes some quite significant financial burdens on Telstra in the event that we do detect anticompetitive conduct.

Senator JOYCE—Do you have any constraints in time or are there any other constraints that affect how you can effectively monitor Telstra, and do you know of anything impending into the future that might affect that?

Senator CONROY—He cannot say anything other than they are going fine at the moment.

CHAIR—Senator Conroy, let Senator Joyce frame his own questions and let Mr Samuel respond to them.

Mr Samuel—I would genuinely answer that if we felt that there were significant constraints I would obviously give you an honest response. But I can say to you that the

regulatory framework that is there is a workable model. There will always be time constraints involved in the process of dealing with anticompetitive conduct or in dealing with access issues and access pricing issues. In dealing with anticompetitive conduct, one of the most significant impediments that we have is the failure of others within the marketplace that may be affected by Telstra's anticompetitive conduct to provide us with the necessary evidence, the substantive evidence, necessary to be able to prosecute a case. We highlighted that in relation to the broadband competition notice. I think we have been assisted by the operational separation legislation that was passed in September this year. In dealing with access issues and access pricing, unless a dispute is brought to us, it is difficult for us to deal with these issues other than in the manner of sitting and waiting for undertakings to come from Telstra and then to have those undertakings rejected. That can go on forever. But, ultimately, that matter is brought to a head by a dispute being brought to us which enables us to make a final arbitration on those issues.

Senator JOYCE—You have already answered my next question. So you obviously believe that since the passage of the September legislation your position has been strengthened in such a form that you can better monitor how Telstra works within the marketplace. That has been affected in quite a substantive form?

Mr Samuel—Yes, subject to the final determination by the minister of the operational separation framework. But as I have indicated, I think that the minister has already indicated, and demonstrated a determination to bring about an operational separation framework that will serve the objective that she outlined when the legislation was introduced.

Senator JOYCE—So regardless of the ownership of Telstra, prior and post the passage of the September legislation, the position of the people wanting to compete with Telstra or the consumer has been strengthened?

Mr Samuel—Yes. The ownership of Telstra actually makes no difference at all to the operation of the competition or the anticompetitive provisions of the Trade Practices Act. I indicated before you came in, Senator, in my opening comments that the ACCC remains agnostic over the ownership of Telstra. It matters not one iota to us whether Telstra is wholly owned by government or government owns not one share in it. The regulatory regime operates irrespective and it is designed to bring about a competitive environment in the sector of telecommunications in this country. We think that the regime has been developed to a level that would enable a workable process to be adopted to bring about that competitive outcome and objective.

Senator JOYCE—In your own words, where do you see this ending up if Telstra continued to stymie the process and basically muddy the waters, prevaricate, obfuscate and basically avoid ever having to comply?

Mr Samuel—We need to remember that what Telstra is doing at the moment is endeavouring to have external influences brought upon the ACCC. So its first stage was to endeavour to have prevented the processes that the ACCC had sought and that the minister had thought were appropriate, which was the introduction of operational separation into the legislation. They sought to have it not included in the legislation the week before parliament. I have to say that Telstra's pleas in that area, Telstra's loud and amplified complaints in that

area, were ignored by government. Government took a view that it needed to introduce a process to enhance the ACCC's regulatory ability and regulatory processes in the interests of enhancing competition in the sector of telecommunications in this country in the interests of all Australians rather than the interests of the incumbent. So to that extent, Telstra has hit a brick wall.

Telstra then moved from that brick wall. I was going to say it moved to another brick wall, but we will have to wait and see. But it has moved to another area, which is to endeavour to have government intervene in the regulatory process of the ACCC setting ULL access prices. Now it is entirely a matter for government whether government intervenes. But if government does not intervene, Telstra will need to deal with the ACCC on that issue, as it is at present. The ACCC will ultimately arbitrate on that issue free, I have to say, of any influence from Telstra other than any rigorous analysis that Telstra or anyone else wants to put to the ACCC in assisting it to make its final determination in that matter.

Senator JOYCE—Obviously Telstra put up the argument of the averaging of the retail and the averaging of the wholesale. You have the averaging of both. You cannot have one or the other. No doubt you would have seen the OECD report that has been passed around in support of their position. I would be interested in your comments on that specific OECD report.

Senator CONROY—He spent half an hour on this topic.

Senator JOYCE—Did he?

CHAIR—That is all right. Mr Samuel can respond to your question.

Senator JOYCE—I would be interested to hear that. I gather from what you have said that you too can see no veracity in the \$800 million argument, which is another number that some people say exists and some people say does not exist. Until we see it written down, I would be interested to know your comments on the \$800 million cost argument.

Mr Samuel—I could repeat it, although I am not sure that the patience of some other senators would permit me to repeat the totality of my opening statement, which unfortunately took longer than I had hoped it would take, although I did try to speak very fast in making it.

Senator JOYCE—You got some practice at the Telstra inquiry.

CHAIR—Indeed you did, Mr Samuel. Perhaps you could give Senator Joyce a *Reader's Digest* version of the two points. Perhaps if you have extra copies of your opening statement, copies could be furnished to him.

Mr Samuel—I can do that. I did note this. Firstly, it is not an OECD report. It is a staff paper. The OECD has many staff papers that are presented to it from time to time. It has not been considered yet by the OECD competition committee and certainly has not been adopted by the OECD at this point of time. So it is merely a staff paper. As I say, staff papers can come representing all sorts of different views. But, importantly—and this is the comment I made in the opening comments—not only has the staff paper been overstated in terms of its relevance by Telstra in distributing the document, but in addition it has been misrepresented. Perhaps I will give you a very, very short quote from the staff paper to indicate the position that has been taken. It says this:

A more complete extract indicates that the staff paper considers that geographically deaveraged ULL prices, where ULL charges are based on actual costs—

which is what deaveraging does—

is a superior method of maximising competition and ensuring efficient investment signals.

A quote from the staff paper says as follows:

A preferable approach is to set the price for unbundled local loop equal to the cost of those loops and to use taxes on the retail products of the incumbent and its rivals to recover any fixed costs or access deficit. In practice, this would likely imply the establishment of some form of universal service funding mechanism.

The staff paper also notes that a key problem is that average ULL prices are not sustainable in a competitive environment. The paper recommends that the only solution to the problem—the problem is the one you have summarised, which is providing average retail prices and deaveraging wholesale prices—is for funding for these services to be sourced from the industry by way of a taxation approach on retail services. That is equivalent to the current USO mechanism applicable in Australia.

Senator JOYCE—My final question—

Mr Samuel—Sorry, by the way, I did not answer you in respect of the \$800 million. What we did say on that was to date, despite the fact that the \$800 million has been floated all over the place by Telstra on many, many occasions—and this \$800 million, by the way, relates to the ULL pricing issue and the issue of deaveraging—there has been no analysis of that or no justification for that presented by Telstra to any party outside Telstra as far as we are aware.

Senator JOYCE—Have Telstra ever acknowledged to you that there is a formulation for that number? Have they ever said: ‘We have actually calculated it. We have the workings on it?’

Mr Samuel—No, not to my knowledge, and not to the knowledge of my colleagues here. I did mention, by the way, in my opening comments that Telstra has on the table before the ACCC at this very point in time a deaveraged wholesale accessing pricing proposal, which provides for \$13 wholesale excess pricing in the CBD, \$22 in metropolitan areas, \$40 in regional Australia and \$100 in rural Australia. It is sitting there on the table at the moment, which is somewhat contradictory to what they are arguing should not apply.

Senator JOYCE—Do you see this proposal with the band four area to be onerous on investment outcomes for telecommunications in rural and regional Australia? The argument is put out there that this will, in effect, if it is forced on them bring about basically a disincentive to do any further investment in rural and regional Australia.

Mr Dimasi—Averaging across the four bands would not lead to any greater incentive on Telstra, or indeed anybody else’s part, to invest in rural and regional Australia. If deaveraging allows the right signals so people will invest based on the charge, the issue is rather one of having average retail price. So the question is: what is the best mechanism for achieving that with a deaveraged wholesale price which leads to the potential for greater competition? One of the mechanisms that you could achieve that with is through the various USO funding arrangements. That is the path that Australia has taken. You could have other arrangements, as

suggested by the OECD staff paper, for example. So the issue is how you achieve that objective if that is your objective. But to suggest that by averaging you increase the incentive to invest in regional and rural, we would reject that. I do not see how it would increase the incentive to invest in regional and rural Australia whatsoever.

Mr Samuel—Actually, it is a contradiction. If you work on the basis that deaveraging reflects the inherent costs of development of the infrastructure, averaging provides in the ultimate a disincentive to invest in rural Australia.

Mr Dimasi—Correct.

Mr Samuel—If you work on the basis, for example, of the current figures provided by Telstra, which says that they want to undertake to charge a wholesale excess of \$100 for rural Australia, that must reflect at least their estimate of the efficient costs of investment in rural Australia. If they then say what they would rather do is charge \$35 or \$40 for rural band four, that has to be significantly below their cost. What it does lead to, as the OECD staff paper suggests, is distortion in the investment outcomes.

Senator JOYCE—Thank you for that. I will grab your *Reader's Digest* with pictures later.

Mr Cassidy—On that, whilst we aim to be helpful and hand it over, Mr Cosgrave has just pointed out to me—those who listened to the chairman's opening remarks may find this a bit hard to believe—there is actually some material in here that the chairman did not use in his opening remarks. So what we will do is edit it down to exactly what the chairman said and get it to you tomorrow.

CHAIR—I thought it was such a comprehensive tour d'horizon that there would be nothing missing, Mr Cassidy.

Mr Samuel—I took some out but then elaborated in other areas in order to achieve that record of proximity that Senator Conroy commented upon.

Senator CONROY—I was not being critical. I acknowledge that there was a need for it.

CHAIR—Senator Allison has inquired whether you want to incorporate any of the omitted material into *Hansard*, Mr Samuel. It is a matter for you.

Mr Samuel—No. We will stay with the opening statement.

CHAIR—Thank you. Back to you, Senator Conroy.

Senator CONROY—I would like to turn to the work the ACCC has been doing in defining media markets. Has the ACCC been working with the department of communications on the possible impact of repealing the cross-media ownership laws on media markets?

Mr Dimasi—The ACCC has been doing some work in looking at media markets. In particular, we are interested in—

Senator CONROY—I was asking about work with the department.

Mr Dimasi—We liaise with the department and let them know our thoughts on these things, yes.

Senator CONROY—How many meetings have taken place?

Mr Cosgrave—I do not know that I have particularly sought to count them. They are not too numerous. There were two or three.

Senator CONROY—So discussions are ongoing?

Mr Cosgrave—There are ongoing discussions at all times on a range of issues.

Senator CONROY—Has the ACCC done any work on whether there is a market for news and current affairs, or has work primarily focused on the classified or advertising markets?

Mr Samuel—No. We are examining all the markets. I think it would be obvious from several published speeches I have made of recent times that we are examining a number of markets relating to the media and the development of those markets, particularly in the context of convergence. Included in that would be an examination of whether there is, and how one measures, a market for news and information services, although much of the commentary that has been made in public papers has focused on content, such as classified advertising in its various formats and sporting content and the like. I think I have also made comments in the public arena that have suggested we are examining the measuring of a market for news and information services.

Senator CONROY—News Ltd has recently purchased realestate.com.au. Was that takeover examined by the ACCC?

Mr Samuel—Yes, it was.

Senator CONROY—How did you define the classified market for that exercise?

Mr Grimwade—I seem to recall in the examination of that matter there was no need to precisely define the market because whatever the market, whether it was broad or narrow, there was not going to be a substantial lessening of competition.

Senator CONROY—Sorry, whether it was?

Mr Grimwade—Whether it was broad or narrow.

Mr Samuel—Broad and narrow is whether it included print and electronic—that is online—or whether it was just narrowed down to online. Either way, it would not have led to a substantial lessening of competition.

Senator CONROY—Can you give me an outline of your thinking on that. Why did you believe that was the case?

Mr Grimwade—My recollection is that we had a look at the overlap in terms of online and print. We had regard to what we saw as levels of concentration. We had regard to the dynamism of the market, the ability for new entry, including online, those sorts of factors which are set out in section 53 of the act which we are required to apply in a competition analysis.

Senator CONROY—I just find it a little unusual for you to be able to say that, no, there is no lessening of competition in a market when you actually did not seek to classify what the market was.

Mr Samuel—I think what we said was that—

CHAIR—Whether there was a broad or a narrow market, there would not have been a substantial lessening of competition.

Mr Samuel—We certainly determined it.

Senator CONROY—That is not what they said, Senator Brandis. Can you let them answer the questions rather answer on their behalf. You are not on a retainer from them today.

CHAIR—Senator Conroy, do not put back to witnesses statements they did not make as if they made them. You cannot do that.

Senator CONROY—As you said, I think Mr Samuel is more than capable of looking after himself, and you should take your own advice.

CHAIR—But I am not going to have any witness treated unfairly, and that includes putting back to them statements on the basis that they made the statements when in fact they said something different.

Senator CONROY—We could stop and get Hansard to give us a copy, if you like.

CHAIR—We will not waste time doing that. I am drawing that to your attention. Mr Samuel.

Mr Samuel—Let me perhaps elaborate on what I was putting to the committee before, which is in examining this matter we always consider whether or not there will be a substantial lessening of competition. The question is: what is the market that we look at? In this context, we looked at both a broad market of print and online and then a narrow market of online on its own to determine whether or not there would be a substantial lessening of competition. Even if you had taken the narrow market of online on its own or you had taken the broader market of online and print, in either circumstance we determined there would not be an SLC, a substantial lessening of competition. Therefore, we were able to clear the acquisition.

Senator CONROY—So what about the Brisbane and Adelaide classified markets, where there is only one print media?

Mr Samuel—As I said, we looked at the issue of both print and online and online on its own. In the context of print, there was no further concentration because, of course, there was an online advertising medium. In terms of online, we looked at the issue of whether the acquisition would lead to a substantial lessening of competition in the online market and formed the conclusion that it would not because of relatively light barriers to entry, other competitors in the marketplace and the other factors that we would normally take into account.

Senator CONROY—Going back to the issue of the market and the use of current affairs, what do you see are the problems in trying to measure that market?

Mr Samuel—It is not a matter that we have gone into in any depth at this stage. But the expert economists within the commission staff will say that measuring news and information is not capable of easy economic measurement in the way that one would normally apply economic measurements to other markets and to competition in those other markets. On the other hand, as we have commented in the various public papers that we have issued on this

matter, which at this stage is only at its incipiency, with the result of convergence there is a potential for substantial diversification of sources for news and information and opinion from a range of sources in the future. The question is: when will that occur? Whether convergence will occur in the way that some have predicted it will or whether it will occur in different ways, these are all matters that we are focusing on at the present time.

Senator CONROY—In her speech to the Press Club in August, Senator Coonan floated a so-called diversity test as a replacement for the cross-media rules. Are you familiar with that speech?

Mr Samuel—Vaguely, yes. We have not been into it in detail.

Senator CONROY—I thought you were in discussions with the department.

Mr Samuel—Yes.

Senator CONROY—Presumably you do talk about what the minister says.

Mr Samuel—Let me emphasise that in our discussions with the department, of course they will be interested in our views as to how we would interpret section 50 of the Trade Practices Act and other provisions, including sections 45 and 47 in relation to content aggregations, and what sort of interpretation we might place on markets, all of which may or may not be relevant to the department determining the advice it gives the minister as to the course that the government might or might not take in relation to media regulation in the future.

Senator CONROY—Under the test, a merger between television, radio and newspaper companies could not proceed unless there would remain at least five commercial media groups in mainland state capitals and four in regional areas. Are you familiar with that part of it?

Mr Samuel—I am familiar with the five-four test, yes.

Senator CONROY—Has the ACCC made any assessment of the impact of this proposal?

Mr Samuel—Not really. It is a matter obviously for government policy. My understanding is that no specific proposals have been put to us at this point in time. But in the event—

Senator CONROY—Well, what is it you are having conversations with the government about if you are not talking about their proposals?

Mr Samuel—As I was explaining before, the issues that we discuss with the department are issues within our responsibility and within our remit, which is how we do interpret and would in the future interpret the application of section 50 and then, in another context, sections 45 and 47 of the Trade Practices Act in various scenarios, which could encompass both existing regulations staying in place and/or existing regulations being modified by one form or another.

The primary issue is that whether regulations provide for nine, eight, seven, six, five, four, three, two or one does not matter for us in terms of diversity regulation. We will still apply the tests of substantial lessening of competition contained in sections 45, 47 and 50 under the law as it currently stands and will continue to do so in the future. That law will always apply irrespective of any other laws or other regulations or constraints that may exist in quantitative terms in terms of further concentration in the media market. They exist at present. They are

applied by us at the present time, as was most recently exhibited in the acquisition by the Macquarie Bank radio group of regional stations throughout this country.

Senator CONROY—Is the ACCC aware that under Senator Coonan's proposal any company that owns a newspaper, a commercial television licence or a commercial radio licence is defined as a media group?

Mr Samuel—It is not a matter that is within our remit. I am not sure. I do not think that we have been apprised of that much detail as to some of these issues.

Mr Cosgrave—It is not a matter that has come up specifically in any conversation we have had with the department.

Senator CONROY—It has not come up in your discussions?

Mr Cosgrave—The chairman has correctly characterised the nature of the conversations we have been having, which is on our views around market definition.

Senator CONROY—Take me through the test for section 50 again.

Mr Samuel—Whether in any market an acquisition of shares or assets would be likely to lead to a substantial lessening of competition. That test applies whether there is a numerical restriction of five, four, three, two or one. I think it is important we understand this. Let us assume that a five-four regulatory test is imposed under the broadcasting act or whatever it might be. It may well be that the view that is taken by the commission in any given set of circumstances is that, even though an acquisition would fall to be cleared under the five-four test, it would not be cleared by the ACCC because it would be likely to lead to a substantial lessening of competition. That is the way our law applies.

Senator CONROY—You have said earlier that it is hard to define a news market.

Mr Samuel—I think I said that it was not capable of easy economic definition. It requires somewhat more complex analysis. But it is not something that economists shy from.

Senator CONROY—How do you make section 50 work for the news market?

Mr Samuel—It is an area that we are currently examining. I have to say to you that the concept of the definition of news markets is a different form of concept than that which normally applies to, for example, more commercial markets such as classified advertising.

Senator CONROY—I am agreeing with you. I am inviting you to illuminate us on your thinking.

Mr Samuel—At the present time I cannot because we are still at our early stages of thinking and analysis in this area, so I cannot give you any more information at this point of time.

Senator CONROY—I think the department did at the estimates hearing on Monday night. I asked Mr Cameron from the department. Are you familiar with Mr Cameron, Mr Cosgrave?

Mr Cosgrave—Yes.

Senator CONROY—I asked him what would be a media group for the purpose of the test. Senator Kemp said:

I will leave that for Mr Cameron to answer.

Mr Cameron said:

A media group would be a group of one or more licensed television services, radio services or associated newspapers in a market where they are under common control.

I asked him some other questions. He then said:

It would include assessment of the relevant media entities, any commercial television licence, any commercial radio licence and any associated newspaper.

I asked:

So those are the three things that are the test for a media group?

Mr Cameron replied:

That is correct.

Does that seem clear?

Mr Cosgrave—That is presumably for the five-four test you are talking about.

Mr Cassidy—That is the diversity test, presumably.

Senator CONROY—That is what I was discussing with Mr Cameron.

Mr Samuel—I have to say to you that is not that relevant to our consideration of these matters.

Senator CONROY—No. I am going to come to that. That is actually where I am going. Under that definition stated by Mr Cameron, Channel 9 and Radio Sport in Melbourne are given the same weighting in terms of their contribution to media diversity. Does that seem to make sense to you, Mr Samuel?

Mr Samuel—It is not for us to make sense or otherwise. I have to stress this. The issues that the government and/or the department are considering, as you have outlined them, are not of enormous relevance to us. They are merely permissive. They are permissive in terms of providing quantitative indications and quantitative regulations as to mergers that might or might not be able to take place under that legislation. Irrespective of any permission that might be given under that legislation for a merger to take place, any merger, under the law as it currently applies, will be required to be considered by the ACCC under the competition provisions of the Trade Practices Act and will continue to do so. So it will go through one permissive test, if you like, that may be administered by ACMA under the appropriate legislation. That is entirely a matter for government. But in the event, it will have to come before the ACCC for consideration under section 50 of the act.

Senator CONROY—Under this particular proposal, if you take Sydney, you could get the following media combinations under the diversity test before—

Mr Samuel—Before it comes to us.

Senator CONROY—Before it comes to you. You might get News Ltd, Channel 7 and 2UE in one group; Nine, SMH Fairfax, 2GB Macquarie in another; and a third group comprising Channel 10 and, say, Austereo. The two other groups would be just radio stations, such as DMG Nova and 2SM. That would be five media groups. Would that pass a test, do you think?

Mr Samuel—Which test?

Senator CONROY—Your test—section 50 or any of the ones you have outlined.

Mr Samuel—I would probably need to adjourn for about 15 minutes so that we could consider the markets in detail, conduct a full rigorous analysis and then try and give you an opinion. I answer that somewhat cynically—

Senator CONROY—It is pretty straightforward.

Mr Samuel—and I should not do so. But let me say to you—

Senator CONROY—News Ltd, Channel 7 and 2UE in one group?

Mr Samuel—I could not give you an answer.

CHAIR—Let him finish.

Mr Samuel—I could not give you an answer. It would not be appropriate for us to give an answer without conducting extensive analysis, extensive inquiries and market inquiries examining all the relevant markets, not just the markets for print or electronic media, as we have been endeavouring to make clear over recent times, but looking at all the relevant markets that might be affected. If there is only one market—one submarket, for example—that was affected by that acquisition that could not otherwise be dealt with and where a substantial lessening of competition might take place, the acquisition could not proceed under the Trade Practices Act.

Mr Cassidy—Part of the problem is that that is the diversity test. That would be the test that would be applied in relation to diversity. There would then be a particular acquisition or merger proposal which we would be looking at. Having passed the diversity test, we then look at whatever the particular merger or acquisition proposal is. So we cannot hypothetically say to you, ‘Yes, that would or would not pass,’ because it would depend on the particular transactional acquisition that we were asked to assess.

Senator CONROY—That is exactly why we need cross-media laws—just in case one of those could be slipped through.

Mr Samuel—That is not a matter for us. That is a matter for government. But all that we are trying to indicate is this: whatever permissions might or might not be contained in the broadcasting legislation that might be administered, for example, by ACMA, ultimately all acquisitions and all mergers fall to be considered under the competition provisions of the Trade Practices Act. Those competition provisions are designed to ensure that ultimately Australian consumers benefit from the disciplines of competition—that is, diversity, choice and ultimately quality, lower prices and innovation.

Senator CONROY—Do you think the Trade Practices Act is sufficient to guarantee diversity of news?

Mr Samuel—Let me go back and repeat what the Trade Practices Act is designed to achieve, which is to achieve competition in terms of choice for consumers, which ultimately leads to a higher quality of services, leads to a diversity of services—that is, choice for consumers—leads to lower prices and leads to incentives on the part of competitors to innovate and to provide different choices for consumers.

Senator CONROY—Thank you for reading the act back to me. What I am asking is: would you contend—and you can happily say no if you like—that the Trade Practices Act is sufficient to guarantee news and current affairs diversity by itself?

Mr Cassidy—But that is not the proposal.

Senator CONROY—But I am asking you.

Mr Cassidy—But the proposal, as I understand it, that the minister has outlined in her speech is that there will be a diversity test.

Senator CONROY—I have moved on from that.

Mr Cassidy—It is important because it is implicit in what the minister has outlined. As we understand it, the government is not going to be relying purely on the Trade Practices Act to ensure the outcomes—

Senator CONROY—I am just asking whether you think you could manage the situation to achieve—

CHAIR—Order! Senator Conroy, let Mr Cassidy finish what he was saying.

Senator CONROY—If he answered my question rather than wanting to—

CHAIR—Senator Conroy, Mr Cassidy was in the course of answering. Mr Cassidy, please finish.

Mr Cassidy—As I was saying, as we understand what the minister has said, the government is not expecting the Trade Practices Act to deliver both a competitive market and, if you like, a diverse market. That is why the government is talking about some sort of separate diversity test. If you like, the government is already saying that the Trade Practices Act in and of itself is not going to deal with the issue of diversity.

Senator CONROY—But I am asking what the ACCC thinks, not what the government thinks. Does the ACCC believe that the Trade Practices Act is sufficient to deliver diversity in the news and current affairs market?

Mr Samuel—I think as we have endeavoured to make clear in the various public papers that we have delivered on this subject, there are two fundamental issues that we are examining at the moment. The first is the way in which we measure markets and the way, therefore, we apply the competition test to those markets. That is a developing process that we are undertaking at the present time. But the second one—and it is probably even more important and it affects the first process—is the development of convergence and where convergence might lead us in terms of diversity of offerings for consumers.

We can all speculate on convergence. We can all speculate on technological developments. We can all speculate on where consumers might exercise their choice. I guess the process that we are adopting at the moment is to try to look forward, both from overseas experience and from the experience we can gain from the developments that are occurring in Australia, to determine whether or not that convergence of itself may indeed provide diversity of offering and diversity of choice for consumers irrespective of cross-media or other regulations. It may well be that over a period of time technological developments provide such a diversity of

choice that current or future cross-media regulations become less relevant in dealing with the issue that you are raising, which is diversity of offering.

Senator CONROY—That was a long-winded way to avoid the question, Mr Samuel, but I appreciate it. In other countries, regulations employ a share of voice test to assess the effect of a media merger on the diversity of opinion. Has the ACCC examined any of these approaches?

Mr Samuel—Could I have that again. I just missed the beginning of it.

Senator CONROY—I think Senator Brandis was mumbling into his microphone. In other countries, regulators employ a share of voice test to assess the effect of a media merger on the diversity of opinion. Has the ACCC examined any of these approaches?

Mr Samuel—They are one of a number of issues that we are examining at the moment. As I say, it is only at its early stages of development.

Senator CONROY—Is there any information that you able to share with us about how it would work? Have you got that far down—

Mr Samuel—No. Remember that the issue of share of voices is not primarily a matter we have to consider in the context of our competition test.

Senator CONROY—Is there any way you can see that a merger between PBL and News Ltd could take place that would pass your Trade Practices Act?

Mr Samuel—It would not be appropriate for us to comment at this point of time. I give the same answer as I gave to those that you postulated before—that is, we need to undertake careful market inquiries, proper rigorous analysis, look at all the relevant parts—

Senator CONROY—Which part of the laying of the two gorillas together do you need in order to have a careful market inquiry into it?

Mr Samuel—It is not appropriate to comment. Every single merger proposal that is put before us needs to be examined rigorously.

Senator CONROY—Surely you can just say, ‘No, that one couldn’t possibly pass the test.’

CHAIR—Senator Conroy, let Mr Samuel finish.

Mr Samuel—The reason I say that is very deliberate. So often we find that in significant mergers put before us, particularly in the public listed company sense, various media commentators are very quick to form their view as to our view on the matter, which inclines me to subject to Mr Grimwade that he should pull our investigators and analysts off the matter because clearly the matter has already been determined by the media and they know which way it is going to go. We do conduct very extensive analysis. We listen to all the views. As I pointed out before in the context of the Woolworths and Action stores, we listen to the views coming from a range of stakeholders, politicians from both sides of politics at both federal and state levels and all interested stakeholders. But ultimately we have to form a view that will satisfy the legal tests contained in section 50 of the Trade Practices Act because, in the event, our view is ultimately subject to review and final determination by the Federal Court.

Senator CONROY—What are the non-economic issues that you described that make it hard to define the news and current affairs market?

Mr Samuel—News and current affairs is not priced. It is not a market that you can economically test according to price. It has different values and a different process of analysis. It is not incapable of being analysed, and economists do it, but it is a new area. It is a new area primarily because in most nations there are other forms of constraint or regulation imposed.

Senator CONROY—I am surprised you say it is a new area.

Mr Samuel—It is not an area that we have in the context of Australia analysed in detail because it has not been appropriate for us to do so. We have not had cause to do this.

Senator CONROY—Are you looking at this at the moment?

Mr Samuel—Yes.

Senator CONROY—So you are undertaking some work?

Mr Samuel—Yes.

Senator CONROY—On 3 October, the *Australian Financial Review* published an article by Fred Brenchley which reported that the ACCC planned to unveil, and I quote, ‘what it says are radical new guidelines for media mergers as it prepares for the Howard government’s deregulation of cross- and foreign ownership rules.’ Are you familiar with that article, Mr Samuel?

Mr Samuel—I am very familiar with it, yes.

Senator CONROY—You are quoted in it extensively, so I am pleased to see that.

Mr Samuel—I am not sure the quotes actually related to the substance of the article, but that does not matter. They often do not.

Senator CONROY—I am assuming you are the source of the story. You are extensively quoted in it.

Mr Samuel—Again, as I say, I am not sure that the quotes bore any relationship to the substance of the article.

Senator CONROY—Are you denying they are your quotes?

Mr Samuel—No. The quotes are perfectly accurate. What I am saying is that I am not sure that the quotes bore any relationship to the substance of the article or the headline. I also would refer you to an article written by Jane Schulz of the *Australian* of just a few days ago.

Senator CONROY—Is she allowed to write on the media again?

CHAIR—Senator Conroy, stop it. Let Mr Samuel finish.

Mr Samuel—It made it very clear—

Senator CONROY—I thought they had sin binned her.

CHAIR—Senator Conroy, stop it.

Mr Samuel—We do not have sin bins, Senator.

Senator CONROY—No, I do not mean yours.

Mr Samuel—Anyway, Jane Schulz—I am sure it was in the *Australian*—reported comments I made at the Australian British Chamber of Commerce lunch in Sydney and that I subsequently made to her that there were not going to be any—I am not sure what words she used.

Senator CONROY—I think you are pre-empting my questions, here, Mr Samuel. I have not actually got to my questions and, seriously, I think you are actually pre-empting my questions.

Mr Samuel—You asked me whether I was familiar with the article and whether the quotes were accurate. There will be no guidelines issued in the foreseeable future on this issue.

Senator CONROY—I was just going to ask how the guidelines are progressing.

Mr Samuel—I just said to you there will be no guidelines. That is why I said to you I did not think that the quotes that were attributed to me, which were accurate, bore any relevance to the substance of the article.

Senator CONROY—So Mr Brenchley is mistaken when he suggests the ACCC will provide hypothetical merger scenarios?

Mr Samuel—I think that is a matter to put to Mr Brenchley. All I am saying to you is that the quotes attributed to me did not bear much relevance to the substance of the article and there will be no guidelines issued. It was never intended that there be any guidelines issued.

Senator CONROY—So there was never any intention to issue guidelines?

Mr Samuel—Not in the immediate future, no.

Senator CONROY—There was never any intention?

Mr Samuel—We normally do not issue guidelines about—

Mr Cassidy—We would not be issuing hypothetical guidelines.

Mr Samuel—We do not issue hypothetical guidelines in relation to specific sectors and say, ‘In relation to this sector, if A were to merge with B, then the likely outcome would be as follows.’ We could not do that without undertaking extensive inquiries. Of course, that sort of hypothetical guideline issued by us would be extremely market sensitive and have major market implications, so it is not our practice to do just that.

Senator CONROY—Has the ACCC discussed the idea of issuing media merger guidelines with the minister for communications or her department?

Mr Samuel—No.

Senator CONROY—Senator Abetz, does the government have a view about whether the ACCC should issue media merger guidelines?

Senator Abetz—I dare say somebody in the government may have some views. I am happy to take that on notice to the relevant minister.

Senator CONROY—I am confused because Minister Coonan seems to think guidelines are a good idea. In August at the Press Club she said:

The Government appreciates that from industry's point of view a high level of regulatory certainty is desirable. The ACCC already has published guidelines detailing the factors they take into account in assessing mergers.

She went on to say:

Once the Government's media reform framework has been settled, there would also be value in the ACCC articulating more clearly how it would propose to deal with media mergers in the future. All these measures will contribute to parties being able to proceed with confidence.

Mr Samuel—That is exactly what we are doing, if I might say so, Senator. The speeches that I have been giving have been providing some clarity as to the sorts of questions we ask, as to the sorts of issues we would take into account.

Senator CONROY—That is not what Senator Coonan is talking about, Mr Samuel.

Mr Samuel—You would have to address that to Senator Coonan, but I think you will find that—

Senator CONROY—Does she have any idea what she is talking about?

CHAIR—Come on, Senator Conroy. We know that is out of the ballpark. You can ask Mr Samuel about the ACCC.

Senator CONROY—Just on the point of order: I thought earlier in the day you suggested to Senator Abetz that I might be able to ask any politically loaded question that I wanted and that Mr Samuel was perfectly capable of dealing with them.

CHAIR—Senator Conroy, I am prepared to allow a tolerable level of politically loaded questions.

Senator Abetz—You opened the gate, Mr Chair.

CHAIR—I did. Thank you, Senator Abetz. Even Senator Abetz is perfectly prepared to allow a degree of political badinage, as is the custom in these proceedings, but you cannot ask Mr Samuel what Senator Coonan thinks, not because it is political but because it is not a question for this witness.

Senator CONROY—Sorry, Mr Samuel, did you want to finish an answer to a question?

Mr Samuel—I thought it had just been finished.

Senator CONROY—I was not aware that Senator Brandis could speak on your behalf. You should not let him badger you like that, Mr Samuel.

Mr Samuel—I am happy to adopt and choose my own words—those just used by Senator Brandis in responding to your question.

Senator Abetz—Next question, Senator Conroy.

Senator CONROY—Perhaps you are working as a legal brief for him now, Mr Samuel.

Senator Abetz—Next relevant question to the witness, please, Senator Conroy.

Senator CONROY—Thank you for determining how relevant my questions are, as always. Has the ACCC advised the minister of its position?

Mr Samuel—I think the minister will have been able to read the various public speeches I have made on the subject. They will provide guidance as to the current issues that the commission are thinking about and examining, the questions they are asking and the sorts of matters we might take into account. But those issues are mere indications at this point of time. I would have to say to you that the media sector, in certain respects, other than the layer of regulations contained under the broadcasting and television act and foreign investment regulations and the like, is no different from any other industry sector in this country. Advisers know the sorts of issues we would take into account. They know the economic analyses that we undertake. They have economic and legal experts who are able to advise them. From that they derive certainty or uncertainty as to whether or not to proceed.

As the statistics I have provided earlier indicate, of the 189 mergers that were submitted to us in the past year, we only rejected two. We regarded 32, I think it was, as being complex. They are the ones about which I expect economic and legal advisers to the parties concerned said, ‘These are mergers that may require further analysis and discussion with the ACCC.’ We remain, as always under our informal clearance process, open and receptive to discuss with parties confidentially, if it is appropriate, any proposals for merger and to give some guidance as to the sorts of issues that we might take into account. We have considered a number of mergers during the past year, on a confidential basis and, indeed, cleared some on a confidential basis. In others, we take a position that we either cannot form a view without making public market inquiries or we have formed a view but that view might well change, having undertaken public market inquiries, as is standard process. That provides a high level of certainty and predictability but also provides uncertainty where one is sitting on the border of the application of the substantial lessening of competition test under section 50 of the act.

Senator CONROY—Thank you for that. I want to talk about an answer you gave a little earlier. We were talking about the news and current affairs market. I am looking at a speech of yours given at the Melbourne Press Club on 26 August. You said:

I should state here that whatever changes are made to the laws controlling media ownership or broadcasting spectrum are entirely a matter for Federal Parliament. Whether or not cross-media restrictions are removed, for example, is up to parliament. I therefore won’t be commenting on such policy matters.

Mr Samuel—Correct.

CHAIR—Senator Conroy, I am not necessarily disposed to interrupt you, but Senator Allison has been called to an urgent appointment. If she cannot interpose now, she will not get the chance to ask her questions. I wonder whether you would be kind enough to indulge Senator Allison so she can ask her questions now and leave.

Senator CONROY—I am only too happy to indulge Senator Allison.

Senator ALLISON—Much appreciated. Mr Samuel, Mr Cassidy and Mr Antich, it is about—

Senator CONROY—How long do you think you will be, Senator Allison?

Senator ALLISON—It depends on the answer, really, Senator Conroy, but not very long.

Senator CONROY—We will be here for hours, then. You missed his opening speech.

Senator ALLISON—I wonder if you could give the committee an update on your progress with Imperial Tobacco and the ‘mild’ and ‘light’ problem and the progress on the package of advertising to overcome the damage done by ‘mild’ and ‘light’ promotion.

Mr Samuel—I am pleased to be able to report that we are nearing a potential resolution of the outstanding issues with Imperial Tobacco. Given that they are still in the process of negotiation, it would not be appropriate for me to provide any more detail or comment. But things—

Senator ALLISON—Could you give the committee a date by which this will be resolved?

Mr Samuel—The problem is that every time one sets a deadline the deadline is not met. I would say that reaching a satisfactory outcome with Imperial Tobacco is very near indeed. I am sorry I cannot report on that at this point of time because we have not yet completed. But I think it is fair to say that we have had some very satisfactory negotiations and discussions with Imperial Tobacco over more recent times. I am hopeful that we will have a satisfactory outcome on the Imperial Tobacco position in the not-too-distant future or the very near future. In terms of the package, I might refer you to Mr Antich, just for a comment on where we are currently on that.

Senator ALLISON—Before you do, I might go back to the agreement with Imperial Tobacco. You said in answer to my questions—I think they were on notice—that Imperial Tobacco had already removed their descriptors from Horizon, which is their main brand here and in New Zealand. What remains on the shelves at the present time with ‘mild’ and ‘light’ on it, by way of their products?

Mr Cassidy—As part of our discussions with Imperial, Imperial have now stopped importing and producing any cigarettes with ‘light’ and ‘mild’ descriptors. So what is out there on the shelves, either for Imperial or, for that matter, the other two tobacco companies, is basically old stock. From an enforcement point of view, our requirement applies, if you like, at the wholesale or production level in terms of when the ‘light’ and ‘mild’ descriptors were to be removed or were to cease being imported. That is how it occurred for all three tobacco companies. Whatever existing stock there was at the retail outlets is sold. It will be replaced with new packaging that no longer has the words ‘light’ and ‘mild’ on it.

Senator ALLISON—On that question of old stock, can it be sold and marketed as ‘fresh’?

Mr Cassidy—It is old stock in that it predates when the production of the cigarettes with the descriptors ‘light’ and ‘mild’ ceased.

Senator ALLISON—So you are talking about quite old cigarettes here?

Mr Cassidy—I am not quite sure what the shelf life of a packet of cigarettes is, but I think it has a reasonable shelf life, in that, across the three companies, one had a deadline in July, one had a deadline in September, I think—

Senator ALLISON—Just on that point, I am not really interested in how old they are, but could old cigarettes be marketed as ‘fresh’ because that is, as I understand it, an alternative which might be used by tobacco companies? You have indicated that ‘fresh’ is acceptable where ‘mild’ and ‘light’ are not?

Mr Cassidy—Could cigarettes marketed as ‘light’ and ‘mild’ be marketed as ‘fresh’—is that the question? Sorry, I am not following your question.

Senator ALLISON—No. As I understand it, it would be lawful for companies to promote products as ‘fresh’. ‘Fresh’ is one of the labels, one of the indicators, whatever you call them, which would not offend against misleading practices. If it were old stock, would you make a judgment about whether it could be marketed as ‘fresh’. if it was old?

Mr Cassidy—We have not tried to indicate to the tobacco companies what descriptors they can use. As far as we are concerned at the present time, something like ‘fresh’ would not raise the same problems for us as the ‘light’ and ‘mild’ descriptors.

Senator ALLISON—But, if a product was being marketed as ‘fresh’, what would constitute fresh, in your view? You ultimately have to make a judgment about this.

Mr Samuel—Something that is not stale.

Senator ALLISON—Stale. What makes a tobacco product stale?

Mr Samuel—I think Mr Cassidy has indicated he is not an expert on what the shelf life of tobacco products is. But, if cigarette products, for example, could remain on a shelf for 12 months and still be fresh—that is, not be stale—I am not sure it would be misleading and deceptive to describe them as fresh. I have no idea what the shelf life of cigarettes is, but after 10 years it might well be that they would no longer be fresh. But I think Mr Cassidy is indicating that he is not sure whether three months or one month is relevant to determining whether a product becomes not fresh—that is, stale.

Senator ALLISON—So it makes no difference—they are still toxic and dangerous to use. I am sorry. I interrupted as you were about to go on to the advertising.

Mr Antich—Did you have some questions about the campaign in particular? Did you have any particular ones?

Senator ALLISON—I think it might be useful to have an update on progress, please.

Mr Antich—Because it is going to be advertising in the form of a message from the Australian government, there are certain governmental processes that we have to be part of. Those processes involve contracting for consultants in terms of creative consultants, research consultants, tendering processes, getting the work developed and drawing on research that is available in terms of getting the campaign put together. We are going through those normal government processes. So we have—

Senator ALLISON—So what are you up to?

Mr Antich—We have obtained a research consultant. We also have a creative consultant now. There was a tender process. That has now been chosen. We are well advanced in the production of the advertising for TV, for billboard and for print.

Senator ALLISON—You have appointed consultants. What was that for?

Mr Antich—I am sorry?

Senator ALLISON—Who are the consultants for?

Mr Antich—You need, firstly, research consultants to test the messages on various audiences. So you need someone to oversee that sort of work. The consultants we have are ones familiar with government work and familiar with tobacco work.

Senator ALLISON—So who is that? Who are the consultants?

Mr Antich—I am not at liberty to say that right now.

Senator ALLISON—Sorry?

Mr Antich—I would rather not say that right now. It is an ongoing process.

Senator ALLISON—They have been appointed and you cannot say who they are? What is the reason for that?

Mr Antich—I might provide that on notice if that is all right.

Senator Abetz—I am the chair of the MCGC that in fact has been dealing with all this. It has been progressing well. If you will just bear with me, Senator Allison. The only concern—it surprised me why the official thought he could not answer—is there is the suggestion that those that were unsuccessful have not been told as yet. That is the only reason no answer has been given to that at this stage. So I suggest we take that on notice. Under normal circumstances, there would be no difficulty in telling you the successful consultants and creative agency. But, of course, if those that were unsuccessful have not been told, the courtesy ought to be that they be told directly, as opposed to through the Senate estimates process.

Senator ALLISON—So the researchers have been appointed, but you have not advised the others?

Mr Antich—No.

Senator ALLISON—What about the advertising—

Mr Antich—The creative consultants are the ones I am not able to tell you about at the moment.

Senator ALLISON—For the same reason?

Mr Antich—No. That is the creatives. The research consultant I can tell you: it is Woolcott consulting.

Senator ALLISON—The researcher is Woolcott.

Mr Antich—Woolcott.

Senator ALLISON—And in developing what is being taken out to market test, as it were—that is what you said—we had a conversation at last estimates, I think, about the actual content of the advertising. Can you outline to the committee what work you did and who you consulted in the content and the style and so forth.

Mr Antich—The last committee hearing was 31 May. We were very early in that—it would have only been 20 days since the undertakings had come in and we got the funding. So since then there has been a lot more work in terms of developing the ideas. The way it works is you have a research brief, you put it together, you then get the creative pitches from the

various agencies. They are then tested. That is part of the evaluation as to which agency will win the pitch.

Senator ALLISON—Mr Antich, we had a conversation that I am sure you will remember. The subject of it was the extent to which expertise would be taken on board by your department from those medical experts, those people who have for a long time—

Senator Abetz—There has been a great degree of cooperation with the health department, if that assists.

Senator ALLISON—Is it just the health department that you have consulted with?

Mr Antich—No, in terms of—

Senator ALLISON—Mr Antich, could you give us a list of the people who were consulted in developing what is now being road tested?

Mr Antich—Definitely the department of health and the available research that the department has drawn on in the past and research available from other sources were used. I cannot give you those details now. I will just have to take that on notice.

Senator ALLISON—Will you take that on notice?

Mr Antich—And it would also be the Quit association. We also met with them.

Senator ALLISON—You met with them?

Mr Antich—Yes.

Senator ALLISON—And took input from them?

Mr Antich—Yes, we met with them for a couple of reasons. One was obviously to get input about the campaign and any views that they had on it, both in relation to our campaign and the department of health's campaign about the graphic warnings. It was a meeting—we hosted it but it was in conjunction with Health. We spoke to the Quits for their input and also to let them know how the campaign was progressing.

Senator ALLISON—That is not quite the same thing, and the graphic warnings are not quite the same thing, are they?

Mr Antich—No, they are not. They are two distinct campaigns but there is a link, because we are aware of what Health is doing and Health is aware of what we are doing. They are related.

Senator ALLISON—I am sorry, I missed that last bit. You might have to speak up a bit more.

Mr Antich—I am just saying that two campaigns are involved. There is our campaign and there is one by the department of health in relation to graphic warnings. All I am saying is that we are keeping each other well informed as to how each campaign is progressing. They are distinct and separate campaigns. They are funded separately, but we are keeping each other advised.

Senator ALLISON—I do not doubt that, but what I am interested in is how much consultation took place, with whom, for the 'mild and light' campaign. We will come to the other one further down the track, but if you can just be precise about those outside the

department who were consulted. As I recall, a list of possible people to be approached on the subject was provided to your department. Was that list used? Did you consult with any of them?

Mr Antich—No, we have not as yet. We have consulted with the Quits, and the Quit organisations around the country. We have not consulted with people outside the Quits because of what stage the campaign is at. We are going to consult with other people, but at this stage we are not in a position to consult with them.

Senator ALLISON—But won't it be too late? You will already have a product. You will have an ad, presumably, with content. Your researchers are going to test it against some smokers and others.

Mr Antich—Yes.

Senator ALLISON—Would it not have been more sensible to have approached other groups—academics in the field, people who understand a bit about communicating these concepts?

Senator Abetz—Senator Allison, if I could intervene, I think there is not much dispute. That is why the fund in fact has been created, even by the tobacco companies—and correct me if I am wrong on this, because I might not be the full bottle on it, let us put it that way. But, as I understand it, there is acceptance that there is really not much difference between light, mild and whatever the other type of cigarette might be—regular I think is the term, is that right?—and that basically every cigarette does you damage. So you do not need a whole host of academics to keep reinforcing that. What you do need is that it is a given—and I think it is generally accepted as a given—that every cigarette does you damage, whether it is mild or not mild. The real task, then, is to be able to communicate that in an effective manner, and that is where you get the creative agencies in, that is where you get your researcher in, and your focus groups, and that is where we are at the moment.

Senator ALLISON—Yes. The other fact, Minister, was that 50 per cent of those people at least—some said it was even higher than that—who used mild and light cigarettes thought they were healthier for them than other kinds.

Senator Abetz—That is right, and that has helped—

Senator ALLISON—So it is a complicated message that has to be conveyed.

Senator Abetz—That has helped to inform the campaign, and, from what I have seen thus far, if that keeps on being developed, I do not think either you or I will be disappointed with the outcome. The message will be very good and very clear.

Senator ALLISON—Were the tobacco companies consulted at any stage in the development of the answer?

Mr Antich—Not all, no.

Mr Cassidy—It is part of the undertaking, Senator, that they are completely removed from this process. They have no input, they have no association with it, they have no say on it.

Senator ALLISON—So when do we expect them to go to air, to be broadcast? Are they all television ads?

Mr Antich—No, they are not, Senator. It is a combination of media, yet to be finally resolved. There is an indicative budget, but basically it will be spread across TV, radio, billboards and print.

Senator ALLISON—Over what period of time will this be?

Mr Antich—The timing is not final yet, but we are aiming for it to be before the introduction of the new graphic warnings in March next year. So basically we are looking at in the next few months, but I cannot be more specific than that.

Senator ALLISON—Will it last a week or six months or—

Mr Antich—It will last a period of probably around two months—the current framing is around two months, rather than having a long ongoing campaign. We took some advice on this issue. We ended up with an appropriate medium that it will be a short big-bang type campaign.

Senator ALLISON—And this will use up all the money that has been contributed by BAT and Philip Morris?

Mr Antich—Yes.

Senator ALLISON—I dare not ask you if this is the case, but, if there is some money coming from Imperial, will that just extend the program, or what will you do with that money?

Mr Samuel—I think we need to await the outcome of the completion of those negotiations, but let me say that, if there are any funds forthcoming from Imperial Tobacco, they will be properly utilised in the same codex and with the same objectives as the funds that have come from BAT and Philip Morris.

Senator Abetz—The current strategy is that the ACCC campaign go first and then the graphic warnings go second. And hopefully those graphic warning ads would, to a certain extent, leverage off the ACCC ones. And then, if the ACCC does get some more money, I dare say what we will do is get some advice as to the market cut-through of the first lot of advertisements and the recognition that they had and whether the message needs to be refreshed and, if so, at what stage it ought to be refreshed.

Senator CONROY—Hopefully they will be more successful than these other ads.

Senator ALLISON—A bit more informative, do you think, Senator Conroy?

Senator CONROY—God help us, yes.

Senator ALLISON—I have just one other question about the fruit flavoured cigarettes. Was there a brief forthcoming from the department of health on this question?

Mr Ridgeway—I am not aware of any brief coming from the Department of Health and Ageing in relation to fruit flavoured cigarettes.

Senator ALLISON—We discussed it at the last estimates session and you advised that you would act only in the event that there was one. I was just checking to see whether there was. I will ask the department of health as well. Thank you very much, Chair.

CHAIR—Thank you, Senator Alison. Back to you, Senator Conroy. Before you start, how long do you think you will be?

Senator CONROY—I would think half an hour or 45 minutes.

CHAIR—I just wondered whether we might send ASIC away. We are due for an adjournment at 6.30. I think we might indicate to representatives of ASIC, who have been waiting patiently in the witness room, that they will not be called before 8 p.m. So they may leave. That is not an invitation to go until 6.30, Senator Conroy, but we will take the dinner adjournment either at 6.30 or when you finish.

Senator CONROY—No worries. I appreciate that. We were talking about news and current affairs, and also about some of your quotes to the Melbourne Press Club. Given that you have stated very clearly that you do not want to buy into the political debate, would you concede that the news and current affairs is probably the hottest of the topics politically?

Mr Samuel—To respond to that would be to buy into the political debate, so I think I will buy out of it.

Senator CONROY—It is just that you told the ABC's *Media Report* in May 2005:

I think the concerns about diversity in terms of news and information will soon be seen to be misplaced and that we will overcome those with the development of a whole new genre of information services being provided to the Australian public.

It sounds to me like you are recycling the government's line that the internet will deal with diversity issues.

Mr Samuel—It is not for me to recycle anyone's line—not yours nor the government's line, and you are well aware of that, I think. All that I have indicated is that, as I put to you before, convergence has the potential to provide—and I emphasise the word 'potential'—a raft of alternative mediums for dissemination of entertainment, sport, music, information and news services to consumers through a variety of different platforms. A lot of that is at its incipiency. A lot of it is actually developing a lot faster than many of us thought it might, even as late as a year ago. So I think we have to wait and see how that happens—

Senator CONROY—But it is the first part of your quote—'I think the concerns about diversity in terms of news and information will soon be seen to be misplaced'. I am still concerned, so are my concerns misplaced?

Senator Abetz—It is political to answer that question.

Mr Samuel—I have no idea whether you have concerns or whether they are misplaced. All I have indicated is—

Senator CONROY—You are indicating that it does not matter who they are—they are all misplaced.

Mr Samuel—It is very easy to take sentences out of context, so let me put them in context just so we can understand what this is about. What I have indicated to you—I am sorry, I am repeating myself now—is that convergence does raise the prospect of a raft of different mediums, a raft of different platforms, being available to consumers, and being available to content owners—whatever form of content we are talking about—to disseminate to

consumers information, news, opinions, sport, entertainment, music, movies, whatever it might be. And we will have to see how that develops over the next period of time. But, in the event that there were technological developments that allowed a raft of alternative medium, alternative platforms, to become available to consumers, that in itself tends to lead towards the diversity of offering.

Senator CONROY—A lot of knowledgeable people disagree with that view, do they not?

Mr Samuel—I am sure they do. And there are a lot of knowledgeable people that would think that the view is too conservative.

Senator CONROY—For example, Stuart Simpson, the man who wrote the Productivity Commission's report into broadcasting, told the ACCC's annual regulatory conference in July: There has been low investment in terms of dedicated staff by media players in new online news and current affairs. The argument that the new media has seriously fostered diversity is, in my view, a mirage.

Alan Kohler, in an article entitled 'Internet dominated by the same old gang' states:

It turns out that, despite all the exciting possibilities, the Internet is not much of an engine for media diversity.

Mr Samuel—Look, you can produce all sorts of quotes from various people and I could equally produce quotes—I do not have them in front of me—from Stuart Simpson at that same regulatory conference that complimented the Chairman of the ACCC as being one of the few parties that might be looking forward and looking at the prospect of convergence and the way it might provide diversity of offering—

Senator CONROY—I am sure you would be far too bashful to provide that quote.

Mr Samuel—It is not appropriate for me to do so. I can also indicate a number of articles written by the same—

Senator CONROY—Maybe you should stop it or you will go blind soon!

Mr Samuel—I could indicate a similar number of articles written by the same Alan Kohler, who seems to be almost committed to the view that IPTV, broadband TV, is something that is on the not too distant horizon and is going to provide a whole raft of diverse offerings for consumers. So there will be all sorts of views. The problem is that the views that are being expressed are looking into the future. Some are looking into the future with a great deal of knowledge. Some are looking into the future with a lot less knowledge. And, as I have commented on several occasions, when we are looking at technological developments, the verges of the superhighways are littered with the gravestones of those that have ventured into this area and have failed in the past.

Senator CONROY—I am talking about news and current affairs, Mr Samuel, specifically. And the point that is being made—and I have made this point myself on a number of occasions—is that, if you look at the percentage of hits that are taking place on the existing web sites of existing media companies, they do not just dominate, they overwhelm all other media on the internet in terms of eyeballs et cetera. As much as I am sure that you, myself, Senator Brandis even, would like to think that Stephen Mayne and crikey.com are going to achieve a level of prominence in media diversity, they are not really. I know Senator Abetz is

sitting there indicating support for that point of view. It is really not going to happen in the foreseeable future. To describe oneself as a visionary to Senate estimates is a novel approach, but, given the enormous concentration around the existing media web sites, do you really believe that, while I accept that barriers to entry are much lower in this field than others 'concerns about diversity in terms of news and information will soon be seen to be misplaced and that we will overcome those with the development of a whole new genre of information services'?

Mr Samuel—As I say, there is a range of views on this. The range of views is backed up or not backed up by a range of information and understanding about the issues. It is not for me to suggest to you that any projection I have for the future is any better than the projection that you have or any worse than the projection that you have. I think we will have a range of views. What it will ultimately fall to the ACCC to do is to determine, at a point in time when a prospective media merger is put before it, the circumstances that are before it at that point in time and that have a likelihood—and I use that word carefully—of being before it in the foreseeable future, keeping in mind that the test provided for under section 50 of the Trade Practices Act is whether a merger has or is likely to have the effect of substantially lessening competition. We will take all those factors into account at the relevant point in time.

Senator CONROY—I guess the point I am making is that, in my view, you are going dangerously close to breaching your own previous statement—actually it is a subsequent statement, even though it was May and this is 26 May—that 'I should state here that whatever changes are made ... I will not be commenting on such policy matters'. You are dangerously close to veering into the most singly hot and sensitive of the media reform debates. You do not find anyone jumping up and down about seeker.com or real estate.com and classifieds. It does not generate the same passion that views around genres of information services do, and perhaps you might want to take your own advice.

Mr Samuel—Thank you, Senator. I take your advice and appreciate it being offered to me.

Senator CONROY—I will move to another issue. Your opening statement covered off on a lot of my questions, as I said. I have a number of questions on the ACCC's consumer activities that you mentioned earlier. A number of consumer groups have recently publicly expressed concern that the ACCC has placed a lower priority on consumer issues and has tried to move the burden of taking action on these issues to state fair-trading bodies. Are these concerns warranted? Is the ACCC currently increasing the burden on state based consumer affairs regulators?

Mr Samuel—First of all, I am not sure that 'a number'—to use your words—of consumer groups have publicly expressed such a view. That view was expressed by a particular journalist with the ABC, Stephen Long, based on some outdated statistics, and I think the words used were 'some say' et cetera. I think that it was a rather unfortunate article prepared by him on ABC's *Inside Business*—

Senator CONROY—Could I name names then, just to help you?

Mr Samuel—Yes, sure.

Senator CONROY—Groups like the Australian Consumer Association are concerned that the track record of the state based bodies is not as good as the record of the ACCC under Professor Fels.

Mr Cassidy—That is quite different to the question you put to us, if you do not mind me saying so—

Senator CONROY—Can I assure you that I am not verballing the ACA?

Mr Cassidy—No, but I am just saying that that is quite different from the question that you just put to us. That says that the state fair-trading offices are not as effective as the ACCC, whereas your question was about us dropping off on consumer protection—

Senator CONROY—It is a follow-up—that they are concerned that you are pushing off your regulatory work onto state bodies which are not good enough.

Mr Cassidy—I am reacting because we have a lot to do with the ACA, and in fact it is on our consultative committee, and it simply has not raised that sort of concern with us. That is why I react to you attributing that concern to the ACA.

CHAIR—So, Mr Cassidy, you do not accept the premise that is being put to you that that is the ACA's view?

Mr Cassidy—That is correct.

Mr Samuel—I was about to say that I do not think that the article that was prepared by Stephen Long of *Inside Business* did either him or the particular program any great credit. But let me now deal with the substance of what you put to me. The process that we have adopted with state consumer affairs bodies goes back to a meeting that I had with SCOCA—that is, the directors of those various bodies—at a dinner I had with them back in the very early stages of my term of office—that is, in the latter half of 2003. At that meeting and dinner, I indicated to them that we at the ACCC were of the view that there should be a much greater degree of collaboration and cooperation with the state consumer affairs bodies and offices of fair trading because we are all working towards the same objective, which is the protection of consumers from fraud and misleading and deceptive conduct and from scams.

The reaction around the table from the representatives of the state bodies concerned was one of great enthusiasm and appreciation for the sentiments that were being expressed—the fact that we were saying, and directly saying, that we intended to work closely with and cooperate with them. At the same time, Mr Cassidy and I visited the state premiers and state consumer affairs ministers and discussed the process of extending and developing the cooperative process and, with one or two exceptions, I would have to say that around the country this process was greeted, again, with enthusiasm and with a degree of cooperation and in a spirit of cooperation.

What has happened in practice is as follows: where state offices of fair trading have shown a willingness and an ability and the expertise and the resources to be able to take matters that they and we consider are properly within their jurisdiction because they are peculiarly of a local nature, those matters have been referred to them under the process of cooperation.

Where they have not shown the ability, willingness, expertise or resources to deal with those matters, they have not been referred to them and they have been dealt with within the

ACCC. I think the statistics I quoted before clearly indicate that the number of matters falling under part V of the Trade Practices Act that have been dealt with by the ACCC, far from declining—which was the implication of the Stephen Long *Inside Business* article—have actually increased in percentage terms and in numerical terms over the past two years since this process has been in place. In addition, there is a lot more work that is now being undertaken very effectively by state offices of fair trading.

Senator CONROY—Thanks for that, Mr Samuel. While you indicated earlier that the percentage of consumer cases as a proportion of the total legal action taken by the ACCC has increased, how have the number of court cases taken by the ACCC with respect to consumer issues changed in real terms?

Mr Samuel—What do you mean by ‘real terms’?

CHAIR—He gave you the figures, Senator.

Senator CONROY—Under Allan Fels the commission launched more than 60 cases in 2001, and in Professor Fels’s final year it was 39 cases, but in your first year it was 22. What is the reason for this change?

Mr Samuel—Please! I have given you the statistics. We are dealing with the 2004-05 report, and I indicated that in the 2004-05 year the number of cases instituted was 30. If I might say so, if you select the first year, with all the reasons that have been the subject of explanations at previous Senate estimates as to the financial constraints that were imposed upon us as a result of a substantial deficit that was incurred in the final year of Professor Fels’s chairmanship—that is, \$10.2 million in that year—a projected deficit that was put in place prior to the commission being established under my own chairmanship of just over \$8 million dollars, there are some constraints that are imposed upon the activity of the agency over a period of time.

Those constraints were lifted after we had undertaken an internal examination of the manner in which we were conducting our enforcement, of the efficiencies associated with it, and, particularly, the voting of over \$90 million over a period of four years to us by the federal Treasurer in the May 2004 budget. And, as from the time immediately following that budget—and I am talking about a matter of days or weeks following the bringing down of that budget—the enforcement activity of the ACCC increased significantly, as the clear budgetary constraints that had been imposed, and that had imposed some internal constraints upon our offices around the country, suddenly were able to be lifted.

CHAIR—I take it that the trend under you has been up.

Mr Samuel—The trend has clearly been up. It was always going to be advanced once our financial position here clarified, and it did in the May 2004 budget.

CHAIR—You will have to forgive Senator Conroy, Mr Samuel. He does not write these questions.

Mr Samuel—Okay, that is all right.

Senator CONROY—But do not forgive Senator Brandis, who cannot manage to chair impartially any meeting he ever chairs.

CHAIR—I give you more latitude—so much latitude, Senator Conroy, that I am even being chastised by my minister.

Senator CONROY—You give new meaning to ‘chairman’s prerogative’, Senator Brandis.

CHAIR—On you get, Senator Conroy.

Senator CONROY—Mr Samuel, you spent quite a bit of time defending the consumer activities of the ACCC—

Mr Samuel—No, not defending them—explaining them. There is nothing to defend. The consumer activities of the ACCC are very well conducted by very capable people, with a direct focus on ensuring that consumers are protected from misleading and deceptive conduct, and anticompetitive conduct, all of which have severe deleterious effects upon consumers in Australia.

Senator CONROY—I accept the point you are making. If consumer issues are such a priority for the ACCC, why has not the ACCC’s deputy chair, Ms Sylvan, ever appeared before Senate estimates? I think maybe she came once in your absence, but in the last year I do not think she has been.

Mr Samuel—No other commissioner has appeared before Senate estimates. Senate estimates is attended by me. I would have thought—

Senator CONROY—And, as you know, I always genuinely appreciate the time and effort you put in. But given that Ms Sylvan is specifically given the consumer activities—

Mr Samuel—Sorry, Senator, the deputy chair is not specifically given consumer activities at all. All the commissioners—

Senator CONROY—That was the deal for your ticket, wasn’t it?

CHAIR—Excuse me, Senator Conroy. Allow Mr Samuel to answer the question.

Mr Samuel—Let me finish. I am not going to get involved in the political exercises of yesteryear. All the commissioners of the ACCC have full responsibility for all the activities. I am particularly responsible for the totality of what the ACCC does. If it succeeds in what it is doing, all the commission takes the plaudits for that. If it fails in what it is doing, generally the chairman takes the responsibility.

Senator CONROY—I was not suggesting you were failing.

Mr Samuel—That is fine. That is good. But let me make it clear—

Senator CONROY—But I was indicating that I would like to pursue a number of issues in some depth and, while your ability and depth are always appreciated, it would be appreciated by the committee if Ms Sylvan was able to attend at some point.

CHAIR—It would be appreciated by you, Senator Conroy. Do not speak for the committee. It is for the agency, I think, to ensure that the appropriate officers are available who can respond to questions.

Senator CONROY—I am entitled to ask.

Mr Cassidy—You ask your in-depth questions and we will answer them. That is why the staff are here, with all due respect.

Senator CONROY—We are very toey!

Mr Cassidy—We are, because I do not particularly like the frame of that question. We come here trying to answer every question we can, and that is why I bring as many staff as I do. So, if you have in-depth questions, you ask them, and we will answer them.

Senator CONROY—I am just wondering why the deputy chair has not been in a long time.

CHAIR—Senator Conroy, I think—

Mr Cassidy—Commissioners do not come here. They never have. They did not under the previous Chairman.

Senator CONROY—Except for—

Mr Cassidy—I am sorry, I am making a point. They do not now and they did not previously.

Senator CONROY—I am entitled to ask—

Mr Cassidy—You have been answered.

CHAIR—You have made an observation, Senator Conroy. It has been responded to. Move on.

Senator CONROY—As always, we appreciate your guidance from the chair. Joseph Stalin would be proud. Mr Samuel, I am assuming you are familiar with section 95H of the Trade Practices Act.

Mr Samuel—I would have to get it in front of me the moment, but go on.

Senator CONROY—It is to do with price inquiries—95H.

Mr Samuel—Yes.

Senator CONROY—Inquiries by the commission. When was this provision last used? It is the one for the minister. It reads:

The minister may, by notice in writing given to the Chairperson, require the Commission to hold an inquiry...

Ms Arblaster—Prior to the formation of the ACCC?

Senator CONROY—No, I was just asking when the provision was last used.

Ms Arblaster—Well, it was prior to—the last one was the petrol one.

Senator CONROY—What year would that be?

Ms Arblaster—1995.

Senator CONROY—1995 you came into being as—

Ms Arblaster—When the commission came into being.

Senator CONROY—So it has never been used since the formation of the ACCC?

Ms Arblaster—Directions were given under that provision prior to the formation of the ACCC, and the inquiries under that provision were completed after the formation of the

ACCC. But no inquiry has ever been initiated under that provision after the ACCC was formed.

Senator CONROY—So can I just confirm: 1995 was the formation of the ACCC?

Ms Arblaster—Yes.

Senator CONROY—And it has never been used in the last 10 years?

Ms Arblaster—It has not been initiated since the—

Senator CONROY—Initiated.

Ms Arblaster—Yes.

Senator CONROY—Thank you. So, the minister, who is the Treasurer, has never at any stage written to you in the 9½ years of the Howard government initiating an inquiry into anything, from petrol prices to bank fees?

Ms Arblaster—No.

Senator CONROY—Okay.

CHAIR—I am sorry, Senator, to interrupt you, but I am just reminded by the secretary that an invitation was, of course, given to all senators to nominate topics and officers whose presence was requested at these hearings and that you did not request Ms Sylvan's presence.

Senator CONROY—It does not look like she would have been allowed to come, even if I had.

CHAIR—Since the implication was that she should have been here and that there is something wrong with her not being here, it was up to you to nominate who you wanted here, and you did not nominate Ms Sylvan.

Senator CONROY—I think the chairman and CEO have indicated that that will not be possible.

Mr Samuel—I can indicate, Chairman, that the practice we have adopted in the past we will continue into the future.

Senator CONROY—That will be a no, just in case you are wondering. Mr Samuel, I have just been reminded of a quote that Mr Rod Bruem gave, I think, to the *Herald Sun's* Matt Charles for tomorrow's papers.

Mr Samuel—That is interesting.

Senator CONROY—The quote reads:

It is disturbing to see an official stand up and make so many false claims before a Senate committee. For Mr Samuel to stand there and to say something quite the opposite is disturbing and demonstrates, unfortunately, that the ACCC is not allowing the facts to stand in the way of its determination to cripple Telstra. We can provide firm evidence to back any figures we put out, and you have to do that in this business. You can't just pluck figures out of thin air.

Any response? Any thoughts?

Mr Samuel—If they are able to do it, I think they should do it. The question asked of me was: have they produced any analysis of the \$800 million claim? My response was, 'Not to

my knowledge and not to the knowledge of anyone sitting on this side of the table.’ I still do not think, at this point in time—unless it has been done in the past hour or so—that any substance has been provided to back up that claim.

Senator CONROY—I share your frustration. I spent some hours on Monday night attempting to establish the basis of this figure, and the closest we got was that it was somewhere between a three-year and a five-year figure. We could not even clarify what the time period of their modeling was. I do share your frustration.

Mr Samuel—It is not a frustration; it is just part of the process. In the event, as I have tried to point out on many occasions, Telstra will need to work within a regulatory regime that is set by government, however government determines to set it. The ACCC will, equally, work within that regulatory regime and will administer it with proper analysis of all the relevant facts provided by all relevant stakeholders and will adjudicate accordingly. Telstra will live with that environment.

Senator CONROY—What position does Mr Bruem hold? I am not sure off the top of my head. Is it a fairly senior position?

Mr Samuel—I am not sure.

Senator CONROY—Do you deal with him? I am trying to find out whether he is one of the people you are having to meet with and have discussions with.

Mr Dimasi—No, Senator, as I understand it, Mr Bruem’s role is in public relations. I am not sure of the actual level of the position he holds.

Mr Samuel—I think he is one of the rotating spokespersons for Telstra, Senator.

Senator CONROY—I wonder if his mum has got any shares. But I guess they still won’t let Mr Burgess out in public.

CHAIR—Do you want to move on?

Senator CONROY—I will.

CHAIR—We do not seem to be going anywhere for the minute.

Senator Abetz—Never stopped him in the past.

Senator CONROY—I live and learn from you on a daily basis, Senator Abetz.

Senator Abetz—You wish.

CHAIR—Enough of this in-house badinage.

Senator CONROY—What are the implications for the ACCC of the Senate’s decision to excise schedule 1 from the Trade Practices Amendment Bill No. 1?

Mr Samuel—This is the merger provisions. Well, that is a matter that is currently before parliament. Let’s see the final outcome of the process of dealing with that legislation.

Senator CONROY—My recollection is that you have expressed your unhappiness with that particular provision in the past.

Mr Samuel—No, I have not. I have never expressed a view on that particular schedule.

Senator CONROY—My apologies. I thought you had publicly, possibly at these hearings or in some speeches.

Mr Samuel—No.

Senator CONROY—I stand corrected if that is the case. I just hope that Mr Brenchley has not been verballing you again. I might have to set Senator Brandis on him.

Mr Samuel—I have not made any comments at all about schedule 1 of that legislation.

Senator CONROY—It was not your preferred model, though, when it was first put forward.

Mr Samuel—It is a matter before parliament. I think it is a matter of policy of government.

Senator CONROY—I am not trying to pressure you; I just genuinely thought that you had expressed some public views previously.

Mr Samuel—I think I expressed some views about two years ago about some possible consequences of adopting some models in relation to mergers. But those have long since passed, and we are dealing with a different regime.

Senator CONROY—I thought that you publicly stated in a Senate inquiry that you did not favour the model in schedule 1. I was at the hearing that day, so I was just vaguely—

Mr Samuel—I am sure you have a better memory than I have, Senator.

Senator CONROY—I thought that was the case. I was not trying to verbal you. As I said, I would not want Senator Brandis to leap upon me yet again.

CHAIR—If you do, I will. Next question.

Senator CONROY—I thought, and others are suggesting to me, that that was the case. I wanted to refer to procedures that could apply to the Patrick Toll merger if the original bill were to become law in the near future. Are you comfortable with going there?

Mr Samuel—No, not if it is going to involve the Patrick Toll merger, because that is currently a matter that is before us. Even if I were to discuss that in a hypothetical sense, it has the potential for being misrepresented. So could we take a merger that is not currently before us.

Senator CONROY—Okay. Could you just outline the process of review of the merger under the current law?

Mr Samuel—Under the current law, there are two tests to be dealt with in connection with mergers. One is the competition test—that is, whether or not the merger is likely to lead to a substantial lessening of competition in the market. That is the competition test. The other is the authorisation test—that is, whether a merger that might have an anticompetitive impact has compensating public benefits that would overwhelm the anticompetitive detriments. That is the authorisation test.

The competition test is currently dealt with by the ACCC under an informal clearance process that is governed by its informal clearance guidelines which, as I indicated before, were adopted and put into place in October last year. In the event that a merger is cleared by that process, the merger would, in the normal course, proceed. In the event that a merger is

not cleared by the process, the merger parties would either determine not to proceed with the merger or, if they indicated that they were going to proceed, it would be open to the commission to take steps under section 50 to seek an injunction from the Federal Court to prevent the merger from proceeding. Or, in the alternative, the parties themselves could take proceedings against the ACCC for a declaration that the merger proceeding would not breach section 50 of the Trade Practices Act.

In respect of an authorisation, the matter comes before the ACCC. The ACCC must consider the authorisation within a period of 30 days or, by extension, to a total of 45 days. Following the conclusion of the determination by the ACCC of that authorisation process, it is then open to the parties to take the determination of the ACCC to the Australian Competition Tribunal for a review *de novo*—that is, a review that will take place at the time that the tribunal considers the matter, based on such information as is put before the tribunal at that particular point in time.

Senator CONROY—Okay. Thank you very much. I just wanted to talk about section 46. Before I venture there, I was hoping I could get my questions finished before the chair demonstrates the depth and breadth of his knowledge in this area. I only have a couple of questions—

CHAIR—I wasn't going to say anything, Senator.

Senator CONROY—That I find hard to believe—on section 46.

CHAIR—I am going to listen eagerly to the depth and breadth of your knowledge on the topic.

Senator CONROY—How many actions under section 46 have been conducted by the ACCC since the Boral case?

Mr Cassidy—We currently have four section 46 cases in court. I think it would be fair enough to say that they each predate the High Court's decision in Boral in terms of being investigated and/or instituted. If you define that in terms of new section 46 matters going into court, there have not been any new section 46 matters currently in court.

Senator CONROY—Four commenced before the Boral decision and none commenced since. Is that basically what the facts are?

Mr Cassidy—I am hesitating a little on the so-called Baxter case. There are a couple of things on the Baxter case. Baxter was one where the court said that we would have found a section 46 breach, except that Baxter had derivative Crown immunity. We have appealed that case and, as we appear here, it is currently being heard before the full bench of the Federal Court. Whether Baxter was instituted by us just before or just after the Boral High Court decision, I am afraid I am not quite sure. It is either one or none, depending on Baxter.

Senator CONROY—Do you have a policy in place at the moment that it is not worth pursuing a section 46 until the legislation is—

Mr Cassidy—Indeed, section 46 is one of what are traditionally referred to as the three pillars of antitrust policy. It is just too important for a competition law enforcement agency such as the ACCC to—

Senator CONROY—To state that that would be your policy?

Mr Cassidy—Yes, to say it is—and, indeed, it is not our policy. We currently have nine in-depth investigations in relation to section 46 under way. Anticipating the next question, since the High Court's decision on Boral, we obviously do not have matters flowing through from the investigation to the litigation stage in section 46.

Senator CONROY—There has been a lot of debate about section 46, particularly since the Boral decision. There have been some Senate inquiries, and Senator Brandis has waxed lyrical. The government has indicated that it proposes to amend section 46 to give effect to the minority report, possibly even drafted by Senator Brandis, of the Senate committee inquiry into the effectiveness of the TPA for small business. Do you think the changes proposed in that Senate minority report will significantly improve your powers?

Mr Samuel—We do not have any details of what the government is proposing to do with section 46 at this point in time. Not only is it as a matter of policy but a matter of awaiting the details of the government's response.

Senator CONROY—Senator Brandis might be able to help us—I find it amazing to say that publicly. I thought the government indicated that they endorsed the minority report.

CHAIR—As far as I am aware, Senator Conroy, no draft legislation has yet been made public.

Senator CONROY—But the government had indicated support for the Senate minority report.

CHAIR—I do not speak for the government in this hearing; Senator Abetz does.

Senator CONROY—I just thought you might be able to help clarify. You are normally so willing to help.

CHAIR—As I said, Senator Conroy, you ask your own questions.

Mr Cassidy—Senator Conroy, I think the government has picked up a number of the recommendations in the Senate minority report but not all.

Senator CONROY—Okay. Do you think the ones that they have indicated that they are going to pick up will substantially assist the ACCC?

Mr Samuel—So much depends on the drafting of the legislation. Remember that the decisions that have been made in respect of section 46 have hinged so much on the specific words, particularly the preamble to the section, that it is difficult to provide an opinion as to whether the commencement of litigation in respect of section 46 will be enhanced or otherwise until we have seen the draft legislation and we can determine the way that the court might interpret the provisions as redrafted.

Senator CONROY—Moving on to another matter, the Auditor-General has indicated that the ACCC has held funds technically in breach of section 83 of the Constitution. It is on page 153 of the ACCC's annual report. For what period did the ACCC hold these funds without legal authority?

Mr Cassidy—Basically, we believed that we had the appropriate authority and it is a matter of an agreement between us and the department of finance. I must say, until the Audit

Office turned this up relatively recently—not in relation to us but in relation to a number of other departments and agencies—neither we nor, I believe, the department of finance believed that we did not have an appropriate authority. But the Audit Office indicated that for the period 1998 to 2005 we did not have an appropriate authority for retaining what are relatively small amounts of money. As far as we are concerned, it is about \$800,000 a year, as against a current budget of about \$85 million.

Senator CONROY—When the error came to light, did the ACCC return the funds immediately to consolidated revenue?

Mr Cassidy—No, we did not, Senator, because the funds had been spent on what are quite legitimate purposes. As far as the commission was concerned, we immediately entered into what the Audit Office now indicates is an appropriate agreement with the department of finance. But, no, we did not return the funds—nor, as far as I am aware, has any other department or agency.

Senator CONROY—I want to talk about broadband data collection. Is the ACCC aware of a ministerial determination, issued in May 2003, under which the ACCC is directed to collect various data on the broadband market—that is, the use of low, medium and high bandwidth data speeds by various market segments; information on competitor numbers delineated by postcode; and information concerning uptake by user segments such as SMEs, residential and by postcode?

Mr Cosgrave—Yes.

Senator CONROY—Is this determination still in force?

Mr Cosgrave—The determination is still in force.

Senator CONROY—Is the ACCC currently complying with this determination?

Mr Cosgrave—The ACCC has released two discussion papers around the collection of information. There have been difficulties in terms of the burden on industry. Concerns have been expressed by industry in relation to the compliance costs with the determination. The commission has been continuing to collect data around the take-up of broadband while it has been exploring those difficulties with other parties, including the department of communications and the Australian Bureau of Statistics.

Senator CONROY—So, at the moment, the ACCC only appears to publish basic national broadband take-up data in quarterly broadband snapshots?

Mr Cosgrave—That is correct, Senator.

Senator CONROY—And there have been two and a bit years of discussion papers with—

Mr Cosgrave—There has been a long process of seeking to—

Senator CONROY—Who is the main villain?

Mr Cosgrave—I don't understand the question, Senator.

Senator CONROY—Who is telling you it is an awful lot of trouble to collect this information?

Mr Cosgrave—A variety of industry players.

Senator CONROY—Any large ones in particular?

Mr Cosgrave—Large and small ones, Senator—perhaps more amongst smaller ones, actually, in terms of compliance costs.

Senator CONROY—In light of the fact that commercial organisations, such as Sensis and Pacific Broadband, are able to collect and publish simpler information, why is the ACCC unable to publish similar information?

Mr Cosgrave—Some of the difficulties have been with some of the data points that have been set under the determination, including collection of broadband take-up by postcode. That has proved problematic simply because of the number of data points involved and what is currently collected by a range of players within the industry under their retail systems. In other words, we have had a lot of people indicating that they do not collect various data points required by the determination. As a consequence, complete compliance with the determination would involve considerable cost on their part.

Senator CONROY—The ACCC's broadband snapshots do not appear to collect data from wireless broadband providers, such as Unwired, Personal Broadband Australia or iQ Connect. Unwired have publicly claimed 36,000 customers in Sydney; is there a reason why you cannot collect that one?

Mr Cosgrave—I am not sure that I agree with the premise of the question, but I would have to take it on notice.

Senator CONROY—Do you have any idea of when you think you will be able to implement the May 2003 directive?

Mr Cosgrave—All I can put to you is that there will be a further discussion next week with both Communications and the ABS, who have recently discontinued the Internet snapshot. We are trying to work through an agreed position.

CHAIR—Senator Joyce.

Senator JOYCE—I have a brief question going back to the broadband and the previous costing that the ACCC put out. If you have in zone 4 a retail price cap on Telstra of \$28 yet the wholesale price is \$144, who would bother investing in zone 4? It is quite obvious that your wholesale is in excess of your retail.

Mr Dimasi—Senator, you would need to look at the whole picture, including the various subsidy payments, to determine who might do that. In looking at your return, you would invest to recover retail plus the difference you can achieve from the various subsidy arrangements.

Senator JOYCE—That does not make much sense. I sell this to you for \$144, and you have got to sell it for \$28. I do not think I will invest in that market.

Mr Dimasi—If the cost is \$144 to provide the wholesale service, that cost has to be recovered in a number of ways. The way it is recovered is with retail and with the subsidies. If the cost is, for example—

Senator JOYCE—So you are saying that government subsidy is going to make up that gap between \$28 and \$144?

Mr Dimasi—That is right.

Senator JOYCE—That will be news to the government. Is that what currently happens?

Mr Dimasi—We have not looked at the various subsidy schemes, but in totality that is what the various subsidy schemes are intended to do.

Senator JOYCE—With the rollout of broadband—I will contextualise this in broadband—do you see that further competition will be developed by other major carriers when the conceptualised costs are \$144—

Mr Cosgrave—Senator, your question is also premised on an apparent supposition that the copper network is the only basis upon which broadband is delivered. That is, as you well know, clearly not the case. We have broadband delivered already—in some cases subsidised through government grants—via wireless, satellite et cetera. In relation to the fixed network, there may be issues around subsidy but, in terms of the investment part of your question, there may also be real questions around investments in band 4 for both technical reasons, in terms of distances from exchange—

Senator JOYCE—My question is specifically on band 4 fixed line investment. Why would you bother, if it is going to cost \$144 and you can only sell it for \$28?

Mr Dimasi—This is in the context of the average of the ULL. If the average turned out to be \$40, for example, why would somebody invest at \$40? The problem is not addressed by averaging. This is the point of the OECD report. It is the point of what we were saying earlier. The issue is addressed by looking at all of the tools, and by preventing competition elsewhere you do not address the issue of investment in band 4; you address the issue of investment in band 4 by allowing alternative service providers to come in and to have access to the very schemes that the government provides. By doing that you can achieve your average retail price with the—

Senator JOYCE—As far as fixed lines go, they are not coming in. That is probably the point. As far as fixed lines go, in zone 4 they are not coming in, so we are relying on the mechanism that there is a margin made in metropolitan markets as a form of subsidisation of what is to be invested in regional markets, especially zone 4.

Mr Samuel—An announcement has been made—and I cannot comment upon the viability of the proposal concerned—by other carriers of alternative forms of providing broadband and, through that, one would guess, VOIP into rural Australia. For example, one particular organisation has announced its intention to roll out significant broadband wireless services into rural Australia over the next year or two, with projections of 750,000 being available for wireless broadband services over the next 12 or 18 months. The process starts to provide some competitive alternatives, particularly in rural Australia, if appropriate pricing strategies are put in place in terms of band 4.

Senator JOYCE—But they will not be doing it by fixed line, Mr Samuel, though, will they? It is highly unlikely they will be doing it by fixed line.

Mr Dimasi—It is not likely that anyone, including Telstra, would voluntarily do that either.

CHAIR—One last question.

Senator CONROY—I would like to clarify a quick discussion Mr Samuel and I were having about his testimony to the Senate inquiry into the Dawson legislation. I am just reading from page 15. In your testimony you say:

Therefore, we have some concerns over the fact that the ACCC will be effectively bypassed in respect of the authorisations proposals that are now contained in the merger provisions of the Dawson legislation.

Mr Samuel—I think that that dates back some time.

Senator CONROY—That was at the Senate hearing, which is now probably two years ago.

Mr Samuel—Yes, and I think that you will find that the legislation has since been amended. If I am not mistaken, it currently provides that, in the context of an authorisation application that goes direct to the tribunal, the tribunal must seek a report from the ACCC on such matters as the presiding member of the tribunal specifies and the tribunal is obligated under the legislation to take that report into account.

Senator CONROY—Now, Mr Samuel—

CHAIR—Mr Samuel, if I am not very much mistaken—

Senator CONROY—Can I just finish my question?

CHAIR—I think it was in February 2003. The draft legislation was not until much more recently than that. I think the evidence that has been quoted was before the first draft of the legislation was published.

Senator Abetz—I think Senator Conroy will retire hurt for dinner.

Senator CONROY—I have more of the transcript that I can read you, particularly expressing concerns about the way the ACT treated you in terms of your appearances. I am pleased to see that you suddenly feel that a written report to them would be more powerful than your previous testimony to them. I am pleased to hear that you have renewed faith in the ACT's processes.

Mr Samuel—I think that it is fair to say, Senator, that since giving that evidence—I am not sure which hearing it was at; there have been so many hearings into all these matters that I have lost track—and since the hearing I think you are referring to, there have been amendments made to the legislation as well as extensive communication, cooperation and collaboration established with the tribunal, which I think has cleared the air on a whole range of matters and may well assist a proper consideration of authorisation applications in the future.

Senator CONROY—See, Barnaby, he is now indicating he likes schedule 1.

CHAIR—Thank you very much. It being after 6.30, we will adjourn. Thank you very much indeed, Mr Samuel, Mr Cassidy, officers. We will resume at 8 pm with officers from ASIC.

Proceedings suspended from 6.31 pm to 8.02 pm

Australian Securities and Investment Commission

ACTING CHAIR (Senator Watson)—I would like to take this opportunity to welcome to the committee the Australian Securities and Investment Commission, headed by Mr Jeffrey Lucy. He is accompanied by Mr Jeremy Cooper and Ms Berna Collier, together with supporting staff. Do you wish to make an opening statement?

Mr Lucy—I would like to, thank you. Members may be aware that ASIC's annual report entitled *Patrolling a broad territory* was tabled in parliament on 14 October. We chose that title to reflect the fact that the agency now has a broader regulatory landscape than any other comparable corporate regulator in the world. In the first four months of the financial year, we have continued at a cracking pace. We currently have 427 formal enforcement actions on foot; of these, 170, or roughly 40 per cent, are in the investigation phase, whilst the remaining 257 actions are in various stages of litigation. There are currently 129 criminal proceedings, 89 civil proceedings and 39 administrative hearings. Further, ASIC has concluded its CA negotiations effective from 1 August, and in line with federal government policy has offered 835 Australian workplace agreements.

ASIC has also played a prominent role in warning Australians about illegal investment schemes. In the last financial year we have undertaken 25 per cent more actions to close down illegal schemes. We have closed down schemes involving more than 2,150 investors, with almost a quarter of a billion dollars invested in them. ASIC will continue to endeavour to shut down these schemes and prosecute those who operate them.

I am pleased to inform the committee that ASIC is continuing to work well with our fellow regulators. Just a few weeks ago we teamed up with the ACCC to launch jointly produced publications, entitled *Dealing with debt: your rights and responsibilities* and *Debt collection guideline: for collectors and creditors*, aimed at improving standards in the debt collection industry. They are just some of a growing list of publications issued by ASIC, some which we are proud to say have gone on to win international awards. Indeed, internationally, we have also continued our focus through IOSCO by leading two specifically established chairs committees of the technical committee of IOSCO. These are considering issues associated with governance and audit. It remains a core role of ASIC to promote confidence in Australia's financial markets through effective enforcement and regulation. It is a big job, and I believe that ASIC is doing this exceptionally well. Thank you for the opportunity to present an opening statement.

CHAIR—Thank you very much indeed, Mr Lucy.

Senator WATSON—Mr Lucy, I just get a little bit worried about the lack of severity in Australia as regards sentencing and white-collar crime. Excluding the Brad Cooper possibility, if you look at the HIH people, they really got quite token sentences compared with their corporate counterparts in the United States. I must say I was a little bit disappointed when you seemed to give the impression that you felt the sentences were adequate. In fact, you have got a good record of bringing a lot of people to task, but in terms of the message the severity of their sentences is pretty light. In fact, it took Mr Graeme Samuel, from an allied area, to express the need for a tightening up. Why didn't that come from you?

Mr Lucy—I guess in the first instance it is fair to say that the toughening up—to loosely describe it—in the United States has only been a fairly recent advent. In the Australian context, you mentioned HIH. Obviously we cannot talk about Mr Cooper because he is before the courts, but in the other instances those parties pleaded guilty and, as such, the courts in Australia have regard to pleas. They recognise the fact that there is a need for consideration by the court of such pleas. Further, in the case of Howard, there were two other mitigating factors: firstly, he provided information to law enforcement authorities that otherwise would not have been provided and, secondly, he provided assistance, which the court recognised. It is important to have a look at the sentencing in a holistic sense. But, in the end, it remains absolutely with the court process. It is for them to decide how they intend to determine appropriate sentences, and before that, of course, it is with parliament to set the parameters for those sentences.

Senator WATSON—Do you still stand by your earlier views that you felt that the sentences were not unreasonable under the circumstances?

Mr Lucy—I think the last point you raised is the key one: under the circumstances. It is under the circumstances of the judicial system that parliament provide. I guess our priority is to make sure that, when we need to litigate, we litigate successfully and, in the event that we can achieve an outcome without the necessity to litigate, that the sentence appropriately represents the criminality of the conduct. That is absolutely our preoccupation.

Senator WATSON—Why did it take Mr Samuel to step in about some corporate issues rather than you? You are doing a good job in bringing people to court, but there is not much of a deterrent there in terms of the message to the wider community.

Mr Lucy—I would respectfully suggest that it is really a matter for the parliament to determine what scale of penalty they wish to provide for these offences. Our approach is to have regard to how the courts have previously dealt with similar offences and how they have established a precedent. In that context, we determine from our side whether or not the penalty sufficiently represents the level of criminality.

Senator WATSON—I put it back to you then, as the watchdog in this area: do you think the penalties are adequate?

Mr Lucy—These are very complex questions and I am certainly not wishing to be—

CHAIR—Before you answer that, Mr Lucy, I think we should ask Senator Watson to clarify. Do you mean the penalties being imposed by the courts or the penalties available under the legislation?

Senator WATSON—I interpreted from your response, Mr Lucy, that it was the penalties under the legislation.

CHAIR—So your question is: are the maximum penalties under the statutes sufficient?

Senator WATSON—Yes.

Mr Lucy—Again, that is squarely a matter for the parliament.

Senator WATSON—Yes, but I am asking for your view.

Mr Lucy—I understand that, but these areas are very complex. We look at our particular area of interest, which is obviously Corporations Law, and we have a perception of that, but there are other laws that are supervised by parliament and they need to be kept in balance. I think, from our perspective, we have a very close dialogue with the Commonwealth Director of Public Prosecutions. There is discussion there and the potential for these sorts of discussions to be raised at that level, which they are. Again, we have close dialogue with Treasury, and I think the views that we have in relation to some of the penalties that are set in statute are well known.

Senator WATSON—If they are well known, tell the committee.

Mr Lucy—Again, it is a very broad subject. There are some areas, for example, in the case of insider trading, where the penalty is in the order of \$200,000. Now \$200,000 in some circumstances is an extraordinarily large amount of money; in other circumstances it is not a particularly large amount of money. It is a question of whether or not parliament wishes the penalty to act as a deterrent as such, or whether or not it wishes it to act as a punishment. I think it is fair to say that, from our experience, much of the consequence of our litigation is more to do with damage of reputation than it is with any particular financial penalty.

Senator WATSON—That only affects some people, doesn't it?

Mr Lucy—Yes.

Senator WATSON—Damage to reputation.

Mr Lucy—Yes, definitely.

Senator WATSON—If the price is high enough, people are prepared to suffer some damage. Anyway, that is a little bit disappointing, Mr Lucy—I thought you would be a little bit tougher than that.

CHAIR—Do you want to respond to that last remark, Mr Lucy?

Mr Lucy—I do not think so, Chairman. I think the senator has his perspective and I have hopefully articulated ours.

Senator Sherry—I thought after our last oversight hearing you definitely came across as tough enough, particularly to the Prime Minister.

Mr Lucy—I am sorry, I did not hear that.

Senator Sherry—I thought you did come over as tough enough, particularly after the last hearing in terms of the Prime Minister.

Mr Lucy—I think that is the point, Chairman, and perhaps I did not elaborate it sufficiently. On the reputation side of it, when we deal with both individuals and corporates, invariably reputation is the issue that is most significant. I guess the experience, when we try to bring matters forward without the necessity for litigation, is that it is invariably the influence of damage to reputation which is the trigger for that.

CHAIR—I would have thought, in fairness to you, too, Mr Lucy, that the real measure is the tenacity with which the law is enforced—which, if I may say so, in the case of ASIC under your leadership has been of a high order.

Mr Lucy—Thank you, Chairman.

CHAIR—Anyway, that is just my opinion.

Senator Sherry—Just briefly touching on the oversight hearing we had about five weeks ago—and there is a further hearing next week—will we receive the answers that were taken on notice at that hearing before the hearing next week?

Mr Lucy—We have actually sought clarification for that because, at one point, there was a request as to whether or not we might provide the answers before tonight's hearing. Certainly our understanding is that the two hearings are totally disconnected.

Senator Sherry—They are. That does not prevent me from asking a question here, and frankly the reason I pursued that was the hope that we might avoid the hearing next week. I have to say that, given the time limits and all the questions I have, that hope has long collapsed, I am afraid. I was just seeing if we would get the answers before the hearing next week.

Mr Lucy—Certainly it is our understanding that next week's hearing is an extension of the first hearing—

Senator Sherry—Correct.

Mr Lucy—which means that the original hearing is still, as it were, open-ended.

Senator Sherry—Correct.

Mr Lucy—That was the reason why we were waiting to respond to all the questions in a complete manner. Our record of answering questions is, I think, exemplary, from an ASIC perspective.

Senator Sherry—But that does not mean the answers cannot be provided before next week's hearing to hopefully conclude the questioning. Do I take it from what you are saying that we may still receive those—

Mr Lucy—We will certainly re-look at that and, to the extent that we can forward appropriate responses before next week, we will do so.

Senator Sherry—I appreciate that, because I would not want to conclude next week's hearing—and you have raised a pretty technical issue about it being a continuation—and then have to make another request to the committee for a new hearing to come back to you on the answers to the questions you have given us. I would hope to avoid that sort of process.

Mr Lucy—Yes, I understand.

Senator Sherry—In the annual report, there are a couple of references to staff numbers, but page 38 indicates a significant increase in staff—this year, 1,570. Do you see the staff level as likely to decline in the next couple of years, or is it going to remain at this level over the next couple of years?

Mr Lucy—It really depends on the demand. In the year that you are referring to—the 2004-05 year—the 1,570 number was influenced, for example, by the James Hardie task force. So there have been specific activities for which we have been funded—for example, in the previous year there are a fair number for FSR licensing. Some of those activities have a

particular tail, in which case the numbers drop. It is a question of whether or not it remains business as usual or whether or not there are new activities presented to us.

Senator Sherry—What is projected at the moment? You must have a forward estimate of staff numbers?

Mr Lucy—We are projecting a slight reduction during the 2005-06 year.

Senator Sherry—What about 2007-08?

Mr Lucy—On the business as usual basis, another slight reduction.

Senator Sherry—What is slight—10 or 20?

Mr Lucy—No, about 40.

Senator Sherry—Could you take on notice providing me with the turnover rates of staff, please?

Mr Lucy—Yes.

Senator Sherry—Some of the other annual reports do publish that.

Mr Lucy—Would you allow me to separate it between ongoing and non-ongoing?

Senator Sherry—Yes.

Mr Lucy—Because from a commission perspective, we look at that also, and it is relevant to be able to have that categorisation.

Senator Sherry—Yes, that is fair enough. You could take that on notice. Do you have bands of employment?

Mr Lucy—Yes.

Senator Sherry—Could I have the breakdown for each band?

Mr Lucy—As in turnover—yes.

Senator Sherry—There is one other issue that I wanted to refer to in the annual report concerning unclaimed money. Page 43 states:

Unclaimed monies collected from banks, life insurance companies and approved deposit taking institutions increased with \$53 million collected in 2004-05.

It increased from what, approximately?

Mr Lucy—I would have to take that on notice. But I can provide an explanation as to the increase. In the previous financial year we undertook a major campaign reminding Australians that these monies existed. We provided a web site opportunity for them to search to see whether or not there was an opportunity for Australians to make claims. Therefore, in that year there was a real blitz. During the 2004-05 year, there was not such a blitz. We are looking at the same thing this year. That was one of the reasons why it rose again during that financial year. I can give you the specific dollar values in the earlier year.

Senator Sherry—Thanks. I read a press release—I think it was accompanied by a speech from Professor Collier, on Universal Children's Day, urging parents to talk to their kids about money. Is ASIC doing any work in terms of studies of ongoing on financial literacy levels?

Mr Lucy—I will ask Professor Collier to respond to that.

Ms Collier—We are not conducting any surveys, for example, in relation to financial literacy. We have an ongoing program on financial literacy matters—much of the information on this can be found on our FIDO web site. So, for example, we have issued publications that are specifically aimed at youth which have been distributed to Australian schools.

Senator Sherry—I appreciate that, and I am aware that education is flavour of the year across a whole range of areas. Are you aware of any specific research that is going on in terms of tracking financial literacy levels? I accept that ASIC is not doing any, but are you aware of any other agencies that are doing this in any specific sense? Did you see what sort of impact it is having?

Ms Collier—It is my understanding that ANZ Bank is doing another survey. However, that is obviously not within our purview. Secondly, a financial literacy foundation has been established by the Commonwealth government. It was recently launched here in Canberra.

Senator Sherry—Is there any tracking on financial literacy levels?

Ms Collier—I am not sure if they are doing any tracking of financial literacy. My understanding is that they have been funded to do work in relation to financial literacy. That may very well include tracking—I am not sure.

Senator Sherry—Would you agree that, given that there seems to be an enormous amount of activity from various organisations on attempting to lift financial literacy via various education campaigns, it would be useful to know whether it is actually working?

Ms Collier—Yes, that would be useful to know.

Senator Sherry—There has been a lot of discussion, obviously, about money laundering legislation. I am aware that there is some legislation—I think to be released in draft form in November. Has ASIC been consulted about aspects of legislation to track money laundering?

Mr Lucy—Yes, we have.

Senator Sherry—What aspects would ASIC be particularly concerned about in terms of money laundering issues?

Mr Lucy—I guess it is from two perspectives. The first is from the consumer's perspective, in that frequently consumers can be the unfortunate beneficiaries of activities to do with illegal money laundering, particularly where money leaves the country and there is nothing left behind but a debt. The other side of it is directors and officers' duties where companies undertake activities moving funds illegally, which inherently means that the company officers and/or directors are carrying out their affairs illegally, in which case we have a direct interest in that. Separately, you may be aware that I am on the board of the Australian Crime Commission. So, wearing that hat, I have that added interest.

Senator SHERRY—I know there is a lot of activity going on in terms of money laundering legislation internationally. One of the things that concerns me is that whatever we do in Australia, to some extent we are dependent on other countries doing something similar or the same in terms of making sure the impact is consistent. What countries are improving their money laundering tracking efforts?

Mr Lucy—I think the quick answer would be most. Certainly within the IOSCO group there is a very high level of interest in money laundering. For example one of the issues that was specifically identified in the report on Parmalat was the potential for illegal movement of funds.

Senator SHERRY—Yes, but is a report available on this of which you are aware?

Mr Lucy—I am happy to take it on notice and see what might be available. You are talking from a global context?

Senator SHERRY—Yes. The reason I raise this is that certainly in the anti-terror legislation—I have not seen the detail of it yet—but I know there will be a section on money laundering as well as the specific money laundering legislation. It strikes me that you say most; the problem is, if we have jurisdictions like Monaco, Switzerland, Channel Islands within the English jurisdiction, Cayman Islands, Bermuda—if they do not do something similar, we are left with holes in the system, are we not?

Mr Lucy—Yes. I do not think it is quite as bleak as you present, in that certainly again from an IOSCO perspective, there are really only three countries that are regarded as being reluctant to provide international support for enforcement activities.

Senator SHERRY—And, those three are?

Mr Lucy—I have to say I am not aware of them, because the way that they are presented to the IOSCO technical committee, the names are not provided.

Senator SHERRY—Well, three countries is three countries.

Mr Lucy—It is.

Senator SHERRY—It does present a problem.

Mr Lucy—But, with respect, I think you have quickly outlined four, so I think that—

Senator SHERRY—No, I was just raising them in the terms that they are known as jurisdictions with perhaps a lighter touch approach.

Mr Lucy—Well, for example, you mentioned Switzerland. We receive a very high level of cooperation from the Swiss.

Senator SHERRY—You might take it on notice to find out what those three countries are?

Mr Lucy—I will take it on notice.

Senator SHERRY—Thank you. As to the issue of fee data, I must say I was intrigued and a little taken aback by the press release of Monday, 3 October, not that you are seeking details of superannuation fee data—that is fine—but I thought this was an APRA job, that is why I was a bit taken aback by the press release and the announcements contained therein.

Mr Lucy—For matters that are generally under the umbrella of FSR, Jeremy Cooper, Deputy Chairman, will respond.

Mr Cooper—I think it really has always been joint work. Certainly the work that has been done so far is dependent on inputs from both agencies.

Senator SHERRY—I do not know whether or not you are aware, but I had a long conversation with APRA on the last occasion about the—you are nodding your head, so you are obviously aware of it?

Mr Cooper—I do recall it.

Senator SHERRY—About the lack of information that was able to be gathered in the area of commissions and the SNR, statistically not reliable. Is this in part a response to that particular issue that was discussed on that occasion?

Mr Cooper—Yes, I think it is an endeavour to improve over time and improve the quality of the information that is available.

Senator SHERRY—So, you are gathering this data: how is it to be presented to the public? Will it be regularly published? I notice there is a reference to it going on the web site. How have you thought about presentation of this particular data?

Mr Cooper—Again it is an iterative—the initial data went on to the web site. Our aim is to keep improving the quality of the information and the usability, if you like, so that over time consumers will be able to go and really do genuine comparisons of, for example, their own fund with other funds and then other funds between themselves.

Senator SHERRY—What about individual planners' commissions? I am not suggesting names are named, but even if their names were named, would that not be useful information to the public in terms of competitive pressure and selection?

Mr Cooper—Generally the commissions emanate from the product issuers, so it is a complicated chain in many cases.

Senator SHERRY—Yes, I am aware of that.

Mr Cooper—Generally speaking that is where the commission comes from.

Senator SHERRY—Do you think it is desirable that we have two agencies collecting fee data rather than just one? I have had a lot of complaints recently, in many cases unjustified, about APRA and ASIC, but I do continue to hear complaints about APRA and ASIC in some cases doing overlapping things. It seems to me this collection of fee data is something you are both doing; it is a function that is overlapping.

Mr Cooper—I think there is a certain amount of truth in that. These things are certainly evolving. We are all working in the same direction. Certainly the collection of fee data leading up to 30 June seemed to work without too much trouble.

Senator SHERRY—That was going to be my next question. What sort of response have you had from industry to the collection of this data? You are aware of the conversation I had with APRA?

Mr Cooper—Yes.

Senator SHERRY—They struck significant problems, I think unjustifiably, and had little to do with APRA despite the protestations from some who refused to provide the data, with lots of feeble excuses. What sort of response are you getting in terms of collecting this data?

Mr Cooper—My experience has been, and, apart from those people who are leaving the industry as a result of the changes, my recollection is—I guess I have some knowledge of this because the request went out in a letter signed under my name, so I did get a lot of responses. I can only think of two or three occasions where I could discern that people were merely objecting for the sake of objecting, that they were not leaving the industry or whatever. So, that is a fairly low rate in my view.

Senator SHERRY—We are not getting the excuse given to APRA that they could not understand it, could not gather it, it was too difficult, all the sorts of things that were presented to APRA when it tried to do this?

Mr Cooper—Do not seem to be, no.

Senator SHERRY—Good. The next release was the update of the disclosure, the PDS disclosure requirements. There have been a number of documents on this. You put out a specific media release on Monday 26 September 2005. Where are we up to in terms of the average length of PDSs at this point in time that you believe are being created in terms of this simplification exercise?

Mr Cooper—We make no secret of the fact that we think they are too long. If you wanted an average, it would be 60-plus pages, I would think.

Senator SHERRY—I have taken about 40 off the net, and that would be about right. Is there any indication we are headed to slimmed down production of these things as yet?

Mr Cooper—One of the 25 refinement proposals that the government put out last year is a short form proposal, and that has attracted a lot of interest.

Senator SHERRY—Are we seeing any produced yet, though?

Mr Cooper—No, it is still in proposal form.

Senator SHERRY—I have been critical of what has emerged, and I have been critical of ASIC because I think you do need to take some responsibility, at least part of it, anyway. Are you doing any specific consumer testing of the readability of documents that have emerged under FSR, PDSs in particular?

Mr Cooper—We have done some testing of our short form statement of advice and propose to do more.

Senator SHERRY—Sorry, what do you mean by some?

Mr Cooper—We have had organisations, like the Australian Consumer Association and so on, give us feedback on how readable they find it. The trouble with consumer testing is that it takes time and it costs money. We are wanting to drive change fairly quickly in this area, and that is why we put out our 12-page statement of advice. The next project is to attack the PDSs. Make no mistake: there are some deep cultural reasons why we have the resistance in that the players in the financial services market are obsessed about liability.

Senator SHERRY—I understand that. I think there is a solution to that, but I think it is a discussion for another time. I just want to get to the point that I do not think you have responded as an organisation as I would have thought. The bottom line is that it is about understanding, readability, et cetera. From what you are telling me, you have given it to the

ACA—that is fine. I do not have a problem with that. I am sure you have circulated them to the industry, but what about specifically putting them in front of the average punter, so to speak, to test whether these things are readable and understandable?

Mr Cooper—No, we have not done that work specifically on PDSs. I guess that is because the system, which started in 1991 with prospectuses, is very much a self-assessment, user based system. In the old days, when you created a disclosure document, the predecessors of ASIC would actually check through every page and see whether you had complied with this and that obligation. The responsibility is now very much with the issuers, so there has not been a great appetite or a lot of work done on the ASIC side specifically in looking at every single document.

Senator SHERRY—The biggest single complaint—there is a lot of talk about red tape, and I understand the goal of FSR, but there has been an enormous and costly exercise—some in the industry tell me it runs into \$200 million. I do not know whether or not that is accurate, but it is certainly very expensive to produce documents for disclosure. A criticism from industry—not that I agree with all of their criticisms—but these documents are unreadable. I have to say, I have taken them down and done a little test asking people if they can understand them. They pick them up with horror, which leads me to the fundamental conclusion: what use are they if consumers will not read them? Do you understand the problem?

Mr Cooper—I certainly do, I really do. I reiterate that the government's refinement proposal which specifically mandates a short form PDS will address that problem.

Senator SHERRY—We hope it will. I do not know how short it will be yet. It seems to me fundamental that consumer testing is required to identify whether or not these things are going to be readable. We have had this red tape review set up. I think Mr Banks is carrying out the red tape review. Will ASIC be providing any input to that review?

Mr Lucy—Yes, we will.

Senator SHERRY—Have you thought about in what areas?

Mr Lucy—We are actually canvassing a broad landscape at the moment. We are meeting with the people involved with the review in a fortnight to take it further. We anticipate putting in a complete submission.

Senator SHERRY—Will that submission be made publicly available?

Mr Lucy—Truthfully I have not got that far in my thinking.

Senator SHERRY—As I say, certainly my colleagues and I get more complaints about paperwork overload in the context of FSR than almost any other issue. I do not blame you; I do not heap total responsibility on ASIC. I think some criticism has to be made of ASIC in my view, but at the end of the day, governments write the legislation and the regulations. You can only implement what is there, although you do have some latitude, but it is a big issue.

Mr Lucy—Yes. We support that, and as Jeremy said, we are very much aware of the government's refinements program. We have publicly stated that we support it warmly, and we are playing our part to make sure that that is successful.

Senator SHERRY—I have a few issues on the shadow shopping disclosure plans, but I might leave that for the oversight committee, I think, because that logically continues on from the discussion we had on the last occasion of oversight. As to unit pricing problems, I am looking at a 20 September 2005 press release from ING, and I can recall a press release from APRA on a similar issue. There seem to be three or four issues of late involving unit pricing. Does ASIC have any view about why it seems to be more of an issue at the present time?

Mr Lucy—There are a couple of points for response. First, together with APRA, we are releasing a paper tomorrow on unit pricing. It has been road tested with some parts of the industry, and to date the responses are that it will be an extremely informative and constructive paper. The unit pricing area is complex for a number of reasons. Firstly, in many instances you are dealing with historical products that companies, by way of merger or acquisition, are actually dealing with. Therefore, some of the software, the systems, et cetera, that manage those are antiquated; sometimes they are not supported. Also, taxation does from time to time present an overlay of complexity because people's circumstances are different, so that can be a factor. From our part, it is encouraging that companies are themselves appreciating the importance of getting this right and in some instances, including some of the major banks, they have come to us and indicated to us that there are problems. In all instances, we have been able to work them through satisfactorily; there has been restitution made to the parties, the Australians who have suffered. We have always insisted that there is an external review by an external auditor or somebody as such to ensure that the harm has been accurately diagnosed, and secondly, that the harm has been accurately corrected. We think we are on top of it. That is not to say that it is not an ongoing, complex area, and that is why we have taken the step to come forward with this paper.

Senator SHERRY—Yes. I understand why it is complicated. I must say I had a couple of people brief me on it, and frankly I found it extraordinarily difficult to follow. I can understand the complexities in this area. Can you suggest or point to any reason why, just in the recent few months, we seem to have had more activity in terms of disclosure in this area and correction than we appear to have had in previous years?

Mr Lucy—I think that two reasons might be behind it. First is the requirement for breach notification, so that the companies have a more stark understanding as to their responsibilities to bring to our attention any known breaches as distinct from sitting on them. The other, I guess, is the fact that some well-known and well-respected banks and institutions have come forward to say that they have a problem, therefore it is perhaps no longer the embarrassment and so therefore others that are faced with similar circumstances are quick to come forward themselves. It is an important area, and we have certainly had discussions with the industry as to whether or not there might be advantage to seek opportunities to simplify products, to see whether or not sensibly there might be opportunities for merging. We have asked them what regulatory or taxation issues might be in the way, just to see whether or not parliament might be able to accommodate those issues.

Senator SHERRY—Members switching contributions or accrued balances from one superannuation fund to another—I do not want to go to the issues of the commissions and the shadow shopping exercise, that is for the oversight—there have been accusations that some funds are effectively erecting red tape barriers or making it difficult for individuals to do this.

Put aside the issue of exit fees, that is another issue altogether. Effectively, the issues are the level of proof required to transfer moneys from one fund to another or delaying it. I notice Virgin Super have had quite a bit to say about this publicly. Is ASIC doing any work in this area?

Mr Lucy—Yes, we are, but again, I will ask Jeremy to respond to that.

Mr Cooper—Certainly we are, and we are very mindful of some of those criticisms. I must say that the rule gives the fund 90 days in which to deal with a request. So, it was odd that so early, perhaps even in July, we were hearing complaints of tardiness and problems and so on. There was perhaps a little bit more smoke there than there was actual fire. We have certainly followed up very vigorously and spoken to a number of funds, including Virgin Super, about those issues.

Senator SHERRY—Was it ASFA that released a paper on this issue recently, last week or so?

Mr Cooper—I must admit I have not seen one.

Senator SHERRY—One of the things that concerns me is that we do not have any uniform documentation, standards of proof, et cetera. I know of one fund that requires a statutory declaration and a couple of photo ID proofs which does seem to me to be a little bit over the top in the name of security, in terms of practical implementation. Do you have any comment about that?

Mr Cooper—Yes, I do. We have identified that as a problem, and also the lack of standardisation of what information should be asked of the client's existing fund to find out the details about it and so on. We have written to the two major players, the industry associations, IFSA and the FPA, about sitting down and quickly working out an industry standard way of doing this. Perhaps it would grow into an industry code to iron out some of these things.

Senator SHERRY—Do you think a standard type form approach would be a good thing in this area?

Mr Cooper—Yes.

Senator SHERRY—Will you be publishing anything shortly in the near future on this issue?

Mr Cooper—We would hope that we can get that out fairly shortly. It really should not be a big job.

Senator SHERRY—You say fairly shortly—by the end of this year?

Mr Cooper—I see Christmas looming.

Senator SHERRY—Yes, so do I. I will not press you any further. I was interested because there seems to be a number of complaints about it. As to the issue of exit fees, are you doing any work in that area?

Mr Cooper—Not specifically. After we released our report, we have not specifically revisited exit fees.

Senator SHERRY—Putting aside the traditional horror products with the exit fees, in looking at the PDSs I referred to earlier, I have noticed exit fees still in place, certainly not of the level—they tend to start at may be 15, 20 per cent for the first year and they drop down to 12½ or 10 and then are phased out. Has any analysis been done of that type of exit fee at the moment?

Mr Cooper—We have looked at the modern product. I think our view is that it is a relatively salutary design in the sense that it reduces the initial cost to the consumer and amortises it over time. The consumer is effectively pushing out the initial pain having to take out a four per cent entry fee, if you like, and it gets pushed back to a time down the track when the product may be worth some multiples of what was originally paid.

Senator SHERRY—I accept the argument about the admin costs, but a modest exit fee is something that will make someone think twice about moving out.

Mr Cooper—Certainly.

Senator SHERRY—They would certainly have to consider it.

Mr Cooper—I guess what I am saying is that in effect, instead of paying, say, a four per cent entry fee, some of these products now charge you a lower entry fee and put the balance as an exit.

Senator SHERRY—Why should there be any entry or exit fee? It seems to me that is anti-competitive.

Mr Cooper—I think you will see competition drive these costs down.

Senator SHERRY—Yes, but if you are effectively caught in a product, that is not competition, is it?

Mr Cooper—Certainly, but I think the modern product is significantly less in quantum than the really bad legacy products that we are talking about.

Senator SHERRY—Sure, I acknowledge that, but they are still fees that would make a person think twice about shifting out, are they not?

Mr Cooper—Certainly.

Mr Lucy—I think in the area of competition, our experience with the survey that we undertook is that a number of companies chose to make material adjustments to their exit fees.

Senator SHERRY—Correct.

Mr Lucy—And therein lies the potential for commercial—

Senator SHERRY—But it has gone in some cases from high to what you could roughly call moderate exit fee, has it not?

Mr Lucy—Yes. In some instances, they have been waived.

Senator SHERRY—Yes, in some instances.

Mr Lucy—That is a significant step in the right direction, and the best pressure really is the pressure from the industry and from consumers.

Senator SHERRY—My point is this: fine, that may have some impact over time, but you still have people in these products having to take these things into account, even in products that are being written today, albeit very modest compared to the past.

Mr Lucy—Yes.

Senator SHERRY—As to the issue of property spruikers, do you have anything to report on activity in that area?

Mr Lucy—Yes, Berna Collier will speak to that.

Ms Collier—We are continuing to participate in the ministerial council process. My understanding is that there is still consideration of the future of regulation of this industry, which is an issue for government. We maintain our position, which we have expressed in this committee before, that there should be comparable regulation of property as with other financial products, but the way in which that is conducted is an issue for government.

Senator SHERRY—Do you have any knowledge about when we will see these comparable legislative proposals?

Ms Collier—No, I do not.

Senator SHERRY—Who is coordinating this activity?

Ms Collier—The Ministerial Council on Consumer Affairs.

Mr Lucy—It is largely with the states, of course.

Senator SHERRY—Yes, I understand that. As you know, there was a lot of attention given to this in the media in recent times. I am wondering when we will see something emerge to assist in regulating the sector. So the council of ministers?

Ms Collier—Yes.

Senator SHERRY—ASIC received some criticism recently for not listing criminals. Are you aware of that media coverage and criticism?

Mr Cooper—Yes, we are.

Senator SHERRY—Do you have a response to that?

Mr Cooper—We do, and the response is that there is a system to register the people we ban from being a director under various scenarios. There is also an automatic banning under the Corporations Act that can be imposed by not courts within Australia and in fact even by courts overseas, which is specifically not intended to go on our register. Our register does not purport to be and is not a complete list stating ‘Here are all the people that might be banned at any one particular time in Australia.’; rather, it is, ‘Here is a list of the people that ASIC has banned.’ So, that was a complete misinterpretation of the register and an unwarranted criticism.

Senator SHERRY—Is your register publicly available?

Mr Cooper—It certainly is.

Senator SHERRY—Are other registers publicly available?

Mr Cooper—I am not sure what you mean by ‘other registers’.

Senator SHERRY—Well, are there other registers or public records by which people can access persons who have been prohibited or disqualified in some area of the finance, legal accounting—?

Mr Cooper—They can find out who has been made bankrupt and they can certainly find out who has been convicted of serious criminal offences. They would have to do that on a state by state basis, and of course, if there was a person in Australia who had been convicted of something like that overseas, that would make it even more difficult. I guess that is the whole point. There could be such a register, but it would be a very difficult job in keeping it up to date and properly assembled.

Senator SHERRY—We have a variety of collections of data that seem to be across different jurisdictions and agencies. Would it not be useful to have a cross-reference to a list of other registers where they are available, just a cross-reference to them? I am not suggesting ASIC did it by itself, but it seems to me it would be useful for other registers to do the same?

Mr Cooper—Yes, I think in theory that would be beneficial.

Senator SHERRY—Because you are familiar with the issue that was raised—it was the Money for Living, retirees' financing company?

Mr Cooper—Yes.

Senator SHERRY—Apparently this fellow, Mr O'Neill, was gaoled for three years for forging documents in 2001, stealing about \$2 million from another business in the late 1990s. His corporate ban ran until 2009. He was released from gaol in July last year, discharged from bankruptcy two months later, and apparently was one of the operators of this Money for Living scheme. Are you aware of that?

Mr Cooper—I am indeed.

Senator SHERRY—Are you undertaking some activity in respect of Money for Living?

Mr Cooper—We certainly are. We have some major enforcement proceedings on foot right at this minute.

Senator SHERRY—I think it was some sort of drawn out equity type arrangement for retirees on their property, some manner of construct around that principle?

Mr Cooper—I am happy to answer your questions, naturally, but only in a very general sense.

Senator SHERRY—I understand that.

Mr Cooper—Because it is very, very important that we do not upset anything in relation to that investigation.

Senator SHERRY—But you are familiar with that; that was the general nature of it?

Mr Cooper—Yes, it was.

Senator SHERRY—I will not go any further into this specific case, but has ASIC examined the regulatory regime around equity draw-down products that seem to be being offered more by an increasing number of financial institutions, and particularly to people who are retired or coming up to retirement?

Mr Cooper—Yes, we have.

Senator SHERRY—What work have you been doing in this area?

Mr Cooper—We have been doing a range of work. We have been talking to the industry body—I cannot quite remember the name of it, but there is a body that has been set up that participants in that industry join. We have been talking to it about the benefits perhaps of a code of conduct and just what sort of products are out there in the market. A classic reverse mortgage is actually a credit product which we do not regulate. However, there are various mutations of that idea that do become either financial products or perhaps even managed investments. We are looking closely at those.

Senator SHERRY—Would you see those as your area of responsibility?

Mr Cooper—Yes.

Senator SHERRY—The traditional reverse mortgage offered by banks, for example—that is APRA?

Mr Cooper—Yes.

Senator SHERRY—It just seems that this is an area where there is a bit of crossover, would you agree?

Mr Cooper—There are some fairly fine distinctions, yes.

Senator SHERRY—The *7.30 Report* broadcast a program on 18 August involving two individuals. I have the transcript; there was nothing confidential about it. A Ms Anna Chernisnova had allegedly been convinced to shift \$200,000 by a sales person out of the ANZ fund. I must say I was a little taken aback, she worked for ANZ; I would have thought a person would have had a greater knowledge. Anyway, she was convinced to shift it out into a managed account, and then the money was withdrawn and apparently stolen. There was I think a car repair operator who—not the same level of moneys, Aaron Kendon I think was his name. Anyway, has ASIC had anything to do with the investigations around the salesperson who convinced them—

Mr Lucy—I will take those on notice, if I may. They do not that immediately gel with us, so we will take them on notice.

Senator SHERRY—It was the *7.30 Report* of 18 August. Emma Alberici, who was the interviewer, said:

After investigating a series of complaints earlier this month, the Australian Securities and Investments Commission shut down the PFS business development group—

Personalised Finance Solutions, does that ring any bells?

Mr Cooper—Yes, that does. I think to provide a comprehensive report, particularly if there is any potential for it to be an outstanding investigation, we should take it on notice.

Senator SHERRY—Okay. Could also take this on notice. In a case like this, is there any potential for compensation to be payable? It was superannuation moneys, but I am not sure

whether it will be covered in terms of the compensation provisions of the act. Could you give us a view about that?

Mr Lucy—Yes.

Senator SHERRY—Whilst we are on these types of cases, you obviously put up press releases from time to time. There was a press release on Monday, 19 September—I do read your press releases, almost daily reading, I have to say. You obtained orders in the Federal Court in respect of Superannuation Retrieval Services to repay 10 clients a total of \$79,594.00. In this case were all the clients compensated all of their money that was apparently incorrectly taken out?

Mr Cooper—I am familiar with that case but I must admit I do not know the answer to that specific question. I know that we were very swift. We picked that up and swiftly moved to protect the clients' funds, but I am not sure whether we got a 100 per cent strike rate.

Senator SHERRY—Okay, if you could take that on notice. I notice also in this press release that in this case this company was establishing self-managed superannuation funds and charging in one case a fee of \$1,500 for an \$8,000 contribution—that is just absolutely outrageous.

Mr Lucy—That is the modus operandi particularly of the early release super, so it is outrageous but it is not surprising.

Mr Cooper—We picked that up as part of the switching surveillance.

Senator SHERRY—Why do you say it is not surprising?

Mr Lucy—Because typically the people involved in the activity are essentially there to defraud Australians of their superannuation money, so they were in there for both fees, in some instances fees to establish and then fees to look after the investments.

Senator SHERRY—The tax office is regulating this area. I know ASIC has done some oversight work on these types of superannuation funds, but I cannot get any data in terms of what is happening in this sector. You get lots of anecdotal activity. Is there any overview data available on this sector?

Mr Lucy—We work closely with the tax office, but you are right, they are constrained as to what they can share, including with other law enforcement agencies such as ASIC. There is a paucity of information, and in some instances it would be helpful for us to gather more but the laws prohibit the tax office from communicating that information to us.

Senator SHERRY—Presumably, you are saying that that would prohibit them from providing information in a general sense in terms of the internal structures and fees of these things publicly as well.

Mr Lucy—The general sense is not really all that helpful, because typically in these sorts of schemes, no-one really wants to bring forward the information to ASIC because even for the party that suffered loss, the only way that they can correct the situation and make their superannuation fund back into a complying fund is to regurgitate the moneys, to reverse what has gone on. If the promoter has taken a 30 per cent slice out for a fee, that typically is a very

difficult exercise. So the party that is wronged, typically wants to keep a very low profile and not have either the Taxation Office or ASIC be made aware of the transaction.

Senator SHERRY—It would be useful if the tax office was able to share more information?

Mr Lucy—It would be, frankly, because they certainly communicate to us when they look at issues which are generic issues, and the ones that you are describing, certainly they have conveyed to us as areas of generic interest. That is something that perhaps we all know. It is really a matter of going to the next step that it really starts to become helpful to us. That is not easy.

Senator SHERRY—I am just reflecting that the government decided that the regulation in this area will be transferred from APRA to the tax office. I know APRA were finding difficulties with the regulation, and I can understand the tax office approach, but do you see this as an area where there is a comparative downside with the tax office handling it, as compared to what is probably a significant upside?

Mr Lucy—I think generally Australia has taken the attitude that one's taxation affairs are confidential between the taxpayer and the tax office, and all sorts of areas of criminal activity are communicated to the tax office but are not otherwise passed on to other law enforcement agencies. It is a fundamental starting point. It is true that—not just in the superannuation area—there would be in fact a range of areas where the intelligence gathered by the Taxation Office, for example, people paying their BAS fees late—would be of interest. To the extent that they were corporations, that would be of interest to us because it would be very much an early warning of likely problems. So, with our national insolvency coordination unit where we try to identify companies in distress, that sort of intelligence would be quite valuable.

Senator SHERRY—One final case, because we have run out of time. You had a press release on Monday, 17 October concerning Bridges Financial Services Pty Ltd switching super funds. The press release contained the warning from Ms Jan Redfern from the disclosure document, 'Consumers should read this information carefully so that they can make a considered and informed decision about whether to act on the advice provided.' She is warning consumers to read the information. Do we know in this case whether consumers actually did read it, and if they did, whether they understood it? It comes back to whether the disclosure documentation in fact is readable in the first place.

Mr Lucy—I guess that is true, but we also have an environment where people are encouraged to seek competent advice from financial planners and others. I think Jan's point obviously is to hoist the flag to really reinforce to the consumers that this is an area where they actually do need to either form their own view or seek advice so that they can be assisted with that view.

Senator SHERRY—I understand her giving the warning, but it comes back to the earlier discussion about the difficulty understanding. I do not know whether consumers actually read it or indeed were given it in this circumstance. It is very difficult if consumers are provided with the documents but cannot understand them.

Mr Lucy—Our experience, particularly through FIDO—where we are very active trying to provide consumer alerts, advice generally about products and so on—is that that really is an

extraordinarily beneficial service which is of great assistance to Australia. The numbers of parties that hit our web site each year go up. They are in the millions. We certainly have a view that it is providing a proper service, but inevitably there will be some that choose to ignore it.

Senator SHERRY—I have some other questions, but they will pass over to the oversight committee.

CHAIR—Thank you, Senator Sherry. Thank you Mr Lucy, Mr Cooper, Professor Collier; you are excused.

[9.05 pm]

Australian Prudential Regulation Authority

CHAIR—Dr Laker, gentlemen, welcome to the hearing. Dr Laker, did you wish to make a brief opening statement?

Dr Laker—Yes, Mr Chairman, and the operative word is brief. APRA's 2005 annual report, which describes a very active year for APRA, was tabled in parliament last Friday. Since the committee may not have had the opportunity to study the report in any length, I wanted to make a very brief opening statement to draw out three main themes of the report. Firstly, the Australian financial system remains in sound condition, underpinned as it has been for a number of years now by the strong economic fundamentals of this country. The cooling housing market and more intense competition for quality loan assets and for deposits have meant a more challenging credit environment for the deposit taking sector, but these developments have not to this point put stress on profitability, asset quality or capital adequacy in the sector. The general insurance industry continued to lift its risk management and underwriting performance, and it also benefited, as did the life insurance and superannuation industries, from the rally in domestic and global equity markets over 2004-05. Our report cautions our regulated institutions not to take the current strength of the Australian financial system for granted, but to use these good times as an opportunity to ensure that their risk management defences are up to the mark and that they are well prepared if adversity were to hit their industry.

Secondly, some major reforms to Australia's supervisory framework converged and gathered momentum over 2004-05. By and large these reforms are not APRA initiatives. Some of them, such as the adoption of international financial reporting standards, and the new Basel II capital framework are international initiatives running on international timetables, while others are a response to the recommendations of the HIH Royal Commission. Whatever their origin, it is APRA's responsibility to implement the reforms and we have been consulting extensively with a full range of interested parties to ensure that the reforms are practical and relevant. Reforms on this scale are not easy, but we in APRA are confident that they are laying the foundations for a more robust supervisory framework in Australia for the next decade and beyond. We are sympathetic to industry concerns about the burden of regulatory change over recent years, and we certainly do see clear air ahead for industry once the current wave of reforms has settled.

Thirdly, APRA has continued to build up its own strength and effectiveness, boosting staff levels in our front-line and specialist areas and improving the way we conduct our

supervision. Despite a fiercely competitive market, we have succeeded in recruiting experienced staff from industry and the professions to join our core group of seasoned supervisors and support staff, and we have now just about reached the staff levels we need to do our job well. Our staff turnover has attracted some media attention recently, but, though obviously not what we want, our turnover has in fact been running below the finance industry as a whole.

One of APRA's immediate tasks, and one in which this committee has shown a close interest, is the introduction of the new superannuation licensing regime. APRA has been geared up for this task for some time, and we have consulted extensively on licensing requirements with trustees and industry groups—over 250 workshops and presentations and 700 meetings with trustees and still counting. Until recently, however, applications had been slow to arrive. We are currently processing around 150 formal applications and have issued 25 licences with several more licences imminent. However, we are still awaiting applications from over 200 trustees that have indicated their intention to apply, and for them the clock is quickly ticking down. APRA has discretion to close the licensing window before the two-year transition period ends on 30 June 2006—in fact, the discretion operates as early as January next year—so that we can process any late rush of applications.

Tardy trustees face a real risk of missing the cut. APRA will also need to manage the exit or transfer of the 700 to 800 trustees and associated funds that do not apply for a licence. Thank you, Mr Chairman, we will be happy now to take any questions from the committee.

CHAIR—Thank you, Dr Laker.

Senator SHERRY—I had read your annual report; I have read a lot of them—not just APRA—in the last couple of weeks. A flood of them has come into my office. Starting with the annual report and staffing, what is the turnover rate, because I could not identify it in the report?

Dr Laker—For our front-line—what we call our operational divisions—it has been about 15 per cent over 2004-05. For our staff over all, about 18 per cent.

Senator SHERRY—That is certainly better than the finance department. I do not know whether you have heard about their turnover rate recently.

Dr Laker—We look at turnover in the public sector, but we recruit in and lose staff to the finance industry. That is our main recruiting market, and the benchmarks there suggest that turnover in that industry is running over 20 per cent or around that area. It is a phenomenon in our finance sector that staff with risk management skills are in very strong demand at the moment. But having said that, we are also able to recruit into APRA. It is reassuring that we can bring in quality people and are bringing quality people into our senior ranks.

Senator SHERRY—I notice that 589 is the 2005-06 figure for staff; it is up about 10 per cent on 2004-05. What is your projection forecast for staffing in the next two financial years: stable, going up, down?

Dr Laker—Last year, because of the success of our recruiting effort, we came very close to the target that we have set, and it was funded through the new policy proposals. This year we expect, if we can hold our current levels, that we will grow our staff by a small number,

and that would take us to what we need for our current tasks. We would expect to hold that for the next couple of years. Looking beyond that, clearly we need to look at the kind of additional demands that might be made on us. We need to have a look at the implications for our staffing of the changes in superannuation trustee numbers as well. It is too early for us to get a sense of what the industry will look like post licensing, but certainly there will be fewer superannuation funds. But there will be many larger, more complex superannuation funds. They are the factors we will look at beyond that.

Senator SHERRY—So you can have a decline in number but you can have a rise in complexity?

Dr Laker—There has certainly been a decline in number in the industry over the last few years. It is clear that that has been accentuated by the licensing process. But some of the funds, through amalgamations and rationalisations, are becoming large and complex, yes.

Senator SHERRY—On that fund licensing issue, you mentioned that 700 to 800 have indicated they will not apply. Presumably the assets will be transferred into some other arrangement; they would have to be. Are you keeping a close eye on that to ensure there are no undesirable activities or practices in those transfers?

Dr Laker—I will ask my deputy chairman, who is responsible for this whole exercise, to comment, but, yes, we give that as much attention as we do the formal licensing of new superannuation funds.

Senator SHERRY—The reason I raise this is that in the ASIC context and in a lot of work on switching, commissions, fees et cetera that is at the individual level, but you could have malpractice going on at the bulk level when one fund is collapsed into another, which I know is occurring regularly, from reports I receive. With that comment in mind, Mr Jones, do you have any observations to make about this?

Mr R Jones—Generally it is going fairly well. We anticipated when we did the first study that there would be quite a few exiting and so we put a lot of emphasis on doing wind-ups and exits and so on. We are fairly confident that the movement of funds is being done in a very sound way. The real concern is the length of time. So, given that the licensing period has to be up by 30 June, the real concern is to ensure that those who are deciding to exit are effectively exited by 30 June.

Senator SHERRY—Okay. But do you formally examine, for example, the fee structure in a fund that shuts down and the assets transfer to another fund; do you look at what is happening?

Mr R Jones—We formally examine what happens to the funds in a transfer, absolutely.

Senator SHERRY—Is it correct that an existing balance in an account in a fund would require the formal approval of an individual to authorise it being transferred into another fund, where the fund is being shut?

Mr R Jones—Sorry, where the fund is being shut?

Senator SHERRY—Say you have a fund with 20 members and J. Smith has a \$100,000 balance in their account. The trustees and the employer have entered into a new arrangement

with a new fund, passing it over to a new fund. Would it require the individual, in this case J. Smith, to authorise the transfer of their existing balance into that new fund?

Mr R Jones—You mean each individual having to authorise the transfer?

Senator SHERRY—Yes.

Mr R Jones—No, it would not.

Senator SHERRY—I do not think you have published, but do you intend to publish what has been happening, for example, with the fees and charges, insurance arrangements, admin costs, those sort of things, when one fund shuts and literally moves as a whole into another fund?

Mr R Jones—We have not really thought about publishing those because it has not really been a significant issue in terms of significant costs to individual members of a transfer. There are administrative costs associated with the transfer of funds, but the circumstances for the individual has not really been an issue.

Senator SHERRY—It is not so much the administration costs. ASIC is doing the work in the case of individuals where they transfer individually from the ‘from’ fund to the ‘in’ fund. Are you doing similar work in terms of the closure and then bulk transfer, if you like, of members from the ‘from’ fund to the ‘in’ fund?

Mr R Jones—Absolutely—but we do that all the time; it has not come through licensing. For a large number of years there has been a decrease in the number of funds, particularly corporate funds who have been winding up. As firms do their wind-up, it is our responsibility to ensure that the wind-up is done appropriately and the money is transferred appropriately. Of course, every single member is given the information as to where the money has gone.

Senator SHERRY—That is all fine but, given what you have said, it would seem to me that in a bulk wind-up, if we want to use that term, it is perfectly permissible for a member to pay a higher fee in the ‘in’ product or the ‘in’ fund. Do you do work on checking this?

Mr R Jones—No, we do not.

Senator SHERRY—Don’t you think that would be a point of vulnerability? ASIC do that sort of checking in the case of individuals, but you do not seem to be doing it in the case of a bulk transfer.

Mr R Jones—I do not think we have seen any circumstances where there has been a loss of members’ funds as a consequence of a bulk transfer.

Senator SHERRY—No, it is not the loss of the funds—though that obviously has to be checked—it is the fee.

Mr R Jones—Whether the new fund charges higher fees than the previous fund?

Senator SHERRY—Yes. That is one issue. Level and cost of death and disability insurance would be another issue. As you said earlier, the individual does not have to authorise that, so it seems to me that some people could be put at a disadvantage in terms of the ‘in’ fund.

Mr Byres—One of the things we look at is not so much the fee structure but what due diligence the trustee of the fund that is winding up has done in selecting the eventual home for the fund. It might be quite acceptable that a trustee chooses a product which has a higher set of fees but also offers a higher set of services. It is not purely a case of saying, ‘You paid a certain percentage before and you pay more now and therefore that is a bad transfer.’ What we are looking for is, in a sense, that the trustees, in looking at the best interests of the members, have said: ‘Here are the services the new fund, the new trustee, will provide. Here is the cost. And on an overall package basis that seems to be a reasonable transfer.’

Senator SHERRY—That can be a difficult judgment to make, can’t it?

Mr Byres—It is a difficult judgment.

Senator SHERRY—For exactly that reason you referred to—the overall level of benefits. Some may be disadvantaged as a result of the transfer, others may gain, and in this case the individual has no say in that transfer. That is correct, isn’t it?

Mr Byres—If the fund in total is being transferred from one trustee to another, that is correct. The trustee obviously needs to advise the existing members of where they are being moved to, the implications of the move, what that will involve. At the end of the day, the trustee looks at the best interests of the members as a whole, not each and every individual member.

Mr R Jones—The trustee that is the so-called exiting trustee still has an obligation to look after the best interests of members and make decisions that are in those members’ interests.

Senator SHERRY—Do you have any overview data—obviously you do not have it here—about what is happening with the fees in these circumstances? I raise it because it seems to me there is more of this activity going on at the moment than there ever has been before, in part because of the licensing requirements but I think there are a lot of other issues as well. Do you have any data you can provide about the analysis on what is happening with overall fee levels? In many cases I know employers with corporate fund arrangements often pay the admin fee themselves and/or the death and disability, and that is often finishing when the transfer is occurring. A fund is shut down, over to another fund, and the employers are saying they are not going to do it anymore. So I am interested in some representative data about what is actually happening in these areas. Can you give me a list—take this on notice—of all the funds that have shut down in the last year? Presumably you would have a list of that available.

Mr R Jones—There are hundreds—yes?

Senator SHERRY—Yes. Do you have the number of employees or number of members of the fund?

Mr R Jones—Yes.

Senator SHERRY—Do you have the ‘to’ transfer fund?

Mr R Jones—Yes.

Senator SHERRY—I don’t want to put you to too much work, you see! I don’t want to see the staff numbers increase by another four or five for next year. I think what I have gone

through so far is pretty simple—I suspect you could get a print-out of that. But, for my last request for data, the fee issue particularly intrigues me.

Mr Littrell—If we could undertake to provide that, as a question on notice, for a statistically relevant sample we could do that reasonably. To do every one of them we are talking hiring staff. It would be a colossally large job. But we can do enough of a sample to answer the question you are asking.

The other point to make, Senator, is the transferred members are informed of that and the new trustee must provide the same information to the new members as they would provide to their existing members. And for those new members, for their defined benefit portion, if that happens to be relevant, typically the transfer is not going to make much difference. If it is accumulation they have portability and choice, so they are not chained to the fund.

Senator SHERRY—Not necessarily. There are exceptions to portability and choice. Put aside the state awards next year and with AWAs you can have an agreement that overrides choice. You could have a bulk lock-in, if you like, through an AWA. It is not quite that simple, Mr Littrell.

Mr Littrell—The great bulk of people being transferred through this period do have portability and choice.

Senator SHERRY—Yes, but they are still being transferred. It is whether or not they know and understand all of that bulk transfer when a fund shuts.

Mr Littrell—They will know. They do not have a choice in the matter of whether the fund moves, but the fact is disclosed to them and information about the new fund is provided.

Senator SHERRY—Yes; it is whether they act on that.

Mr R Jones—This is certainly no different to what it has been for years.

Senator SHERRY—Yes, except that there is an accelerated level of activity.

Mr R Jones—That is true, and except that now there are also more opportunities for portability than there were before. So one does counter the other a little bit.

Senator SHERRY—That is right. And also this is a really big issue in both the UK and the US in the context of what seems to be the collapse of their DB funds. There are lots of disputes and arguments about this, and a whole lot of other issues about asset backing. Anyway, let us see what the data produces and we will have a look at it at another time in more detail. Can you say, here and now, that the licensing deadline that you have referred to is not going to be extended? It seems to me that you are going to have one hell of a logjam by the required date. You have given another warning tonight.

Mr R Jones—I can confirm here and now that APRA has no ability to extend the period past 30 June.

Senator SHERRY—If that happens and you do not licence a fund, frankly I am not terribly worried about the consequences on the trustees but the consequences on the members are significant, aren't they?

Mr R Jones—They are. Just to talk a little bit about the process, for the past few months we have been contacting each trustee and asking each trustee to give us an indicative date. We

now have the circumstance where no trustee who has said they are applying for a licence will be applying after Christmas.

Senator SHERRY—Provided they meet the indicative date.

Mr R Jones—Precisely. Provided they meet the indicative date, we are confident that we will be able to process every application by 30 June.

Senator SHERRY—And process those applications with the same degree of examination and oversight as all the others have been?

Mr R Jones—Absolutely. But that is also conditional upon the expectation that we will not be taking applications well into next year. In fact, it may well be that we will not be taking applications by February.

Senator SHERRY—Let us say someone is late and you do not want to adversely hurt the members, where would their contributions go to? There cannot be a void allowed to exist, it seems to me. What would you do in those circumstances?

Mr R Jones—There are two options. One is that they have decided to wind up and have not wound up. The other is that they have decided to apply for a licence but they are not through it. One possibility is a replacement of the trustee, and that is certainly something we have given some very serious thought to. We are spending a lot of time on those that are planning to exit, because those that are planning to exit in one way or another we want them out and we want the thing sorted by 30 June.

Senator SHERRY—Just returning briefly to the closure and exit issue, you are saying that you are closely examining and monitoring this but are there, for example, competitive tendering requirements? Are there criteria and parameters for closing a fund and transferring it to another? I cannot recall anything that exists in this area in regulations.

Mr R Jones—I am sorry—competitive tendering for what?

Senator SHERRY—For the replacement. There is a reason for asking this in another context, which I will come to.

Mr Littrell—There is a SIS requirement that the current trustee exercise reasonable efforts in finding a new trustee, and if they cannot do that then there are equivalent provisions on winding up the fund. But there is nothing like a competitive tender. The replacement trustee is not a government agency.

Senator SHERRY—Yes, I understand that. I am just interested in what the parameters are in these circumstances.

Mr Littrell—As is typical in SIS, it is that the trustee exercise their best efforts and act reasonably.

Senator SHERRY—‘Best efforts’ could be a fund that costs twice as much.

Mr Littrell—Remembering that we appoint the replacement trustee and we can direct the replacement trustee. It is not always the case, but you are typically talking about a major accounting firm, a reasonably reputable group.

Mr R Jones—And we do this independently of the licensing process. There are circumstances where we replace trustees.

Senator SHERRY—Yes, you replaced the HOSTPLUS trustees, I think.

Mr R Jones—For a while.

Senator SHERRY—The other context in which I want to raise this issue is default fund. Employers now, at least under federal award jurisdiction, make the decision to select the default fund. It seems to me that this is an area of possible abuse going forward. Are you keeping an eye on when an employer decides to switch or change the existing default fund arrangements?

Mr R Jones—No.

Senator SHERRY—There is no oversight of it?

Mr Littrell—If I could expand on that, once we are through the licensing period the presumption is any licensed APRA trustee or registered fund—from the employer's point of view, it is really up to them.

Senator SHERRY—That they are getting?

Mr Littrell—Yes. It is not APRA's job to vet the employer's choice of the default fund.

Senator SHERRY—That is what I thought. It just seems to me that you could have a good fund with reasonable fees, the employer for whatever reason decides, 'I'm not going to have that default fund, I'm going to change it,' and there is fundamentally no check or no criteria they have to follow. They can just do it; it is their decision on the default fund. That is my understanding. That is correct, isn't it?

Mr R Jones—That is my understanding.

Senator SHERRY—APRA has not looked at any activity in this area? It seems to me that this is an area that is potentially wide open for abuse at a future date—well, from now on.

Mr R Jones—Why from now on?

Senator SHERRY—Because of the choice of fund regime. The employer picks the default fund. They had not had the ability to do that in an unfettered way until the choice of fund regime came in. Just take it on notice. Have a look at it. I am just raising it as an issue, because I think potentially there may be problems down the track.

Mr R Jones—Okay.

Senator SHERRY—Coming back to staffing, there was an article in the *Australian Financial Review*, in the Rear Window column, under the heading 'Spotter fee a nice little earner for APRA staff'. I do not always assume every media article is correct, but it says that APRA staff who do a friend for a job with APRA get a \$500 finder's fee. It says:

This pre-tax fee is not a bad lurk for the under-funded APRA but does not compare too well with the Financial Services Authority in London which has a £1000 (\$2330) spotter's fee.

Can you confirm whether this is an accurate description and, if so, why?

Mr R Jones—I am not sure about the pre-tax, but certainly the spotter's fee is correct.

Senator SHERRY—It is.

Mr R Jones—It is. It has actually been shown in other institutions to be a quite effective mechanism in getting quality employees and getting employees who stay. Word of mouth is not a bad thing.

Senator SHERRY—How many spotter's fees have you paid this last financial year?

Mr R Jones—We only introduced it a couple of months ago and as far as I am aware the answer is none.

Senator SHERRY—None.

Mr R Jones—But I still think it is a good idea.

Dr Laker—Certainly in comparison to what it costs if you have to go to a recruitment agency to try and find specialist staff, which is what we had in mind when we were also looking at the pros and cons.

Senator SHERRY—So you picked up this idea from another agency or agencies, have you?

Mr R Jones—I would not say it was an original idea on our part, no.

Mr Littrell—The idea has been around for decades.

Senator SHERRY—I know. I had heard of it before. I was just intrigued that APRA was in the media for a spotter's fee. I had not spotted any other government agencies yet. Maybe the department of finance might like to do it, given what is happening there.

Mr R Jones—If it works really well I am sure we will claim it was an original idea!

Senator SHERRY—Talking of fees, I had a superannuation fund contact me who had received their APRA levy bill under the financial assistance levy—I think it is part 23 of the SI(S) Act—to recoup amounts of money paid by the government to super entities that have suffered loss as a result of theft and fraud. The bill they received covered three years of the levy, going back to 2001-02. It was not accompanied by any letter of explanation as to the calculation of the levy—they were not objecting to it—and why it covered three years worth of levy and they were requested to pay within 32 days of the issuing of the notice. What is happening in this area? Is that an accurate overview of what is happening with the levy issuing notices?

Mr R Jones—I think it is an accurate description of the particular circumstances of recovering those funds, yes. It was a recovery for a couple of years. Given that the amounts vary from year to year in terms of recovery, I think you are correct that it was recovery based upon a number of years worth of payouts.

Senator SHERRY—Why wasn't there an explanation?

Dr Laker—The reason it does cover more than one year is that some of the particular cases which give rise to payments under the Superannuation (Financial Assistance Funding) Levy Act 1993 are cases which may be two or three years in the development, because before compensation is paid to fund members the trustees have to exhaust all other possibilities of

recouping funds. That often involves protracted legal action. It is only when all that is completed that you can—

Senator SHERRY—I understand that.

Dr Laker—That is where you get the lag.

Senator SHERRY—I understand that, Dr Laker. I have been sitting here for, unfortunately, almost 10 long years and I am familiar with the background and the reasons. But why wasn't there an explanation on the levy notice to explain this at least in some level of detail? I received five or six phone calls from funds about this. At the end of the day they were not upset about paying the money; they could pay it. It was just fairly abrupt and lacked information.

Mr R Jones—I think in most circumstances their usual response would be to get in touch with the relevant supervisor, and the supervisors often explain to them when they have been on site, or over the phone, if there has been a lack of understanding of what the real purpose was.

Senator SHERRY—Of course. But surely if a simple explanation was given as to what it was for and why it was covering three years you would have fewer phone calls.

Mr R Jones—That is probably true. I think most trustees would understand, though, what the actual levy was.

Senator SHERRY—That is true. The trustees, or chief executives in a number of cases, that rang me had no argument about paying the levy, they had the money, and there was no argument about the purpose, because of the theft and fraud provision. But they did not understand that it would be for three years—they did not understand that at all. And it was the lack of any explanation that got quite a number of them quite annoyed. Will you look at that for the next time this happens?

Mr R Jones—I think next time around we will make sure it is a lot clearer and that it is explained more carefully.

Senator SHERRY—Another area of regulation in the context of super fund choice that I have been made aware of recently is the issue of clearing houses, where the clearing house is not part of a financial institution regulated by APRA. I am sure you would be aware that clearing houses are obviously a much greater necessity in the context of super fund choice. The reason I raise this is that a clearing house is not a financial institution or located within a financial institution—it is a separate legal entity. The employer pays the money to the clearing house. It either goes bankrupt or theft and fraud occur in the clearing house, and the moneys are then not on-cleared to the appropriate super fund. Are you doing any work on the issue of clearing houses?

Mr R Jones—It is an issue that exists with all types of outsourcing, not just clearing houses. We actually have close to no ability to look at the behaviour of many of the outsourced services, including clearing houses.

Senator SHERRY—I would argue—and would you agree?—that this is a more important issue in the context of superannuation fund choice because there is a much greater take-up of the use of clearing houses for obvious reasons.

Mr R Jones—I think it is an issue that is increasing. I am sure you are correct that there is an increased use of clearing houses, and it increases the care with which trustees are going to have to look at their outsourcing arrangements and certainly to have a greater degree of confidence in the outsourcing arrangements that they are dealing with.

Senator SHERRY—Sure, but this is an unregulated area. The new system of super fund choice effectively forces funds to use clearing houses. There is little option for many employers; it is a reality. And yet we have got moneys being paid to unregulated bodies. As I say, they go bankrupt or the moneys are not on-transferred for whatever reason. This is a sort of intermediary, if you like, between the employer and the fund. It seems to me that this is an area that is wide open for potential problems.

Mr R Jones—I think it is an area of concern in the same way that many of the outsourced arrangements are; custodian arrangements as well.

Senator SHERRY—I appreciate the outsourcing concern, but in this particular instance outsourcing has increased dramatically on the back of this issue. Almost every employer has had to go to a clearing house. Many of them are in-house in that the fund has got them, and that is not a problem. Anyway, take it on notice, because I think it is another area of vulnerability that I have had raised with me. I think we have some potential problems ahead. You clearly believe you cannot regulate this area at the present time.

Mr R Jones—Yes.

Senator SHERRY—Who would regulate this area?

Mr R Jones—I do not imagine that there would be any prudential regulation of this.

Senator SHERRY—Okay. Have a look at it, if you could. I think there are potential problems ahead, unfortunately. Money laundering: has APRA been consulted about the money-laundering legislation that is proposed and that I understand will be released shortly?

Dr Laker—Broadly speaking, with our functional set-up, AUSTRAC handles money laundering. We liaise with AUSTRAC, but APRA has actively engaged itself in money-laundering issues since AUSTRAC was established. Certainly as part of our ongoing supervision we talk to individual banks about the systems they have in place as part of a broad assessment of their systems to do with the range of issues, but we have not been, to my knowledge at least, actively engaged in the FATF review of Australia's money laundering. We certainly take part in the broad discussions, but it is an area in which we have deferred to AUSTRAC.

Senator SHERRY—Yes, I understand the role of AUSTRAC. I would have thought you would have had an input into at least some elements of money laundering—for example, what the regulatory issues will be in terms of a potential increased burden, what is practical and what would work in the Australian context. The alleged increased red tape burden is in the news a lot recently, particularly in the financial services sector.

Dr Laker—In the course of our normal supervision of entities we look at that as an aspect of operational risk, and so it is a focus, but it is not one where we have ever sought to take the lead. We help AUSTRAC where we have the skills to do so, but it is not one that we are in the forefront of, nor have we been for some time.

Senator SHERRY—I would not expect you to be in the forefront. I was not suggesting that. I am just interested in the level of consultation, if any, in terms of the to-be-released proposals in respect of money laundering. I will give you a reason why.

I was in the UK recently, and as a result of their money-laundering legislation there, it takes three months to open a bank account. In the interests of antiterrorism that might sound fine, but there are some severe practical consequences for consumers if you cannot open a bank account for three months, and apparently this is going to be extended to credit cards. There are very significant practical implications for consumers, and I just wondered whether you had been inputting on any of those sorts of issues?

Dr Laker—Not in any specific detail, no.

Senator SHERRY—As I mentioned earlier, there has been a bit of comment recently about red tape. Will APRA be making a submission to this red tape task force the government has established?

Dr Laker—We have not discussed amongst ourselves whether we will or we will not, but we certainly are meeting with the task force. That meeting has been set up. Clearly some of the initiatives we have under way at the moment are attracting attention in that context.

Senator SHERRY—I do not think they are.

Dr Laker—Some would say they are.

Senator SHERRY—Not here.

Dr Laker—Until we talk to the task force, we have not yet worked out what help we can give the task force. The proposals we have under discussion are very transparent; they are all out there in the formal discussion papers. The consultation processes are not complete. They are actually ongoing as we speak. By the time we meet the task force they may be able to guide us as to the sort of questions that are on their mind, and we can offer a perspective from APRA's point of view as well. We will help the task force as much as we can. We are certainly aware of the issue.

Senator SHERRY—You mention in your annual report this general issue of red tape, duplication and those sorts of issues. Do you have an MOU with RBA and ASIC?

Dr Laker—Yes.

Senator SHERRY—Are copies of that MOU available?

Dr Laker—Yes, they are on the public record.

Senator SHERRY—Mr Littrell, in particular, did you hear the question I asked earlier to Mr Lucy of ASIC regarding their collection of commission data?

Mr Littrell—Yes.

Senator SHERRY—ASIC are now collecting some level of commission data. As I said, I was a little taken aback, not because I am concerned about a regulator collecting data, but you have been putting in a pretty good effort and now we have ASIC doing the same, albeit with different types of fees. Is it desirable that we have you both out there hunting for fees?

Mr Littrell—Where to start? When you are collecting data from super funds and trustees about the funds, one of the series of items we collect has to do with expenses. The reason we collect our data is essentially to verify compliance or noncompliance with the various SIS regulations, and also that feeds into our financial analytics to predict problems in super funds. The ASIC collection, which as I understand it is government mandated, is about representative individual outcomes and is very much more premised on how a particular super fund proposition looks to a defined representative individual. So they are trying to assess, if you will, value for money, which is very different to what we are trying to assess.

Senator SHERRY—Yes, I understand the different purpose. The immediate issue—I am not concerned about the collection of the fees—is two agencies collecting fee data.

Mr Littrell—If I could also note that I am saying this as an observer, not as someone who is directly involved. The ASIC fee collection is essentially a screenshot from the PDS. It is not like the funds are having to do a great deal of work. They are giving ASIC, in one place, something they are all producing individually so ASIC can put it in FIDO. APRA actually did the first of these collections on 30 June on behalf of ASIC, because at that point ASIC did not have the infrastructure in place and we did. I would not be surprised if at some point in the future we re-establish that because, in all honesty, we probably do have more efficient processes. But, given the timeframe they were working in, and given that what is being collected is a pretty easy thing to provide, I would be dubious of any claims of inefficiency as a result of this particular initiative.

Senator SHERRY—I am going to come on to claims of inefficiency and difficulty. You copped a bit of a brickbat from Mr Gilbert at IFSA, who savaged—that is the *Financial Review's* description—APRA, and I think it was aimed at you, for its flawed and nonsense questions on fees. How is the collection of that fees data going? I do not agree with him by the way, and I said that to him very bluntly, on this issue particularly.

Mr R Jones—IFSA has been in touch with us in recent days to say that they would be very eager to assist us in improving our statistical collection with regard to that particular matter, and hopefully we will get some cooperation.

Senator SHERRY—I am surprised you say ‘in recent days’, because it was back in May that I was asking about this issue.

Mr R Jones—I think Mr Gilbert made his comments after your questions at the last estimates.

Senator SHERRY—Yes, but that was in May. We are now in early November.

Mr R Jones—Yes, he and I had contact the day that his piece was in the *Financial Review*.

Senator SHERRY—Yes, but the point I am getting at is that Mr Littrell and I had an exchange—it was not a disagreement or anything; it was just a question and answer session back in May. Then the *Financial Review* decided to retrace the issue on 29 August, having reported on it back in May. I must say I am a bit taken aback, not at you or APRA, that it is only in the last couple of days that Mr Gilbert and IFSA have come to you.

Mr R Jones—Sorry, perhaps I expressed that incorrectly. His most recent communication was a few days ago. This process has in fact been ongoing in terms of trying to improve it. It

is simply that it has only been in the past few days that we believe that we may in fact be able to get some more effective accommodation in terms of what we want and what they can provide. However, I still do not think that it is going to be something that is immediate.

Senator SHERRY—I think it was made clear by Mr Littrell that we are looking at early next year before we get some reasonably representative data.

Mr Littrell—Without going back to the whole conversation, there are two areas of deficiency in the collection. One is that to date we have not been appropriately collecting the deductions from contributions, essentially financial planners' upfront commissions. The last round of annuals came in two days ago, and at this point I would prefer to wait until the next estimates and, if you want to ask then, we will tell you all about how that worked. That round is supposed to have corrected that particular issue.

Senator SHERRY—You say 'supposed to'. I am getting worried. Has there been an improvement?

Mr Littrell—We do not know yet. We just got 11,000 forms two days ago. By the next estimates we will be able to give you a definitive answer on that. With that little piece of the puzzle in place, we now have quite good data on relative net performance. So we can say fund X or fund type X had a certain net return versus another fund. We will not be able to report the gross returns, the expenses, and then that return because of the issue we talked about of indirect expenses—they are not being captured. In fact, we are no longer reporting that section in our quarterly and annuals in terms of those expenses. We are just going to be silent on that, probably for the next two years, because we will have to go through the statutory consultation and give people a year to adjust their reporting systems.

Senator SHERRY—Is it two years before we get that sort of information? Surely you have been endeavouring to collect and illustrate?

Mr Littrell—It is two years before we have that information routinised in a system sense, and just feeding into our reports automatically.

Senator Sherry—Yes, but it seems to me you are going backwards.

Mr Littrell—Again, from our point of view, it is not our job to work out value for money. It is our job to work out trustee performance, and net performance is far more important to that proposition than an estimate of the expenses and fees. It is possible for a trustee to have quite low expenses and really appalling investment returns, or quite high and decent investment returns.

Senator SHERRY—Yes, and quite low investment and quite high fees, which is the next issue that Mr Jones has made some very perceptive comments on recently.

Mr Littrell—How to put this? If someone bought a house, our statistics could tell you how much they paid for the house, but they could not tell you how much was paid for the valuation report, how much was paid for the termite inspector—they just tell you the number, but this is the important number.

Senator SHERRY—I do not necessarily agree with you. It might be the important number to you, but to an independent authority producing the full range of fee data, I think it is very important.

Mr Littrell—On that point I would prefer that we were in a position to produce that.

Senator SHERRY—Yes, I understand you would be.

Mr Littrell—But I can tell you that, as a matter of statute and just the practicalities of dealing with computers, we are not able to collect that data without changing some of our forms. We cannot change those forms without a public consultation process and, having done that, it would not be realistic to immediately start collecting, because all these entities need some time to change their computer systems.

Senator SHERRY—Is the long and the short of it that you are intending to do it, but it is going to take two years?

Mr Littrell—Yes, at least two years, remembering that we have a fair amount of work already in super, just in getting the licences and the exits sorted. The other point I would make is that in the meantime we have in train quite a lot of work on a non-routine basis, if you will, and our research team is looking at the same issue. That will not end up producing standard publications, but it will shed a fair amount of light on the issue of differential performance, including the fees and investments.

Senator SHERRY—Is this the investigation that Mr Jones was referring to in terms of retail funds, or is it a separate project?

Mr R Jones—It is a separate project. That is the further examination that we are doing, and that will start next year.

Senator SHERRY—Will the research conducted be made public?

Mr Littrell—That decision has not been taken yet. To some extent it depends on what we find out. If it is not interesting, it is much less likely.

Senator SHERRY—I will put on notice here and now that I would like the committee to see it. Mr Jones, I think Mr Dunstan is a reputable journalist. He was quoting you fairly extensively on 11 August in the *Financial Review* on your observations about retail funds. You have already touched on it. Is APRA conducting a survey of the underperformance of retail funds?

Mr R Jones—What we will be doing will be in the new year. The first thing is to get the super licensing out of the way. Once that is done, then we do plan to have a look in more detail at the nature of performance. It is not looking at under performance of retail funds; it is looking at the performance of funds in general.

Senator SHERRY—But you were quoted here in this article—and, as I said, Mr Dunstan is one of the better journalists in terms of accuracy—that you had admitted APRA simply did not know the reason for the underperformance, and there was a direct reference to retail funds.

Mr R Jones—That is a fact. The published information that we had and the information I was using for that speech showed quite clearly the performance of the various types of funds, and it was a fact from the statistics that the retail funds did underperform. I then mused about possible reasons as to why, and pointed out that we plan to do some further research on this in 2006.

Senator SHERRY—It is the first time I have seen APRA make a comment. Mr Lucy has made a comment about industry funds versus retail funds on a previous occasion publicly, in the context of the controversy over the advertising campaign.

Mr R Jones—Yes.

Senator SHERRY—I had not seen APRA make any remarks to that effect, at least until this article. Is it correct that, as part of that, you will be looking at the lower returns among retail funds and the interface with fund members exercising investment choice, and the relationship with financial advisers and the advice they offer?

Mr R Jones—We will be looking at trying to see if we can find explanations as to why certain types of funds perform differently to others, and probably we can not say much more than that given that we have not done any of the research at this stage.

Senator SHERRY—Okay. So your comments to date have been based on the published data from the various survey companies we have seen on a reasonably regular basis in the last year or so—the last 18 months.

Mr Littrell—In fact, it is based on our data, which is definitive.

Senator SHERRY—Okay, that is even better.

Mr Littrell—I did want to clarify, on the point Mr Jones is making, that the research is not about retail fund underperformance. The research is focused on larger trustees, not everybody, and it is essentially about the need for better data to be able to say, if fund X had eight per cent return over five years and fund Y had six, what the composition of the difference was.

Senator SHERRY—Okay.

Mr Littrell—One of the things that will fall out of that is a characterisation of why retail funds seem to underperform, but there are a fair number of other funds, regrettably, that do not have that great a track record either.

Senator SHERRY—Yes, there would be some industry corporate funds below par, a couple of public sector funds.

Mr Littrell—So I do not want to give the impression here that this is somehow research targeted at retail funds. It is targeted at understanding the big funds sector—everybody.

Senator SHERRY—And the funds that underperform and why.

Mr Littrell—And overperform and why. Essentially, neither we nor anyone else at this point can explain consistently why two trustees or two funds generate different returns over a long period. We want to correct that deficiency.

Senator SHERRY—The next issue is about Mr Penn and AXA and APRA's ruling, so I was going to suggest you might have to leave, Mr Somogyi. I think Senator Watson, along with me, raised some issues to do with this matter on the last occasion. I just want to be clear about what has happened to Mr Penn. My understanding is that there is an adverse finding with respect to his role as a trustee of the AXA fund.

Mr R Jones—Senator, there are various confidential elements associated with a lot of this stuff.

Senator SHERRY—I understand the sensitivity, but there has been a hell of a lot in the media about this.

Mr R Jones—There has been a lot in the media about this and it has not come from APRA.

Senator SHERRY—Senator Watson and I also asked about this on the last occasion. What is the factual position in terms of APRA and the action it has taken against Mr Penn to date as a matter of fact?

Mr R Jones—APRA has had a look at the behaviour of trustees of the fund and APRA has taken certain action.

Senator SHERRY—What action has been taken against Mr Penn?

Mr R Jones—Senator, I would prefer to talk about this in camera, I think.

Senator SHERRY—The media has been full of this. The argument is that Mr Penn has been found to show cause why he should be allowed to continue to be a trustee of the fund.

Mr R Jones—That information was provided by AXA to the market. That is correct.

Senator SHERRY—Is there a ruling or at least a view that, as a consequence of that, he can no longer continue to be the CEO of AXA?

Mr R Jones—AXA made a decision as to what they thought was appropriate in the circumstances, and my understanding is that Mr Penn is currently doing a different function.

Senator SHERRY—I understand that, but that is not the question I asked. There is an adverse finding with respect to the trustee issue, but does it have a flow-on consequence in terms of his position—separate position—as the CEO of AXA?

Mr R Jones—If I could talk in general terms, after we have undertaken an investigation and got what we consider to be corrective action, which in this case was compensation for affected individuals, we then look at the behaviour of individuals. That is a fact.

Senator SHERRY—So we have got action in terms of his role as a trustee, but is there a consequence in terms of his position as chief executive officer of AXA—obviously a separate legal entity?

Mr R Jones—That might depend upon the action that APRA took. Perhaps I could talk not specifically about this to explain the process. In terms of process, quite often APRA would engage in a show cause. The relevant individual would provide information as to whether or not they should be disqualified. APRA may make a decision whether or not to disqualify an individual. That individual may appeal to APRA for a second approach. That individual may go to the AAT. The AAT may then look at this matter and the AAT may make decisions that some of these hearings are confidential.

Senator SHERRY—The possible consequence for Mr Penn is an adverse finding in respect of the super fund for which he was one of a number of trustees. He could lose his job as the CEO of AXA, which seems to me to be a double penalty, if not a reasonably extraordinary penalty in the circumstances. That could happen.

Mr R Jones—In terms of the power that APRA has against individuals, APRA's only real power is disqualification.

Senator SHERRY—Yes, it is all or nothing. It is a very significant power which Mr Penn faces in these circumstances.

Mr R Jones—It is also a power that is subject to substantial administrative appeal—I certainly would not describe it as arbitrary—and there are the checks and balances of an internal review after the first decision maker.

Senator SHERRY—It is very black and white. From his point of view, he either lives or dies in terms of the job that he has had to stand down from, in addition to the adverse finding as a trustee of the super fund.

Mr R Jones—To put it in a slightly different context, we are doing the same thing with the wash-up from the HIH royal commission. We are going through and investigating individuals and making disqualifications.

Senator SHERRY—Sure, but the issues of Mr Penn and the super fund would in no way compare with the activities of the people who were involved in HIH insurance claims.

Mr R Jones—I was not making comparisons in terms of culpability. I was making comparisons simply in terms of process. Our process is that we have disqualification powers.

Senator SHERRY—In terms of the media, there has been a lot of coverage of this. You made the comment that APRA had not been responsible for the transmission of any of the material in the media. Are you confident that that is the case?

Mr R Jones—I am confident that that is the case. I confirmed the previous point that you made because the company put out as a statement that there had been a show cause issued. APRA has never made any public comment at all.

Senator SHERRY—I know that APRA has not made a comment other than the press release issued back in June. It was a joint press release with ASIC. I am not suggesting that some of this material in the press was based on public comments. I am asking whether you are confident that some of it has not been leaked from APRA. Are you confident about that?

Mr R Jones—I am confident that it has not come from APRA, yes.

Senator SHERRY—I move now to the issue of unit pricing, which I touched on briefly on with ASIC. You put out a press release in respect of Colonial Mutual back on 11 October. As I said at the ASIC hearing, there seems to have been a flurry of activity by a number of financial institutions—more than I have seen in a long time—about this issue. Do you have any observations to make about what has caused this?

Mr R Jones—Part of it is caused by a more proactive response by the two regulators. We learn things as we do investigations and what we learn enables us to look more carefully at other institutions, so we find more problems.

Senator SHERRY—You do not think it is a growing problem in the sense that there are more and more of these unit pricing underpayments throughout the finance services industry?

Mr R Jones—I am not convinced that there are a growing number of issues. I think that we and the institutions are more capable of finding them than before. We are looking for them more carefully, and the organisations concerned are responding more effectively than before.

Senator SHERRY—Why are both ASIC and APRA putting out press releases on unit pricing issues?

Mr R Jones—We each have different elements under the SI(S) Act. I think ASIC may have mentioned earlier that ASIC and APRA have done a joint study which has led to what we loosely describe as ‘The good practice guide to unit pricing’, and that will be released tomorrow morning.

Senator SHERRY—You have put out a few less press releases than ASIC.

Mr R Jones—And a few less than—

Senator SHERRY—If they are not common, they are not joint. They are separate press releases, obviously from different perspectives, about unit pricing issues that are resolved. With regard to the global accounting deadline, a claim was made in the *Australian Financial Review*—not by Mr Dunstan—that APRA had targeted 1 January next year but this has now been delayed for six months. Is that correct and, if so, why?

Dr Laker—We have not completed the consultation processes involved in taking accounting standards and working out what the prudential implications should be. We have two discussion papers out, one of which we are now finalising discussions on, and we want to put out our proposals in their final shape in the next month or so. We have had quite extensive discussion with industry. We have also kept an eye on how the debate has changed globally on some of these accounting standards. We prefer to get it right and to make sure that the prudential treatment is sensible, and that has meant we have taken more time to get through that process.

Mr Somogyi—We originally said that, when we are going to make some changes, firstly, we will allow industry to implement IFRS from the point of view of the financial reporting requirements, which they had an obligation to do from the first reporting period on or after 1 January 2005. We said then that there are some implications for prudential regulatory capital, and also prudential reporting, and that any changes that would be made to that would be made no earlier than 1 January 2006 and that we would consult with industry as to the earliest practicable date for implementing those requirements.

Senator SHERRY—Is this a case where you are damned if you did and damned if you didn't, in terms of the date? Some financial institutions, who obviously seem to have been prepared for the date, have criticised APRA.

Mr Somogyi—The answer to that is that they are certainly prepared for the date for financial reporting, but prudential requirements are different from financial reporting requirements. They are aimed at different purposes for different audiences. Financial reporting, as ASIC would tell you—and it is their territory, not ours—is aimed primarily at informing capital providers, among a number of other audiences. Prudential reporting is to ensure that we have the right measures to ensure that beneficiaries, depositors and policyholders have their savings and policies safeguarded. So there is a different purpose and

a different audience, and therefore a measured set of steps needs to be taken to ensure that the right data is collected in the right fashion.

Senator SHERRY—I have a few things to put on notice, but one final issue I want to ask you about is the spectacular headlines about APRA's proposal to crack down on churches. It was reported that an APRA spokeswoman—I do not know who it was; it does not say who it was—said that a draft policy was a confidential document. What is going on? Are you preparing some sort of confidential document that got leaked to the *Australian*? What work is being done in this area?

Dr Laker—I think the headlines are more spectacular than the reality.

CHAIR—How unusual, Dr Laker!

Senator SHERRY—Here is your chance to give it to the *Australian*.

Dr Laker—A number of churches over a period of time have developed charitable development funds. This involves taking funds from parishioners or contributors and lending those funds for charitable purposes. In the normal course, taking money and lending is banking business and you are required to be authorised and regulated by APRA to do so, or you must be exempted to do that. We, and the Reserve Bank before us, have exempted certain charitable church development funds from the regulation of the Banking Act. We have given them an explicit exemption on the basis that their prime purpose was charitable work. That notion of charitable work might have been a bit stretched in a couple of cases and we have seen that some of these funds have moved more into transactional banking, with cheque accounts, EFTPOS and those kinds of more natural banking business.

Senator SHERRY—Run off the church account?

Dr Laker—The church funds are offering the facilities. We have gone to the church funds and said that we would like to regularise the exemptions. The exemptions used to be ad hoc and were specific to each fund. We have said that we would like to have a class order exemption which would apply to any charitable church fund and which would set out the basis on which we would exempt them from the Banking Act. The main element would be that their purpose is clearly charitable; that they are really not seeking to get into commercial banking. We would also expect there to be very strong disclosure that these funds, although exempted by APRA, are in no way supervised by us and are not covered by the depositor protection in the Banking Act. We are talking to the funds one on one, with that framework.

Senator SHERRY—Has APRA sent some sort of document to these churches as part of the discussions?

Dr Laker—They all have specific exemptions. We are looking at one that would be common across all church funds so that it would be quite clear to any charitable church development fund which was seeking to promote charitable work what they needed to do to get the exemption from APRA.

Senator SHERRY—According to the *Australian*:

An APRA spokeswoman said the draft policy was a confidential document, which amounted to a “rationalisation of current exemptions”.

Is there a draft document within APRA on what to do in this area at some future date?

Dr Laker—We have put proposals to the major church funds saying: ‘This is the way we intend to proceed. Can we have your views about how this would work?’ We would then finalise it. Clearly, it would be published and if a fund had strayed a little bit from the purely charitable purpose we would have a transition arrangement.

Senator SHERRY—What is your time line on the publication of the draft policy?

Dr Laker—I think the intention was to complete the discussion with the various churches by the end of this year. Then, if there is a need to, we will look at a sensible transition arrangement if a fund has to make any adjustments to fit within the exemption.

Senator SHERRY—I refer to your earlier references to the sorts of commercial activities that have attracted your attention. Has there been an evolution of some of the activities by some of the church funds into areas that they were not involved in before?

Dr Laker—Yes, but only in limited cases. There are limited cases but they have been brought to our attention. We need to talk to the funds about that to make sure we have the facts right but it seems that some of the business is much closer to retail banking business than it is to charitable business in those select cases. Those cases are the ones that we are talking to the various churches about.

Senator SHERRY—Have you liaised with the tax office about this issue? The tax office has been doing some work on definitions of charities for some time, I think. I am not sure where it is up to; I cannot recall.

Mr Littrell—We have not—but, having said that, there is not a crossover on tax here. The work we are doing has nothing to do with their tax status.

Senator SHERRY—I understand that but I think the tax office has been looking at the issue of the taxation of some of these activities.

Mr Littrell—What we are doing is not particularly overlapped with that; it is, at best, pretty incidental.

Dr Laker—We are working with the churches because we are really asking them to confirm or endorse the objectives of their charitable development fund. So I think our spokeswoman’s description was quite right—but it does not make a particularly exciting headline.

Senator SHERRY—Chair, I will put my further questions for APRA on notice.

Senator CHAPMAN—Some concerns have been raised with me about APRA’s proposed changes to the potential supervision of lenders mortgage insurance, which I would like to ask some questions about. As a result of those concerns having been raised with me, I have taken the opportunity of reading the report prepared by the Allen Consulting Group on the economic benefits of lenders mortgage insurance. Some of the conclusions made in that report seem quite logical and valid as critiques of the changes that are proposed. For instance, the report says: ‘The changes to the amount of capital required to be held for mortgages, as proposed by APRA, will greatly reduce the incentive for lenders to take out lenders mortgage insurance. Where lenders decrease their lenders mortgage insurance cover, the economic benefits of lenders mortgage insurance will be lost or, at the very least, greatly reduced. For these reasons

alone, APRA's proposed changes need to be reconsidered.' What is your response to that comment in that report?

Dr Laker—That report is with us as well. Those proposals are only proposals. We have not reached the due date for submissions. Submissions on the various sets of proposals are not due until the end of this year. It is difficult to respond to one set of submissions without a sense of how others would look at the same sorts of issues. Let me clarify some aspects of the way in which APRA approaches both lending for housing and lenders mortgage insurance, because there is some focus on its impact on first home buyers. In our prudential framework, when we look at the credit risk that a lender takes on in lending, we look at a range of attributes of a loan, such as whether or not it is fully documented, whether it is a standard loan and how much equity the borrower puts in. There is no particular category for first home owners; it is not a potential focus of APRA. The proposals we have out and the steps we have taken to tighten the capital framework for lenders and for lenders mortgage insurers have had no impact on the willingness of lenders to make funds available. We are still seeing quite strong growth in the low doc housing market, for example, which is the one area that we did tighten up. Nor are we seeing any indications at this stage that it has had an impact on the price of lenders mortgage insurance.

They are the proposals that we have been working on for some time with the LMI industry, as we call it, and that we have introduced quite recently. There is now a separate set of proposals to which you are referring, called the Basel II proposals. In those proposals we are looking at the amount of capital we require the lenders to hold against risks in housing, and we are looking at how much mortgage insurance cover would qualify the lender for a capital concession. But, more broadly, we are also looking at what we call capital arbitrage: how much does a lender need to hold against the same credit risk and how much does a lenders mortgage insurer need to hold against that risk?

Over the years, because different regulators were involved in it, the signals or the capital requirements were quite different between those sectors. There was a very strong incentive on the part of our regulated lenders to move the risk to lenders mortgage insurers. For their part, they had to hold much less capital against the same risk. The result was that the amount of capital in the system to support lending for housing was much lower than it might otherwise have been. Our proposals are designed to get the amount of capital more aligned with the risk within each sector—both the lenders and the lenders mortgage insurers—and also to make sure that there is enough total capital in the system to support lending for housing or lending generally in the event there were to be any sort of adverse developments. That is the broad aim that the Basel II proposals are putting out.

If we are able to ensure through that that we have well capitalised lenders and well capitalised lenders mortgage insurers, the benefit will be that these institutions will continue to lend willingly to borrowers, whether or not they be first home borrowers. That is the broader picture that we are looking at. We put out those proposals and we are seeking comments. You have a set of comments that you have seen, which have been provided to us as well. We are working our way through those comments. I have already met the chief executives of the two major lenders mortgage insurers in Australia for preliminary discussions

and we have said we will have further discussions with them. That is where we are in our work at the moment.

Senator CHAPMAN—As I understand it, you have already produced two papers on which you have sought comment and then you have responded to those comments in a separate paper?

Dr Laker—No, they are the reforms that have now been finalised and introduced for lenders mortgage insurers. That process involved two discussion papers and quite extensive consultations with lenders mortgage insurers. The purpose of those reforms was to bring our regulatory minimum requirements up to where the industry was already at. That was something we learnt from our stress testing—that is, that the bar we set as the regulatory minimum was too low and it was much lower than what the institutions themselves thought was appropriate capital to hold. So we have brought those two into alignment.

Senator CHAPMAN—That process has been finalised?

Dr Laker—That process is completed. As I said, we work extensively with industry. It is one area that we have fully consulted on. That process is now in place. Basel II is looking ahead to an implementation date that does not start until 1 January 2008. The relevant sets of proposals have gone out in the last six months. We are getting submissions in on both. There are two separate timetables; there is one that is still running. Then we will sit down and consult.

Senator CHAPMAN—Would you accept that, if Basel II is implemented as proposed, it will make it more likely that the big banks will self-insure either totally or a large slab of their loans and will only palm out, if you like, the higher risk loans to the specialist lender mortgage insurance organisations? And would you accept that that will also give them, if you like, a predatory pricing advantage against the smaller banks, the co-ops, the building societies, the credit unions and the like?

Dr Laker—I think it is too early to make a judgment on that because the major banks that are going through what we call the advanced approaches to Basel II still have to work out how they would handle the extra insurance they would get from lenders mortgage insurance. The difference simply is that, at this point, there will be no regulatory requirement or explicit regulatory intervention in the way the major banks approach lenders mortgage insurance. But neither we nor the other regulators looking at these advanced approaches believe that we have completed—nor have the banks completed—the work that is involved. I think it is too early to form a view about how banks will approach LMIs. They have to look at what they believe is the value proposition for taking out the insurance versus the cost involved, and it is this work that is still under way.

Senator CHAPMAN—That accepts that they have to make that assessment. But, if they made the assessment that, to a large degree, they could self-insure, would that give them a significant advantage over the smaller financial institutions? That is not available to them now, because at present they all rely on lenders mortgage insurance.

Dr Laker—The same options are available. There is no requirement for lenders mortgage insurance. It is only that, if they wish to avail themselves of capital concessions, they pass that risk in various measures to the lenders mortgage insurers. I make the point that one part of the

proposals is that we are proposing to reduce the amount of cover required for that concessional capital treatment from 100 per cent to 40 per cent; so we are proposing that the cover be significantly lower. It is hard to say what impact that would have on LMI premiums, but it will obviously push them down rather than up. At this stage, until we work out the response of regulated lenders to these proposals, I would not want to be quantitative about it but will say that it is in the right direction for those of the smaller lenders that will be under the standardised approach.

To be frank, for major institutions, these are quite complex questions that get right into very difficult parts of the calculus. If they lose money on a loan and it is insured with lenders mortgage insurance, in the end how much would they lose? What loss would they suffer if there were to be a default? This is work that the banks currently are putting a lot of effort into. However, as I say, it is too early to form a final view.

Mr Somogyi—Perhaps I can add to that. I am not sure whether it is possible to say definitively that a deposit taker capital requirement would be lower than the equivalent capital requirement in lenders mortgage insurance. As Dr Laker said early on, it is important in this exercise to assign capital to the risks being undertaken by the different forms of risk takers. To date, I do not think that any party, including ourselves, could come to finality on whether the deposit takers have to carry less capital than do the lenders mortgage insurers. It may very well still be the case that lenders mortgage insurance is attractive to deposit takers. We will see what comes as a result of consultation.

Senator CHAPMAN—Dr Laker has said that at the moment the capacity is there to self-insure. Is that a correct interpretation of what you have said?

Dr Laker—As I say, we do not require an entity to take out lenders mortgage insurance but we do say that if you take that out there is a concession on the capital you have to hold. However, over time it became very clear to us that the concession was out of alignment with the transfer of the risk and we were watching risk being transferred with a substantial reduction in capital overall in the financial system. That is what led to the reforms that have now been completed. I think we have gone quite a way to getting a more sensible set of incentives for the lenders—but, as I say, there has never been a requirement that they have to.

One of our concerns—it motivates our proposal to reduce the overall cover from 100 to 40 per cent—is that our lenders think not only that they have passed the risk but also that they no longer have any skin in the game and they do not have the incentives they need to monitor their lending closely and to keep in touch with their customer. We want more skin in the game from the lenders, so to speak.

Senator CHAPMAN—Would that potentially lead, as is argued in this paper, to lenders attempting to manage default risk by risk based pricing—that is, by having higher interest rates for potentially higher risk borrowers?

Dr Laker—There is nothing to stop anybody from doing that now, but Australia generally does not have risk based pricing focused on individual borrowers. There is some risk based pricing between standard lending and low doc lending; there is a margin that is intended to reflect the risk. The most recent Reserve Bank financial stability review has questioned whether, given the amount of competition there is in low doc lending, that margin might be

getting squeezed and whether it is an adequate compensation for risk. But it has not been an Australian tradition to have risk based pricing for individual borrowers. This is not something that APRA has decreed; it is just the way the industry has grown.

Senator CHAPMAN—But is our not having it at the moment a consequence of the concession that is available by taking out lenders mortgage insurance?

Dr Laker—No, I do not think there is any link between the two. I think it is just that Australian banks have traditionally competed at the same price on a mortgage.

Senator CHAPMAN—What do you think is the source of concerns that are being raised in papers like this? If you think there will be no substantial change—

Dr Laker—We need to explore that with the people who have made the submission. That submission only arrived recently and we have not had the chance to discuss it across the table. I think most of the value in sitting across the table is that we can get a sense of what really does concern them. These problems are not unique to Australia; this is a global reform. The issue of how you treat lenders mortgage insurance is on the plate of a number of regulators in the markets where our major LMI companies operate. Regulators will try to form a consistent and sensible view about how to handle this. That is why it is premature for me to answer that question without having had the chance to listen to the arguments put and for them to hear our point of view.

Senator CHAPMAN—Are you intent on doing that?

Dr Laker—Yes. That follows from the completion of the due by date for the advanced approaches, which is where this question about self-insurance comes to the fore. The due by date is not until the end of this year. We will then be talking to participants who put submissions in, as we do with all our reform proposals. I must say that we spent a lot of time in meetings with the various parties on lenders mortgage insurance. They were important reforms—they were needed and they are now in place and, I think, broadly supported by the LMI industry. That first phase has gone well, but it has been an extensive process. We are now entering the Basel II framework phase and there is quite a lot of work involved in that.

Senator CHAPMAN—I think you said earlier that the changes, if implemented, would not come into effect until 2008. Is that right?

Dr Laker—Yes, 1 January 2008, which is when we are asking all of our deposit-taking institutions to move to Basel II.

Senator CHAPMAN—So, in a sense, there is time for these issues to be resolved.

Dr Laker—There is time both for us to discuss the issues with the banks—and we want to hear the banks' perspective as well as the LMI perspective on this—and for the regulators generally to have a look at how the phenomenon of lenders mortgage insurance is handled. It is not a worldwide phenomenon; it is unique to a number of markets. The regulators in these markets—particularly in the United Kingdom, the US and Australia—are looking at how to incorporate lenders mortgage insurance into the Basel II framework. So we will not rush to judgment on that, as we want to get it right.

[10.40 pm]

National Competition Council

CHAIR—I invite to the table officers of the National Competition Council. I indicate to those officers of the Productivity Commission who are waiting patiently that we will not reach you by 11 o'clock, so you are free to go. Tomorrow morning we will begin with the Productivity Commission, then the Australian Bureau of Statistics and the Corporations and Markets Advisory Committee and then we will go on to the Australian Taxation Office after that. Mr Feil or Mr Campbell, is there an opening statement?

Mr Feil—No. We would be perfectly happy to move straight to questions.

CHAIR—Very well.

Senator SHERRY—The Prime Minister's export infrastructure task force reported on 1 June, and there was a Council of Australian Governments meeting on 3 June which committed in principle to a simpler and consistent national system of regulation for ports and export related infrastructure. This is to be considered in the COAG review of national competition policy, NCP. Has the NCC been involved in these reviews?

Mr Feil—The National Competition Council made a submission in respect of the export infrastructure task force. The COAG reference was to a group of COAG officials, with representation from each of the jurisdictions. The council are not involved in that process, although we have made some submissions as part of a number of groups that have put forward views. But we are not formally part of that advisory role.

Senator SHERRY—So you have made some submissions. Have they been published?

Mr Feil—We have made a couple of sets of submissions by way of meetings. We have also quite recently published another occasional paper in the series the council has produced, which we had the Centre for International Economics write, trying to summarise quite a lot of the material that has been written. We have not made detailed written submissions to the COAG process other than submissions we made initially to the Productivity Commission.

Senator SHERRY—So nothing formally since the announcement?

Mr Feil—Nothing formally since the announcement, other than the CIE report, which I think was released last week.

Senator SHERRY—Were there any terms of reference provided to the NCC at all?

Mr Feil—In respect of what?

Senator SHERRY—In respect of the examination of national competition policy.

Mr Feil—The process began some time ago with a reference to the Productivity Commission, which I think reported at the beginning of this year. That document was used to inform the COAG discussion that you referred to and the communique. That communique has obviously been made public. The process for advising further on how specifically to implement that lies with officials in departments and in state and territory governments. It is not something the NCC has been involved with—other than as an interested party, obviously. We are very interested in how the new process will evolve.

Senator SHERRY—What is your understanding of the evolution to date?

Mr Feil—Our understanding is that the COAG officials were directed to report by the end of this year. I have heard nothing that suggests they are not broadly on that target, and then there will presumably be a further discussion among COAG members, I would hope in the early part of next year.

Senator SHERRY—Those COAG officials have presumably been appointed by the Council of Australian Governments from within the state or Commonwealth departments.

Mr Feil—That is my understanding.

Senator SHERRY—Do you know who at the Commonwealth level is responsible for this?

Mr Feil—As I understand it, it is a combination of the Department of the Prime Minister and Cabinet and the Treasury.

Senator SHERRY—The Treasury. Do you know which section of Treasury?

Mr Feil—I presume there are a number of branches. I gather there has been a task force put together with some individuals pulled from various parts, but I do not know the detail, I am afraid.

Senator SHERRY—It is fair enough that you are not aware of the detail if you are not directly involved. That means I have finished my questions a bit earlier than I thought.

CHAIR—Thank you very much for your patience, gentlemen, in waiting this late.

Committee adjourned at 10.45 pm