



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

ECONOMICS LEGISLATION COMMITTEE

ESTIMATES

(Additional Estimates)

THURSDAY, 16 FEBRUARY 2006

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SENATE
ECONOMICS LEGISLATION COMMITTEE
Thursday, 16 February 2006

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

Senators in attendance: Senators Brandis, G. Campbell, Carr, Chapman, Conroy, Evans, Parry, Sherry, Watson, Wong

Committee met at 9.03 am

TREASURY PORTFOLIO

Consideration resumed from 15 February 2006

In Attendance

Senator Minchin, Minister for Finance and Administration

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 Roger Brake, General Manager, International Finance Division

Dr Steven Kennedy, General Manager, Domestic Economy Division

Mr John Hawkins, Manager, Domestic Economy Division

Mr Graeme Davis, Manager, Macroeconomic Policy Division

Mr Paul O'Mara, General Manager, Macroeconomic Policy Division

Mr Greg Coombs, Acting Manager, Macroeconomic Policy Division

Mr Russell Campbell, 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 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 Michael Burton, Chief Financial Officer, 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 Vicki Wilkinson, Manager, Financial System Division

Mr Trevor King, Manager, Financial System Division

Mr Olaf Schuerman, Senior Adviser, Financial System Division

Ms Lorraine Alan, Senior Adviser, Financial System Division

Mr Geoff Miller, General Manager, Corporations and Financial Services Division

Ms Kerstin Wijeyewardene, Manager, Corporations and Financial Services Division

Mr Matt Brine, Manager, Corporations and Financial Services Division

Mr David Love, Manager, Corporations and Financial Services Division

Mr Jorge del Busto, Secretary, Financial Reporting Council

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 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 Michael Burt, Actuary, 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 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 Patrick Colmer, General Manager, Indirect Tax Division

Mr Colin Johnson, General Manager, Business Tax Division

Mr Mark O'Connor, General Manager, Individuals and Exempt Tax 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

Mr Michael Rawstron, General Manager, International Tax and Treaties Division

Mr Paul McBride, Manager, International Tax and Treaties Division

Ms Jo Ladusko, Manager, International Tax and Treaties Division

Mr Hadyn Daw, Manager, International Tax and Treaties Division

Mr Bruce Paine, General Manager, Board of Taxation

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 Rose Webb, General Manager, Enforcement and Co-ordination 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 Helen Lu, General Manager, Corporate Management Branch

Mr John Bridge, Chief Finance Officer

Ms Lisa Anne Ayres, Executive Branch

Mr Josh Maldon, Executive Branch

Mr Peter Maybury, Director Finance and Services

Ms Kristy Randall, Executive Branch

Australian Taxation Office

Mr Michael D'Ascenzo, Commissioner

Mr Greg Farr, Second Commissioner

Ms Raelene Vivian, Deputy Commissioner

Ms Donna Moody, Chief Finance Officer

Mr Mark Jackson, Deputy Commissioner

Ms Stephanie Martin, First Assistant Commissioner

Ms Margaret Crawford, Chief Operating Officer

Mr Mark Konza, Deputy Commissioner

Mr Michael Monaghan, Deputy Commissioner

Financial Reporting Council

Mr Jim Murphy, Executive Director, Treasury and FRC Member

Inspector-General of Taxation

Mr David Vos, Inspector-General of Taxation

Mr Rick Matthews, Deputy Inspector-General of Taxation

National Competition Council

Mr John Feil, Executive Director

Productivity Commission

Mr Bernard Wonder, Head of Office

Mr Garth Pitkethly, First Assistant Commissioner

Mr Michael Kirby, First Assistant Commissioner

Mr Ian Gibbs, Assistant Commissioner

Australian Prudential Regulation Authority

Dr John Laker, Chairman

Mr Steve Somogyi, APRA Member

Mr Brandon Khoo, Executive General Manager, Specialised Institutions Division

Mr Bernie Egan, Program Director, Basel II, Policy, Research and Statistics Division

Australian Securities and Investment Commission

Mr Jeffrey Lucy, Chairman

Mr Jeremy Cooper, Deputy Chairman

Ms Louise Macauley, Director, Enforcement Policy

Australian Securities and Investment Commission

CHAIR (Senator Brandis)—I welcome the witnesses to the resumed hearing of the Senate Economics Legislation Committee into the consideration of the additional estimates in respect of proposed expenditure for the year ending 30 June 2006. Mr Lucy, do you have an opening statement?

Mr Lucy—Yes. I appreciate the opportunity to deliver to the committee a short opening statement regarding ASIC's activities and achievements since our last appearance in October 2005. At this morning's hearing, I am accompanied by my fellow commissioner, Deputy Chairman Jeremy Cooper, and Louise Macauley, Director Enforcement Policy, is in attendance if the committee wishes to pursue their interest in section 19 examinations. Members would be aware that Professor Berna Collier has recently left ASIC, having been appointed a judge of the Federal Court of Australia, and therefore is obviously not attending this hearing. ASIC is grateful for former Commissioner Collier's significant and active contribution to our regulatory achievements, particularly in the areas of financial service regulation, insolvency law and consumer protection.

For the committee's information I would like to highlight some of our recent key projects and achievements. In December 2005, the Parliamentary Joint Committee on Corporations and Financial Services released its report on the statutory oversight of ASIC. The committee stated:

... it is satisfied that in the period since the last ASIC oversight report was tabled, the Commission, its leaders and officers have continued to apply both the letter and the spirit of the corporations legislation in the specific matters considered by the Committee within this oversight hearing.

In enforcement we currently have 136 separate investigations, involving a large number of individuals or entities under investigation. In addition, we have 135 criminal actions involving some 258 individuals, 100 civil proceedings involving 261 individuals or entities before the courts, and 35 administrative actions involving 45 individuals or entities.

Since the commencement of this financial year, we have completed 209 criminal and civil litigations—95 per cent of which resulted in a successful outcome for ASIC; entered into 17 enforcement undertakings, including with some larger industry groups, such as Coles Myer, ING Australia, HOSTPLUS and the American International Assurance Company; obtained 18 criminal convictions; disqualified or obtained undertakings to remove 17 people from directing companies and seven people from offering financial services; and taken action against the operators of illegal early release superannuation schemes by obtaining court orders against 13 companies or individuals and criminal charges against three individuals.

One particular enforcement matter that I am sure will be of interest to the committee is that of the Westpoint Group. As you may know, ASIC has commenced a number of legal proceedings against Westpoint. These proceedings were taken to protect investors and creditors and to stop new investors from investing money to prop up a failing business. Since November 2005, ASIC has commenced 25 proceedings against 16 companies and individuals in the Westpoint Group. Ten of those proceedings have been finalised, with orders in favour of ASIC. However, ASIC's work on the Westpoint Group is really just beginning. ASIC is now investigating the conduct of a number of officers and related entities in the group, the licensed and unlicensed advisors who promoted the investment, and professional advisors. The scope of our inquiry and investigation will be extensive, covering close to 50 individuals or entities. There are aspects regarding the Westpoint collapse that are extremely worrying for ASIC.

The Westpoint Group was involved in property development through a complex web of finance, development and construction companies. There are over 50 companies within the group. The finance companies promoted high-yield promissory notes, and it appears that these investments were marketed towards investors wanting a secure income and interest rates above cash rates. High-yield investments have been a concern to ASIC for some time. We have been issuing consumer and investor warnings since at least 1998, either in the context of enforcement action or more general warnings guiding investors to be wary. In the last year, we have issued seven media releases on these types of investments. The Westpoint model was based on mezzanine finance only investments rather than a spread of investments. The problem with mezzanine finance is that it is a second level of finance that only gets paid out after secure lenders in the event of failure.

ASIC became concerned about the Westpoint model in 2003, when we commenced an investigation. Two years ago we commenced proceedings against two companies in the group, arguing that they were illegally operating outside the Corporations Act. ASIC sought a court ruling that the two Westpoint companies were promoting a financial product and operating a managed investment scheme. This was a test case for ASIC involving the Westpoint Group and was an attempt by us to bring these structures within the regulations of the Corporations Act, which of course would require a licensee to undertake compliance programs, liquidity buffers, audited financial accounts and financial disclosure. Advised by its lawyers Westpoint had structured its fundraising based on the issue to investors of promissory notes, which are similar to IOUs—they are unsecured and offer little protection.

While the court made findings on a number of legal issues in late 2004, the proceedings were not concluded by the time of our recent investigation and proceedings, and there are currently still appeals on foot. The Supreme Court of Western Australia found that the promissory notes issued by the Westpoint companies, which were the subject of the proceedings, were not debentures within the meanings of the Corporations Act, as argued by ASIC, and therefore ultimately not financial products. However, the court also found that the promissory notes were an 'interest in a managed investment scheme'. The court did not accept ASIC's argument that key representations made by Westpoint in its offer document were false, misleading or deceptive. These legal rulings raise important issues for ASIC concerning our jurisdiction. The case is a good example of ASIC testing the boundaries in complex matters.

As this matter is listed for hearing on 20 February this year before the Court of Appeal of the Supreme Court of Western Australia, I do not wish to comment any further on these legal issues. However, I should note that ASIC first raised concerns about fundraising through promissory notes in 2003 when we issued an information release on 14 July 2003. This was followed by a specific media release in relation to the Westpoint proceedings in May 2004. ASIC commenced new investigations into the group in July 2005 after complaints from investors.

One of the key issues for ASIC is how so many mum and dad investors got involved in Westpoint. One of the first tasks for us will be to focus on facilitating some relief for investors. Unfortunately, in many cases it will take some time before investors will know how much of their original investment will be repaid. We will work with the liquidators and administrators of the group and licensed entities to facilitate payment to investors. ASIC will also undertake action against unlicensed advisors and, where appropriate, licensed advisors who promoted these schemes. ASIC will certainly be focusing on those who were involved in the management of the companies in the group, including related entities. In terms of taking action, we are looking at all possible options within our regulatory and legislative jurisdiction.

The commission is committed to working through this matter, and I am taking a personal interest in this investigation. The nature of this matter further highlights the importance of consumers seeking licensed financial advice; understanding the nature of their investments; diversifying their financial investments, having regard to risk; and asking themselves, as appropriate when they are dealing with a scheme that is unregistered, why that scheme is not registered and what protections are in place. Of course, it also reminds financial advisors to provide quality advice based on a proper understanding of the needs of their client.

We have undertaken considerable and specific work with both consumers and the industry in order to get this message across. ASIC at all levels, including the commission, have been extremely active in endeavouring to obtain high levels of press and other coverage in providing consumer warnings and key messages regarding investments. There have literally been dozens of such articles carried in the press in all states and territories under our name. For example, in December we released a booklet for consumers in consultation with the Australian Financial Planning Association entitled *Getting Advice: A practical guide to personal financial advice*.

A further example is a recent launch of our guide on 'book up', a common practice allowing consumers to purchase goods on credit by, for example, the trader holding the consumer's bank debit card and PIN as a form of security. Through this guide, ASIC has reinforced its commitment to consumer education in Indigenous communities. Similarly, we worked collaboratively with APRA to launch our unit pricing guide into the practice of the life insurance, superannuation and funds management industry. This joint initiative involved ASIC and APRA together drawing on extensive industry consultation to tackle the issue of errors in unit pricing and to ensure that investors can be confident that they will be treated fairly.

In the regulatory space generally, we have in recent months taken some important steps to minimise the regulatory burden on business by simplifying and streamlining some of our compliance and lodgment requirements. We have, of course, implemented CLERP 7, and we

have now also simplified the financial service licensing process, reducing the paperwork involved for applying for an AFSL by approximately 50 per cent. We have also, together with APRA, established a working group to review areas of perceived regulatory overlap or duplication between the two agencies and evaluated how each one might be resolved.

We also have significant additional work in progress. Our current year's business plan already commits us, in the first six months of this year, to improving the quality, transparency and usability of our regulatory communications, including considering the nature, clarity and effectiveness of our policy documents and possibly establishing a user guide to our various policy documents, guidance and class orders. Secondly, it commits us to systematically reviewing our industry liaison and implementing a comprehensive revised industry and stakeholder management plan. Lastly, it commits us to reviewing and refining our approach to breach notifications, including providing greater transparency in our approach. In addition, we acknowledge the work of the regulation task force and recognise the benefits of reducing the regulatory burden on business wherever possible and wherever prudent.

CHAIR—Thank you, Mr Lucy.

Senator SHERRY—Could we have a copy of the opening statement?

Mr Lucy—Yes, certainly.

CHAIR—You are tabling that?

Mr Lucy—We are; thank you.

CHAIR—Thank you.

Senator WONG—Mr Lucy, can I turn to the issue that I think we pursued at the statutory oversight hearing and that you referred to in your opening statement. I am interested in determining what changes have occurred since we last spoke relating to ASIC's investigations and its enforcement activity, particularly that leading to criminal prosecution. On the last occasion, you indicated that there was going to be work on the memorandum of understanding between you and the DPP in order to better coordinate the two agencies. Could I have a brief update as to where that is at.

Mr Lucy—Yes. I believe that the final draft has now been concluded, this week, and it is my expectation that I will be signing it within the next fortnight.

Senator WONG—Are there significant changes to the way in which the two agencies operate? Are you able to outline those?

Mr Lucy—I am not sure that there are significant changes in the manner in which we operate, but there are significant changes to the manner in which the MOU is presented. It will be made available for public inspection.

Senator WONG—What does 'the way in which it is presented' mean? Does it alter the nature of the working relationship between the two agencies?

Mr Lucy—No, it does not.

Senator WONG—What about the section 19 issue which was raised in relation to the Vizard matter? I think a number of committee members have expressed some concern about

why that had not been utilised. Has ASIC reconsidered its approach to the utilisation of section 19 statements?

Mr Lucy—Yes, we have. Indeed, that committee also made suggestions or recommendations regarding possible law reform or a different approach to section 19. Chair, that is the reason I have asked our director of enforcement policy, Louise Macaulay, to be present: to provide any background or respond to any questions that Senator Wong or other senators have in this particular area.

Senator WONG—Ms Macaulay?

Ms Macaulay—Even before your report was published, we had engaged in correspondence with Treasury about this issue of reluctant witnesses, as we call them—people who have been subject to a section 19 examination but are unwilling to voluntarily provide a statement. We have put a proposal before Treasury. That proposal has been extant for some time. We have held discussions with them and the Attorney-General's Department about the best way to move such a proposal forward. These discussions have not happened since the report was published—they had happened before that—but we have written to Treasury in relation to your recommendations in the report.

Senator WONG—Broadly, what is the nature of the proposal?

Ms Macaulay—The proposal is an amendment to section 19 of the ASIC Act. Currently, that provision gives us power to ask someone to provide reasonable assistance where we are contemplating a prosecution or have commenced a prosecution. In our view, it is unclear whether reasonable assistance includes asking someone to provide a statement in admissible form that relates to the subject matter of a section 19 examination they have undertaken. Essentially, we are seeking a clarification of section 19 so that it expressly provides that, in certain circumstances, we can ask a person to provide such a statement.

Senator WONG—When was that proposal first provided to Treasury?

Ms Macaulay—In November 1997.

Senator WONG—November 1997?

Ms Macaulay—That is correct.

Senator WONG—That is a very long time ago, Ms Macaulay.

Ms Macaulay—It is. At that time, there were discussions with Treasury, the DPP and the Attorney-General's Department.

Senator WONG—So the government has had a proposal for essentially an improvement to ASIC's powers since 1997?

Ms Macaulay—That is correct.

Senator WONG—Can you provide us with a copy of the proposed amendments?

Ms Macaulay—Yes, I can.

Senator WONG—Are you taking that on notice?

Mr Lucy—Yes, we will.

Senator WONG—There have been some press reports making certain assertions about the DPP's activity and, by implication I would suggest, ASIC's. It was reported:

Senior insiders at two investigating agencies, who would not be identified for fear of harming their working relationships with the DPP, said they avoided referring serious white-collar criminal conduct to the DPP for fear of excessive delay and inaction, preferring softer actions which they could control.

Is that a view that is held within ASIC?

Mr Lucy—No.

Senator WONG—Do you have any knowledge as to whether any person from within ASIC gave that information to the media?

Mr Lucy—That is a very complex area, and I think that our relationship with the DPP is, of necessity, a robust relationship. We both have separate responsibilities, and inevitably there are discussions and communications between the two agencies that are certainly robust discussions.

Senator WONG—What does 'robust' mean?

Mr Lucy—As I said, we consider our relationship robust and challenging and one that certainly does not leave open any questions that should be asked or responded to.

Senator WONG—Does 'robust and challenging' mean that there is a view within ASIC that reflects the view that I have just read out—that there are concerns amongst some of your officers as to the utility of referring serious charges to the DPP?

Mr Lucy—No, I do not believe that is the case.

Senator WONG—Have you asked them?

Mr Lucy—Yes.

Senator WONG—You do not believe that is anyone's view?

Mr Lucy—I think that there is, from time to time, an inevitable concern as to whether matters which we refer to the DPP are engaged in the manner that we would like. There is nothing wrong with that; that is inevitable. They have their responsibility as an independent agency to prosecute, we have our responsibility as an independent agency to investigate, so our people inevitably form an attachment or an emotion to a particular matter. We argue our perspective vigorously, and not every time does the DPP agree with our perspective.

Senator WONG—Does this argument as to your perspective or putting views about the conduct of a matter ever take the form of written communication?

Mr Lucy—It is really on a case-by-case basis. There are three layers of liaison. Firstly, there is our liaison on our national basis. We meet every four to six weeks, there are minutes and agendas, and issues are formally brought to the table. On a regional basis—that is a state or territory basis—we essentially meet monthly, again very much on a case-by-case, matter-by-matter basis. At commission level, we meet approximately quarterly. In a formal sense, the director of the DPP and myself meet at HOCOLEA meetings to sign off as to the fact that our relationship is an effective working relationship.

Senator WONG—You said ‘robust discussions’. Do I infer from that that at times ASIC officers may raise concerns with the DPP about their conduct of matters?

Mr Lucy—I do not think ‘the conduct of matters’ is appropriate terminology. It is more to do with the fact that they do not always agree with our perspective.

Senator WONG—Perspective about what?

Mr Lucy—For example, when we seek senior counsel’s advice, that advice does not always accord to our own view. That is the whole point of going out and seeking that advice. In respect of the DPP, where matters involve criminal investigation, we communicate with the DPP. They are involved in that interaction, and they do not always agree with our perspective. That is inevitable and, frankly, it is quite proper.

Senator WONG—You said the liaison between you is at various levels. What written communication has occurred between ASIC and the DPP in relation to criminal investigations?

Mr Lucy—I could not responsibly answer what level of communications. I have certainly written to the DPP on occasions, and I have every expectation that through the liaison process there is communication backwards and forwards between the staff.

Senator WONG—How often would you write to the DPP?

Mr Lucy—Once or twice a year.

Senator WONG—Are you able to provide copies of that correspondence over the last two years?

Mr Lucy—I will take that on notice.

Senator WONG—Would the amendments that Ms Macaulay gave evidence about, which have been with Treasury since 1997, effectively strengthen ASIC’s pre-referral capacity to obtain statements?

Ms Macaulay—Yes, they would enable us, in circumstances where people are unwilling to voluntarily provide a statement, to obtain a statement.

Senator WONG—Mr Lucy, why was this not disclosed to the committee previously when questions were asked about the section 19 issue?

Mr Lucy—I am not sure that we were asked that question.

Senator WONG—We did ask quite a lengthy range of questions, in the context of the Vizard matter, about why section 19 had not been utilised.

Mr Lucy—I would have to take that on notice and refer back to the questions that were specifically asked. Obviously we do not make the laws, but, as to that particular reference, I would need to go back to *Hansard*.

Senator WONG—I am not suggesting you make the laws, Mr Lucy. I am asking why, when the committee was inquiring into this issue, it was not raised. If you want to take that on notice, obviously you can do that.

Mr Lucy—Thank you.

Senator WONG—Isn't the issue that Ms Macaulay has given evidence about—being that these proposed amendments are directed to a situation where you have an unwilling witness—precisely the issue that was the concern in the investigation of the Vizard matter?

Ms Macaulay—That is correct, Senator. However, we are of the view that these amendments would not deal with every situation where a person was reluctant to provide a statement.

Senator WONG—Clearly not, but they improve the capacity of ASIC to question people in such circumstances. I understood that to be your evidence.

Ms Macaulay—They do not improve our capacity to question people. Our section 19 power is there, and we are not proposing that there would be an amendment to that. What it is directed towards is where we would like to prepare a brief to the DPP and ask the DPP to make a decision about whether there should be a prosecution commenced. So we need to gather together all of the admissible evidence. Part of that is statements from witnesses who are able to provide evidence that is relevant to that intended prosecution. That is where we have difficulty.

Senator WONG—Which was, as I recall, the evidence ASIC gave when being questioned about the difficulties in the Vizard matter, and particularly the statement from the accountant. I think that was the concern.

Ms Macaulay—I cannot comment on the Vizard matter. I have had no personal involvement in that, and my area of expertise is law reform. But we have always recognised, in putting this proposal up, that there are some circumstances where, even with the ability to obtain a statement from a witness, it would be inappropriate to call that witness, because there are other issues with that witness's evidence.

Senator WONG—I know that we are under a bit of time pressure today, but could I turn to the requirements in terms of the issue of prospectuses. There is a requirement in the Corporations Law that all information that an investor would require to make an informed assessment should be included in the prospectus. Is that correct?

Mr Cooper—Yes.

Senator WONG—Would you agree that, when issuing a prospectus, if a company were paying bribes or kickbacks, that would be information that an investor should properly be aware of—in addition to whatever other criminal or civil matters might be associated with that activity?

Mr Cooper—That is a hypothetical question.

Senator WONG—I will make it very factual. The AWB was listed on the Stock Exchange at a time when, it was alleged before the Cole commission and in the public arena, kickbacks were already being paid by the AWB. Do you consider that that is an issue that should properly have been disclosed in the context of the public listing?

Mr Cooper—Strictly technically, yes.

Senator WONG—As a result of that, therefore, and the information that has been made public, is ASIC going to investigate AWB directors in relation, firstly, to the listing of the company?

Mr Lucy—We have made it quite clear, Senator, that in relation to the AWB, we are following the Cole commission very closely. At the conclusion of the Cole commission, we anticipate that there will be, or will not be, recommendations made suggesting that there might be breaches of the Corporations Act. To the extent that there are recommendations made regarding the Corporations Act, we will investigate those promptly.

Senator WONG—Mr Lucy, you have a statutory obligation to enforce the Corporations Law.

Mr Lucy—Yes.

Senator WONG—Are you suggesting that your decision to investigate the AWB will be entirely dependent on the Cole commission's recommendations?

Mr Lucy—No, I am not suggesting that. Indeed, I think I can provide a very good example in the HIH royal commission, where the commissioner made recommendations to ASIC for areas to be investigated. The scope of our investigation went quite a bit broader than the recommendations of the royal commission. That would be exactly the way I would expect that we would follow this through as well.

Senator WONG—Breaches of the Corporations Law are not a matter referred to in the terms of reference of the Cole commission.

Senator Minchin—The terms of reference clearly seek to have the commission direct its attention to whether there have been breaches of any Commonwealth, state or territory law. It may be that Corporations Law was not specifically referred to, but they do refer to any laws of the Commonwealth or a state or territory.

Mr Cooper—I think that is the point. If and when it is determined that bribes were made, and the extent of those bribes, then it will be a question of whether that is relevant to the Corporations Act.

Senator WONG—Is it asserted by ASIC that you are not going to undertake any investigative activity of the AWB directors, current or past, until the Cole commission has concluded?

Mr Lucy—That is our view at this time, yes.

Mr Cooper—Correct.

Senator WONG—Are you aware that the parliamentary joint committee has in fact written to you saying that, while the committee recognises ASIC's quite proper wish not to impede the progress of the commission, the committee has examined the commission's terms of reference and cannot immediately see why an investigation by ASIC would so impede the commission.

Mr Lucy—Yes, I am aware of that letter.

Senator WONG—Do you disagree with the committee's assessment?

Mr Lucy—I have responded to Senator Chapman, the chair of the committee.

Senator WONG—And?

Mr Lucy—Essentially, I outlined what I have just said: that it is the view of the commission that we will continue to closely monitor the workings of the Cole commission and anticipate responding very quickly to any recommendations that he may make.

Senator WONG—You keep saying that, Mr Lucy. I suggest to you that your statutory obligation is not dependent on the Cole commission making any recommendations. You have an obligation—

Mr Lucy—No, it is not dependent on it. But, at this stage, the expectation is that the Cole commission will work quickly and properly release their findings. We will respond accordingly. In the meantime, we are monitoring the evidence provided to the commission very closely.

Senator WONG—How are you doing that? Is there an ASIC officer following the commission's evidence?

Mr Lucy—Yes.

Senator WONG—And sitting in on the hearings? Or is there some other process of monitoring it? Can you tell me how that is occurring? What is the process?

Mr Lucy—It has been part of our national assessment program that, firstly, we monitored very closely the Volcker report and, subsequently, we have been monitoring very closely the workings of the Cole commission. But, of course, the Cole commission is incomplete. It is at various stages of hearing and considering evidence. But, at this stage, it is incomplete.

Senator WONG—Is there a dedicated officer or officers considering the evidence of the Cole commission as it is taking place? There are quite a number of matters which impinge on potential breaches of the Corporations Law. There is the public listing and also the ongoing requirement for continuous disclosure. Clearly, on the evidence to date, there would be some question as to whether the AWB had complied with that.

Mr Lucy—Again, yes, we are monitoring it very closely but, at this stage, the evidence is not complete.

Senator WONG—Tell me how you are doing that.

Mr Lucy—I think that have articulated it yourself. We have a person that is carefully monitoring all the evidence and material that is before the committee, including the evidence that is provided by witnesses, so that we are, in a sense, in a contemporaneous position to be able to respond if and when any directions are made.

Senator WONG—Is there a dedicated ASIC officer monitoring the Cole commission?

Mr Lucy—Yes. That is not to say that that person does not do anything else.

Senator WONG—In which section does that person work?

Mr Lucy—National Assessment and Action.

Senator WONG—But they have other duties as well?

Mr Lucy—Yes.

Senator WONG—And are you aware of, or is ASIC considering, various aspects of the oral and material evidence—

Mr Lucy—We are considering all the—

Senator WONG—How are you doing that?

Mr Lucy—By reading it.

Senator WONG—All the evidence is being read, is it?

Mr Lucy—Yes.

Senator WONG—When do you believe you will be in a position to commence your investigation?

Mr Lucy—As I have said, the decision that we have taken at this stage, having regard to the Cole commission, is that we will wait upon any recommendations the Cole commission provides.

Senator WONG—What if the Cole commission does not make any recommendations that relate to the Corporations Law?

Mr Lucy—If that were the case—and it is hypothetical—we would consider our own position. We might or might not undertake our own investigation at that time, but that is hypothetical and for the future.

Senator WONG—It is possible that you may not investigate?

Mr Lucy—That is hypothetical, Senator.

Senator WONG—Mr Lucy, you have either made a decision that you will investigate subsequent to the commission's findings or that you will investigate dependent on the commission's findings or that it is still an open question?

Mr Lucy—It must be an open question because the Cole commission is incomplete.

Senator WONG—You do not believe, from ASIC's perspective, that the evidence to date discloses at least a sufficient prima facie case of breaches of the Corporations Law that warrant an investigation on their own merits even if you made a decision in terms of timing subsequent to the commission's recommendations?

Mr Lucy—The commissioner is continuing to hear evidence. It may be that the future evidence impacts on the evidence that has been provided to date.

Senator WONG—This is a prospectus issued by a company. Have you looked at the AWB original prospectus?

Mr Lucy—Our staff have, yes.

Senator WONG—There is certainly nothing in that about breaching the UN oil for food guidelines or paying a company called Alia. That is certainly not disclosed, is it?

Mr Lucy—There is no such reference. But the Cole commission has not determined its findings and so any suggestion as to that sort of activity is an open question.

Senator WONG—So you do not believe that there is even a prima facie case that there have been breaches of the Corporations Law?

Mr Lucy—We have an open mind, Senator, as I have said.

Senator WONG—Just to recap: you say that you are monitoring it and you are not going to look at it until the recommendations are made and you have an open mind as to whether you would in fact investigate subsequent to the recommendations coming down.

Mr Lucy—Correct.

Senator WONG—Is ASIC aware of the analysis by Corporate Governance International of the AWB structure?

Mr Lucy—I would have to take that on notice. I am not—

Senator WONG—You are not aware that Corporate Governance International was highly critical of the structure, from a governance perspective, of the AWB, and stated this publicly:

The question should be asked of governments and regulators how they ever let this governance Frankenstein loose on the largely unsuspecting investment public.

Mr Lucy—I am not aware of the report to which you refer.

Senator WONG—Has anyone within ASIC looked at this issue? There are very serious issues raised—and I appreciate that this is only the view of one group

Mr Lucy—I would have to take it on notice, Senator, because I am not aware of it.

Senator WONG—It is a group, obviously, that has some reputation in terms of corporate governance analysis. It has been highly critical—

CHAIR—He said that he will take it on notice. You said you are referring to one particular commentary and he said that he will take it on notice.

Senator WONG—Is this something that ASIC has previously considered? Had ASIC turned its mind to the governance structure within AWB prior to these allegations being raised?

Mr Lucy—I cannot speak for ASIC in its entirety since the time that that prospectus was issued, so therefore I need to take that question on notice.

Senator WONG—There have been a number of commentators, including CGI, over some time who have raised concerns about the governance structure within AWB. I am interested to know whether that issue had ever been the subject of consideration by ASIC prior to these allegations in relation to the oil for wheat.

Mr Lucy—That will be part of the matter that I take on notice.

Senator WONG—I would appreciate it if you would. I would be interested in knowing whether any investigation or consideration by ASIC officers regarding the AWB governance structure occurred prior to the current round of allegations being raised.

Mr Lucy—I understand.

Senator WONG—I understand that there is a current Treasury review process. A consultation paper was issued last year in relation to ASIC's audit inspection powers. Do you

have any concerns regarding the proposed modifications of ASIC's domestic inspection powers?

Mr Lucy—No. Our attitude is that aspects of the profession have misread what was initially intended, but we are comfortable with the proposed amendments.

Senator WONG—In terms of the suggestions that are set out in the consultation paper, does ASIC have any concerns about the thrust of those proposals?

Mr Lucy—No. We think that this is an important piece of legislation and, to the extent that there need to be changes made to accommodate concerns of others, we are comfortable with those changes.

Senator WONG—Have you responded in writing to the consultation paper?

Mr Lucy—I would have to take that on notice. Certainly we have had a very close level of dialogue with Treasury. To the extent that we have formally responded in writing, I would have to take that on notice.

Senator WONG—Okay. If you have, I ask that you provide a copy of that. Have you considered whether or not the proposals, if adopted, will result in a reduction in your audit inspection activity?

Mr Lucy—Yes. We have visited that. I think that much of the initial concern was to the extent that we would be acting on behalf of the American PCAOB. That was really the nature of the initial concerns.

Senator WONG—I am sorry, Mr Lucy, but I thought there were two aspects to what was being suggested. The first was the cooperation arrangement between ASIC and the American regulator.

Mr Lucy—That is right.

Senator WONG—The second was the modification of your domestic audit inspection powers more generally.

Mr Lucy—Yes.

Senator WONG—I was asking more in relation to that second point. Do you believe it will result in a reduction in your audit inspection activity?

Mr Lucy—No, we do not.

Senator WONG—Will there be any cost savings resulting from it, do you think?

Mr Lucy—From our perspective?

Senator WONG—Yes.

Mr Lucy—There is potential for cost savings but I do not have an expectation that that will be an automatic outcome.

Senator WONG—Why is there potential?

Mr Lucy—It really depends upon how the inspection process works in the field, what we see and the results of that. Until we get into that process, I cannot predict it.

Senator WONG—Is it your belief—I won't ask for your guarantee; that is probably a bit high—that there will not be a reduction in ASIC's audit inspections?

Mr Lucy—At least in the medium term, that would be my expectation, yes.

Senator WONG—Why does that alter from medium to long term?

Mr Lucy—Because we are early into this process. I think that once we get further into it and we have a better level of understanding as to what is actually out there in the auditing arena, we will then be able to better decide what level of inspection we need.

Senator WONG—Yes. I am more interested in whether the changes proposed will lead to any cost savings or reduction in activity.

Mr Lucy—Again, I indicate that I do not expect so.

Senator WONG—Finally, I will turn to the additional estimates. There is some additional funding for ASIC in relation to insolvency. I am interested in that but I will ask you about that another time. There is also Operation Wickenby, which is about international financial transactions—is that right?

Mr Lucy—Yes.

Senator WONG—There is also \$3.3 million for this financial year only on strengthening ASIC's enforcement capabilities. Can you tell me why that money was sought?

Mr Lucy—I will take that on notice.

Senator WONG—There are only three bits of money. Surely you know why you needed more money for enforcement.

Mr Lucy—I am sorry, Senator. I will have to take that on notice.

Senator WONG—Is there no-one here from ASIC who can tell me about the additional estimates appropriation?

Mr Lucy—There is no-one here who can answer the question you have put.

Senator WONG—What is the money proposed to be spent on?

Mr Lucy—It is obviously to be spent on enhancing our enforcement capability, but you asked us to provide the specific details of what that will be, and my response is that I will take that on notice.

Senator WONG—So you cannot tell me what changes you might put in place once you have received this extra funding?

Mr Lucy—There are ongoing and frequent changes to all aspects of the way that we do our business. I am thinking that that is to do with technology, but again I have to be absolutely sure of my facts and so therefore I need to take the question on notice to be clear that my response is reliable.

Senator WONG—Will that mean you will investigate more serious financial crime?

Mr Lucy—We will continue to do our job with vigour and without fear or favour.

Senator WONG—Mr Lucy, is it the case that ASIC investigations in relation to serious financial crime have been limited over the past two years because of inadequate funding?

Mr Lucy—No.

Senator WONG—The Vizard matter: what have you learnt from that?

Mr Lucy—To the best of my knowledge, we learnt nothing relevant, in the context of funding, from the Vizard matter.

Senator WONG—What about operationally?

Mr Lucy—As we previously said to this committee and others, we certainly believe that the key lesson in Vizard was the manner in which we communicated the outcomes to the public more broadly.

Senator WONG—So you have no concerns about the gathering of evidence, the section 19 issue et cetera?

Mr Lucy—No.

Senator WONG—I am not trying to redo the Vizard matter; I am interested in learning what changes and alterations to your operations and investigations resulted from that.

Mr Lucy—ASIC has no regrets or qualms about our investigation and subsequent prosecution of the Vizard matter. We remain of the view—

Senator WONG—That is a big statement, Mr Lucy.

Mr Lucy—that it was robustly investigated and appropriately—

Senator WONG—No regrets or qualms whatsoever?

Mr Lucy—Not in relation to the prosecution of Mr Vizard.

Senator WONG—Do you have regrets or qualms in relation to your record on serious white-collar financial crime?

Mr Lucy—No.

Senator WONG—Do you think you have a good record?

Mr Lucy—Yes.

Senator WONG—Do you reject the public concerns which have been raised that ASIC and the DPP are soft on corporate crime?

Mr Lucy—Correct.

Senator WONG—Are you going to alter your prosecution strategy at all? We have discussed previously—

Mr Lucy—No, we are not.

Senator WONG—So you still want to aim for a very ‘play it safe’ strategy—

Mr Lucy—No.

Senator WONG—where you operate at around 20 per cent above your prosecution target success rate?

Mr Lucy—No, that is not the case. We still operate on the basis that we will only take on matters where there is a reasonable and appropriate opportunity for a successful prosecution.

Senator WONG—And I have put previously to you that your success rate is 90-something per cent.

Mr Lucy—Not in criminal matters.

Senator CHAPMAN—I want to ask some questions in relation to unsolicited share offers. In relation to unsolicited or low-ball share offers, to what extent does ASIC consider that previous attempts and current provisions to provide clear information to shareholders, many of whom have received their shares as a result of demutualisations and therefore might be regarded as unsophisticated investors, so that they will reject these offers have been successful—for example, requiring the total market value of a shareholding to be clearly compared to the total price offer?

Mr Cooper—The answer is that the success has been mixed. In some cases, largely through education from ASIC, it seems that shareholders have been well aware of the dangers of these low-ball offers. In other cases, where perhaps the company is on the cusp of a demutualisation—so in other words it does not have shareholders who are used to the listed environment—shareholders seem to be less aware of these issues. In the recent case of Avon, we had to litigate against Mr Tweed, seeking declarations that he had been misleading and unconscionable in relation to those offers. So there have been some successes, but we continue to be vigilant against Mr Tweed.

Senator CHAPMAN—In relation to his offers, how many complaints have been received by ASIC over the last 12 months, either from investors who have received and accepted such offers and have realised after the event that they have been duded, or from investors who have received correspondence and refused the offers? How does that compare with previous years?

Mr Cooper—I could not give you specific figures but I can say that we regularly receive complaints both from shareholders and in particular from listed companies who become aware that low-ball offers are being made to shareholders but there have been some instances where—we are talking specifically here about Mr Tweed; he seems to the expert in these things—he has made offers and they have had absolutely no acceptance rates. So we consider that to be a pretty good success.

Senator CHAPMAN—Has the recent offer by David Tweed and his associated companies where he offered shareholders of a large Australian financial institution part payment of shares over an 18-year period come to your attention?

Mr Cooper—The trouble with Mr Tweed is that he makes many and varied offers but that is a familiar technique. Often it is 15 years. In general terms, yes, I am aware of that.

Senator CHAPMAN—Is this particular type of offer of any greater concern to you than the other upfront cash offers that he makes?

Mr Cooper—It is of enormous concern. We took proceedings against him alleging it was both misleading and unconscionable. In those proceedings the Federal Court actually agreed with us that it was unconscionable.

Senator CHAPMAN—Has ASIC sought to do any sort of analysis of the total losses that have been suffered by shareholders who might have accepted such offers from Mr Tweed and his associated companies?

Mr Cooper—Not to my knowledge. That would be a useful but very large and resource intensive exercise. I am not aware that we have done that.

Senator CHAPMAN—You would be aware that entities such as Mr Tweed and his associated companies that make unsolicited share offers are not required to hold an Australian financial services licence in order to make these offers because they are regarded as self-dealing. Is this exemption being abused by individuals such as Mr Tweed? If so, are some reforms needed to overcome that abuse?

Mr Cooper—The answer is yes and no. With regard to just passing additional laws one after the other in relation to Mr Tweed—and I suppose we have already seen a pattern of this; there is a specific part of the Corporations Act which we colloquially refer to as the anti-Tweed provisions—no sooner have you done that than he moves into some other technique. Lately we have seen him morph into an entirely new technique that he is undertaking in relation to a company called Clime Capital. Unfortunately while he is a continual concern for us, I am not sure that continuing to pass more laws, which then have unintended consequences on a whole lot of other honest people, is necessarily the right way to go. So I guess we have had a mixture of litigating against him and warning consumers. There are the anti-Tweed provisions so it is really a package of measures, but no one of them by themselves is actually going to put him out of business.

Senator CHAPMAN—It has been put to me—I put this in the context of raising the possibility or the danger of overregulation, in a sense—that in fact there is currently an imbalance of regulation when you compare the regulations that apply to Australian financial services licensees, which include companies that are targeted by Mr Tweed. When they, for instance, want to make a share buyback offer to their shareholders, they are required to file a number of notices and documents with you at ASIC and provide documentation to shareholders that runs to something in the order of 20 pages of explanation to ensure that all the disclosures and explanations are provided to shareholders. On the other hand, Mr Tweed can provide a one or two-page document to shareholders. What is your view on what might be termed that regulatory imbalance?

Mr Cooper—I understand the issue but imposing regulations on anyone who wants to make an offer is a pretty big undertaking to get the settings right without upsetting a whole lot of very legitimate transactions in the process. I think those who think about this issue very soon realise that even the anti-Tweed provisions themselves have had a number of unintended consequences. For example, they have caused problems in relation to perfectly legitimate offers that have come from overseas in a properly regulated jurisdiction like the United Kingdom. It has already caused unintended consequences in those areas. So I would be reluctant to try to cure the Tweed problem by further regulation.

Senator CHAPMAN—The Australian Consumers Association made a submission to the regulation task force in which they referred to this issue as well. They recommended:

Regulations to strengthen the unconscionable conduct provisions to protect consumers from predatory behaviour—for example, where someone seeks out shareholders from demutualisations and offers to buy their shares well below market value.

What is your view of that?

Mr Cooper—I think they are right, and in our Federal Court proceedings against Mr Tweed the court found that it was unconscionable. Unfortunately, owing to the complexities of the provisions, we identified a problem with one of the sections in the ASIC Act, so it was a sort of Pyrrhic victory. Yes, the conduct was unconscionable, but owing to the technicalities it looks like it is going to need to be fixed—and we have recommended that to Treasury. Nonetheless, in that case we were able to get orders that he pay the money back, so we still believe that that was substantial progress.

Senator CHAPMAN—What would ASIC's view be of an amendment to the legislation regarding ASIC and court power in relation to the register of members of companies, whereby ASIC or a court could issue a specific instrument or class order enabling a listed entity to refuse to respond to a request for a list of its members?

Mr Cooper—Again, this is obviously a question for the government, which makes the laws. However, my comment is that I believe it is a question of balance. There are lots of legitimate commercial reasons why a person might ask for a copy of the register of members. That is how a takeover happens. We regard them as perfectly legitimate—in fact, necessary—parts of commerce. We have been quite public about this. We would be against using a sledgehammer to crack a walnut by imposing a right-across-the-board ban on access to registers of members to address this problem. We do not think that is the right way to go.

Senator CHAPMAN—That is not what I am suggesting. I am suggesting that ASIC or the court have the power to refuse an individual if it is deemed they are engaged, for instance, in the practice of low bowling.

Mr Cooper—Perhaps I did not make myself clear enough. Unfortunately, what tends to happen is that that power is then seized upon by any number of companies which wish to fend off offers for their shares. From experience, I think you would find that in nine out of 10 cases you would have target companies using the power, alleging that there are all sorts of reasons why they should not hand over their register of members. There is a long history of toing and froing on this subject. The current regime is that for legitimate commercial purposes the register is available.

Senator CHAPMAN—What is your view of requiring people such as Mr Tweed to lodge with ASIC documents similar to those that companies are required to lodge in the situation of a share buyback?

Mr Cooper—I suppose it is the difficulty of really defining the Tweed circumstances so that we do not catch a whole lot of other legitimate people. That could certainly be worth looking at, but it is an increase in regulation.

Senator CONROY—I would like to talk about ASIC's investigation into Telstra's disclosure practices late last year. Could we establish one important issue up front: in ASIC's view, did Telstra breach the Corporations Act?

Mr Lucy—There were essentially three areas in which ASIC investigated Telstra. The first issue that ASIC considered was that there was a selective briefing to analysts on 11 August 2005, when Telstra released its full accounts to the ASX and, at the same time, gave webcast briefings to analysts. The information that was given was some guidance about a decline in earnings that was sufficiently specific to allow those with the benefit of a briefing to know a likely range of the decline. However, any detriment was limited as the information became public essentially instantaneously through the webcast. The briefing was otherwise handled appropriately, and ASIC formed the view that the guidance provided was a one-off disclosure made in circumstances where the Telstra officer was under pressure to respond to a particular question. However, ASIC considered that this was not best practice and referred the board to our guidance statement of 23 August 2000 entitled *Better disclosure for investors*.

The second issue related to the briefing paper to the government of 11 August 2005. Telstra provided a confidential briefing paper to the government. In ASIC's view, Telstra was not required to release this briefing paper to the market, because it contained information that was covered by the carve-outs to the listing rules—namely, the information was confidential, it was incomplete and speculative and a reasonable person would not expect the information to be disclosed. However, there was information to suggest that certain parts of this document were disclosed to the market sometime on or around 16 August.

In circumstances where a document which would otherwise not be disclosable becomes public knowledge, in our view, the carve-outs no longer apply, not only because the information is no longer confidential but because it could no longer be said that a reasonable person could not expect that the information be disclosed. In this case, the only information that ASIC was concerned about was the information contained in tab 2 about Telstra's dividend policy. ASIC formed the view that this information should not formally be disclosed to the ASX, as it did not entirely accord with the formal position of the board.

When the whole of the briefing was disclosed by Telstra on 7 September 2005 at ASIC's request, this issue was necessarily clarified. The main reason that ASIC asked Telstra to disclose the full document together with any explanation on 7 September was that general market speculation was about the existence of this document and not about what it contained, some of which was incorrect. It was the speculation about this document rather than the information it contained that led to confusion in the market and concerned ASIC.

There certainly was an argument from 16 August to disclosure on 7 September. There was confusion in the market about the dividends position of Telstra. On the other hand, there was evidence to suggest that the statement was not material given that there was an increase in the share price rather than a fall at the time of the disclosure. There was also evidence to suggest that the information was generally available.

Given the potential issues in the case and the fact that Telstra very promptly responded to ASIC's request for disclosure, ASIC decided that in this case a continuous disclosure penalty action would not be warranted. We did consider whether an infringement notice would be warranted but determined that as Telstra would not accept the infringement notice and pay, which is an essential part of the infringement notice legislation, a more timely and effective response would be to adopt the approach referred to.

The third issue that we investigated on disclosure was the announcement made on 5 September about an earnings downgrade. ASIC did not find any breach of the law on this issue, and the downgrade has been borne out by subsequent events. However, ASIC did raise a concern with the board about the confusing nature of the announcement in apparently linking the cost of regulation to the downgrade. It warned Telstra about the importance of being far more precise in its communications with the market.

Senator CONROY—Okay. I wonder whether I can get an answer to my question. I want to establish whether or not, in ASIC's view, Telstra breached the Corporations Act.

Mr Lucy—We found that there was a technical breach that did not warrant prosecution.

Senator CONROY—Is that consistent with what you said publicly at the time?

Mr Lucy—Yes.

Senator CONROY—Did all three of them amount to a breach?

Mr Lucy—No, just the second one.

Senator CONROY—The dividend policy?

Mr Lucy—Yes.

Senator CONROY—On the day you announced the outcome of your investigation, there was an article in the *Australian* suggesting that Telstra executives could face jail for breaching the Corporations Act. Did that story—the 'executives face jail' story—prompt ASIC to bring forward the conclusion to its investigation?

Mr Lucy—I cannot recall the article that you are referring to, but there was no artificial bringing forward or delaying of our determination with respect to this Telstra matter.

Senator CONROY—It was a page 1 story in the *Australian*.

Mr Lucy—It may well have been.

Senator CONROY—'Telstra chiefs risk jail over secret briefings' was the heading. It was very titillating at the time.

Mr Lucy—Good.

Senator CONROY—I am sure Senator Minchin is equally titillated.

Senator Minchin—I am not sure I was as titillated as you.

Senator CONROY—I certainly had a good chuckle.

Senator SHERRY—But you would never hang on a newspaper headline.

Senator CONROY—No. I am just trying to find out what the sequence of events was. I got the impression that you rushed out a statement—that you were not quite in a position to announce your outcomes and you seemed to rush a statement out during the course of the day in response to the newspaper article.

Mr Lucy—I do not have any recollection of such an action.

Senator CONROY—Can you take that on notice and see if you brought forward the date?

Mr Lucy—Yes.

Senator CONROY—It would not surprise me, given the front-page headline announcing that you were about to—

Mr Lucy—It would surprise me—but, as you request, I will take it on notice.

Senator CONROY—I am not necessarily being pejorative when I say that; it was just that it was such an extraordinary headline at the time that I am sure a few of you choked on your Weeties at breakfast if you read it.

Senator Minchin—Maybe Sol did.

Senator CONROY—Only if he was in the country at the time and saw it. Did ASIC advise the Treasurer or his office of the outcome of its investigation before you went public?

Mr Lucy—No.

Senator CONROY—Do you recall your interview on the *7.30 Report* on 14 December with Emma Alberici? I have a transcript here.

Mr Lucy—On 14 September?

Senator CONROY—On 14 December. I will just check the date. It was Wednesday, 14 December 2005. Ms Alberici made the very reasonable observation—and she was talking about the, in general, Telstra case—that:

It is hard to escape the conclusion that there has been some political interference—

To which you relied:

There has been that suggestion. And indeed, there was the suggestion, I think, that indeed it may not have been necessarily the Government but it might have been the Opposition.

Could you explain that comment?

Mr Lucy—I would need to take that on notice to be precise but I am happy to give an off-the-cuff response.

Senator CONROY—It looked like an off-the-cuff response then, so I am hoping that you are going to give me some sort of response now. I take that sort of imputation pretty seriously and was considering—and still would consider—referring you to the Privileges Committee of the Senate over an allegation like that; that is, that we tried to interfere in one of your investigations.

Mr Lucy—Could you read the quote again?

Senator CONROY—You said:

There has been that suggestion. And indeed, there was the suggestion, I think, that indeed it may not have been necessarily the Government but it might have been the Opposition.

Mr Lucy—To what? What was the question?

CHAIR—Mr Lucy did not say anything about the Senate. Is that a guilty denial, Senator Conroy?

Senator CONROY—Mr Lucy has asked me a question. Ms Alberici said:

It is hard to escape the conclusion that there has been some political interference.

You then responded by saying:

There has been that suggestion. And indeed, there was the suggestion, I think, that indeed it may not have been necessarily the Government but it might have been the Opposition.

Mr Lucy—I guess it really depends on what one's attitude is to political interference. There was certainly quite a level of political interest in our investigation into Telstra.

Senator CONROY—I wrote to the Stock Exchange.

Mr Lucy—And you wrote to us.

Senator CONROY—And I wrote to you, and in fact you did not get Telstra to disclose the document in question; I disclosed the document to the Stock Exchange when I wrote to the Stock Exchange the second time and gave them a copy of the document. So your hard-won battle to get Telstra to disclose the document actually had been done days, if not a week or so, beforehand when I disclosed the document to the Stock Exchange and put it into the marketplace.

Mr Cooper—That is actually not correct, because the ASX were not—

Senator CONROY—They received it the day after I wrote to them the first time.

Mr Cooper—Yes, and they were not going to disclose it. We asked for disclosure through the ASX and to Telstra.

Senator CONROY—I wrote to them and gave them the document.

Mr Cooper—Correct, you did, and they decided that it was not—

Senator CONROY—Did they tell you they were not going to disclose it?

Mr Cooper—Correct.

Senator CONROY—We will have to visit them as well.

Mr Cooper—No, on the basis that it was not clear that it was materially price sensitive. It was an inconclusive internal report. These are exactly the same sort of issues that we have heard before. I just wanted you to be clear that the reason it was disclosed was that we said to the ASX and Telstra—

Senator CONROY—If the ASX gagged my attempt to disclose it, I would appreciate that information. That is the first time—

Mr Cooper—They just formed a view that it was not disclosable, which is perfectly open.

Senator CONROY—Despite the fact that you believe it was a technical breach of the law, the Stock Exchange with a former senior Mallesons lawyer could not quite work that out. I am happy to take that up with the Stock Exchange. You do not have to defend the Stock Exchange. It is okay.

Mr Cooper—I will try to explain. We thought it was disclosable because so much polemic had been built up about this document that the market had not seen that we thought the market ought to see it. It probably was not disclosable on its own. But it had been selectively leaked to journalists and there was all sorts of speculation about what was in it, so we thought the best approach was to get it into the market.

Senator CONROY—I agree. I attempted to do that, as I am sure you are aware.

Mr Cooper—But there was certainly a perfectly valid view which the Stock Exchange formed that it was not disclosable.

Senator CONROY—A perfectly valid view. You formed a quite different view—that there was a technical breach of the Corporations Law.

Mr Cooper—This is what disclosure is all about. It is matter of judgment and balance as to whether something is price sensitive and material or not.

Senator CONROY—So they took a perfectly valid view, and you took the view that it was a breach of the Corporations Law. One of the most senior people in Mallesons is the head of the Stock Exchange now. I appreciate it is not as eminent as Blakes. It is quite an extraordinary proposition from the Stock Exchange, but that is for us to take up with them.

Mr Cooper—Fine. But we certainly do not think so.

Senator CONROY—You actually do not have to defend the Stock Exchange.

Mr Cooper—We have a slightly different perspective, of course. We are a regulator of the system and we merely thought that it was appropriate from a systemic point of view that this information be available.

Senator CONROY—I am going back to Mr Lucy's definition of political interference. Who suggested the opposition had interfered with ASIC's investigation?

Mr Lucy—I do not believe that I suggested that there was any interference with our investigation.

Senator CONROY—The question was about political interference. 'There was the suggestion, I think, that it may not have been necessarily the government but it might have been the opposition.' I want know which member of the opposition and what the political interference was.

Mr Lucy—I do not have a recollection. I will have to take that on notice.

Senator CONROY—It is a fairly serious charge.

Mr Lucy—I understand the point that you are making. I will take it on notice.

Senator CONROY—Do you want to apologise? An apology would probably—

Senator Minchin—Can I intervene here?

CHAIR—Sorry, Senator Conroy, the minister wants to say something.

Senator Minchin—This is starting to become badgering of the witness and putting words in his mouth. It seems to me clear just from hearing what has been said—

Senator CONROY—The only words I put in his mouth are his own.

Senator Minchin—that Mr Lucy in that interview was responding to an observation that there had been suggestions. In other words, Mr Lucy was asked for an objective statement as to whether he was aware that there had been suggestions of political interference, and he made the not unreasonable response to that question that he was aware that objectively there had been such suggestions. I think Senator Conroy is guilty of deliberately misrepresenting

that interview, the nature of the interview and the nature of Mr Lucy's remarks, in a quite unacceptable fashion.

CHAIR—Let me respond, Senator Conroy.

Senator CONROY—Are we going to keep debating this?

CHAIR—No, the minister has asked me to rule on something and I am going to respond. I do not think there has been badgering of Mr Lucy. Certainly compared to the treatment to which Mr Samuel was subject by Senator Conroy last night, this is very gentle. In any event, I do not think this is badgering. I do not think Senator Conroy has misrepresented anything. He has read a transcript and asked a question about it several times. What troubled me, I must say, was the question of relevance to the estimates of this inquiry. Mr Lucy made some remarks to a journalist in an interview last year, a senator who takes umbrage at them is asking him of his motivation for making those remarks and the remarks do not bear directly on anything ASIC does—I just wonder if this is relevant to the estimates at all. In any event, the question has been asked and Mr Lucy has said more than once that he will take the matter on notice. I think that is the end of it, Senator Conroy.

Senator CONROY—Sorry, I appreciate that you—

CHAIR—That is the end of that question. Senator Minchin says you are badgering. I think probably you are not, but you are getting pretty close.

Senator CONROY—I am terribly sorry, but there is no standing order about badgering a witness.

CHAIR—Yes, there is.

Senator CONROY—This is not a court of law.

CHAIR—Senator Conroy, order! I am speaking.

Senator CONROY—I am entitled to pursue my questions whenever I want.

CHAIR—You will be silent when the chair is speaking. Come to order, Senator Conroy.

Senator CONROY—You are the most disgraceful chair in this building.

CHAIR—Senator Chapman, you have the call.

Senator CONROY—I am going to keep asking my questions.

CHAIR—No, you are not, Senator Conroy.

Senator CONROY—You cannot just take the call—

CHAIR—If you will not obey the directions of the chair—

Senator CONROY—You are not entitled to give directions.

CHAIR—I will take the call away from you.

Senator CONROY—You are not entitled to give directions.

CHAIR—I am entitled to maintain order.

Senator CONROY—You can make a ruling if you want.

CHAIR—If you violate the good order of these proceedings you will be shown no indulgence whatsoever.

Senator CONROY—You can make a ruling if you like. Make a ruling; don't give a direction. You are not entitled to give directions.

CHAIR—I have not made a ruling; I have invited you to move on to your next topic. You have declined, so I am giving the call to another senator.

Senator CONROY—No, let's be clear. You have to make a ruling.

CHAIR—Senator Watson, do you have any questions?

Senator CONROY—I have a point of order.

CHAIR—Yes, Senator Conroy?

Senator BRANDIS—You have to make a ruling. There is no badgering provision that says you can strip me of the question because you do not like my question. It is just—

CHAIR—I actually said that I did not think you were badgering, but I asked you to move on to another topic.

Senator CONROY—You are not entitled to ask me to move on to another topic.

CHAIR—You declined and—

Senator CONROY—Could you quote the standing order—

CHAIR—You do not have the call, Senator Conroy.

Senator CONROY—that allows you to ask me to move on?

CHAIR—Senator Watson has the call.

Senator CONROY—I have a point of order.

CHAIR—Yes, Senator Conroy?

Senator CONROY—What is the standing order that allowed you to ask me to move on to another question?

CHAIR—My obligation as chair to maintain—

Senator CONROY—What is the standing order?

CHAIR—the orderly conduct of this hearing.

Senator CONROY—Could you point to the standing order that allowed you to direct me?

CHAIR—Senator Conroy, you do not have the call. We will suspend the hearing for a couple of minutes, and when we resume, we will resume with Senator Watson.

Proceedings suspended from 10.17 am to 10.23 am

Senator CONROY—I will return to my questions before the chair so rudely—

CHAIR—Senator Conroy, you do not have the call.

Senator CONROY—I am in the middle of asking questions—

CHAIR—Mr Lucy, Mr Cooper, Minister, Senator Conroy does not have the call and I am asking you to disregard any questions here directed to—

Senator CONROY—I am in the middle of asking questions, Senator Brandis, and you do not have the authority under the standing orders of this parliament—

CHAIR—Senator Watson has the call. Order, Senator Conroy!

Senator CONROY—to give directions for me to change topic.

CHAIR—Senator Watson has the call.

Senator CONROY—You do not have the authority under the standing orders. You are in breach of the standing orders—

CHAIR—Order! Come to order, Senator Conroy. Senator Watson has the call.

Senator CONROY—You are in breach of the standing orders, Senator Brandis, and you should withdraw and give me the call back.

CHAIR—Senator Conroy, Senator Watson has the call.

Senator CONROY—You should give me the call back—

CHAIR—I will return the call when Senator Watson is finished. It is his turn.

Senator CONROY—because I am going to keep asking my question, Senator Brandis. You have no standing orders to support your behaviour. You are a disgracefully biased chair.

Senator CHAPMAN—I move that Senator Conroy be no longer heard.

CHAIR—Do we have to go into private session?

Senator CONROY—Yes, you have to go into private session; you cannot do that thing here.

CHAIR—We will suspend the proceedings and go into private session to deal with Senator Chapman's motion.

Proceedings suspended from 10.24 am to 10.40 am

Senator CONROY—Chair, I have a point of order. I would like to draw to your attention the standing orders of the Senate. This is advice from the Clerk of the Senate:

Any rulings by chairs must be based on some known rule of the Senate. It is not open to chairs to make new rules of their own. It is particularly not open to chairs to rule questions out of order because of their content when the questions meet the requirements determined by the Senate. The rights of all senators ultimately depend on observance of this principle. Restricting the rights of senators to ask questions is an extremely serious step, and can occur only by deliberate decision of the Senate.

I would also like you to rule Senator Chapman's motion out of order as it is not within the standing orders to move a gag in a committee; only the full Senate can do it. I would like you to rule that out of order as is required by the standing orders and then proceed to return to questions and give me back the call. You are not entitled under the standing orders to direct me to move on. You are not entitled under the standing orders to direct me to change my topic. I think the orderly conduct of the committee would be served by some reflection, and hopefully we then can move on sensibly. But, at a minimum, you have to rule Senator Chapman's motion out of order.

Senator WATSON—I have a point of order.

Senator SHERRY—Rule on the point of order.

CHAIR—You cannot take a new point of order, Senator Watson. You can speak to Senator Conroy's point of order. Is that what you want to do?

Senator WATSON—Yes, I will take the opportunity to speak to Senator Conroy's point of order. The rules of the Senate apply to the committee. I do not think you can have different rules for the committee, unless they are definitely prescriptive. In this case the rules of the Senate apply and Senator Chapman's point of order—

Senator CONROY—No, his motion.

Senator WATSON—following the rules of the Senate, would be relevant for this committee's proceedings.

Senator CONROY—That is not right. This is advice from Harry. Only the full Senate can do it, not a committee.

Senator WATSON—My understanding is that the rules of the Senate apply to the conduct of a committee unless overruled specifically by the standing orders applicable to committees.

CHAIR—Did you want to speak to the point of order, Senator Chapman?

Senator CHAPMAN—That was the point I was going to make. Given that the committee had resumed and you had called Senator Watson, I was actually proposing to withdraw my motion.

CHAIR—Does anybody else wish to speak to the point of order? There were two aspects to the point of order. Senator Chapman's motion was not out of order, because it was a motion proposed to be moved in a private meeting of the committee. I suspended the hearing so that there could be a private meeting of the committee. The private meeting of the committee was not able to occur because it was inquorate, and I was informally told that the opposition senators would ensure that it was never quorate so that a private meeting could not take place. In any event, the matter is academic because Senator Chapman—

Senator CONROY—Did you just report a discussion from a private hearing?

CHAIR—A private conversation, yes.

Senator CONROY—No, a conversation that took place in the confines of a hearing you were trying to hold.

CHAIR—Senator Chapman has now withdrawn his motion, so that matter is academic. In relation to the first part of the point of order, every chair has an obligation to maintain order, and that is what I am seeking to do. I propose to give the call to Senator Watson and, when Senator Watson has finished his questions, I will return the call to you, Senator Conroy.

Senator CONROY—I have a point of order. I would like to seek your ruling on whether you believe that it is open to chairs to make up new rules of their own.

CHAIR—That is not a point of order, as you well know.

Senator CONROY—Yes, it is.

CHAIR—No, it is not.

Senator CONROY—Yes, it is, and I would like to know whether or not it is open to chairs to rule questions out of order because of their content when the questions meet the requirements determined by the Senate.

CHAIR—Under standing order 196, the answer to the last question is yes. Senator Watson, you have the call.

Senator CONROY—I have a point of order.

CHAIR—Sorry, I have ruled on your point of order.

Senator CONROY—I have another one. You have not yet ruled on the first part of my second point of order—whether it is open to chairs to rule questions out of order because of their content when the questions meet the requirements determined by the Senate.

CHAIR—I actually did not rule a question out of order. I asked you to move on and you declined.

Senator CONROY—Could you quote the standing order under which you made that ruling?

CHAIR—Standing order 196.

Senator CONROY—Could you read it out?

CHAIR—I will not, because you no doubt have a copy of the standing orders as well.

Senator CONROY—Could you read it out? Could you inform the committee of the basis of your ruling?

CHAIR—Senator Conroy, there is no point of order.

Senator CONROY—I am sorry, but I have a point of order.

CHAIR—There is no point of order. Do you have a new point of order?

Senator CONROY—I am seeking a ruling from you—

CHAIR—I have overruled your point of order; there is no point of order.

Senator CONROY—and I would like you to read out the standing order.

CHAIR—There is no point of order. I have overruled your point of order. Senator Watson has the call.

Senator CONROY—Mr Lucy, I will return to my questions, which the chair directed me to move on to when—

CHAIR—I am sorry, Senator Conroy, but your attempts to reduce this hearing to farce will not succeed. Mr Lucy, Mr Cooper, Minister: Senator Watson has the call, and I would ask you to attend to his questions, and his questions only.

Senator CONROY—The Labor Party is not going to accept you gagging senators. It is not going to accept you making rubbish rulings from the chair, for which you have no foundation.

CHAIR—Senator Conroy, you are out of order again. Senator Watson has the call.

Senator CONROY—We are not going to let you gag Labor senators.

CHAIR—Senator Conroy, you are out of order.

Senator CONROY—This is typical of the arrogance of this government. Minister, you should speak to him in private and tell him to start behaving from the chair.

CHAIR—Senator Conroy, you can make as many political speeches as you like and it will have no effect whatsoever. Senator Watson has the call.

Senator CONROY—He cannot make it up as he goes, Minister. He is embarrassing your government—

Senator WATSON—What is ASIC doing about the large number—

Senator CONROY—and you should have a quiet word with him—

CHAIR—Mr Lucy, can you hear Senator Watson?

Mr Lucy—No, I cannot.

Senator CONROY—because it smacks of arrogance. It smacks of the arrogance—

CHAIR—Senator Conroy, Senator Watson, who has the call, cannot even make himself heard—

Senator CONROY—of the government and reflects on your chairing, Senator Brandis.

CHAIR—because of your loud political interjections, which are out of order. I ask you to respect the comity of this committee—

Senator CONROY—Your conduct is out of order and you should withdraw and seek advice from your elders and betters, Senator Brandis—

CHAIR—I think I will defer to all of our elders and betters. Senator Watson, you have the call.

Senator CONROY—and you should take some advice from the Clerk—

Senator WATSON—I have the call but I do not think the witness can hear my question.

Senator CONROY—and you should reconsider your position—

CHAIR—I have considered the position very carefully. Senator Watson has the call.

Senator CONROY—because this is nothing more than a government gagging of Labor trying to investigate matters of public probity. Your conduct is a disgrace, Senator Brandis. You are the most biased, incompetent chair in this building. You are the most—

CHAIR—Senator Conroy, you said to me privately outside that you would love me to name you because you wanted to be thrown out. I will not play your game, Senator Conroy. I will not distort the processes of this committee for the sake of your political strategy.

Senator CONROY—Senator Chapman urged you to throw me out. If you want—

CHAIR—Senator Watson has the call.

Senator CONROY—to stoop to the level of private conversations, Senator Chapman asked you to name me.

CHAIR—Senator Watson has the call. Senator Conroy, come to order.

Senator CHAPMAN—I have a point of order. At no time in that private meeting did I ask you to name Senator Conroy. My initial proposed resolution was that Senator Conroy be no longer heard. I made no further comment.

CHAIR—That is not really a point of order; it is a point of clarification.

Senator CONROY—It is not even the truth, but let's not worry about that!

CHAIR—Senator Watson has the call.

Senator CONROY—The truth hits the fence as usual under George Brandis!

CHAIR—Senator Conroy, you know you may not reflect on the chair.

Senator CONROY—I am not going to receive the call. I will reflect on you all I like, George. You are the most incompetent, biased chair in this building.

CHAIR—You know you may not reflect on the chair.

Senator CONROY—You are the most successfully—

CHAIR—Senator Watson, I suggest you come over here.

Senator CONROY—appealed against chair in this committee process—

CHAIR—Senator Conroy, you are out of order.

Senator CONROY—since you joined the chamber.

CHAIR—I will not name you, because that is what you want me to do.

Senator CONROY—You are going to allow me to continue with my questions.

CHAIR—I am not going to allow you to distort the processes of the committee.

Senator CONROY—You have distorted the processes—

CHAIR—You will get the call when Senator Watson has finished his questions.

Senator CONROY—of the Senate and you are not entitled to do this, George.

CHAIR—Senator Watson, please disregard Senator Conroy's badgering.

Senator CONROY—You are the most incompetent and biased chair—

CHAIR—Senator Conroy, Senator Watson has the call and you are not taking a point of order.

Senator CONROY—You are the most incompetent and biased chair in this committee and you will—

Senator WATSON—I have some questions concerning complaints systems and how effectively the complaints systems are working—

Senator CONROY—Mr Lucy, I want to again read to you from your own transcript—

Senator WATSON—and I wanted to know: what are the five-year trends for dispute resolution—

Senator CONROY—where you stated:

There has been that suggestion. And indeed, there was the suggestion, I think, that indeed it may not have been necessarily the Government but it might have been the Opposition.

Senator WATSON—in terms of (a) the SCT, (b) the banking ombudsman and (c) the FI Complaints Service—

Senator CONROY—Mr Lucy, what are you talking about?

Senator Minchin—Mr Chairman, it is impossible to hear Senator Watson, given the interference from Senator Conroy. It is impossible for the witnesses to hear Senator Watson.

Senator CONROY—Is there anything on the public record anywhere that the opposition interfered in your investigation, Mr Lucy, or are you just making up—

CHAIR—Mr Lucy, Senator Watson has the call. I will ask him to ask his question again. Senator Conroy, I ask you to have enough manners to listen to Senator Watson's question. You will get the call when Senator Watson has finished.

Senator CONROY—Who has suggested that the opposition has interfered in this investigation? Can you answer the question, Mr Lucy?

Senator CHAPMAN—You will have to shout, Senator Watson.

Senator WATSON—My question concerns compliance schemes—

Senator CONROY—Is there any mention on the public record anywhere of the opposition interfering in your investigation, Mr Lucy?

Senator WATSON—and how successfully they are working. I ask for the five-year trends for disputes which are before, firstly, the Superannuation Complaints Tribunal, secondly, the Banking Ombudsman and, thirdly, the FI Complaints Service.

Senator Minchin—It is impossible to hear Senator Watson with the interference from Senator Conroy.

Senator CONROY—Is there any evidence that the opposition had interfered in your investigation?

CHAIR—Senator Watson, I suggest you sit closer to the witnesses because this committee is being imposed upon—we know that—in order to engage in a political game.

Senator CONROY—Mr Lucy, is there anywhere on the public record—

Mr Lucy—I cannot hear.

Senator CHAPMAN—You will have to speak up, Senator Watson.

Senator CONROY—Mr Lucy, is there anywhere on the public record—

CHAIR—Senator Conroy, you are out of order.

Senator CONROY—It is a very serious charge, Mr Lucy.

CHAIR—Senator Watson has the call.

Senator CONROY—Mr Lucy, is there anywhere on the public record you can point to other than your contribution that suggests the opposition interfered in an ASIC investigation?

Senator WATSON—Mr Lucy, I will repeat my question because I think you have difficulty hearing me. I am asking about five-year trends in the resolution of disputes before three different tribunals. The first one is the Superannuation Complaints Tribunal, the second

is the Banking Ombudsman and the third is the FI Complaints Service. What are the five-year trends in relation to each of those dispute resolution arrangements?

Mr Lucy—I think I understand the senator's question and that is whether we have access to five-year trends of the resolution of disputes coming from the Superannuation Complaints Tribunal, the Banking Ombudsman and FICS. I do not have that information with me but I am happy to take that on notice and provide it to you.

Senator CONROY—Mr Lucy is there anywhere on the public record that you can point to that supports your statement that suggests that the opposition—

Senator WATSON—Perhaps you might like to add as a rider how accountants and financial planners are faring under such schemes.

Senator SHERRY—Chair, I raise a point of order. I wonder at the ability of Hansard to record at the present time.

CHAIR—I was worried about that myself. Senator Conroy has indicated that he refuses to obey directions of the chair and he has indicated that he is going to speak through Senator Watson's questions. That presents me with a choice, Senator Sherry. If I were to name Senator Conroy, I do not think his behaviour would change so I cannot see any utility in that course. So, I have chosen to persevere. The fact that a senator behaves in as disgraceful a way as Senator Conroy is doing is something which none of us can control.

Senator CONROY—You are a totally biased chair. You are incompetent.

CHAIR—Senator Sherry, I suggest that you counsel your colleague.

Senator SHERRY—That is not my role.

CHAIR—I have ruled on the point of order. There is nothing I can do about it.

Senator SHERRY—I am just raising a practical point. How can you have a hearing when Hansard cannot effectively record and, secondly, when other senators—

CHAIR—That is a fair point, Senator Sherry, and I am concerned about it but unless Senator Conroy desists in screaming and talking over the senator who has the call—

Senator SHERRY—There is another option. Your actions earlier have helped precipitate this.

CHAIR—That is not my view, as you know, Senator Sherry.

Senator SHERRY—Of course it is not your view. I am going to refrain from reflection because it does not help the circumstances, but you should have reflected on your earlier behaviour, Chair.

CHAIR—Senator Sherry, I see that your leader is here. I suggest, if I may, that your leader counsel Senator Conroy and in the meantime we will proceed with Senator Watson's questions, which will go for several minutes. Then, as I have indicated all along, I am perfectly happy to return the call to the opposition—to whichever opposition member they among themselves wish the call to be returned to.

Senator SHERRY—Why do you not return the call to Senator Conroy and see where it leads? Initially, at least, in response to Senator Minchin's intervention you did not rule in favour of Senator Minchin's interjection—initially, at least.

CHAIR—Senator Sherry, we will look at the *Hansard* when it is available. I gave the call to Senator Watson in order to preserve the order of these proceedings. The senator against whose interests that ruling was made, namely, Senator Conroy, has indicated since that time a refusal to abide by the authority of the chair. I do not think the committee can allow itself to be intimidated by thug-like tactics. Senator Watson has the call.

Senator WATSON—My second question is to Mr Lucy. What is ASIC doing about the large number of unlicensed financial service operators? I quote:

ASIC had expected to issue between 6000 and 8000 licences by March 10, 2004. But by June 2005, more than a year after the transition to the new regime, only 4135 licences had been issued.

And ASIC still struggled to cope with the lower number.

That is from the *Sydney Morning Herald* of 25 January. The *Australian Financial Review* said:

By June 30, ASIC had issued 4135 financial services licences. Between 2002 and 2005, it carried out almost 1600 surveillance projects on licensees—just over half of what it had planned.

Could you indicate what you are planning to do about the large number of unlicensed financial service operators?

Mr Cooper—I can answer that question for you. The premise on which the newspaper articles are based is misinformed. The licence system allows a person who wants to enter the financial services business two choices: they either get a licence in their own right or they operate as an authorised representative under someone else's licence. We have found that, contrary to earlier estimates, a lot more people have elected not to get their own licences but to operate under other people's. For example, in a large bank or financial institution there would only be one licence but there may be many hundreds of employed people operating as authorised representatives under that licence.

Our original estimate of 6,000 to 8,000 was based on the assumption, incorrect as it turned out, that many more people would seek their own licences than effectively was the case. To say that there are thousands of people operating out there without licences is incorrect and is not borne out by our surveillance activities at all. It is merely an election that people chose to make.

Senator WATSON—And that has been the result of your surveillance activities, has it?

Mr Cooper—That is correct. That is not to say that there are not unlicensed people, but certainly not on that sort of scale.

Senator WATSON—My next question goes to the Westpoint collapse. One of the major problems seems to be what I refer to as 'dodgy debentures'. Why didn't you insist that the moneys raised by this group of companies were effectively under the management investment act? If not, do we need reform in this area? There seems to be an avenue for the illegal raising of money other than through the management investment act. Is that correct?

Mr Cooper—As an initial matter in relation to Westpoint, I need to make a disclosure to the Senate in relation to a possible conflict of interest I have, having been a partner formerly of Blake Dawson Waldron, a large legal firm. We learned early this week that Blake Dawson Waldron had in the past provided legal advice to, we believe, Mr Carey in relation to some aspects of Westpoint's affairs. We were alerted to this by a journalist from Western Australia. I then discussed this with our chairman, Mr Lucy, who then got in contact with the chairman of Blake Dawson Waldron, because certainly I had no recollection personally that the firm had ever acted for Westpoint. Nonetheless, Blake Dawson Waldron undertook to make some inquiries and it turns out that the Perth office of the firm had done work—

Senator WATSON—I am having trouble hearing the response, Mr Chair.

CHAIR—Mr Cooper, speak a little closer to the microphone.

Mr Cooper—I will certainly try to. Would you like me to start again?

CHAIR—Yes, please.

Mr Cooper—Before we discuss Westpoint, I am disclosing a possible conflict of interest arising out of the fact that I was previously a partner of the law firm Blake Dawson Waldron. Unbeknownst to me it turns out that the firm had had as a client Mr Carey and certain of the Westpoint company some years back in Western Australia. We became aware of this from a journalist in Western Australia on Tuesday of this week and I discussed the matter with the chairman, Mr Lucy. He contacted the chair of Blake Dawson Waldron to find out whether this allegation was true and, if so, where we had done work and what it was about. Yesterday we were advised that in fact in the year 2000 the firm's records disclosed that I was asked by a lawyer in the Perth office some questions which involved me looking at the Corporations Act for eight minutes—you will understand that law firms have time-recording systems—

CHAIR—That would have been a tidy sum, I am sure.

Mr Cooper—Bounteous wealth! I had a further 12 minutes in a discussion with a lawyer from the Perth office. The records from the firm show that this was in relation to the chocolate factory syndicate—something about which I have no recollection whatever—apparently a question about a supplementary prospectus. As a lawyer with some expertise in this area, I was contacted by the lawyer from Perth and spent 20 minutes on Westpoint. As I say, I have no recollection of having done this. This occurred in April 2000.

As a result, I believe that I am not able to involve myself in any matters affecting Westpoint from here on in. There are important matters of perception and they are really dual. The first is that people going to law firms are entitled to expect that, if partners of those law firms go on to be corporate regulators, that involvement by the firm with them will not find the regulator having information about the person's affairs. More importantly, there is the public perception of the behaviour of commissioners of an organisation like ASIC and, even though I have no recollection of either being personally involved or that the firm had Westpoint as a client, it is important from the public perception point of view that there be no question about a conflict. Other than discussing Westpoint today, I will not be having any further involvement with it. I just wanted to put that on the record for the Senate.

Senator WATSON—Thank you for your disclosure.

Senator SHERRY—I would like to clarify this issue. You are saying that you can answer questions in respect of Westpoint today?

Mr Cooper—I do not see why not. Unbeknownst to me there was this conflict. I am here able to answer questions about my past work at ASIC in relation to Westpoint and I do not see that that affects the situation one way or the other.

Senator WATSON—It could affect it if, for example, the advice that was given by your previous firm was such that they could avoid raising the moneys through these dodgy debentures rather than through the Managed Investment Act. It could affect it.

Mr Cooper—If that is the view of the Senate, I have no personal knowledge one way or the other whether that advice was given or not. I am happy not to answer questions.

Senator WATSON—All I asked was the question purely from ASIC's point of view: why weren't the moneys raised under the Managed Investment Act and, if they were not, why didn't you take action at an earlier opportunity?

Mr Lucy—Perhaps I can provide, firstly, a response to Senator Watson's question and, secondly, an additional elaboration as to the involvement of deputy chairman Cooper. We sought advice from the chair of Blake Dawson Waldron on Tuesday. At this stage, the advice I have received back is preliminary advice and not complete advice. Last evening, when I received communications from the chair that identified that deputy chairman Cooper had in fact been involved back in 2000, we took the decision that he was conflicted going forward and therefore would not be involved in decisions in relation to Westpoint. That is where we are at the moment. We are still waiting on information from Blake Dawson Waldron as to the work that was undertaken by a separate and individual partner out of the Perth office and, at this stage, I am not aware of the nature of advice given by that Perth partner. Until I have that, I am not able to make a complete decision as to whether we need to look retrospectively at the deputy chairman's involvement.

Senator WATSON—When did you become aware that moneys were being raised under a heading other than the Managed Investments Act? Was it in 2002?

Mr Lucy—We took action in May 2004 in the Western Australian Supreme Court seeking declaratory relief in a determination as to whether promissory notes were securities within the meaning of the Corporations Act. We took that action specifically to obtain clarification from the court as to whether these, essentially, IOUs or promissory notes were within our jurisdiction. The court determined indeed that they were not within our jurisdiction. The court determined that they were not debentures. We have appealed that and in turn the company, Westpoint, has cross-appealed because the court did determine that this was part of an overall managed investment framework. We have cross-appealed that and the matter is before the Western Australia Court of Appeal next week.

Senator WATSON—It seems to me that the act needs to be clarified to ensure that such instruments come within the jurisdiction of the Managed Investments Act.

Mr Lucy—Subject to the ultimate determination of the appeal court, I think that that may well be appropriate.

Senator WATSON—But, in the meantime, lots of people have lost a lot of money as a result of these dodgy debentures, as I referred to them earlier.

Mr Lucy—It is true that there are quite substantial losses in the Westpoint structure, but our position is that we are obliged to take matters to the court. The court makes determinations, and in this case the court did not make a clear determination that this was within our jurisdiction. We have appealed and we now appear back in court next week.

Senator WATSON—Coming back to the nitty-gritty, what actually caused the Westpoint collapse? Was it fraud in your view?

Mr Lucy—It is too early to determine that.

Senator WATSON—You've had a long time.

Mr Lucy—I think that certainly it is too early to be categorical about that. It is interesting to note that any business model that provides for a return in the order of 10 per cent plus commissions of 10 per cent, which obviously add up to 20 per cent, would require, just to open the doors on that basis, something like 25 per cent return on their money. At what point the business model became flawed is very much a matter for the administrators and the liquidators to determine. Certainly we were concerned in 2005 because we were getting complaints about the solvency of the Westpoint Group, which is the reason that we went to the court again in 2005 seeking the appointment of provisional liquidators, which is now what has occurred.

Senator WATSON—If you were getting all these complaints from people, did you challenge them on the basis that they were trading while they were insolvent?

Mr Lucy—Again, the whole point of us taking these to the court was exactly that: to get provisional liquidators appointed, (a) to protect the investors, (b) to stop further moneys going in and (c) to have somebody independent and expert—the provisional liquidators—to determine whether these projects were insolvent. The difficulty is that this is a very complex web involving over 50 entities, much of it related to property development. At what stage in a development is someone able to assess whether the development is going to reach fruition and pay out everybody? It is a very complex issue.

Senator WATSON—Yes, but if we have regulators, the public expect that those regulators have some teeth and can act.

Mr Lucy—We have teeth and we have acted.

Senator WATSON—From 2002 to now, 2006, you have had a few court cases about some technical issues.

Mr Lucy—But they are more than technical issues; they go to the heart of our jurisdiction. And, indeed, in 2004, ASIC sought a full repayment audit.

Senator SHERRY—But it is too late for thousands of people. Hopefully I will get my share of questions to explore this, but you do have jurisdiction in a number of areas. You do have jurisdiction over financial planners.

Mr Lucy—Yes.

Senator SHERRY—You do have jurisdiction over independent research houses or research houses that are licensed to purport to call themselves research houses. I have the independent research house report here. You do have jurisdiction over them, don't you?

Mr Lucy—Yes.

Senator SHERRY—So you do have jurisdiction over some critical elements of the Westpoint situation, as I would describe it.

Mr Lucy—Yes. We are not suggesting otherwise.

Senator SHERRY—You seemed to suggest that in response to Senator Watson.

Mr Lucy—I was trying to respond to the particular point that the core issue as to whether or not these are financial products or debentures is more than an issue on the fringe. It is absolutely a core issue that goes right down to the heart of it.

Senator SHERRY—It is an important issue. I am not disputing that. But I think you seemed to indicate that that is where the argument stops in terms of jurisdiction. In respect of the other important elements of this financial scandal—the planners and the research houses, or research house in this case—you do have and have exercised jurisdiction.

Mr Lucy—Correct. And, as we have announced, we are investigating the activities of those parties.

Senator SHERRY—I will hopefully explore later in some detail whether you did or did not exercise sufficient jurisdiction. That is one aspect of this particular issue. I just want to make it clear: you accept that you had jurisdiction over the planners and the research house?

Mr Lucy—Licensed planners, yes.

Senator SHERRY—Licensed planners and a licensed research house—in this case, Property Investment Research Pty Ltd. They have a licence number from you. You accept that you had jurisdiction over those?

Mr Lucy—In essence, yes. I am just not quite sure of the timing in which some of those responsibilities kicked in.

Senator SHERRY—Yes, we will get to that later.

Senator WATSON—So, *prima facie*, do you think we need reform in this area?

Mr Lucy—Again, it is going to be very much dependent upon the attitude of the appeal court. If the appeal court finds that these are financial products, then we have jurisdiction and I would suggest, in that event, that it is unlikely that there will be any requirement for law reform. In the event that the appeal court confirms the earlier decision, then it is something that we would strongly recommend to parliament that they consider clarifying.

Senator WATSON—I come back to my earlier concern about regulators taking so long to act to bring about some equity. We are dealing with a lot of fairly uninformed people who are the sufferers in these sorts of games. These are ordinary people who probably do not have a second chance to make up their losses.

Mr Lucy—I am not quite sure what the point is that you are raising. I certainly entirely accept the profile of investors that you have given.

Senator WATSON—I now move to another concern where, I believe, the soft touch is probably not really working. In today's *Australian Financial Review* it was reported that ASIC had ordered Virgin Super and max Super to change their advertising campaigns on the grounds that they were misleading. This issue has been going on now for over 12 months. How long is ASIC going to tolerate such practices without imposing some sort of a penalty?

Mr Lucy—This is a really important point. We do not impose penalties. We go to courts and ask them to do things. I think one of the great community misapprehensions about ASIC is that we have the ability to go off and do self-executing things. The only self-executing powers we have are our undoubtedly very strong investigation powers. But, the minute we want to do something to a citizen or a company in this country, we have to go to a court. If the court does not like it or takes a long time or imposes what the community might regard as a low penalty, it is not our problem.

Senator WATSON—Sometimes you press for low penalties, don't you? I will come to that in my next question.

Mr Cooper—I certainly do not accept that. In relation to what large entities do in the financial services market, we believe that speed is essential and therefore use the enforceable undertaking tool that we have. In most cases we force the entity to make proper disclosure rather than going down a long and expensive route of punishment. We seek to change their behaviour up front. Obviously, if they keep doing it then that is a whole different question.

Senator WATSON—But you have been laying down the ground rules for 12 months now, and people seem to be ignoring them.

Mr Cooper—I do not think there is any evidence of that. I think the messages we are getting out there are quite the reverse. In relation to these players, they were new entrants with a new product. We said that they made inadequate disclosure, and that has been fixed.

Senator CONROY—I want to go back to what we were discussing a little earlier, Mr Lucy. I appreciate that you were in the middle of an answer before Senator Minchin jumped in and sought a ruling from the chair, which was unsuccessful. I was asking about your comment on the *7.30 Report*. I will read it again, because I do not want to be accused of verballing you:

There has been that suggestion. And indeed, there was the suggestion, I think, that indeed it may not have been necessarily the Government but it might have been the Opposition.

I read the question earlier, so I will not repeat it. Is there any newspaper article or media commentary that you can point to that supports that assertion?

Mr Lucy—I think that my response at that time was to say that I would take it on notice. I do need to have regard to the full context of that interview and to be able to read it.

Senator CONROY—Would you like a copy of the entire interview? I have the transcript here. You can have a look at it right now.

Mr Lucy—I have said that I will take it on notice and respond appropriately. You make a key point that there was a suggestion of interference. Neither ASIC nor I have made any suggestions that there has been any interference by the opposition.

Senator CONROY—What I am asking is: is there a suggestion anywhere else? The first time I heard that the opposition had interfered was out of your mouth. I had not heard any

such commentary whatsoever. It is a reflection on the parliament when the opposition is asking questions in the parliament—and I wrote to the Stock Exchange and to you—to then have the chairman of ASIC go on television and say, ‘I’ve heard suggestions that the opposition has interfered.’ I have not heard that from anywhere other than you—and I do read the papers as well. I do not have quite as good a clipping service as you, so perhaps you could refer me to where you heard these suggestions. As I said, I can happily give you a copy of the transcript right now, if you want to make sure that you have the right context. I do not think you will find that I have taken you out of context. It is a separate and distinct question from the questions that preceded it. I was just wondering if you could point me to any newspaper or media commentary, from before you chose to reveal this startling fact on national television, that suggested that the opposition had actually interfered in this.

Mr Lucy—As I have already indicated, I will take that on notice. I need to have regard to not only the context of the interview which you are referring to, but also to the full context of parliamentary hearings and so on, because there has been extensive discussion by senators on both sides in relation to our involvement in the Telstra matter.

Senator CONROY—Not in any parliamentary committee that I am aware of. This is the first time it has been raised.

Mr Lucy—No, that is not the case.

Senator CONROY—On the Telstra continuous disclosure?

Mr Lucy—Correct. There was extensive discussion—

Senator CONROY—I am talking about prior to you making that statement, not after.

Mr Lucy—Yes, prior. There was extensive discussion. In fact, I could tell you the exact date of it if that would be helpful—it was 13 September 2005.

Senator CONROY—I was not involved in that, was I?

Mr Lucy—No. But I was. That is why I need to—

Senator CONROY—So, arising out of that, you felt that there was some opposition interference in your investigation?

Senator Minchin—Hang on. Mr Chair, Mr Lucy has already made it clear that at no stage did he assert that there was political interference—

Senator CONROY—I have not said that.

Senator Minchin—and I wish Senator Conroy would be more careful in his language.

Senator CONROY—I have asked him to identify—

CHAIR—Senator Conroy, let me hear the minister out.

Senator Minchin—I just want to stress the important difference between the assertion, both implied and explicit, by Senator Conroy that Mr Lucy has, on the one hand, asserted political interference, which he has denied, and, on the other hand, the proposition that Mr Lucy was referring to an objective reference to suggestions of political interference. There is a big difference between the two, which Senator Conroy keeps confusing. I think that is quite unfair to the witness.

CHAIR—Senator Minchin, I think that Mr Lucy has made it perfectly clear in his answer that he is not himself making that suggestion and did not at that time make that suggestion. It is also perfectly clear to all of us that Mr Lucy has said that he will take the question on notice so as to consider the matter carefully.

Senator CONROY—In taking it on notice, Mr Lucy, I would like you to specifically identify where there was a suggestion that the opposition had interfered and whether or not you got it from a source, if you are able to. I appreciate that you may not be able to identify a source, although I would say that would probably be the subject of some questions here next time. I would like you to identify if there is any media report or any source anywhere that suggested that about the opposition before you decided to suggest that you had heard suggestions that the opposition had interfered. It is a fairly serious charge to suggest the opposition had interfered in an ASIC investigation, Mr Lucy. I am sure you appreciate that.

Mr Lucy—Senator, I can say no more than I have on this matter.

Senator CONROY—As I said, I would like to know if you had any specific evidence of any sort to point to, before you decided to put them on the public record, to support these suggestions. Moving on, could you outline the range of penalties that are available to ASIC to deal with breaches of the continuous disclosure provisions of the Corporations Act.

Mr Cooper—Yes. We have an infringement notice regime and also civil and criminal penalties.

Senator CONROY—So, jail, fines—criminal sanctions—civil penalties and infringement notices?

Mr Cooper—Theoretically jail.

Senator CONROY—Parliament has given you that broad range of powers to deal with breaches of the continuous disclosure provisions. I have almost all of the corps act here—I think I am missing a book. Can you point me to the clause where the yellow card is? I have gone through the act since I heard you say that and I must have missed it. I cannot find the yellow card in the Corporations Act. What page is it on?

Mr Cooper—Clearly, there is no yellow card. But in running a law enforcement body like ASIC, a number of things that you will not find in the Corporations Act are brought into play. One of those is assessing, after an investigation has been conducted, what the most appropriate remedies are, including—

Senator CONROY—If a remedy is not contained in the corps act then it is not a remedy, is it?

Mr Cooper—It is a figure of speech. What we in fact did was issue a media release after having communicated our views to the company. That was most aptly, and very appropriately, in my view, described as a yellow card. I think most business people understood exactly what that meant.

Mr Lucy—The other point, if I might add to that response, is that what we are dealing with here is the whole issue of continuous disclosure. In the event that there was not a serious breach of law, the alternative that we had was to advise the shareholders that, in our view, the matters within Telstra were not satisfactory. The court, as per the Federal Court in the case of

Southcorp, said that such advice is appropriate. Indeed, should there be another instance where we were to take a matter up with Telstra and, ultimately, take that to a court, then the second court would have regard to the fact that there was a warning already issued. So it is not in the act, but it is very much part of—

Senator CONROY—Why did ASIC choose not to exercise its powers?

Mr Cooper—Because the breaches were not sufficiently serious. They were all arguable. In fact, Telstra had argued and did not accept that there were any breaches. They occurred during a turbulent period in the company's history where there were new officers on board and Telstra did not have a significant track record in doing this sort of thing. There was a series of factors that went into analysing whether it was a worthwhile use of our budget funds in going through a full litigation process with a major company over relatively minor breaches. We took the decision to communicate our findings quickly using the yellow card type language so that business people could see that when irregular behaviour occurred in a large company we would investigate it and communicate our findings quickly. The fact that we did not rush off to court was simply a matter of us determining that the breaches were not sufficiently serious.

CHAIR—That is a common decision—

Mr Cooper—It happens every day.

CHAIR—by a regulator to exercise what in another context might be called a prosecutorial discretion in a particular fashion.

Mr Cooper—It happens every day of the week.

Senator CONROY—You say you wanted to give Telstra a wake-up call, your mythical yellow card, but they did not take it that way, did they?

Mr Cooper—No, they did not.

Senator CONROY—Telstra claimed vindication, didn't they?

Mr Cooper—Correct.

Senator CONROY—According to their press release of 14 December:

“Telstra was always confident that its conduct was consistent with our continuous disclosure obligations.

“Telstra has a strong record of compliance with the law in relation to its continuous disclosure practices. Telstra rejects any suggestion that its continuous disclosure policies and practices are inadequate or that there is potential risk of future non-compliance. Telstra's standard of corporate governance is widely respected in the Australian corporate community, and has been recognised in independent surveys conducted both domestically and internationally.”

They did not seem to notice your yellow card.

Mr Cooper—No, they did not, but certainly other business people—

Senator CONROY—Wasn't the point for them, though? You were giving Telstra the yellow card not everybody else.

Mr Lucy—They have issued that press release and it is their right to issue such a release.

Senator CONROY—They have the right to say they did not break the law when you say they did?

Mr Lucy—They can say what they choose to say. The point is whether or not they have actually heeded the warning, and time will tell.

Senator CONROY—But they say they had nothing to be warned about.

Mr Lucy—They say that in the press release. Whether or not the board of Telstra and the senior management of Telstra have heeded our warning, time will tell. We sincerely hope that they have heeded our warning.

Senator CONROY—Time told within a few hours, when they said that they have done nothing wrong and they are completely vindicated.

Mr Cooper—What are you asking us about—their state of mind?

Senator CONROY—Your reasoning for not using any of your powers was that you wanted to give them a warning. They say that there was nothing to warn them about and it is business as usual.

Mr Cooper—The fact that a large corporate entity engages in bravado following an exercise like that is actually something that we have yet further taken into account on the score card, if you are using the yellow card analogy.

Senator CONROY—You are not afraid to enforce the law against Telstra, are you?

Mr Cooper—Certainly not.

Senator CONROY—They do not have too many lawyers for you?

Mr Cooper—No.

Senator CONROY—Telstra also said in their media release that ASIC acknowledged that the confidential briefing paper that was leaked to journalists by a senior executive did not contain information that was price sensitive or disclosable. Is that right?

Mr Cooper—No.

Senator CONROY—So they can mislead the Stock Exchange like that?

Mr Cooper—We took a decision that it was not—

Senator CONROY—But isn't this a mislead of the Stock Exchange?

CHAIR—With respect, Senator Conroy, I do not think that Mr Cooper can be expected to give an off-the-cuff response to what is a complex legal issue like that—'Did a certain statement constitute a misleading of the Stock Exchange?'

Senator CONROY—I accept the point you are making except this was about two to three months ago, so it is not an off-the-cuff situation. It is something that Telstra did in response to you two or three months ago. I do not think it is off the cuff. Two or three months ago they put out a statement denying something and I am just asking you whether or not they are misleading the Stock Exchange and the investing public.

Mr Cooper—My answer to that is: we are not a court. For all of these matters, if they were taken to court, you would get an answer as to whether or not they were misleading on the

balance of probabilities. We saw no regulatory purpose in getting into a tit for tat public spat with Telstra about whether things were or were not misleading, because we have seen that occurring in other areas and we did not think it was the path we wanted to go down. Our position was quite clear. We had said our version of events to Telstra. As I said, we are not the High Court; we are a regulatory agency. And that is where we left it.

Senator CONROY—There are many colourful descriptions of what Telstra did to you in that press release. I am not going to go there, but the kindest one was—

Mr Cooper—We have long memories.

Senator CONROY—You have long memories. Was that a threat? I would be happy as a Telstra lawyer with that statement. Fortunately, it is privileged, so they cannot use it. But I would certainly put that in my file to point a judge to the next time to illustrate the state of mind of ASIC officials.

CHAIR—There is such a thing for you regulators as a culture of compliance. In making decisions in the future you would have regard to whether or not there was a culture of compliance or, alternatively, a culture of noncompliance in a particular corporation, wouldn't you?

Mr Cooper—Quite so, yes.

CHAIR—When you put something like that in the files that might potentially contribute to your thinking in the future about the issue of a culture of compliance.

Mr Cooper—I would not like to overrate it, but obviously—

Senator CONROY—I am sure they will be shaking in their boots when they read the *Hansard*. You said that you did not want to proceed on the basis that it was not serious enough. I want to read you a few quotes from the explanatory memorandum of the CLERP legislation passed in July 2004. The explanatory memorandum noted:

- Investors still suffer as a consequence of less serious contraventions.

... ..

The main problem in relation to continuous disclosure relates to inadequate compliance with the existing rules and gaps in ASIC's capacity to penalise less serious contraventions.

The EM goes on to state that the infringement notice powers contained in the legislation are intended to remedy:

... a significant gap in the current enforcement framework by facilitating the imposition of a relatively small financial penalty and requiring information disclosure in relation to relatively minor contraventions of the continuous disclosure provisions of the Corporations Act that would not otherwise be pursued through the courts. The capacity to issue an infringement notice also allows ASIC to signal its views concerning appropriate disclosure practices to listed entities more effectively than through court action alone.

The whole purpose of those reforms was to give you powers that did not previously exist to deal with the more minor contraventions, the argument being that we have two choices: we can suspend them from the Stock Exchange or do nothing. All these gradations were put in for you to deal with these less serious breaches.

Mr Cooper—Correct.

Senator CONROY—And yet, even when you had the opportunity to, you chose not to.

Mr Cooper—True. We chose not to, and I will tell you why. Telstra had made it quite clear in their conduct that under no circumstances did they accept our propositions about the events and the legal circumstances and under no circumstances would they, had we issued them a \$100,000 fine, have paid it. So we are straight back to square one, having to either just let that stand, which we do not think would have been a terribly good indicator to the business community about where we were coming from, or institute legal proceedings. So in this particular circumstance—

Senator CONROY—That would be your job.

Mr Cooper—we decided not to issue an infringement notice. It was not the adequate remedy in this particular case, where we have a very large corporation and it is insisting that it has not broken the law. We determined it was not appropriate to take full-blown legal proceedings on the matter and nor was it appropriate to give it an infringement notice in circumstances where it was quite obvious that it was not going to pay.

Senator CONROY—So fining companies in this country is down to whether they will accept it or not.

Mr Cooper—In some ways it is, because if the fine is not—

Senator CONROY—It sounds like a very cleverly designed law.

Mr Cooper—You probably need some refinement. It is a very new regime. It has worked in certain cases.

Senator CONROY—Self-regulating fines.

CHAIR—Let him finish. Sorry, Mr Cooper, what were you saying?

Mr Cooper—It is a new regime. It has worked in certain cases. But in a situation like this, where there is a long series of toing-and-froing about matters and it becomes quite obvious that the entity does not agree with our position, there is no point issuing them a notice which is not self-executing. In other words, it is truly not a fine; it is like a chess move. We move a piece, and, if they want the matter to go away, they can pay the fine. But, if they do not, it just sits there. In this instance we formed a view that that was not an appropriate strategy. It is not a matter of going soft; it just would not have worked.

Senator CONROY—It would have worked if you had taken them to court and won.

Mr Cooper—We have explained why we did not do that.

Senator CONROY—I am saying it would have worked.

Mr Cooper—Who knows? We may have lost. These matters are all very subjective. There is no level of certainty at all around whether an issue is material to the market and whether it ought to have been disclosed. We may have spent millions of dollars and lost.

CHAIR—The key word that you use, Mr Cooper, is the word ‘strategic’. You make strategic decisions as to what in your best judgment on the facts as you know them will be most effective. Is that right?

Mr Cooper—Correct.

Senator CONROY—It sounds to me like your press releasing claims are as much bravado as Telstra's.

Mr Cooper—They partly are.

Senator CONROY—I will leave it there.

Senator WATSON—At the last Senate estimates hearing I wrapped ASIC on the knuckles about what I believed was a soft approach to high-profile offenders. In response, Mr Lucy, you took the view that the publicity and the failure to be a director also had to be taken into account for such high-profile offenders in addition to jail or mandatory penalties. Have you changed your views in relation to these high-profile offenders since I last asked that question, particularly the likes of Mr Vizard and others?

Mr Lucy—We have not changed our view in respect of high-profile or other defendants. Our attitude is that, if a matter can be successfully prosecuted in a criminal court, that is absolutely what we will seek. That decision is taken in consultation with the Commonwealth Director of Public Prosecutions. Therefore, if matters can be taken through the criminal court, we will categorically do so. In the event that we are obliged to take civil proceedings, again, we will argue those in the court robustly. We certainly do not have regard to whether or not people are high-profile or other. We do not have any intention of flip-flopping our approach to investigation and/or enforcement as to whether or not people are well-heeled, well-known or otherwise. We are absolutely without fear or failure.

Senator WATSON—They are fighting words but they are not necessarily borne out by an examination of a number of individual cases. That is the problem that we have.

Mr Lucy—I would invite the senator to give examples of instances where—and, of course, we are not the court—we as ASIC the investigator have gone soft, as it were, or some suggestion that you are putting to us.

Senator WATSON—You could have gone for a higher or more rigorous penalty rather than for a lesser sentence.

Mr Lucy—Might I have an example of that?

Senator WATSON—The HIH case, which I mentioned previously. You have the Vizard case, which I can tell you did not go down very nicely in the general community.

Mr Lucy—To the extent that the courts provide discounts because of guilty pleas and other, that is a matter for the courts; that is not for ASIC. It is true that the courts historically have provided discounts for guilty pleas, recognising the extremely complex issues and difficulties as far as achieving successful prosecutions. That is a matter for the courts.

Senator WATSON—But it is not a matter for the courts when you could pursue a more rigorous demand from the courts rather than a lesser approach.

Mr Lucy—You mentioned HIH. I am not aware of any of those matters that have been concluded through the courts in relation to HIH where there could be any suggestion that ASIC has gone soft.

Senator WATSON—If you look at these situations and compare them with, say, the American regime—

Mr Lucy—But that is a matter for parliament.

Senator WATSON—We are here representing the ordinary people of Australia. When they look at a similar situation that occurs elsewhere, such as in America, where the rule book is really thrown at them and they appear to get reasonable sentences for the seriousness of the offence, we do not seem to take quite as seriously the need to apply the full force of the law and the consequences of that.

Mr Lucy—We at ASIC do.

Senator WATSON—If you think the parliament has been remiss in terms of the way in which they have framed the legislation so these outcomes are possible, then please tell us.

Mr Lucy—There have been recently a number of areas where parliament has increased penalties; indeed, they have doubled them. In the end, it is a matter of how the court applies their own attitude to those penalties. We have seen, within the last quarter, at least one instance where, in a criminal prosecution, a person was found guilty of fraud, deception, deception to work colleagues—and was given a \$500 good behaviour bond. That is a matter that is entirely out of our jurisdiction. We, like you, look at some of these determinations by the court and reflect as to whether or not they really are sending the message that the community want. But in the end it is not a matter that is within our capability of dealing with.

Senator WATSON—I have a question on Westpoint. Do you want me to ask that now?

CHAIR—Yes. Is the only remaining topic for ASIC now Westpoint?

Senator SHERRY—I have two or three other issues that will not take a great deal of time.

CHAIR—Do you want to deal with them now?

Senator SHERRY—Yes, there are a couple of issues I want to deal with before we get to Westpoint. I have some questions about ASIC's action against a financial planning company, First Capital Financial Planning. It is reported in the media that 180 teachers in New South Wales government schools were convinced to switch from their state government superannuation fund to a private fund represented by the planning firm. Firstly, my assumption is—if you could confirm it—that First Capital Financial Planning are licensed.

Mr Cooper—Yes.

Senator SHERRY—How many planners working for First Capital Financial Planning were involved in this activity?

Mr Cooper—I am just looking for my papers, if you will excuse me. I will say, of course, that this is an active enforcement matter and we will be somewhat restricted in what we can tell you.

Senator SHERRY—I understand that. That is why I am really just going to go to factual issues. What is the number of planners involved in this?

Mr Cooper—I do not have specific information as to the number of planners, I am afraid.

Senator SHERRY—Did it involve commission based recommendations?

Mr Cooper—Yes, it did.

Senator SHERRY—What was the level of commission based recommendations?

Mr Cooper—They were at the high end of the range, but nothing in the order of Westpoint. We are talking about contribution fees of up to four per cent and then annual fees of 2.2 per cent. In the broad range of these things, that is on the high end but not the extreme.

Senator SHERRY—It is on the high end; I am glad you note that. We will get to the extreme with Westpoint. I am concerned about a super product here. That commission of 2.2 per cent is on top of other fees and charges presumably, or is it inclusive of admin, financial investment et cetera?

Mr Cooper—It is inclusive.

Senator SHERRY—So it is 2.2. What is the approximate sum of money involved in respect of the people who were switched?

Mr Cooper—There were 180 clients involved. They were all school teachers. We would have to assume that their superannuation balances were within normal ranges, so it is just a matter of doing the maths. If you like, I can take on notice what the figure is.

Senator SHERRY—Take it on notice, but given the profile of the individuals involved I suspect it is in the millions.

Mr Lucy—Yes, in aggregate.

Mr Cooper—It would have to be in the millions.

Senator SHERRY—Were these individual teachers given a PDS or financial plan document?

Mr Cooper—Yes. That is where we allege that there were deficiencies in those statements.

Senator SHERRY—Are you aware of the length of the document that was given to the teachers? Are we talking about a five- to 10-page document here—I am yet to see any of them—or a 50- to 100-page document, which is normally presented?

Mr Cooper—I am afraid I do not have that specific information. We can take that on notice.

Senator SHERRY—If you could. We are talking about teachers who are presumably literate. I am not sure whether they are financially literate. Does it surprise you that teachers would switch, given these circumstances?

Mr Cooper—No. It is a bit of a hypothetical question. You are asking me about the states of mind of the teachers, but it is remarkable what consumers can be talked into. I suppose it is not so much whether they did switch but the fact that they were given very poor advice, so we allege, to switch. That is the issue we are taking up with the licensed adviser. Even if none of the people had switched and there had been no damage ensuing to them, the fact that that sort of advice is being given is just as serious.

Senator SHERRY—The issue of commission based advice is an element in this case, isn't it?

Mr Cooper—I could not say whether or not it is. All I can say is that there does appear to be a correlation between the commission model and problems with advice, but I could not speculate whether that was a driver in this case.

Senator SHERRY—We might get to that after the case is resolved. Had any of the individuals actually switched their money?

Mr Cooper—How many of the 180 switched we could take on notice, but I am driving at the conduct of the adviser not so much at what proportion of the 180 clients actually switched. We can certainly take that on notice.

Senator SHERRY—Given what has occurred here and the fact that they were licensed under the new regime, have you gone back to check the documentation and background material that was provided with their licensing application?

Mr Cooper—Again, I am speculating, but I imagine checking their licence and all of the supporting material would be a standard procedure in any enforcement matter.

Senator SHERRY—I may come back to that a little bit later, but that leads into the Audit Office performance audit of the licensing process. There were some criticisms, and I suppose I could spend a reasonable amount of time on that, but Westpoint begs. There are two issues I want to focus on. One is the ability, within the resources allocated, of ASIC to examine in detail the documentation required by all planners prior to them giving a licence. My understanding is that it was not practicably possible within the financial resources for that to occur with respect to all financial planners who received a licence.

Mr Lucy—We are not quite sure what the question is.

Senator SHERRY—Did ASIC examine all of the detail provided by all licence applicants for planning? Did you examine all the detail? My understanding is that you were not able to within the time frame and with the resources you had allocated.

Mr Lucy—I think it is more to do with the documentation. We were criticised because we were not able to demonstrate the extent to which we have examined, and we accept that criticism, but that is not to say, though, that the examination itself was deficient. We did examine the documents and they were assessed on their merits and licences were issued accordingly.

Senator SHERRY—I understand that, but I have had financial planners and officers say to me, as part of this process, that they would admit that there were inaccuracies on the documents they provided—inadvertent, perhaps, but there were inaccuracies on the documents. What I am getting at is: to what extent did you examine the accuracy of names and background details on the documents provided to you for licensing purposes?

Mr Lucy—Extensively; but, again, to really provide some meat to that answer we should take it on notice. There is no doubt that we had skilled, competent people assessing. They were supervised. The whole licensing program was undertaken with a lot of discipline and rigour.

Senator SHERRY—I accept all that, but will you be revisiting the details provided of any of the people who have been given a licence?

Mr Lucy—In particular with regard to any party that comes to our attention through, for example, complaints—absolutely.

Senator SHERRY—I would certainly expect that but will you be, at some point in time, examining the details provided? It think there was what was called a streaming process to improve the flow of information.

Mr Lucy—Exactly.

Senator SHERRY—Those people got licences in the main. Where some people got licences as part of a streaming process, inaccurate information was provided and it just was not practical—and I do not doubt that you were doing your best et cetera given the resources—to examine all the details provided. It then seems to me logical that at some point in time you would go back and examine those details where you were not able to examine them within the resource constraints at the time.

Mr Lucy—I fully support your point. One of the decisions that we took last year was to disband our directorate called FSR and to establish a new directorate called compliance. So our very clear focus now is on surveillance. We are very active out there in the market looking at the behaviour of various parties, including the population that you are describing. To the extent that we need to cross-reference that back to the original applications, that is exactly what we are doing. So we fully support the thrust of what you are saying and believe that we have made the appropriate changes within our agency to meet that responsibility.

Senator SHERRY—The Audit Office identified a diversion of resources from compliance to the licensing regime.

Mr Lucy—A timing issue; but that is quite correct, they did.

Senator SHERRY—My understanding is that you were given approximately \$50 million for this licensing process.

Mr Lucy—Over a period of, I think, four years.

Senator SHERRY—My understanding is that you actually requested 60.

Mr Lucy—I would have to take that on notice because it was before my time. I do not have an intimate knowledge of that.

Senator SHERRY—The bottom line is that you were faced with a practical problem of insufficient resourcing to carry out the task.

Mr Lucy—I think that it was very difficult for all of us, including the government when they were looking at any request for funding, to know what the population would be. All of us made our best guess. Indeed, we overestimated the population as distinct from underestimating it. The real issue, I guess, was the nature of the applications and, to some extent, the poor quality of the applications.

Senator SHERRY—I noted that and that is not a reflection on you. Here we have financial planners who apparently, in significant numbers, were providing poor quality applications. Doesn't it beg the question: if they cannot provide a quality application, what are they doing as financial planners?

Mr Lucy—It is disappointing that they were not able to be as precise as was required.

Senator SHERRY—Yes. You were faced with a situation where you diverted some resources from surveillance to licensing. Did you go back to government and request further additional resources for the licensing process when it became apparent that you would need some resourcing in this area?

Mr Lucy—No, we did not. Again, for more than anything, it is the expertise—there still remains a paucity of people with expertise in this area. You cannot train somebody to become competent in processing licence applications overnight. Indeed, arguably, it takes months. Our only choice was to say, ‘Where within our agency or even externally are people that are familiar and competent?’ It was those that were involved in the surveillance activity.

Senator SHERRY—So the switching of resources was, effectively, some personnel from surveillance—

Mr Lucy—Largely.

Senator SHERRY—to the licensing process?

Mr Lucy—That is correct.

Senator SHERRY—On the licensing process in respect of Westpoint, my understanding of the Westpoint entities is that Westpoint had a financial planning entity with a financial planning licence.

Mr Lucy—A related entity, I think, would be the correct—

Senator SHERRY—Yes, a related entity. I looked at the list of Westpoint related companies and there is a financial planning arm or company, which is certainly a related entity.

Mr Lucy—Yes.

Senator SHERRY—I will come back to that later. Moving to Westpoint in the broad, I have had hundreds of letters. Have you examined any of the correspondence and complaints?

Mr Lucy—I have. I have received perhaps hundreds—certainly, a very significant number. I have analysed them and been moved by them.

Senator SHERRY—It is pretty harrowing, isn’t it?

Mr Lucy—It is.

Senator SHERRY—It seems to me that a substantial proportion of this group of people are in fact retired or close to retirement, and that it was on that basis that many of them made the investment.

Mr Lucy—It is difficult for us to know that.

Senator SHERRY—But with many of the letters I have read—

Mr Lucy—It is a reasonable assumption, certainly with the letters, that that would be the case. But, of the investors, I do not know that I could give a reliable answer. Certainly there were groups of professional people, for example, as investors that would not show the profile of being retired or near retirement.

Senator SHERRY—I want to deal with this profile issue. There has been a lot of speculation in the media about numbers of people. What is your understanding of the numbers of people, approximately, who are affected by this financial scandal? In saying ‘scandal’ I do not think I am overstating it.

Mr Lucy—The dollars are about 300 million. The numbers of investors I could take on notice, but I am not sure that it is necessarily going to be a very reliable figure.

Senator SHERRY—Approximately—I am not going to hold you to the figure.

Mr Lucy—I appreciate that you are just looking for a sounding. But many of the investments were undertaken, for example, by trustees of super funds. To know who is underneath and who is affected by it there is a danger in looking at global figures. I respectfully suggest that they can be misleading.

Senator SHERRY—Yes. I have seen figures of 6,000 and 4,000.

Mr Lucy—I have seen figures of 4,000.

Senator SHERRY—So we are dealing in the thousands.

Mr Lucy—Definitely.

Senator SHERRY—On reading the correspondence that I have received, it seems to me that there is a group who are retired or nearing retirement who had that as their goal. There is certainly a proportionate group amongst them.

Mr Lucy—Absolutely.

Senator SHERRY—It seems to me also from the correspondence I have received that there is a significant number who carried out the investment through a small managed superannuation fund, an SMSF.

Mr Lucy—That is also correct.

Senator SHERRY—Given the small super fund structure, yesterday I posed a question to Treasury, the regulatory people of this area in Treasury—and I do not know whether you were aware. I asked them whether there had been any communication between ASIC and the regulator in this case of small managed super funds, which is the tax office, as you know—it is not your responsibility directly—as to whether there had been any interchange of information or examination in respect of the small managed superannuation fund area. They said no. This surprised me a little.

Mr Lucy—That does surprise me too, frankly, because we do have regular liaison with the Australian Taxation Office and I expect that they would be well aware of the fact that there have been a number of investments undertaken by these small managed super funds into Westpoint.

Senator SHERRY—Just not to mislead you about their evidence, I asked them whether they were aware of Westpoint and had heard of it, and the answer was yes. I asked them whether they had specifically examined the small managed superannuation funds in the Westpoint context and detail, and they had not done that yet.

Mr Lucy—We have not passed a referral to them in that context because we have not completed our investigations.

Senator SHERRY—While you are doing your investigation, because the regulator of these entities, the SMSFs, is carried out by the tax office, don't you think it would be wise, where you find an SMSF—and there are many caught up in this—to refer it to the regulator, in this case the tax office, for specific examination?

Mr Lucy—We will do that. The difficulty we have the moment is that, if we leave aside for the moment the role of the advisers and deal with Westpoint, at this stage it is an extraordinarily complex web and the liquidators and/or administrators are only new into their role. One of the questions that will be required to be addressed is whether or not the entities can be administered on an individual basis. In the normal context where you provide money for project A and the money is going to project A and a colleague goes into project B and the money goes into project B, then it is obvious that the matters would be administered in a discrete way so that if your project was nearing completion and your colleague's project was in its infancy, nevertheless your position would be quite distinct and separate. One of the issues in Westpoint is that that is not what has actually occurred.

Senator SHERRY—True. But what strikes me about much of the correspondence that I have received is that in respect of that correspondence there is a very high proportion—it seems the majority that I have received—did it through the SMSF structure. Looking at some of this correspondence, I am also struck by the fact that there appears on the face of it to be a breach of the prudent person and balanced investment requirements. All of their money, effectively, or the greatest proportion was in the Westpoint entity. This then begs the question: what is the tax office doing in regulating this area to ensure, at the very least, that there is diversified investment within a small managed superannuation fund?

Mr Lucy—You can be assured that as we reach the point with our investigations that we have material we can pass on to the tax office in relation to individual small managed funds we will do so. At this stage we are more at the global level rather than at the individual investor level.

Senator SHERRY—We talked earlier, when Senator Watson was questioning, about where it is clear that you have the power. This Property Investment Research Pty Ltd—and I have a copy of their 'Leaders in independent research'; I do not know whether you have seen it—is the research house that provided a three out of five star rating for Westpoint Management Ltd. The document is signed off by KPMG, which is another issue. Property Investment Research Pty Ltd are licensed by ASIC. What checks did ASIC carry out of this independent research house?

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

Senator SHERRY—I hope you did carry out checks, because here is an entity you clearly regulated and on which many of the individuals who were making investments were reliant. Going to the document which was signed off by KPMG, this independent research house gave a three out of five star rating, which seems to me to indicate it passes. The document refers to significant delays on page 3 on two of Westpoint's property development projects. It notes that Westpoint is in litigation on page 7 and that there is a lack of availability of audited

financial statements on page 10, and yet the independent house gave it three out of five. I am very interested to know, given you had jurisdiction on the independent research house, what you did in terms of a licensing check and whether they are reputable—presumably they are reputable because you gave them a licence.

Could you also investigate whether Westpoint approached a number of research houses and whether other research houses in respect of Westpoint decided not to provide any recommendation, because they were concerned about the product? However, in this case Westpoint were able to secure the services of this independent research house. Again, my information is that it was for a sum of money substantially above what would normally be expected. The whole issue begs the question about the relationship between a supposedly independent research house and Westpoint in this case.

Mr Lucy—It does beg all those questions that you have asked. We are right in the middle of an investigation, and those issues will be part of our investigation.

Senator SHERRY—Going to the investigation itself, when was it that ASIC first became aware of Westpoint in the sense that there were consumer complaints and consumer concerns about the activities of the Westpoint group? When did that first occur? You referred in your address earlier to actions taken, but when did you first become concerned about it?

Mr Lucy—The flow-through is that there weren't concerns about the financial aspects of Westpoint in the early days.

Senator SHERRY—What do you classify as the early days—back more than two years?

Mr Lucy—Yes—in that people were getting paid. So there weren't complaints by investors on the basis that they were not getting paid.

Senator SHERRY—Can we just stop there? Are you aware of a complaint from the West Australian Department of Consumer Employment and Protection to ASIC WA office on 2 August 2002 raising concerns about investors who were placing money in Westpoint mezzanine companies?

Mr Lucy—Yes, we do have a record of that communication on 20 September regarding York Street Mezzanine, I believe.

Senator SHERRY—Is that the first record of a complaint about activities that you have?

Mr Lucy—There were complaints previously but they were not of the nature that you have just described. They were not to do with people having difficulty in getting paid. There was no suggestion in anything coming to us that people were not getting paid.

Senator SHERRY—The issue revolves around the way people were being encouraged—the planning activities of the planning entity, as I understand it; the cold call canvassing; the enticement of people to meetings; and the planners at those meetings then convincing people to invest in Westpoint projects.

Mr Lucy—I do not have any doubt that the activities that you describe occurred, but they were not brought to our attention.

Senator SHERRY—The point I am getting at is that it is my understanding that on 2 August 2002, as you have acknowledged, you received the letter and that is when those matters were first brought to your attention.

Mr Lucy—I am not able to respond as to what we were advised by the Western Australian office at this time, so I will have to take that on notice.

Senator SHERRY—Did ASIC respond to that letter from the WA Department of Consumer and Employment Protection?

Mr Lucy—Again, I would have to take that on notice.

Senator SHERRY—Could you take on notice the production of the response if there was one given. Is ASIC represented on the Fair Trading Operations Advisory Committee?

Mr Lucy—I do not know. I will have to check.

Senator SHERRY—Can you check that, because my understanding is that, on 21 October 2002, risks associated with Westpoint were raised at their meeting. My understanding is that there was a representative from ASIC there. Can you take that on notice. Is ASIC aware that the Western Australian Minister for Consumer and Employment Protection wrote to the federal Treasurer on 21 August 2002 in respect to the activities of Westpoint?

Mr Lucy—I am not aware of that.

Senator SHERRY—Have you received any correspondence—I do not want to go to the nature of it—or has the Treasurer's office forwarded any material to ASIC in respect to concerns about Westpoint?

Mr Lucy—To give a complete and reliable response, again, I would have to take that on notice.

Senator SHERRY—Did the then Parliamentary Secretary to the Treasurer, Senator Ian Campbell, communicate any concerns by letter from his office or verbally or did he forward any correspondence or complaints to ASIC about the activities of Westpoint in 2002 or subsequently?

Mr Lucy—Subsequently in 2003, yes.

Senator SHERRY—Do you know when that was in 2003?

Mr Lucy—I believe it was around May.

Senator SHERRY—Was that forwarded directly by his office or was it through Treasury?

Mr Lucy—It was forwarded directly by his office.

Senator SHERRY—Did ASIC respond to the correspondence forwarded by Senator Campbell's office?

Mr Lucy—I have no recollection of any correspondence being provided by Senator Campbell, but there were certainly discussions. There may well have been correspondence. But, yes, we did communicate with Senator Campbell.

Senator SHERRY—Has ASIC responded directly to the issues raised by the Western Australian Department of Consumer and Employment Protection and/or the Minister for

Consumer and Employment Protection—I think it was Mr Kobelke—as a result of that 2002 correspondence?

Mr Lucy—I think that comes under the matter you raised earlier. We will take that on notice and become more aware of that communication.

Senator SHERRY—My understanding is that in May 2003 Senator Campbell—he was then a parliamentary secretary, obviously, and not holding his current position—responded to Mr Kobelke’s letter stating: ‘ASIC has commenced regulatory action with respect to some of these schemes. The government will consider legislative change should ASIC identify any regulatory gap.’ That is a quote from his letter. I have the letter, but I do not know whether you have it available.

Mr Lucy—I certainly do not have it available. I am not sure whether we have it.

Senator SHERRY—That was in May 2003—two years and nine or 10 months ago. What does ASIC consider to be regulatory action?

Mr Lucy—I can only assume that what he was referring to was that we were taking to the Supreme Court of Western Australia in May 2004 the action against Bayshore Mezzanine to determine whether or not the promissory notes issued were regulated under the Corporations Act.

Senator SHERRY—That is May 2004. But my understanding is that on 24 June 2003, Mr Kobelke wrote again to Senator Campbell along the lines that he was pleased that ASIC had commenced regulatory action but pointed out that they were continuing to receive reports of significant numbers of consumers investing in these products being offered by Westpoint.

Mr Lucy—But then and now there is an express carve-out for promissory notes greater than 50,000, and that is how they carefully arranged their investments.

Senator SHERRY—Let us take that issue up. If we accept that, had you at that point in time initiated any inquiries or investigation into the activities of financial planners regulated by ASIC who were recommending this particular product?

Mr Lucy—My notes indicate that we commenced an investigation into the Westpoint Group in mid-2003. The focus of our inquiries related to whether Westpoint were conducting unregistered managed investments and the issue of whether promissory notes being issued by Westpoint were exempt from regulation. That was subsequently followed up with legal proceedings, which were commenced in mid-2004.

Senator SHERRY—But what about an investigation into the activities of financial planners licensed by ASIC who were recommending the product, where you clearly had regulation and jurisdiction?

Mr Lucy—I guess at that point we were not getting complaints that these people were not getting paid. Our issue was the technical aspect as to whether these were within our jurisdiction. We were not getting complaints from investors about the fact that they were not getting paid. It was not identified as a risk from that perspective.

Senator SHERRY—But the Western Australian minister and consumer affairs had identified it as a risk. There was a risk attached, and they had identified the activity of

planners—not individually—licensed by ASIC in recommending the product. I cannot work out why, given you clearly had jurisdiction on the planners, you had not commenced an investigation into what the planners were doing—for example, examining their disclosure documents and checking whether Westpoint was on the approved list—any of the sorts of things you would look at in terms of a planner where you had jurisdiction.

Mr Lucy—We are of course talking about a pre-FSR regime.

Senator SHERRY—Yes, but in terms of planners ASIC still had jurisdiction prior to FSR.

Mr Lucy—Yes.

Senator SHERRY—I just put it to you: shouldn't you have initiated some investigations? The planners were an entry point to Westpoint for some of the investors. I cannot work out why you did not start examining the activities of the planners who were providing the entry point for some consumers into Westpoint.

Mr Cooper—A very important point about Westpoint is that this is the only example where financial planners have been used with these products. In every other high-yield debenture, aggressive mortgage trust or, you name it, whatever the product actually specifically is, this is the only case where financial planners have been involved in distributing that product. So in the normal assessment process it was unique. You have referred to the 12 per cent commission, and no doubt we will get into that, but it was absolutely unique in the sense that all of the other products of this ilk are distributed in what we call a disintermediated way, straight from the newspaper ads which we have seen so much of and have done so much work on. This was a surprise in the sense that the product was going through a network of plans.

Senator SHERRY—Some of the product, but my understanding is that there was some direct purchase to Westpoint. There was a significant amount of purchase through the Westpoint planning-related entity and a significant amount of purchase through other planners other than the Westpoint entity, which is why, given you had jurisdiction over the planners, I am still looking for an explanation as to why you would not examine the planners and their activities together with the Westpoint entity itself. Sure, it was a surprise. It was unusual. Why?

Mr Lucy—Whilst we have jurisdiction over the planners broadly, as to whether or not we had jurisdiction in respect to their advice regarding Westpoint, that is still unclear. At this stage, we do not know if they are financial products or not.

Senator SHERRY—Let us accept that. You do not know whether they are financial products or not.

Mr Lucy—But that goes to the heart of whether or not we have jurisdiction with the planners.

Senator SHERRY—Did you check at that time? Why did you not commence looking at the planners and their recommendations at that time?

Mr Lucy—Again, I come back to the fact that, at that point, the advice that we had was that they were not financial products and we did not have jurisdiction in that instance of their advising into Westpoint.

Senator SHERRY—The planners were also using SMSF structures in many cases—not in all cases. In many cases, they were using that structure that was encouraged to be established and then encouraging people to put the moneys into Westpoint. Wouldn't you have had an interest in that?

Mr Cooper—Only if people tell us these things. We were in very prolonged and intensive disputes, if you like, with Westpoint about regulatory matters. Was it a promissory note? Was it a debenture? Was it a managed investment scheme? Meanwhile, all of these things were going on out in the community but, unless we get complaints and proper information about these matters, we are simply not aware of them.

Senator SHERRY—Westpoint Finance Pty Ltd became a financed licensed broker on 20 October 1999, according to my information. They were one of the entities with their planners that were encouraging people to invest in this particular product. I do not want to be accused of badgering.

CHAIR—If you are badgering, I will be very swift to point it out, as I was with your colleague.

Senator SHERRY—Thank you. I will conclude on the point by saying that I am very concerned that, at that time, ASIC did not initiate investigations of the planning entities, the Westpoint Finance Pty Ltd, which you licensed and I assume re-licensed—they were licensed on 20 October 1999. You did not undertake at least some investigations into the activities of other planners at that time—not part of the Westpoint entity—who were recommending this product. I will not badger you with it. I just make that point.

Mr Cooper—We are now looking with the benefit of hindsight. We have to remember that, in 2004, we went to the Western Australian Supreme Court alleging that the document that Westpoint had been circulating was misleading in some very significant respects in relation to what was being offered and the security that people would get. The court said, 'It is not misleading.' What was supposed to be the trigger for us going on all these investigations? We know now that the group became insolvent and that moneys were being moved from fund to fund, but we certainly did not know that then. In fact, it was not happening. It was only in the latter stages that the company ran into solvency problems. What was it at that time that was so inherently problematic about this product that we should have gone further? What information could we have had?

Senator SHERRY—Westpoint Finance Pty Ltd were an associated entity with Westpoint. The information I have is that complaints from the West Australian government, from the minister—

Mr Cooper—What sort of complaints?

Senator SHERRY—The information I have is that Westpoint Finance Pty Ltd and their planners were holding meetings and seminars encouraging people to invest in the Westpoint entity and then other planners became involved who were not associated with Westpoint.

Mr Lucy—They were going to be invested into promissory notes.

Senator SHERRY—Yes, I accept that that is a promissory note, but you had regulatory jurisdiction of financial planning.

Mr Lucy—But not over promissory notes.

Senator SHERRY—But you have regulatory control—or you have regulatory oversight, more to the point, not control. What about checking the disclosure documents that they were issuing?

Mr Lucy—We did. That is what we specifically asked the court to identify.

Senator SHERRY—Of the planners?

Mr Lucy—No, I beg your pardon.

Senator SHERRY—I am going to the planners' activity, where you clearly had jurisdiction.

Mr Cooper—I am not sure I agree with that. In those days we did not have the statement of advice and, cleverly, these people had chosen the promissory note exception. To say that we had jurisdiction over the planners in those times—pre-March 2004—I just do not accept.

Senator SHERRY—You did have jurisdiction over them. There was a different regulatory regime that started.

Mr Cooper—Only if they are distributing securities. Of course, promissory notes were, even in those times, an express exception.

Senator SHERRY—Let us go to Westpoint Finance Pty Ltd. Were they relicensed by ASIC when they applied for their licence?

Mr Lucy—I will have to take that on notice. I suspect so but we would have to provide you with a response on the nature of that relicence.

Senator SHERRY—It seems to me that you have got your investigation into Westpoint financial entities. It begs the question of why Westpoint Pty Ltd, the planning entity, was relicensed by ASIC, but you will take that on notice. I would also like to know—because you had the knowledge of Westpoint at this time of licensing—what degree of checking you carried out in respect of the planning entity—whether you just gave it a tick and it got streamlined through or whether there was any special examination of the entity.

CHAIR—Senator Sherry, it is nearly 12.30. Can you give us an indication of how much longer you will be, because, as you are aware, Mr Lucy cannot be with us after 12.30, although I think Mr Cooper can be—is that right?

Mr Cooper—We are a pigeon pair. We both have pretty serious commitments in Sydney later today.

CHAIR—So you are unable to be here after 12.30 also?

Mr Cooper—Correct.

CHAIR—In view of that, Senator Sherry, you might—

Senator SHERRY—Can I just have five minutes?

CHAIR—I am happy to sit on for a little bit longer.

Mr Cooper—Five minutes is no problem.

CHAIR—There was time wasted earlier in the day by a particular senator, so I am a bit conscious of that. I want to be fair to Senator Sherry. Can you sit until a quarter to one?

Mr Lucy—Yes.

CHAIR—Then you can put the rest of your questions on notice, Senator Sherry.

Senator SHERRY—Thanks, Chair. I will not complete by a quarter to one and I have still got substantial questions about this whole issue. Mr Cooper, in respect of the Westpoint scandal, there was a report in the *Courier-Mail* where you are quoted as saying—and I never take the press as gospel:

... it appeared the major planning firms were not involved and the product was sold mainly on the margins of the industry 'because it wasn't a very good product. It didn't stack up.'

Is that an accurate quote?

Mr Cooper—Fairly accurate.

Senator SHERRY—Fairly accurate?

Mr Cooper—I could not say whether the commas were all in the right places but I said something very much along those lines.

Senator SHERRY—Do you think that that was a reasonable comment? It might be now with the benefit of hindsight. It was reported on 9 February 2006, so it is fairly recent.

Mr Cooper—It flows from the observation I made earlier—that, according to our learning, financial planners were not typically distributing these sorts of products.

Senator SHERRY—How many financial planners—individual and financial planning groups—made recommendations into Westpoint over the years? Do you know?

Mr Cooper—It is not a big group. We do have, from our preliminary investigations, a list of the sorts of players involved. As you run your eye down the list, it does not involve the household names that we all know about in the financial planning industry.

Senator SHERRY—Does that lessen the problem for the poor punter who has lost part or all of their money?

Mr Cooper—No, it does not all.

Senator SHERRY—You licensed these—

Mr Cooper—Some of them.

Senator SHERRY—Frankly, does it matter to the poor punter who has lost their money, or a large part of it, that it appears that the major planning firms were not involved? The problem is that some of the planners that you did license were involved.

Mr Cooper—Yes.

Senator SHERRY—Big or small.

Mr Cooper—Let's forget about the newspaper, because that is a response to a particular question—

Senator SHERRY—I do not think we can forget it. I am asking about it.

Mr Cooper—Let's leave it on the table then. The point is that you have jumped to the assumption that all financial planners who advised about Westpoint did something wrong. Again, everybody is affected by the seriousness of this collapse, but no amount of regulation can guarantee zero failure—and we do not know yet exactly what advice was being given by these financial planners.

Senator SHERRY—I would plead guilty to you saying that I have jumped to the assumption that they did something wrong.

Mr Cooper—It will be very dangerous to jump to that conclusion because—

Senator SHERRY—On the basis of commission based selling—

Mr Cooper—It certainly looks like that.

Senator SHERRY—not necessarily on the basis that they broke the law or the rules, as we do not know that yet—

Mr Cooper—Correct; we do not. That is right.

Senator SHERRY—but on the basis of the commission based selling that occurred, which you have no regulatory authority over.

Mr Cooper—Correct.

Senator SHERRY—So let's get to the commission based selling that occurred. Again, there is a variety of reports about the level and structure of the commissions that were charged by the planners, which is legal in this country. Do you accept that you cannot do anything about commission based selling in terms of its level?

Mr Lucy—It has to be disclosed.

Senator SHERRY—It is disclosed, isn't it, Mr Lucy?

Mr Lucy—Yes.

Senator SHERRY—What is your understanding of the type and nature of the level of commissions involved?

Mr Lucy—In the order of 10 per cent.

Senator SHERRY—We talked about an earlier case where it was 2.2—

Mr Lucy—Yes.

Senator SHERRY—And here we have a case of 10 per cent commission, which has to be at the top end of anything you or I have ever heard of, Mr Lucy?

Mr Cooper—That is not quite the right comparison. The 2.2 was an annual fee and this was an up-front. So, in that case—

Senator SHERRY—What was the ongoing?

Mr Cooper—There was not one.

Senator SHERRY—In all circumstances?

Mr Cooper—On a rollover they would sometimes, as I understand it, seek to get another clip of the ticket—as they say in the trade. As I understand it, there was no ongoing; it was purely a recommendation and up-front commission.

Senator SHERRY—I suggest you check your information, because I have documentation. The report shows that the trail commission to some of the planners with respect to Westpoint was two per cent a year and an up-front commission of 2.5 per cent. My understanding is that there was a considerable variance—you mentioned 10 per cent, Mr Lucy—and different types of commission structure. I have information on two per cent a year tail and 2.5 per cent up-front, which is still high.

Mr Lucy—Very, but it would depend on the model and how long the investment was there as to whether or not in aggregate that was greater than 10 per cent up front.

Senator SHERRY—Whatever the commission detail and level in the case of Westpoint, it appears that in almost every case that has been brought to my attention there was commission based selling involved. It was in almost every case. It was overwhelming. Do you agree with that observation—whatever the level and structure?

Mr Cooper—That seems to be the case, yes.

Senator SHERRY—Does the issue of commission based selling on financial products cause you concern?

Mr Lucy—Yes, and we have been consistent in our expression as to the fact that we do have some anxiety about commissions. That is not to say that it is entirely inappropriate. One is not able to say that it is inappropriate in every circumstance. Fortunately, there are major industry participants that are moving away from commission into fee based service, and we are vocally supporting such a move.

Senator SHERRY—You raised a different but related issue. Moving to one side briefly, ASIC released a press release on Friday, 3 February welcoming ANZ's decision to move away from commissions—

Mr Lucy—Yes, we did.

Senator SHERRY—to a fee-for-advice remuneration model. In making that statement in the release, Mr Cooper, did you examine whether or not ANZ was still charging an adviser service fee ongoing?

Mr Cooper—No, we did not deeply examine the ANZ model.

Senator SHERRY—But you welcomed it, you said.

Mr Cooper—We welcomed the fee-for-advice remuneration model.

Senator SHERRY—The adviser service fee I understand is ongoing—I am just interested as to what is the distinction between an ongoing adviser service fee and a commission.

Mr Cooper—There is a lot of jargon in the financial planning industry, as I am sure you know, but it is all about tailoring the payments to what is actually being received. We are not in a state of perfection yet, but so long as the industry as a whole moves to a model where there is some correlation between what is agreed to pay for the advice up front and what is ultimately paid—whether by instalments or in an up-front amount—we consider that to be

great progress. Whether there are hidden details that militate against that great progress, well, unfortunately that is just how the world works sometimes.

Senator SHERRY—Yes, but you put out a press release welcoming this development. What I am getting at is the degree to which you actually checked. You see, I saw the same press release and I thought, ‘Yeah, that is reasonable.’ My personal preference is for flat-fee models rather than commissions for a whole lot of reasons we have discussed here today and on other occasions. But the point I am getting at is: before you put out the press release did you examine in any detail what their ongoing-fee model would be, so as to examine the type of ongoing fee that would be charged?

Mr Cooper—I examined their media release and I saw that people could elect to remain in the trailing commission environment and that they were offering a fee-for-advice model. The release was not a great endorsement of ANZ, necessarily, or of its particular product, because ASIC does not do that. But we are endorsing the overall move, and the bulk of the press release is explaining in very broad terms the difference between the two regimes, rather than focusing on ANZ’s product.

Senator SHERRY—Yes, but you did put out a press release in response to that. It says that this is ‘yet further evidence of positive change in the financial planning industry’.

Mr Lucy—We stand by that.

Senator SHERRY—Yes, I accept that, and I am pleased you do. But I am just interested in the extent to which Mr Cooper actually examined the detail of the model that ANZ was implementing.

Mr Cooper—The answer to that is that, other than looking at their media release—are you saying that that was not right, that there is some hidden—

Senator SHERRY—I have had raised with me the question of what is the status of ongoing fee-for-service advice within the so-called fee-for-advice model. What is the distinction between ongoing fee-for-service and commission? Is there effectively a distinction? Did you look at that in the context of ANZ’s announcement?

Mr Lucy—Certainly, from my perspective, the concept of a fee for service is exactly that: a service is rendered. I think that is really the significant difference between fees and commissions, in that commissions are payable without there being any necessity for an ongoing provision of service, expertise, advice or anything else, whereas the ANZ are apparently retaining this fee for service on the basis that there is a service provided.

Senator SHERRY—Going back to the court action that ASIC was involved in with Westpoint—

Mr Lucy—This is the May 2004 action?

Senator SHERRY—Yes. Was there a direction or a commitment given by ASIC to write to the holders of each promissory note with respect to Westpoint?

Mr Lucy—I will have to take that on notice. I am not aware of that requirement and I do not have anything in front of me to enable me to answer that.

Senator SHERRY—Could you check that? My information is that there was a direction from the court for ASIC to do that but that that did not happen.

Mr Lucy—I do need to follow that through, clearly.

Senator SHERRY—Could you follow that through and see what occurred? In these circumstances—we are talking here about WA—were people involved from ASIC central office, to use that expression, over in WA in this case or was it just handled by the local office?

Mr Lucy—Are you talking 2004 again?

Senator SHERRY—Yes.

Mr Lucy—No, there was an involvement nationally. Certainly we do not want to be disrespectful of the Perth office, but in those days, we were more structured on a regional basis. Since 2004 we are structured more on a national basis. So there would have been, quite legitimately, a heavy engagement by our Perth team.

Senator SHERRY—In terms of financial planners and Westpoint, has ASIC heard of the company called Private Collection?

Mr Lucy—I have not, but we will take it on notice to see whether or not that has been brought to our attention.

Senator SHERRY—I am not informed as to whether it is a licensed planner. I understand they are a research facilitation business development company. You may examine their activities in respect of Westpoint if you have not already done so. You can take it on notice.

Mr Lucy—If you are able to let us have any of that material, that might be constructive.

Senator SHERRY—When looking at the activities of financial advisers and the product disclosure statements that have been issued since the regime was implemented, did you examine the details of the advice given in respect of Westpoint?

Mr Lucy—That is exactly what we are doing at the moment. We are looking at the full level of responsibility, as in knowing the client's circumstances and knowing the products.

Senator SHERRY—I read out earlier some of the points that I think were dubious in the independent research houses document signed off by KPMG which planners used in part—I think probably largely, but at least in part—as the basis for their recommendations into Westpoint. Is it sufficient for a planner to rely on that independent research house document largely or exclusively in order to make a recommendation?

Mr Lucy—It is a hypothetical question. But I think the point you are raising is: will it be acceptable for these people to use that excuse if they simply relied on that information? That certainly will not be, in the first instance, acceptable to ASIC. We will want to go behind it as to the validity of that research and what other inquiries people should make. Again, no doubt you will have seen in the correspondence addressed to you that there has been quite a level of mischief used with the word 'secured'. Certainly the use of the word 'secured' by any adviser without the proper authority for that is something which we are looking at very closely.

Senator SHERRY—Did ASIC investigate the online super advertising campaign? By the way, we are not just talking about WA here. A lot of it seems to be WA, but the correspondence I have is from all over the country.

Mr Lucy—I am not even sure that the majority is. I think that there is a fair spread on the eastern seaboard.

Senator SHERRY—Some of the companies', the sub-entities', investments are on the eastern seaboard.

Mr Lucy—And Adelaide as well.

Senator SHERRY—It is all over the country.

Mr Lucy—No state has been untouched.

Senator SHERRY—Did you investigate the online super advertising campaign which was run across the country in a number of metropolitan areas?

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

Senator SHERRY—The information given to me—I am a bit scared of using the term 'advice' now—is that this online super advertisement was for a workshop where ASIC licensed financial planners were in attendance. Consumers turned up and licensed financial planners were there as a consequence of this online super advertising campaign. It was there that the 'benefits'—in inverted commas—of investing in Westpoint mezzanine finance projects were outlined by the director of what was called Keibel bank, and it was advertised by Keibel bank. Has ASIC ever investigated Keibel bank?

Mr Lucy—The Keibel family is part of our investigation, yes.

Senator SHERRY—Is ASIC aware whether or not there is such a licensed entity as the Keibel bank?

Mr Lucy—I am not able to respond to that. I will have to take it on notice.

Senator SHERRY—I might check that with APRA. But I do not think there is a Keibel bank licence.

Mr Lucy—I would be surprised to find out that was the case.

Senator SHERRY—But part of the activities involved an indication to individuals that there was a bank, in this case the Keibel bank, involved. You have no knowledge of the role played by this purported bank in the selling of these products?

Mr Lucy—I will take that on notice. I will restate again that we are well and truly into the thick of our investigation and certainly we do not want to do anything that might prejudice the outcome of that investigation.

Senator SHERRY—I understand there is the court case. I am conscious of time and there are a lot more questions. But I do want to make the point that I believe that ASIC, in respect to the planners and the 'independent'—in inverted commas—research house, could have acted earlier to investigate those areas in its jurisdiction in response to the Westpoint activity. Obviously we will have further opportunity to explore these matters.

CHAIR—Will you put your further questions on notice?

Senator SHERRY—Yes.

CHAIR—Thanks.

Mr Cooper—May I provide one item of quick clarification? Senator Wong asked about the \$3.3 million that was provided out of the estimate program for enforcement. I can now confirm that that indeed was for enforcement and it is for the One.Tel matter.

CHAIR—Thank you.

Proceedings suspended from 12.49 pm to 2.02 pm

CHAIR—Gentlemen, I just want to put something on the record in relation to something that happened in the committee this morning. During the proceedings of the committee this morning, during the examination of witnesses from the Australian Securities and Investment Commission, a series of rulings by me were challenged by Senator Conroy. Senator Conroy is a participating member of the committee. In giving those rulings I had not had the opportunity at the time to look carefully at the standing orders or to examine *Odgers' Australian Senate Practice*. I have since done so and I want to put a couple of remarks on the record. In preparing these remarks, I have not had the opportunity to examine the *Hansard* of this morning's proceedings and therefore, to the extent to which these remarks rely upon my recollection, it is subject to checking against the *Hansard*.

During the course of questions from Senator Conroy to Mr Lucy, the Chairman of ASIC, I made a direction to Senator Conroy which he indicated he would disobey. After a brief dispute, I then invited Senator Watson to ask his questions. Senator Conroy disputed that ruling as well and continued persistently to interrupt Senator Watson so as to make him inaudible. I then suspended the proceedings of the hearing because it was my view that they had become disorderly.

I sought to convene, so as to deal with a motion foreshadowed by Senator Chapman that Senator Conroy no longer be heard, a private meeting of the committee but was told that the Labor members of the committee who are full, not participating, members and who were therefore necessary in order to enable a private meeting to be quorate were unavailable and would be unavailable so that a private meeting could not occur.

After an exchange with Senator Conroy, during which he threatened me in the presence of other senators that, were I to resume the hearing and give the call to Senator Watson, he would continue to persist in making the hearing disorderly, I nevertheless resumed the hearing and gave the call to Senator Watson. For a period of time when Senator Watson was asking his questions he was persistently and loudly interrupted by Senator Conroy until, after a period of some minutes, that behaviour desisted and the resumed hearing returned to order.

Senator WATSON—To the extent that the witness could not hear the question.

CHAIR—As Senator Watson points out, to the extent to which the witness could not hear the question, Senator Watson had to physically relocate himself elsewhere in the hearing room in closer proximity to the table.

I have considered these matters and I have considered the rulings I gave in the circumstances in which I gave them. The proceedings of these committees are subject to any resolutions of the Senate to the contrary governed by Senate standing orders and, so far as

qualified by any practices or resolutions of the Senate to the contrary, the chairman of these committees exercises the prerogatives and functions of a presiding officer. The core provision relevant to the incident this morning is standing order 184(1), which provides:

Order shall be maintained in the Senate by the President.

The standing orders define by standing order 203 the circumstances which constitute infringement of order. They identify five circumstances which constitute an infringement of order, that is:

- (1) If a senator:
 - (a) persistently and wilfully obstructs the business of the Senate;
 - (b) is guilty of disorderly conduct;
 - (c) uses objectionable words, and refuses to withdraw such words;
 - (d) persistently and wilfully refuses to conform to the standing orders; or
 - (e) persistently and wilfully disregards the authority of the chair ...

On any view, the conduct of Senator Conroy was a violation of (a), (b) and (e). To the extent to which the standing orders empower chairs to make rulings which must be observed by senators, it was a violation of (d); and, only because I did not demand, nor did Senator Watson, withdrawal of offensive words used by him, it would have been a breach of (c) as well.

The position in relation to disputed rulings is governed by both the standing orders and Senate practice. Odgers' 11th edition, page 116, says:

A President's ruling which has not been dissented from is equivalent to a resolution of the Senate and must be complied with ...

No motion of dissent from any of the rulings of mine disputed by Senator Conroy was the subject of a motion of dissent, nor, as I understand the position, could it have been in the absence of a full member of the committee from the opposition. My understanding is that participating members do not have standing to move motions in these proceedings. Hence, in the absence of either a dissent motion or a foreshadowed dissent motion, each ruling I made was a ruling which all members of this committee were obliged to abide by, and conduct to impeach that ruling, to disobey it or to obstruct its operation in the further conduct of the hearings of this committee was itself further disorderly conduct.

The opinion of Mr Evans, the Clerk of the Senate, was sought by Senator Conroy, and in a brief email Mr Evans made some observations which will no doubt be placed on the record. I point out that Mr Evans's observations are qualified by the introductory words 'If a senator's questions are being asked in an orderly fashion', and then he goes on to make certain other observations.

The conduct of Senator Conroy was in all of the several respects I have indicated and for the reasons I have stated grossly disorderly.

Senator Sherry, you wanted to indicate some programming matters for the afternoon.

Senator SHERRY—I do, Chair, but before I do that I do want to place on record my concern at the description of events that you have just outlined and the comments you have

made. It will be for Senator Conroy to respond at the appropriate time, but I do not believe the description that you have outlined is sufficiently full as to outline the total sequence of events that occurred this morning. So I place that on record, because Senator Conroy is not here. No doubt he will have an opportunity to place his view alongside your view at a particular point in time.

CHAIR—Senator Sherry, of course you are entitled to make that observation. The sequence of events will be revealed by the *Hansard* transcript. The purpose of my making this statement was not to reargue the issue but, because I did make a series of rulings which were controversial and did lead to events which interrupted the business of the committee, I thought it incumbent on me, on reflection and having examined the standing orders and the Senate practice, at least to state more fully the grounds for my rulings. That can be, if you wish or if others wish, agitated on another occasion.

Senator SHERRY—I am sure it will be. Senator Conroy is not here and I just wanted to ensure that, in response to your statement, there are some remarks that I believe are appropriate in the circumstances.

CHAIR—That is fine, Senator Sherry. I do not dispute that.

Senator WATSON—I wish to thank you, as Chair, for examining other authorities in relation to the matters before us. Chair, I think you gave a full and accurate presentation of how you perceived the events this morning. Under the circumstances, I think you acted appropriately.

CHAIR—Thank you. Senator Sherry, you indicated to me informally before that you wanted to say something about programming.

Senator SHERRY—I am not sure of the total time Senator Watson would take, but I would be looking at approximately half an hour with APRA. We are then moving to Industry—and Senator Ian Campbell is here—which we will need perhaps an hour and a half, maybe two, for. I have had indications from Senator O'Brien of approximately an hour for Resources. Then I had indications from Senator O'Brien of approximately an hour with respect to Tourism.

CHAIR—In view of that, Senator Sherry, and its now being a little after 2, it sounds to me that with reasonable dispatch we could be finished by 6.30.

Senator SHERRY—I think that is a distinct possibility. I do not want to make any promises.

CHAIR—I understand that.

Senator SHERRY—First, because it is Senator Campbell's and Senator O'Brien's call; and, second, because I will not be here. I do not want to be held responsible should that not occur.

CHAIR—I might even, subject to the convenience of others, if we reach 6.30 and are nearly finished but not quite, be prepared to sit on, if that is all right with you, Minister.

Senator Minchin—Sure.

CHAIR—Thank you very much indeed for that indication, Senator Sherry.

[2.13 p.m.]

Australian Prudential Regulation Authority

CHAIR—I welcome to the table officers of the Australian Prudential Regulation Authority—Dr Laker, gentlemen. Dr Laker, do you have a brief opening statement?

Dr Laker— I could say, Mr Chairman, I had a one-hour statement I was going to read. But on this occasion, no, we are quite happy to go straight to questions.

Senator SHERRY—First, I just want to revisit briefly one aspect of the Westpoint matter. I know you were here when I raised the issue of the Keibel bank in the context of Westpoint. The Keibel bank was promoted as a financial institution involved in Westpoint activities. It is obviously not an area for ASIC in the sense of the existence licensing of Keibel bank, but was APRA consulted at any time about the existence of a Keibel bank?

Dr Laker—Keibel bank was never authorised by APRA to operate as a bank in Australia. It was drawn to our attention that it was purporting to be an investment bank, Keibel Investment Bank. We guard the use of the word ‘bank’ very carefully. We issued a cease and desist order, which was responded to by Keibel. We then followed up by visiting its offices in Sydney, Melbourne and Perth to satisfy ourselves it was complying with the Banking Act, and we saw no problems at that point.

Senator SHERRY—Approximately when did that occur, Dr Laker?

Dr Laker—In May and June last year.

Senator SHERRY—I am not aware of the precise provisions about the use of the word ‘bank’, but my assumption is, and you may be able to inform me about this, that the word ‘bank’ cannot be used in a descriptive title involving financial institutions unless it is properly licensed by APRA, presumably.

Dr Laker—Unless it is authorised by us or there is an explicit exemption to use a particular phrase. But, no, as I say, that term is carefully guarded.

Senator SHERRY—Was any explanation given as to why the term ‘bank’ was being used by the persons who were visited by APRA officers?

Dr Laker—I do not know. We responded only to the way in which the institution purported itself. We do not actually have powers to investigate an institution that is not authorised by us. We make sure that nobody is misrepresenting their status as a bank.

Senator SHERRY—But in the course of those visits there may—I use the word ‘may’—have been an account as to why how the term ‘bank’ was being used. Perhaps you could take on notice whether there is any further information you can provide.

Dr Laker—I will take that on notice. Our first response was the cease and desist order. Our second response was to follow up to ensure that when we were on the ground we saw the way in which the institution was representing itself. Our inquiries would normally stop at that point.

Senator SHERRY—I accept that. But there may have been an outline of the circumstances during those investigations that would be useful to know.

Dr Laker—Okay.

Senator SHERRY—What institution were you visiting? Was it a registered company? Was it the 'Kebbel Bank', an office with signage? Did you know what was being visited?

Dr Laker—Unless my colleague has the answer, I would take that on notice.

Mr Khoo—We visited their offices, but I cannot tell you any more than that. We would have to take that on notice.

Senator SHERRY—Perhaps you could take on notice whether it was a company entity of some kind and the individuals who were given the cease and desist order. Presumably there are some individuals to which it was given who gave an undertaking, presumably, to cease and desist, describing themselves and/or their financial institution as a bank. Just on this matter finally, ASIC has taken some action in respect of a range of Westpoint entities. Is APRA involved in the preparation of material for those actions? They are to be heard at some later date; I am not sure what date. I understand a receiver has been appointed as well. Is APRA involved in any of these activities at all?

Dr Laker—No.

Senator SHERRY—You might recall on at least two occasions I have raised the issue of the reporting in your quarterly reports of fees and charges but particularly the issue of commissions. I think this time last year—it may have been a little earlier—there was an exchange concerning the nonreporting of some data for a range of reasons disputed not by me but by industry. It concerned the nonreporting of some aspects of fees and charges and particularly commissions to APRA and the subsequent inability of APRA to publish some details. The descriptor was not made available in the APRA quarterly data. Can we get an update of where we are at with the collection of the data that was not provided and when it will be published in the APRA quarterly data?

Mr Khoo—I will try to pick that up. That is the area of my colleague Mr Littrell. We amended our instructions for the 2005 returns.

Senator SHERRY—When did you do that, approximately?

Mr Khoo—That would have been around mid-2005. My understanding is that in the returns for that year we have not seen any substantial improvements in that area in terms of the data being reported. We are at this point, however, working with IFSA to try to improve that issue now.

Senator SHERRY—I am concerned because it is now a year, perhaps a little more than a year, since this issue was discussed. You have done the right thing. I think you actually had done the right thing anyway. I am not criticising APRA. I think you actually had made it clear, but that is disputed by some in the industry. So you have issued the instruction in mid-2005. You seem to be indicating that, despite that, some are not providing the information that you believe should be required under that order of seven or eight months ago.

Mr Khoo—I think that would be a fair statement.

Senator SHERRY—Reflecting back on the conversation that occurred on this matter, what struck me was that some institutions, major and middle range, did provide the data

requested; others did not, for a whole range of reasons and excuses. When will APRA require the production of this information?

Mr Khoo—I might have to take that one on notice and refer that back to my colleague. As I said to you, we are actively working now with industry to try to get that resolved.

Dr Laker—It may well be that we have to go back and look at the way in which that particular return has been set up and make an amendment through the Financial Sector (Collection of Data) Act. That is a more formal process, and that takes time. So we need to look at whether or not we can work within the existing reporting framework or whether or not we need to go through the formal consultation steps to make that return clear in what it is seeking from the superannuation industry.

Senator SHERRY—As I say, I am not being critical of APRA. I congratulate you on your attempts to collect what I think is important data. I just make the observation that I understand consultations took place with industry prior to the original data being requested. Some in the industry were able to respond, and respond appropriately. You issued a new instruction in mid-2005. There has been obviously further discussion with some elements in industry, and yet it appears the data is not forthcoming from some. As much as I matter, I would support your continuing efforts in this regard and hope that we will see published the full data as soon as possible.

Dr Laker—That is certainly our intention.

Senator SHERRY—Could you give me a relatively brief update, if that is possible, on the progress of the licensing that is taking place at the moment?

Dr Laker—Certainly. The window for receiving applications for a RSE licence from existing trustees will close tomorrow. At this point there are only a very small number of potential applications outstanding—I am talking on one hand now. So we believe by the close of business tomorrow we will be processing 320 or thereabouts applications. We started batting like Simon Katich, but we are building up a good score at the moment. We have issued in the order of 90-plus RSE licences, and we are on course to complete the review of the remaining 200 or so by the end of June.

Senator SHERRY—There are varying degrees of investigation obviously in terms of the detail you will have to check. That will vary from application to application. Have you given any consideration to what practical course will need to be followed if an entity has applied for a licence but it is not granted?

Dr Laker—I think the broader question relates also to those who have said they do not want to be licensed but have not exited, because that is the bigger group.

Senator SHERRY—I was going to get to that point.

Dr Laker—But they are very similar issues for us.

Senator SHERRY—Yes, and obviously a much bigger group, I suspect.

Dr Laker—From 1 July this year, if an entity is not licensed by us to accept superannuation moneys, it is against the law for them to do so. We have given quite a lot of thought to how we would handle that period after 30 June—whether, for example, one may

need to appoint acting trustees who are authorised by us to handle any transfer of moneys across to a licensed trustee. Clearly, we would prefer to work very hard now to exit all of those who have indicated to us they do not want to stay in the business by 30 June. That is really a major part of our resourcing at the moment. We are about halfway through that process.

Senator SHERRY—Just before you go on, I take it you have perhaps an authorised list of potential acting trustees?

Dr Laker—That is what we have been looking at.

Senator SHERRY—Does that list exist at the moment?

Mr Khoo—No. We are working on that at this point in time.

Senator SHERRY—You have your 320 applications, subject to whatever happens tomorrow. Have you been notified by those current funds who are not going to apply, and have they indicated what the arrangements will be after 1 July?

Dr Laker—As I say, that has been a major part of the dual process. One is authorising those who want to; the other is exiting those who do not. We have been working with the trustees quite intensely and reminding them that the clock keeps ticking down. But they know full well that from 1 July it becomes illegal for them to accept further moneys. So it is a matter of our keeping the pressure on to exit in an orderly way those several hundred or more that are still to exit.

Senator SHERRY—Do you have any idea about what that represents in terms of assets and/or members?

Mr Khoo—No, I cannot respond to that in terms of assets or numbers. I can tell you that we have approximately 400 funds left to exit. But, in dollars and numbers of members, no, I cannot.

Senator SHERRY—Where they indicate what they are going to do, are there any guidelines/parameters they will have to follow for the transfer of assets and members to another fund? Let us say that fund ABC is getting out, that the trustees are ceasing. Do they need to report to you what they intend to do with the trust, the members and the assets?

Mr Khoo—We are aware of that because we have been proactive in this process. We are in communication with every one of our trustees. We are trying to stay across exactly what they are actually doing in winding up their funds or transferring funds.

Senator SHERRY—It is not an easy process, but it is easier with DC. What about with respect to DB benefits where the trust is being wound up, which I think is a lot more complicated in the liabilities to members and the protection of both their existing members and members who left but not retired their existing benefit, if you like, on the DB side?

Mr Khoo—Ensuring that their members will not be disadvantaged is very much a role for the trustees. At the end of the day, that is also an issue which interests us. But, in terms of the actual specifics of the issue, that would be on a case-by-case basis. That is about as much as I can say on that. Was there a specific issue that you wanted to—

Senator SHERRY—No, I am not raising a specific issue. I am just raising the principles and what I think are some difficulties for the member. Just so I am clear on this: where they inform you and let you know, you presumably have some sort of action register of what they intend to do?

Mr Khoo—Yes.

Dr Laker—Yes.

Senator WATSON—Everyone?

Mr Khoo—We have to take into account the fact that some of those have yet to determine how they are going to exit. But, for the ones that we are aware of, yes.

Senator SHERRY—Could I suggest after all this is completed—I do not want to give you extra work now—the publication of what has happened to those that have exited: for example, ‘They have gone to’ in some sort of report format.

Dr Laker—It had been our intention, once the licensing process was complete, to actually publish a broad overview of what the superannuation industry looks like post licensing, because the industry has changed quite a bit in the way it looks. That is something which we could include in that overview. I am happy to do that.

Senator SHERRY—I think it would be useful to know where the funds have gone.

Dr Laker—Where the funds went, yes.

Senator SHERRY—I think it is in the public interest and the members’ interests. There are some issues around self-election or so-called choice of fund and how that is exercised in this context which I think are of great interest. In the event that there is not a successful wind-up of an existing scheme by 1 July, I take it from what you are saying that there may be circumstances where the entity will continue; however, acting trustees will be put into the entity until such time that it is wound up.

Dr Laker—Yes.

Mr Khoo—It would depend on the specific circumstances, but I would think by the end of May we would have a pretty good idea of which funds we think are going to be problems. If a fund has failed to actually wind up or transfer out by 30 June, then on 1 July, as Dr Laker said, it becomes illegal for them to accept contributions, which means that the contributions would then have to be diverted to an RSE under a licensed trustee. If the trustees were difficult and were trying to accept further contributions, we would injunct them from accepting further contributions. Once we have dealt with that, obviously we would then seek to remedy the problem. It could involve the transfer to an acting trustee.

Senator SHERRY—I think, because we have discussed this on a previous occasion, there will have to be an entity for employer and employee contributions to be received. It just cannot sort of end up in the ether.

Mr Khoo—That would be correct.

Dr Laker—A licensed RSE.

Senator SHERRY—At the moment you have hybrid schemes—DB, DC. They have been shut. They are just reported as hybrid.

Dr Laker—Yes.

Senator SHERRY—You have the members of the hybrid, but there is no breakdown as to who is in the DB section of the hybrid and who is in the DC. I would stand corrected, but it is in the millions that are classified as hybrid. In this context it would be useful to know, although I am conscious of the work you have to do, who within a hybrid is an active member of a DB as distinct from the DC section. In relation to this description of hybrid, you just cannot determine, for example, how many people are still in a DB in Australia, both public sector and private sector for that matter. It is useful to have that. Perhaps if you could examine that at least in the context of later data that would be produced.

Dr Laker—Yes.

Senator SHERRY—It seems to be a convenient time to do it. I do not have any further questions, Acting Chair.

ACTING CHAIR (Senator Chapman)—Dr Laker, are you or your associates in APRA aware of comments made in December 2005 by Federal Reserve Bank governor Susan Bies regarding the Basel II framework for reform? Although she said the reforms were necessary, she also went on to say:

... the agencies are indicating that views are still being developed and additional comment would be beneficial before we move forward. We are intentionally leaving a number of areas open in order to solicit a broad range of comments.

... we expect to remain vigilant about potentially unintended and undesired consequences that might have competitive effects on a certain class of banks or specific product lines.

Governor Bies also said that the Federal Reserve would be taking a conservative approach to implementing changes in the Basel framework. What is your view as to why the United States and I understand also other jurisdictions, including the UK and the European Commission, are delaying the introduction of the Basel II reforms and are particularly expressing concern about the possibility of unintended consequences which premature implementation might create?

Dr Laker—I cannot offer you a view as to why the US has taken the path that it has taken. But I think it is fair that all jurisdictions are carefully reviewing the framework. It is a framework. It is not a very specific set of rules, and all jurisdictions are at the moment engaged in further quantitative work to understand the implications of the proposals as they now stand. All regulators are working their way through these proposals. I think I said to you earlier that nothing is set in concrete in this process. But countries have made their own choice about their sort of timetable, and our choice was dictated by what was then the consensus timetable. The US subsequently chose for their own purposes to follow a slower timetable than what had been the earlier consensus.

ACTING CHAIR—In light of that, has any reconsideration been given to our timetable?

Dr Laker—Not at this stage, no.

ACTING CHAIR—Why not?

Dr Laker—One main reason was that our institutions are keen for us to keep working on the timetable established. The Basel II projects in each institution, particularly the larger institutions, are quite substantial projects. The feedback to us is that they have momentum and commitment from the organisation and they wish to keep going.

ACTING CHAIR—Given the responses you gave to the questions I asked at the last round of estimates, could I perhaps have an update as to where APRA is with its consideration of the concerns that have been expressed by some of the affected parties in Australia and how that might affect the proposed January 2008 implementation date?

Dr Laker—Since we spoke in late November, the papers that we had out for discussion reached the closing date for submissions. We have now had submissions from a number of parties. We are currently consulting with them. We met with representatives of the lenders mortgage insurers, for example, last week. We have further meetings under way. We are also taking part in what is called a quantitative impact study, QIS 5, with other major regulators. We have said that we will wait to see the results of that work and the consultations we have with various parts of the industry and also with other regulators about what they are doing. We will wait to see all of that before we make final decisions.

ACTING CHAIR—Has APRA itself undertaken or commissioned any economic analysis or modelling on the likely effects of the proposed changes?

Dr Laker—We, as you may recall, had undertaken quite a substantial stress test of lending to the household sector by our deposit-taking institutions in 2003. That was a very illuminating stress test, and it has been one of the factors that have influenced the approach we have taken to the setting of risk weights in Basel II. We are, as I said, participating in the QIS 5 exercise as well, and that will also be relevant to us. This is an international exercise looking at how those risk weights are calibrated. To the extent we are able to share results, we will certainly be sharing those with the industry.

ACTING CHAIR—What is APRA's view of other economic analyses that have been undertaken of the likely impact of the changes?

Dr Laker—In general, when we put out proposals of any type for consultation we get a range of points of view put to us. We go through each of those points of view so that we can make sure that we understand from the industry's perspective what is the impact or likely impact of our proposals. We do that with all of our proposals. Where we are persuaded that we can do things differently or achieve our ends in other ways, we are prepared to do so. Where we are unpersuaded and we believe that public policy requires a certain approach, I have a mandate to honour and I take a decision—or at least we put out for final discussion—that we will go down a certain route. That is the process we always go through. On Basel II we have a number of submissions that we are working our way through.

Senator WATSON—Does APRA insist that all regulated funds have an independent custodian?

Mr Khoo—No, we do not.

Senator WATSON—It is not a condition of licence?

Mr Khoo—No, it is not.

Senator WATSON—Why not? Would you like to take it on notice?

Mr Khoo—Yes. Is there a context which you would like us to respond to or are you asking the question in general?

Senator WATSON—I would have thought that it would have been a prudential requirement for licensing. I am happy for you to take the question on notice, because I think it deserves a serious response. I congratulate APRA on having a complete registry of all funds not intending to be licensed as at 30 June. Are you satisfied that all transfers and windings-up will be completed in an orderly manner and in an orderly time frame?

Mr Khoo—By 30 June?

Senator WATSON—Yes.

Mr Khoo—The best response I can give to you is we are hopeful of that, but I expect there is a reasonable probability that there may be a very small number of problems which carry over beyond that date. As I responded earlier to the question from Senator Sherry, we have plans on how we will deal with that.

Senator WATSON—A small number being what you could count on one or two hands—something of that order?

Mr Khoo—I would hope so. At the end of the day, the process of winding up or transferring is a trustee responsibility. All APRA can really do is encourage them, stay on top of them and push them as hard as we can. But we cannot act until the licensing period is over.

Senator WATSON—I am worried about the consequences for the members. If you insist that they go into a temporary fund, there are going to be additional fees for those members, aren't there?

Mr Khoo—That is a possibility, and that is why we have been pushing trustees to try to deal with the issue. Unfortunately, if we do get to the point where the trustees are intransigent or they have not met their responsibilities, then, yes, there is a possibility that that could occur.

Senator WATSON—But they might be negotiating with several funds in terms of merger and it is possible that those discussions, if they involve two or three funds, may go beyond 30 June. I am very worried about this very arbitrary deadline that you have imposed on the—

Mr Somogyi—It is legislation that has imposed the deadline, not APRA.

Dr Laker—And the deadline has been known for two years. This is not coming as a surprise or a rush to trustees.

Senator WATSON—The numbers are still quite significant as to what they were compared with what you anticipate them to be. So it will result in major changes occurring within the industry.

Dr Laker—Yes.

Senator WATSON—Some firms will have to consider their capacity to accept that within the time frame, if you are going to suddenly accept another fund using different systems. It just does not happen overnight.

Mr Khoo—This is not a new process. Funds have been winding up and transferring into successor fund arrangements or under new trustees for a very long time. Licensing is accelerating the process. We have a two-year time period and we have been continually in contact with trustees. Any trustee which fails to meet it by 30 June, in my view, will not have been particularly proactive. I am reasonably confident that the ones who will be left over by that point will not be the ones who have been actively out there trying to do the right thing by their members.

Senator WATSON—As at 1 July we need to allow unlicensed funds in the process of bona fide winding up or transferring to another fund—whether it be a master trust, an industry fund or a merger—to accept contributions until such time as they have been transferred in an orderly manner. I am worried about the orderly manner of the process, the time frame and the cost to members. It is all very well to bring down this heavy hand of the law, but there has to be a sensible and human approach to this sort of thing.

Mr Somogyi—Perhaps I could answer a couple of points there. Firstly, the focus of the super licensing team is to ensure that the funds of as many members as possible affected by exiting trustees are transferred through the process before the end of June. There are a number of steps in winding up an unlicensed trustee. Some of those steps in winding up can occur after 30 June because they do not involve any funds of members. We are following that orderly process. The team is focusing on looking after the members' funds as a priority. As my colleague Mr Khoo pointed out, a lot of the actions are of course in the hands of the trustees. We are pushing them as hard as possible.

The second point is that we have been working with industry and all of these funds now for over two years. The vast majority of them have done the right thing and are doing the right thing. There will be only a handful in the situations that you describe if everything goes according to the current plans. No-one can guarantee that there will not be the odd uncooperative or intransigent trustee. But we are doing everything possible to look after the funds of the members and subsequently to complete the process of winding up which does not involve member funds.

Senator WATSON—And to ensure that they are not going to be charged additional fees.

Mr Somogyi—Yes. To the extent possible, we are trying to look after their best interests, which the trustees ought to be doing as well. After all, that is what the legislation asks of them and requires them to do. With respect to the ability to stretch the timetable, that is defined in the legislation, as was pointed out in an earlier answer, and that is not available to the regulator who administers that legislation.

Senator WATSON—What will be the impact on APRA fees for the remaining funds in 2006-07? Your numbers are down enormously. Will we find some funds having their fees increased threefold, fourfold or fivefold?

Dr Laker—While it is true that the numbers are down, the assets in the regulated superannuation sector are not down. We are still looking at the same very large pool of assets being managed by trustees, and the complexity of the funds that remain in the system is much higher in degree than previously. So we clearly will be working with industry on the question of what is the appropriate commitment of resources to the supervision of a sector which may

have fewer numbers, but larger funds in many cases and much more complex funds in many cases.

Senator WATSON—So you do not think there will be any impact because you will increase the fees to remaining funds on the basis of their assets?

Dr Laker—This has not been decided. There is a very formal process by which APRA levies are set, and they are set in consultation with industry. That process will take place within a few months where the minister will release a discussion paper in which we will look at how these various forces work their way out—the smaller number, the more complex structures, the larger the size of individual funds. So it would be premature for us to comment on how that dialogue with industry will go. It will be based on a considered paper, to which industry will be invited to respond, and the minister will then make a call.

It is important to distinguish between the levies set in terms of a percentage of assets and the levy in absolute terms, because some funds will be much larger as a result of licensing than they were before. Since levies are set in relation to assets, you would understand that on that factor alone the total levy would be higher but it would be over a much bigger fund. What we do need to discuss is what the percentage would be, and I think at this stage it is too early to guide you on that.

Senator WATSON—In the longer term, once all of this has settled down and we have larger and, on average, better run and better controlled funds, won't APRA's resources decrease by some amount? It is a greater task controlling and managing a thousand or so funds than 320 funds. So I would expect a significant drop in the regulator's costs associated with such a huge drop in funds under your control through licensing.

Dr Laker—In the end, it is not for APRA but really for government to determine the commitment of resources to the supervision of any of our regulated areas. So, at this stage, I cannot indicate to you where I think we would be pitching our commitment of resources to superannuation. That is a dialogue that APRA needs to have with government and with industry. But our mandate to promote and protect the savings of superannuation fund members is still a strong mandate. In a more complex world, it takes skilled resources to honour that mandate. On the other hand, we acknowledge that there are substantially fewer funds. But there is no simple mechanical formula that produces the outcome.

Senator WATSON—Of your long-term planning and budgeting of staff needs, you obviously will not need the same number of people because of significantly fewer licensed funds.

Dr Laker—We are at this very moment looking at the question of what our resource needs are for that sector and for other sectors as well going into the future.

Senator WATSON—I do believe you have a responsibility to act in a cost-effective manner in discharging your responsibilities. If your mandate has been reduced by the changes of laws and requirements, I would expect some sort of reduction in your resources; otherwise, you will just be manufacturing work for the existing staff, if you are not careful, and I do not think that is in anybody's interest.

Dr Laker—Rest assured, I have no interest in manufacturing work. We have a large amount of work on our plate as it is.

Senator WATSON—I am not denying you have at the moment. You require properly the resources you need. But, taking it into the future, I would expect that with such significantly reduced clientele that must be reflected in workload, staff employed and budget allocations.

Dr Laker—I take your point that we need to be cost effective. I agree with you on that. I would only caution that it is not a mechanical relationship between numbers of funds and the number of APRA staff. It is a more complex set of considerations. We are starting that debate. We have been looking very closely at that within APRA. I am well aware of the constraints we are under in terms of the burden we impose on industry, and we will be working with industry on that as well. So all your issues are alive with us.

Senator WATSON—The reduced numbers cannot be ignored.

Dr Laker—No, I agree.

Senator WATSON—Industry feedback indicates that there is some concern about the value of APRA returns. It is alleged that at present they seem to require a lot of work at fund level, but industry believe they have not seen much output from APRA in relation to your use of this sort of information. I would like your response. It is quite a complicated form. It requires a lot of time. Of your statistical output and what is fed back to industry, there is not a lot of information that seems to flow as a result of the compilation of all that information. That is why I am very concerned about creating work for the sake of creating work.

Dr Laker—A lot of industry consultation has gone into developing those returns for superannuation. As Senator Sherry has drawn out, notwithstanding all that consultation, it has not necessarily provided some of the data that he, for one, was looking for and that we wanted to produce. But these are not statistical returns imposed on industry out of nowhere. They are developed with industry, fully consulted about with industry. We do not hold data back for the sake of holding data back. I will take on board your comment about the usefulness, but we have been very keen to provide industry with much more robust numbers. The numbers coming out now may not satisfy everybody looking for stories in the data, but they are certainly a move comprehensive and robust set of data compared to what we have had in the past, and developed with industry consultation all the way through.

Senator WATSON—I now come to the situation of post APRA licensing. Do you plan to also rationalise the number of audit reports requested by superannuation funds? At present, public offer funds require 10 audit reports, which seems a very high number. Can there not be some rationalisation post licensing?

Mr Khoo—I am not of the view that there were reports of that number. Can we take that on notice, please?

Senator WATSON—Yes, I am happy for you to.

ACTING CHAIR—There being no further questions for APRA, you are excused. Thank you for your attendance, Dr Laker and your colleagues. That concludes the estimates of the Treasury portfolio.

[2.59 pm]

INDUSTRY, TOURISM AND RESOURCES PORTFOLIO

In Attendance

Senator Nick 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 Jason Bannikoff, Acting General Manager, Market Access Group, Tourism Division
Ms Tricia Berman, General Manager, Innovation Policy Branch, Innovation Division
Mr Chris Birch, General Manager, Research, Development and Commercialisation, AusIndustry
Mr Don Bruncker, General Manager, Industry Analysis Branch, Industry Policy Division
Mr Wayne Calder, General Manager, Business Development Group, Tourism Division
Ms Chris Butler, General Manager, Business Development, AusIndustry
Mr Peter Chesworth, General Manager, Strategy, 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 and 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
Ms Kerri Hartland, Head of Division, e-Business Division
Mr John Hartwell, Head of Division, Resources 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 and Industry Participation Branch, Manufacturing, Engineering and Construction Division
Mr Terry Lowndes, Head of Division, Industry Policy Division
Ms Melissa McLusky, Chief Financial Officer

Ms Tess McDonald, Acting General Manager, Offshore Resources Branch, Resources Division

Mr Ken Miley, General Manager, Trade and International Branch, Industry Policy Division

Mr Brendan Morling, General Manager, Industry Policy Branch, Industry Policy Division

Mr Tom Motherwell, General Manager, National Energy Market Branch, Energy and Environment Division

Ms Janet Murphy, Head of Division, Corporate Division

Mr Philip Noonan, Head of Division, Tourism Division

Mr Kevin O'Brien, General Manager and Senior Adviser, Industry Policy 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

Ms Margaret Sewell, General Manager, Safety, Taxation and Projects Branch, Resources 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

Mr Gary Wall, General Manager, Energy Futures Branch, Energy and Environment Division

Ms Sue Weston, Head of Division, Office of Small Business

Mr Bruce Wilson, General Manager, Environment Branch, Energy and Environment Division

Ms Judith Zielke, General Manager, Innovation and Collaboration Programs, AusIndustry

Tourism Australia

Mr John Hopwood, Director, Corporate Services

Mr Scott Morrison, Managing Director

ACTING CHAIR (Senator Chapman)—I welcome Mr Paterson, the secretary of the department.

Senator GEORGE CAMPBELL—Mr Paterson, it might be a novel experience, but I have a number of questions in relation to the PAES. So can we have at the table the people who have some knowledge of the break-up of the accounts?

Mr Paterson—The CFO will be on her way in at the moment. Is there any possibility that we can try and identify where you want to take us this afternoon, to free up those officers may not be required?

Senator GEORGE CAMPBELL—I do not know that I am going to be the only one here. I have a number of questions in relation to the portfolio additional estimates statements.

ACTING CHAIR—You have seen the agenda?

Mr Paterson—Yes, I have.

ACTING CHAIR—I have no information beyond that on what the senators might want to explore, but that gives some guide. Perhaps the senators can be more explicit when they arrive.

Senator GEORGE CAMPBELL—I would not be anticipating letting anyone go at this stage.

Mr Paterson—I was just hopeful.

ACTING CHAIR—We are ready to go, Senator Campbell.

Senator GEORGE CAMPBELL—On page 13 of the PAES there is an additional budget allocation of \$5.4 million for the P3 program. Does that relate to round 3 of the P3 or is that related to something else?

Mr Peel—That is just the movement of funds forward from rounds 1 and 2, to line up with companies' expenditure plans. We have given out a number of grants already to companies under the program. Their R&D activities are not proceeding in line with their original plans, so we have approval to move some funds out to the years where they expect to spend it. There is no change in the—

Senator GEORGE CAMPBELL—That is not additional estimates?

Mr Peel—It is not additional funds; it is moving existing funds to another year.

Senator GEORGE CAMPBELL—Page 9 of the statements refers to the movement of funds—rephasing. I presume that is part of rephasing in this program?

Mr Peel—That is correct.

Senator GEORGE CAMPBELL—That is not referred to. I will come back to it and ask you to go through in detail about the rephasing. It was confusing as to whether that was new money or part of what had been allocated. In terms of that program, the expected expenditure on the P3 program is not altered from what was originally announced in 2003-04?

Mr Peel—No, that is correct.

Senator GEORGE CAMPBELL—How much is the total for that full program?

Mr Peel—It is \$150 million.

Senator GEORGE CAMPBELL—How much of that has been spent so far?

Mr Peel—\$9.5 million.

Senator GEORGE CAMPBELL—What has been allocated?

Mr Peel—\$123.8 million.

Senator GEORGE CAMPBELL—That is over the period to 2009? Is that when the program is due to be complete?

Ms Zielke—Yes, the program is funded out to 2008-09, so 30 June 2009.

Senator GEORGE CAMPBELL—On the issue of pharmaceuticals, am I correct in understanding that the department is participating in an interdepartmental committee examining the PBS reforms?

Mr Peel—That is a question for Mr Pennifold.

Mr Pennifold—ITR is one of the departments that is participating in an IDC, looking at the Pharmaceutical Benefits Scheme.

Senator GEORGE CAMPBELL—What departments are participating in that? Who else is involved?

Mr Pennifold—There is our department, the health department, the Department of Finance and Administration, Treasury and Prime Minister and Cabinet.

Senator GEORGE CAMPBELL—Why is your department involved in an IDC that is presumably looking at the issue of health policy? Is it because of your experience and knowledge of the industry?

Mr Pennifold—Our inclusion is essentially for that reason. Also, Australia's national medicines policy has, as one of its platforms, the maintenance of a viable pharmaceuticals industry.

Senator GEORGE CAMPBELL—Are you familiar with an article which appeared in the *Australian Financial Review* of 11 January, under the by-line of Annabel Stafford, in which she reported that there were two options being considered by the committee? According to her report, one is by the department of health recommending what is expected to take \$830 million out of the PBS each year, and another option favoured by industry which would take \$370 million out of the PBS each year. Is her story correct? It seems to quote from a number of government sources and appears to have had ready access to government documents.

Mr Pennifold—I do recall a number of articles and I do recall that one on this topic, but I am not really in a position to discuss the subject matter of what is going on in the IDC.

Senator GEORGE CAMPBELL—Is she correct in stating that those are two of the options at least that are under consideration? There may be others; I am not suggesting there are not others.

Mr Pennifold—There are a range of options that were looked at by the IDC, a range of ideas, but again to talk about what is in an article would go to the question of what is under discussion within the IDC. That is a matter where we are working on behalf of the government.

Senator GEORGE CAMPBELL—I understand the timeworn argument about advice to ministers. I presume you are not at the point of advising ministers from that committee yet on what you think is an appropriate approach in respect of the PBS. It is a public report by this journalist. Are those two items at least on the table? Have they been considered? I am not asking if you have adopted them or whether you are recommending them. I am simply asking: are they part of the consideration?

Mr Pennifold—I am aware the article purports to put forward two options which are under consideration but, again, I am not in a position to confirm if they are amongst the options that are being looked at by this committee.

Senator GEORGE CAMPBELL—Are you in a position to deny that they are?

Mr Pennifold—I am not in a position to say either way.

Senator GEORGE CAMPBELL—The reason I ask the question is that there is an additional report in the *Australian Financial Review* of 3 February which goes to the point of saying that these proposed reforms would decimate the sector. I am not too sure whether that is both reforms or whether it is one or the other. Given that these reports have appeared in the *Financial Review*, has the department done any analysis of the likely impact of an approach such as that on the pharmaceutical sector?

Mr Pennifold—Within the IDC and in the advice that we prepare for the minister, we have been analysing a range of ideas. Part of the work that we have been doing has been to look at the potential impact on different parts of industry.

Senator GEORGE CAMPBELL—Has the department done any modelling on the likely impact of a range of proposals on the industry?

Mr Pennifold—The department has not done any econometric modelling, nor does it propose to.

Senator GEORGE CAMPBELL—Has the IDC had any modelling done or commissioned any modelling in respect of various options?

Mr Pennifold—The IDC has been preparing advice to ministers which would include costing information.

Senator GEORGE CAMPBELL—I did not catch the last bit of your answer.

Mr Pennifold—The IDC has been preparing advice for ministers on different ideas and that does include information on the costing of those different ideas.

Senator GEORGE CAMPBELL—Does that go to the issue of precise modelling being conducted on those ideas?

Mr Pennifold—The modelling that has been done is on the financial impacts of different ideas.

Senator GEORGE CAMPBELL—That is what I am asking you about. Has that modelling been done internally or externally?

Mr Pennifold—It is being done internal to government.

Senator GEORGE CAMPBELL—By Treasury?

Mr Pennifold—It is done through the normal process of departments, the department of finance and others, looking at ideas and costing them.

Senator GEORGE CAMPBELL—Have no external consultants been engaged to conduct this modelling?

Mr Pennifold—To my knowledge, the government has not engaged external consultants, no.

Senator GEORGE CAMPBELL—The government has not engaged any?

Mr Pennifold—To my knowledge.

Senator GEORGE CAMPBELL—That includes the IDC?

Mr Pennifold—Correct.

Senator GEORGE CAMPBELL—These are purely internal assessments that are being made of the likely impacts?

Mr Pennifold—If by ‘internal’ you mean they are being made by government, yes.

Senator GEORGE CAMPBELL—The Public Service?

Mr Pennifold—Yes.

Senator GEORGE CAMPBELL—Have there been any consultations with the industry about any of the options that are under consideration? I am not asking specifically for the precise options, but has there been consultation with the generics industry, for example, about what particular impacts there might be on their industry if various changes were to occur?

Mr Pennifold—Through the Pharmaceutical Industry Working Group, Ministers Macfarlane and Abbott set up a group of officials to talk with industry representatives, and in the conduct of those consultations industry put forward a number of ideas for government to consider. The government has not formally consulted with the industry on any options that are the subject of the IDC.

Senator GEORGE CAMPBELL—The industry has no knowledge of what precise options are being considered by the IDC?

Mr Pennifold—We have not passed any documents to the industry or in discussions gone into precise details about individual options that may or may not be part of the IDC considerations.

Senator GEORGE CAMPBELL—As far as you are concerned, at this point in time, the industry’s knowledge of what is occurring through the IDC process would be pure speculation?

Mr Pennifold—It would be based on information they have gleaned from whatever sources they have available to them.

Senator GEORGE CAMPBELL—But it has not been the subject of direct consultation between the IDC or any of the departments involved in the IDC with the industry or sections of the industry?

Mr Pennifold—Not on the specifics of any option that may or may not be considered by the IDC.

Senator GEORGE CAMPBELL—At what stage would you expect that the industry would be consulted about precise options?

Mr Pennifold—That is a matter for the government. I cannot comment on that.

Senator GEORGE CAMPBELL—Have there been any precise options put before the government as yet by the IDC?

Mr Pennifold—At this stage, no.

Senator GEORGE CAMPBELL—So it is still very much a work in progress?

Mr Pennifold—Yes.

Senator GEORGE CAMPBELL—When does the IDC expect to complete its consideration of the various options?

Mr Pennifold—The IDC is preparing advice for the government now.

Senator GEORGE CAMPBELL—When is it expected that that advice will be placed before the government?

Mr Pennifold—I do not have an exact date on that. It should be shortly.

Senator GEORGE CAMPBELL—Is it the expectation that that will form part of the budget considerations?

Mr Paterson—We cannot comment on that.

Senator GEORGE CAMPBELL—Is it being prepared in the expectation that it will form part of the budget considerations?

Mr Paterson—I cannot comment on that.

Senator GEORGE CAMPBELL—Why can't you comment on that?

Mr Paterson—Because we are not in a position to comment on advice that may be provided to government and the circumstances in which they may consider it.

Senator GEORGE CAMPBELL—I am not asking you about the advice.

Mr Paterson—You are asking whether it would be considered as part of the budget and I am saying we cannot answer that.

Senator GEORGE CAMPBELL—I am curious as to why you say that, given that a minister, the head of another department, on another day in this building was quite happy to tell us that a report by consultants would in fact form part of the budget considerations.

Mr Paterson—That is a matter for ministers. We are officers, and we are not in a position to comment on it.

Senator GEORGE CAMPBELL—The officer of that department was quite happy with that information becoming known.

Senator Minchin—Mr Paterson is absolutely right; whatever happens in another committee is a matter for another committee. Mr Paterson is absolutely right to state that this is a matter that he and officers, and indeed myself, would not comment on because it goes to the question of considerations the government may or may not have in relation to the preparation of the budget. That is never something either officers or I would speculate upon.

Senator GEORGE CAMPBELL—I do not want to waste time with the argument over whether or not that is a proper exercise of your executive power. I deliberately stayed away from asking about the contents of it. I am purely asking whether this report is being done in the context of preparing something for the budget—or whether the industry can heave a sigh of relief—because, if it is, there is very little time available for consultation with the industry, which would seem to be a strange position to take if some of the mooted changes are as significant as what has been reported in the *Financial Review*.

Senator Minchin—Your line of questioning does go directly to the issue of policy advice to government, and that is not an appropriate matter, and never has been, for estimates committees.

Senator GEORGE CAMPBELL—I have not asked what the policy advice is. I have asked whether or not it will inform consideration.

Senator Minchin—You are asking whether there is policy advice going to government on this matter, and it is not appropriate for that to be confirmed or denied.

Senator GEORGE CAMPBELL—A lot of what we ask questions about at estimates is policy advice to government.

Senator Minchin—That is quite specifically ruled out—

Senator GEORGE CAMPBELL—Are you saying we cannot ask questions about anything?

Senator Minchin—That is quite specifically ruled out in the standing orders on consideration by estimates committees.

Senator GEORGE CAMPBELL—I have not asked about the precise policy advice.

Senator Minchin—You are asking officers to speculate on the nature of advice that may or may not be going to the government in a particular policy area. Mr Paterson is quite correct in not adding to that speculation or confirming or denying it.

Senator GEORGE CAMPBELL—I have not asked what the precise advice is. I am asking whether or not it has been prepared in the context of formal advice to the government in relation to the budget. I have steered well clear of what the detail of the advice is.

Senator Minchin—As far as I am concerned, that comes within the ambit of the prohibition on questions going to policy advice to government.

Senator GEORGE CAMPBELL—I do not want to waste any more committee time pursuing that argument if I am not going to get an answer. That just demonstrates the continued arrogance that this government shows in respect of being answerable to the parliament, never mind being answerable to the Australian community. Can I ask, Mr Pennifold: in the examination of the various proposals, has consideration been given to what impact those proposals might have in respect of pharmaceutical exports, given that pharmaceuticals are now apparently our second-largest export?

Mr Pennifold—One of the many factors considered by the IDC on different ideas was about the impact on industry, and it relates back to my answer earlier that one of the key arms of the national medicines policy does go to that industry question. Exports were part of that.

Senator GEORGE CAMPBELL—Have exports formed a specific element?

Mr Pennifold—Not a specific element.

Senator GEORGE CAMPBELL—On page 13, again, the structural adjustment fund for South Australia shows an additional appropriation—I presume it is an additional appropriation—of \$2.3 million. I note from page 22 of the statements that it is anticipated that

these funds will be fully allocated in 2005-06. Is that still the case? Can you tell us what the increased appropriation is for?

Ms McLusky—The \$2.3 million identified there is not an additional appropriation; it is a movement of funds from the prior financial year into the current financial year.

Senator GEORGE CAMPBELL—Can we just go back to page 9? There is an aggregate movement of funds, rephrasing of \$47.997 million.

Ms McLusky—Yes.

Senator GEORGE CAMPBELL—Can you spell out for us in detail what that relates to?

Ms McLusky—That is made up of the movements identified in the first column on page 13, which relate to the Australian Tourism Development Program, the business ready program, the Building Entrepreneurship in Small Business Program and the home based business seminars. It is the aggregate of those movements identified there for bill No. 1. In addition, it is the movement of funds for outcome 2 of \$291,000.

Senator GEORGE CAMPBELL—Sorry, I did not understand the last bit of what you said.

Ms McLusky—It is the aggregate of the movements identified on page 13 in the column for 2005-06 for bill No. 1. It is a movement of funds between years. It goes down several rows to 'Other', plus the movement of funds for outcome 2, which is several rows down, of \$291,000.

Senator GEORGE CAMPBELL—But you did not mention the pharmaceuticals program, P3, or the South Australian—

Ms McLusky—The \$47 million we were referring to is just the movements into the 2005-06 financial year. It does not include the aggregate of the movements into the 2006-07, 2007-08 or 2008-09 financial years.

Senator GEORGE CAMPBELL—Where does the \$5.4 million of the P3 sit?

Ms McLusky—That is a movement of funds, but it is not included in that total of the \$47 million. On page 9, the information we have disclosed there is the movement in the 2005-06 financial year, not in the forward financial years.

Senator GEORGE CAMPBELL—In fact, the rephrasing could be more than the \$47.9 million, or is it the \$47.9 million plus the \$5.4 million?

Ms McLusky—It is.

Senator GEORGE CAMPBELL—It is?

Ms McLusky—It is the \$47 million plus the \$5.4 million plus the amounts identified for the 2006-07 financial year.

Senator GEORGE CAMPBELL—It is the amounts in the 2005-06 financial year, plus the amounts identified for 2006-07, but excluding anything in 2007-08?

Ms McLusky—No, it includes 2007-08. It is the \$47.9 million, which is the 2005-06 financial year, plus—in addition—the amounts that are disclosed for the forward financial years.

Senator GEORGE CAMPBELL—Where are they mentioned in the PAES?

Ms McLusky—They are not mentioned in the overview on page 9. They are not disclosed there. The information we are talking about there is just the movement from the 2004-05 to the 2005-06 financial year.

Senator GEORGE CAMPBELL—Yes. What is the total amount of funds being rephased?

Ms McLusky—I will get that number for you. I will have that in a minute. It is \$47.9 million plus the amounts disclosed in those forward financial years.

Senator GEORGE CAMPBELL—Maybe you can give us a total?

Ms McLusky—Certainly.

Senator GEORGE CAMPBELL—That amount of money at 2.3 is rephrasing—is that right?

Ms McLusky—Yes.

Senator GEORGE CAMPBELL—And all of that money is anticipated to be expended in this financial year?

Ms McLusky—That is correct.

Senator GEORGE CAMPBELL—On page 14, table 1.3(B) details a transfer from outcome 2 to outcome 1 of \$2.2 million in 2005-06, and the incremental parameter adjustments, whatever they are, for both 2007-08 and 2008-09. Would you like to explain to us what those incremental parameter adjustments are?

Ms McLusky—They are the changes in the index that we apply to our forward-year appropriations, the estimate of our forward years. That is the impact of the movement in the index for those financial years.

Senator GEORGE CAMPBELL—Explain this index to me.

Ms McLusky—We index our forward estimates at the additional estimates update, and that is the impact of the movement in the index.

Senator GEORGE CAMPBELL—How do you index it? What do you index it by—CPI?

Ms McLusky—The index is determined annually by the Department of Finance.

Senator GEORGE CAMPBELL—So they give you a figure—

Ms McLusky—That is correct.

Senator GEORGE CAMPBELL—and that is what you can index it by. That simply represents the adjusted figure?

Ms McLusky—The impact of the movement. There is no impact in the 2006-07; there was no movement in the index, and you do not index your current year appropriations.

Senator GEORGE CAMPBELL—Can you explain to me what this \$2.2 million transfer between outcomes is?

Ms McLusky—That is the impact of a change in the price-of-outcome splits for the department that we apply.

Senator GEORGE CAMPBELL—That means absolutely nothing to me.

Ms McLusky—It reflects a movement in the estimates of effort that we have made between outcome 1 and outcome 2. It is not a change in the total appropriations of the department. It is just simply a change in our outcome pricings. If I could refer you to page 21, there is an explanation there about our output cost attribution. We allocate the output costs across each division and then we also have an allocation for overhead, which is based on an ASL.

Senator GEORGE CAMPBELL—Does the \$2.2 million relate to the staffing issue; is that what you are telling me?

Mr Paterson—It may be helpful if you go to page 22 of the PAES document, which describes outcome 1 and outcome 2. Outcome 1 is ‘a stronger, sustainable and internationally competitive Australian industry, comprising the manufacturing, resources and services sectors’ and outcome 2 is ‘enhanced economic and social benefits through a strengthening national system of innovation’. The change that is identified on page 14, the \$2.172 million that you are referring to, is an internal transfer of resources from outcome 2 to outcome 1. It is a reduction of \$2.172 million in outcome 2 and an addition of \$2.172 million in outcome 1. It is an internal transfer of funds. It is not about new money but, because we report on the amount that is allocated to each outcome, if there is any variation between those allocations then we report that.

Senator GEORGE CAMPBELL—So that is not a specific reduction in an allocation to a particular program in outcome 2 which has been allocated

Ms McLusky—No.

Mr Mackey—At the start of the financial year, we split up the money between the two outcomes but then we revise that split for the purposes of PAES.

Ms McLusky—This is also departmental money. It is purely departmental, so that is the money that the department uses in running costs; it is not money that relates to the delivery of the program per se.

Senator GEORGE CAMPBELL—Yes, I know. You just keep evening up the two buckets of water—is that a simple explanation of it?

Mr Paterson—If you want to use the term ‘buckets’, there are two components, two compartments, of it. One deals with outcome 1; one deals with outcome 2. This is transferring some liquid from one compartment to the other.

Senator GEORGE CAMPBELL—That could be generated by what—by a transfer of staff from one area to another as a result of increased workloads?

Ms McLusky—I would define it more as a change in where the work activity is occurring and whether it is on activities under outcome 1 or activities under outcome 2.

Senator GEORGE CAMPBELL—If you get an increased workload in the pharmaceuticals area, for example—

Ms McLusky—That is correct.

Senator GEORGE CAMPBELL—you may have to increase staff quotas in one.

Ms McLusky—Could I just come back to your question from before, regarding the total of the movement of funds?

Senator GEORGE CAMPBELL—Yes.

Ms McLusky—In total, it is \$79.8 million.

Senator GEORGE CAMPBELL—That is an additional \$30 million. Can we just go back to that figure on page 13? Where is that additional \$30 million identified?

Ms McLusky—I am referring to the second column, the 2006-07 financial year. It is the aggregate of the items for Building Entrepreneurship in Small Business Program, biofuels, the regulation reduction incentive, Hawker de Havilland and the P3 amount of moneys identified in 2007-08. In addition, it is the \$1.6 million for outcome 2 for the commercial—

Senator GEORGE CAMPBELL—What was that last figure you said, the one after Hawker de Havilland?

Ms McLusky—The \$5.4 million for the P3 program in 2007-08?

Senator GEORGE CAMPBELL—Yes.

Ms McLusky—In addition, there is the \$1.658 million, which is identified in outcome 2 for the Commercial Ready Program.

Mr Mackey—It is further down the page.

Senator GEORGE CAMPBELL—Yes.

Ms McLusky—So it is the \$47 million for 2005-06 plus those movements, which gives you in total \$79.8 million.

Senator GEORGE CAMPBELL—If I were to add up all those figures, that would come to \$79.8 million.

Ms McLusky—That is correct.

CHAIR—Senator Campbell, I was proposing to have a brief afternoon break now. How much longer do you think you will be?

Senator GEORGE CAMPBELL—Another hour, 1½ hours or two hours; I do not know. It depends on the answers.

CHAIR—After you, we have Senator O'Brien and Tourism Australia.

Proceedings suspended from 3.34 pm to 3.52 pm

Senator GEORGE CAMPBELL—Going back to those questions on the rephasing, Ms McLusky, can you explain to us why the rephasing of the Hismelt program was necessary?

Mr Hartwell—The rephasing of the Hismelt program was as a result of delays in getting that project up and running. It meant that some of the payments that were to be made in one fiscal year had to be moved to the next. As you would be aware, there was a payment which was made in the first tranche of \$50 million in November 2005.

Senator GEORGE CAMPBELL—What was the total commitment to the HIs melt program?

Mr Hartwell—The total commitment is \$125 million, and that is in a number of tranches. Certain milestones have to be met in that context.

Senator GEORGE CAMPBELL—How much of that has been paid?

Mr Hartwell—\$50 million at this point in time.

Senator GEORGE CAMPBELL—Where is the other \$25 million accountable?

Mr Hartwell—\$75 million.

Senator GEORGE CAMPBELL—I presume this is \$50 million of the \$75 million, is it?

Mr Hartwell—No, it is \$50 million of \$125 million in total.

Senator GEORGE CAMPBELL—The commitment is \$125 million. You say there has been \$50 million paid, which leaves \$75 million. There was \$50 million to be paid in 2005; is that the same \$50 million you were referring to?

Mr Paterson—The \$50 million on page 13 is a movement of funds. It is a movement of funds from last financial year to this financial year because the milestone that was required to be met for payment of that \$50 million was not met last financial year. It has been met this financial year. The other \$75 million is already in our appropriation.

Ms McLusky—Yes, that is right. There is \$25 million in the 2006-07 financial year.

Senator GEORGE CAMPBELL—So is the \$50 million that is here the \$50 million that has been paid?

Mr Ryan—Correct.

Senator GEORGE CAMPBELL—Where is the other—

Mr Paterson—For the purposes of this exercise, this was a transfer of funds from last financial year to this financial year.

Senator GEORGE CAMPBELL—Yes.

Mr Paterson—Since that transfer of funds has been given effect to, a payment has been made.

Senator GEORGE CAMPBELL—You have made that \$50 million payment to HIs melt?

Mr Paterson—Yes.

Senator GEORGE CAMPBELL—Where is the other \$75 million?

Ms McLusky—There is \$50 million in this financial year and \$25 million in next financial year. This table just details the movements; it does not detail the amount available.

Senator GEORGE CAMPBELL—Where do I get the figure of the amount available? Do I have to go back to the original?

Ms McLusky—You would have to go to the PBS.

Senator GEORGE CAMPBELL—There is still \$75 million outstanding in respect to—

Mr Hartwell—There is still \$75 million outstanding, which depends on certain milestones being met in relation to the Hismelt project.

Senator GEORGE CAMPBELL—Can you explain to me the Hawker de Havilland one?

Mr Lawson—For Hawker de Havilland, again this is a movement from the previous financial year to 2005-06 and 2006-07. The reason for the movement was that the Hawker de Havilland project with the 787 program itself slipped to the right and their contract with Boeing moved to the right from the original plans of what was going to happen. In the final negotiations over reaching agreement on the deed, these are our expectations of when the total payments will be made.

Senator GEORGE CAMPBELL—Could you remind me what the Hawker de Havilland funding is for? What is the total package of funding?

Mr Lawson—The total package of funding is this \$12.5 million. It is a strategic investment incentive under Invest Australia to contribute to Hawker de Havilland's non-recurring expenses for their investment to become a tier 1 supplier for the Boeing 787 program for the moveable trailing edges of the aircraft.

Senator GEORGE CAMPBELL—Does this mean that they get paid \$10 million this year?

Mr Lawson—Yes, if they meet the milestones.

Senator GEORGE CAMPBELL—Presumably, if they do not meet the milestones by 30 June, that \$10 million will slip into the next financial year.

Mr Lawson—That is a matter for government to decide. All of these things are government decisions on when to rephase. It is not an automatic process.

Senator GEORGE CAMPBELL—Can you explain to me then the regulation reduction incentive fund? Is it a reduction, or has that money just been shifted straight across into the next financial year?

Mr Peel—The original allocation for that program had most of the money in 2005-06, but now that we are getting to the point where we are likely to be paying grants, the reality is that the money should be more evenly spread across the years. We have moved that \$13 million out into 2006-07, which gives us about \$20 million all up in each year to pay out in grants under the program, so it just smooths out the payment arrangements.

Senator GEORGE CAMPBELL—If I go to the original PBS, there should be approximately a \$7 million allocation for 2006-07 under that heading?

Mr Peel—Yes, something like that.

Senator GEORGE CAMPBELL—And the rephasing on the Commercial Ready Program of \$1.6 million?

Mr Peel—Yes, that was simply an underspend in 2004-05 which we are moving out to 2007-08.

Senator GEORGE CAMPBELL—What components of the Commercial Ready Program does that relate to? Does that essentially relate to Start funding?

Mr Peel—It is all of the components which, as we have discussed before, are the former R&D Start program, the biotechnology—

Senator GEORGE CAMPBELL—Can you give us a break-up of the component parts?

Mr Peel—For 2005-06?

Senator GEORGE CAMPBELL—Of the \$1.6 million.

Ms Zielke—The \$1.6 million is from the overall Commercial Ready budget. We do not actually apportion funds across the program in that way. So it is \$1.6 million from the whole Commercial Ready budget.

Senator GEORGE CAMPBELL—How do you make the judgment that it is \$1.658 million, if you are not aware of what portions?

Mr Peel—It is the amount of money that we did not spend from the total appropriation in the year before. We just had \$1.6 million left over that we did not spend, so we have moved it to the future.

Senator GEORGE CAMPBELL—You do not have a break-up?

Ms Zielke—The various elements of the program are now managed as the one budget so, no, they are not broken down individually in that way.

Senator GEORGE CAMPBELL—Does that mean that they will not be broken down in the PBS?

Mr Peel—The PBS will just show the total funding for the Commercial Ready Program.

Senator GEORGE CAMPBELL—So you will not be prepared for questions about what the break-up is?

Mr Peel—I think at a previous estimates we did give either you or Senator Carr a breakdown of the starting position for Commercial Ready, including what funds came from R&D Start and so on. We could certainly give that to you again if you would like it, but we do not keep a running track of that.

Senator GEORGE CAMPBELL—But, if we keep asking you for a running track, you might start keeping one.

Mr Peel—It is possible.

Senator GEORGE CAMPBELL—I move on to table 1.7 on page 18. It talks about staff outcomes. Page 25 says:

Employees Expense – increased by \$11.404m (up 7.6%) from \$149.483m at Budget to \$160.887m. This reflects an increase in the average staffing level estimated at Budget and the impact of an actuarial assessment on employee leave provisions.

What has been the average increase in the staff?

Ms McLusky—Since the budget, we now have a revised estimate for 2005-06 of 1,817, so there is a movement of 67. It is on page 18, table 1.7.

Senator GEORGE CAMPBELL—Which figure are you referring to?

Ms McLusky—I am referring to the 2005-06 revised average staffing level.

Senator GEORGE CAMPBELL—That is now—

Ms McLusky—It is 1,817. It is 1,483 for outcome 1, and 334 for outcome 2.

Senator GEORGE CAMPBELL—Yes, that is right. What is that in numbers of staff? What is the increased number of staff?

Ms McLusky—The movement is 67.

Senator GEORGE CAMPBELL—How much of the provision relates to the employee leave provisions?

Ms McLusky—Sorry, which provision balance are you referring to?

Senator GEORGE CAMPBELL—It states:

This reflects an increase in the average staffing level estimated at Budget—

You say that that has increased by 67—

and the impact of an actuarial assessment on employee leave provisions.

How much of the 1,817 is attributed to the actuarial assessment on employee leave provisions?

Ms McLusky—The actuarial assessment for employee leave provisions does not impact at all on the ASL numbers. The actuarial assessment was an assessment on leave provisions, so that is long service leave and recreation leave provisions.

Senator GEORGE CAMPBELL—Sorry, Ms McLusky, we might be at cross-purposes here. Can I take you to page 25. It states:

Employee Provisions – increased by \$4.995m (up 10.6%) from \$47.056m at Budget to \$52.051m. This is due to the increase in the estimated staffing level from Budget and the associated additional employee expenses, the effect of year end actuals, and the impact of an actuarial assessment.

Ms McLusky—Sorry, I thought your previous question was different. The movement in the employee expenses is in part due to increases in ASL and in part due to the impact of the actuarial assessment. The impact of the actuarial assessment is approximately \$5 million per annum and the balance will be the movement in ASL numbers.

Senator GEORGE CAMPBELL—So it is \$5 million per annum?

Ms McLusky—Approximately.

Senator GEORGE CAMPBELL—Why do you say ‘per annum’?

Ms McLusky—Per financial year, sorry.

Senator GEORGE CAMPBELL—So the actuarial assessment relates purely to the additional staff?

Ms McLusky—No. The actuarial assessment is an assessment that is made of employee leave provisions to enable the department to provide sufficient provisions for when we need to pay those provisions out.

Senator GEORGE CAMPBELL—That bit I understand.

Mr Paterson—It is the bit on page 25, in the last paragraph—employee provisions increased by \$4.995 million. That is the approximately \$5 million that Ms McLusky is talking about.

Senator GEORGE CAMPBELL—To meet your leave?

Mr Paterson—That is to make a provision for future payments of annual leave and long service leave obligations.

Senator GEORGE CAMPBELL—That is \$5 million?

Mr Paterson—That was the increase in the provision of \$5 million, this year.

Senator GEORGE CAMPBELL—But the figure on page 18 of 1.8, isn't that \$1.8 million?

Mr Paterson—No, that is ASL. That is 1,817 ASL.

Senator GEORGE CAMPBELL—That is the average staffing level?

Ms McLusky—That is correct.

Senator GEORGE CAMPBELL—How many real employees does that reflect?

Mr Paterson—These are averages.

Senator GEORGE CAMPBELL—But it has to reflect real employees.

Mr Paterson—It does.

Senator GEORGE CAMPBELL—So how many real employees are reflected by 1,817?

Ms Murphy—The real numbers for ASL are reported in the annual report each year, and they are based on the payment figures from our pay system. These figures in the PAES and in the PBS represent estimates. What has happened here is that the base estimate has changed from the PBS, which was produced in May, to this document, which is produced in February. What has happened since May and February is that we have a full-year 2004-05 actual figure on which to base more accurate assessments for 2005-06.

Senator GEORGE CAMPBELL—But the '67' does not necessarily mean 67 new employees?

Ms Murphy—No, it does not.

Senator GEORGE CAMPBELL—What does that reflect?

Ms Murphy—It reflects a combination of a more accurate base starting figure for 2005-06. It also reflects an additional 40 new graduates coming into the department as of this calendar year.

Senator GEORGE CAMPBELL—Forty new graduates, full time?

Ms Murphy—That is right.

Senator GEORGE CAMPBELL—What is the other 27? Fifty-four half time?

Ms Murphy—That is essentially the correction in the base figure.

Mr Paterson—If we went back to our annual report last year, which contains our latest published actual employee numbers, which are to be found on page 75 of the annual report,

the total actual at June 2005 is 1,912. These are average numbers on a formula basis for estimating purposes. Each year we publish the actual numbers as at 30 June.

Senator GEORGE CAMPBELL—As I recall from the last discussion we had, part of your department was transferred over—I forget which section it was—and there were some employees who went with them.

Mr Paterson—Last time, as I recall the conversation, there was the transfer of the Tourism Forecasting Council and the Bureau of Tourism Research from the department to Tourism Australia.

Senator GEORGE CAMPBELL—That is right. And some went—

Mr Paterson—There was a transfer of funds and a transfer of individuals.

Senator GEORGE CAMPBELL—What I am trying to get at is: how do we get the figure 1,817? How do we get the average? Do you divide your payroll by \$20,000 and add two? How is that done?

Ms McLusky—It is a calculation. It is simply the average ASL per pay over a particular period.

Senator GEORGE CAMPBELL—That does not explain anything to me. How do you actually get your average staffing level, or ASL?

Ms Murphy—It is an estimate. The 1,817 is a very best guess estimate as of February of what our full-year ASL will look like by the end of 2005-06. To a certain extent, it does involve some assumptions being made about staff coming on and staff coming off.

Senator GEORGE CAMPBELL—This is not a reflection of the actual number of employees in the department?

Ms Murphy—No, it is as close to the best guess estimate that we can give.

Senator GEORGE CAMPBELL—What is the actual number of employees in the department?

Mr Paterson—That varies at any point in time. It depends on how many vacancies we have and how quickly we are able to recruit to fill those vacancies. The average is the best guess that we have at the present time and we then publish the actuals as at 30 June.

Senator GEORGE CAMPBELL—Do you know how many people are currently employed in your department and how many vacancies currently exist as of today?

Mr Paterson—No.

Senator GEORGE CAMPBELL—You do not? As of last Friday?

Mr Paterson—No.

Senator GEORGE CAMPBELL—As of 31 December?

Mr Paterson—I can tell you that, as of 30 June, which is our latest published figure, it is 1,912.

Senator GEORGE CAMPBELL—So 1,912 was the number of employees in the department at 30 June last year?

Mr Paterson—Correct.

Senator GEORGE CAMPBELL—You do not know how many you currently employ?

Mr Paterson—We can find it out from the payroll system. But do I have that number off the top of my head? No.

Senator GEORGE CAMPBELL—If you had said that to me 10 minutes ago, we could have moved on by now.

Mr Mackey—If the number you are looking for is the number of people we paid last fortnight, then of course we can tell you that.

Senator GEORGE CAMPBELL—That will be close enough for my purposes.

Mr Paterson—We will get you that answer.

Senator GEORGE CAMPBELL—I ask you to take that on notice and provide those figures. In terms of the new employees that you have taken on, you say you have taken on 40 graduates?

Ms Murphy—That is correct.

Senator GEORGE CAMPBELL—What areas are these 40 graduates employed in?

Mr Paterson—Each year we run a graduate program. It is a 10-month program of three rotations through the department, and then successful graduates of that often apply for permanent positions within the department. Our past history suggests that the majority of those graduates are successful in gaining ongoing employment with the department. We increased the graduates from in the ballpark of 30 in the cohort last year to 40 in the cohort this year, and they in fact started this week.

Senator GEORGE CAMPBELL—They are given employment for 10 months?

Mr Paterson—The program is a 10-month program, three rotations each. They work in different areas of the department, plus they pursue a major project activity. They all end up with a certificate IV in government, as I recall, and then, as I said, invariably apply for permanent ongoing employment with the department, and the majority of them are successful in those applications.

Senator GEORGE CAMPBELL—Where are these graduates drawn from?

Mr Paterson—We recruit from most major universities around Australia. We attract people from all states and territories. In the people who started this week, there was a spread of people based in South Australia, Western Australia, Tasmania, Victoria and New South Wales, with some from the ACT and some from Queensland.

Senator GEORGE CAMPBELL—Are they are employed all around the country?

Mr Paterson—They are recruited from around the country. They are predominantly employed in Canberra for the period of that graduate recruitment and then, depending on their securing ongoing employment, their location is determined by the location of that ongoing employment.

Senator GEORGE CAMPBELL—Can you also take on notice how many employees you have engaged in the department since 30 June last year, in addition to filling any vacancies

that occurred? We know you had 1,912 staff at 30 June. You did not retrench anybody since then other than the transfers, I presume, or we did not hear of it. Have you taken on any additional employees outside of the graduates? I am not talking about that; I understand that program.

Mr Paterson—Comparing 30 June to what point in time—last payday?

Senator GEORGE CAMPBELL—To the latest point that you can give us.

Mr Paterson—We will be giving you on notice the total number on the payroll as at the last payday—

Senator GEORGE CAMPBELL—That is fine.

Mr Paterson—so we will endeavour to make sure that the calculation we give you in terms of—

Senator GEORGE CAMPBELL—Up to that point?

Mr Paterson—You want new employees, not filling existing vacancies?

Senator GEORGE CAMPBELL—No, just people who have been new employees over and above the vacancies. Page 24 of the PAES refers to an operating loss in the department of \$0.88 million in 2005-06. It says:

Of this amount, \$0.500m relates to the Australian Building Codes Board ... seeking to draw down its cash reserves from its Special Account to fund its activities this year.

On page 25, it goes on to state:

Revenue from independent sources – increased by \$0.619m (up 1.9%) ... This is mainly due to an increase in estimated revenue for the Australian Building Codes Board from the sale of the Australian Building Codes of Australia publication ...

Is that a sale of the publication per se or increased sales of the publication?

Mr Donaldson—Could I have that question again, please?

Senator GEORGE CAMPBELL—On page 24 of the PAES there is reference to the department budgeting for an operating loss of \$0.88 million, of which \$0.5 million relates to the Australian Building Codes Board seeking to draw down its cash reserves from its special account to fund its activities this year. It then goes on, on page 25, to refer to revenue from independent sources and it talks about the Australian Building Codes Board receiving an increase in revenue from the sale of the Australian Building Codes of Australia publication. I asked: is that related to the sale of the publication per se or to increase sales of the publication?

Mr Donaldson—We did not put the price up. We are selling more building codes. That is referring to the Building Code of Australia, the actual technical document that is used by the building industry to design and construct buildings. It is a major source of revenue for our activities. The ABCB is funded from a variety of sources—from government but also from the sale of the building code. Sales are estimated to be a little higher than we originally anticipated.

Mr Paterson—It is not the sale of an asset, if that is where your question is coming from, Senator. It is the sale of the building code. That is not it, but that is the sort of thing we are doing, and it is sales of that document.

Senator GEORGE CAMPBELL—I had assumed that was the case. I just wanted to clarify that in fact that was the case. Why is it dealt with in the way in which it is expressed in the PAES, as an operating loss?

Ms McLusky—The Australian Building Codes Board is a special account. Effectively, the revenue it generates from its activities is quarantined from the department's activities. The operating loss of \$500,000 this year is the Building Codes Board drawing down on previous cash reserves it has to fund some of its activities for this financial year.

Senator GEORGE CAMPBELL—How is the increased revenue that it receives, when it comes into the department, treated? Does that go into Treasury?

Ms McLusky—It is treated as a receipt into the special account.

Senator GEORGE CAMPBELL—They drew down \$0.5 million and earned \$0.61 million?

Ms McLusky—The expenditure will be \$0.5 million more than the receipts they are generating this year, so they are using their cash reserves to fund that activity.

Senator GEORGE CAMPBELL—So that \$0.5 million—

Ms McLusky—It is a timing difference. In one year they might have had a surplus; this year we are utilising that surplus to fund the activities of the building code.

Senator GEORGE CAMPBELL—So there is no crisis in the Australian Building Codes Board; they are currently a financial operation?

Ms McLusky—It does not impact on the longer term equity position of the special account.

Senator GEORGE CAMPBELL—How much do they have in their special account?

Ms McLusky—If I could refer you to page 20, table 1.11, the estimates of the special account flows. The first special account detailed there is the Australian Building Codes Board. You can see that the bold row is the estimates of special account flows for this current financial year. We have an opening balance of \$325,000, we have receipts coming in of \$5.6 million and we have payments of \$5.9 million, leaving a closing balance of \$174,000. These flows are purely the cash transactions. The \$500,000 loss is a result of accrual transactions as well.

Senator GEORGE CAMPBELL—The \$325 million was in the special account?

Ms McLusky—\$325,000 was the closing balance.

Senator GEORGE CAMPBELL—Thousand, sorry. Do those figures include the \$500,000?

Ms McLusky—No, our Building Codes Board, in addition, has approximately \$3 million in cash that is sitting as a receivable to be drawn down as and when needed from the whole-of-government cash balance.

Senator GEORGE CAMPBELL—That is how much it has in the special account?

Ms McLusky—That is correct.

Senator GEORGE CAMPBELL—\$300 million?

Ms McLusky—\$3 million, plus the estimated balance of \$174,000 for the end of this financial year.

Senator GEORGE CAMPBELL—I think I understand that. There is a discussion on pages 24 and 25 of the document about the adoption of the Australian equivalents to international financial reporting standards. I do not know how you express that in Public Service speak.

Mr Paterson—AEIFRS.

Senator GEORGE CAMPBELL—I will try to remember that. On page 25 of the document, it states that intangibles decreased by \$5.439 million. In other words, we are down 30.8 per cent. It is stated that the decrease is mainly due to revaluation as a result of the adoption of AEIFRS. What is identified within the term ‘intangibles’?

Ms McLusky—That is comprised of our internally developed and purchased software.

Senator GEORGE CAMPBELL—It is only software?

Ms McLusky—Yes.

Senator GEORGE CAMPBELL—It is stated that administered investments decreased by 9.34 and that \$4.8 million of this reduction relates to the application of AEIFRS to the investment in Ceramic Fuel Cells Ltd. What does that relate to?

Ms McLusky—That is a write-down in the value of the investment that the department has booked in its accounts, the investment in the Ceramic Fuel Cells Ltd. The AEIFRS require that that investment is valued at market value. The value that is reflected in the accounts now is the market value of that investment.

Senator GEORGE CAMPBELL—Do you have a market value for the investment?

Ms McLusky—We do.

Senator GEORGE CAMPBELL—How do you define the market value of it?

Ms McLusky—Ceramic Fuel Cells Limited is traded on the stock exchange, as I understand it.

Senator GEORGE CAMPBELL—Would that be the case with all the areas of administrative investments that you have? Would they all have market value?

Ms McLusky—We are able to obtain market values using formal valuation methods as well. In some cases, they might have a market value and be a traded security. In other cases, we are able to ascertain a market valuation through requesting formal valuations.

Senator GEORGE CAMPBELL—What caused the difference between the book and market values of the Ceramic Fuel Cells investment?

Ms McLusky—I guess it is the time. I will get more detail on the ceramic fuels.

Mr Paterson—I will stand corrected, but my recollection is that the former standard was that it was held at purchase price, and the Australian equivalent of the international standard means that we have to have a market value. As I recall it, the number was the traded share price as at 30 June last year.

Ms McLusky—That is correct.

Mr Paterson—The new standard would have our supply for market value on the traded share price as at 30 June for that asset, each time we report it.

Senator GEORGE CAMPBELL—Does this apply to all assets that you hold?

Ms McLusky—All assets now are required to be valued. There are various valuation requirements under AEIFRS. The valuation that we are required to apply to that investment is market value.

Senator GEORGE CAMPBELL—How would you do that, for example, with autos?

Ms McLusky—With autos?

Senator GEORGE CAMPBELL—Yes, with cars.

Mr Paterson—We lease them.

Senator GEORGE CAMPBELL—You lease them, so you do not have to worry about market value?

Mr Paterson—Correct.

Senator GEORGE CAMPBELL—Would you depreciate furniture in the normal way? How do you set a market value for it?

Ms McLusky—It comes on at cost and it is depreciated on an annual basis.

Senator GEORGE CAMPBELL—On the normal basis you would have done previously?

Ms McLusky—That is correct.

Senator GEORGE CAMPBELL—I might come back to the investment in Ceramic Fuel Cells. How are your investments in the IIF fund treated?

Ms McLusky—We are still working through the impacts of AEIFRS on the valuation of the IIF companies, and we are discussing those issues with the Department of Finance.

Senator GEORGE CAMPBELL—You have not actually worked out how to treat those investments?

Ms McLusky—Not at this stage.

Senator GEORGE CAMPBELL—It will be interesting to see how you treat a market value on a loss?

Ms McLusky—If I could just provide a little bit more information in terms of the valuation of ceramic fuels, there are various accounting standards that will require you to value investments in different ways. Ceramic fuels is an investment in a subsidiary or an associate, so a particular accounting standard is required to be applied. There will be varying methodologies that are applied, depending on the asset.

Senator GEORGE CAMPBELL—It is not necessarily a standard approach that is taken with respect to how you treat assets?

Ms McLusky—That is right. It would depend on the class of asset.

Senator GEORGE CAMPBELL—Why did the transfer of the National Standard Commission into the National Measurement Institute require a revaluation?

Ms McLusky—What page are you referring to?

Senator GEORGE CAMPBELL—It is on the same pages.

Ms McLusky—The National Standard Commission was subsumed into the structure of the National Measurement Institute, which is a division of the department. As a result of a requirement of government policy, we are unable to hold properties. The National Standard Commission held properties as investments, and they were transferred back to the whole of government. We do not hold those. The NMI was subsumed into the activities of the department.

Senator GEORGE CAMPBELL—Why were you required to do a revaluation?

Ms McLusky—We actually did not do a revaluation. The reduction in the investments was due to the transfer of that asset out rather than a revaluation of it downwards. It was removed from our books and transferred onto the whole-of-government books.

Senator GEORGE CAMPBELL—Those figures reflect what it was on the books at?

Ms McLusky—That is correct.

Mr Paterson—You might recall that, prior to the creation of the National Measurement Institute, we had the Australian Government Analytical Laboratories, which were part of this department; the National Standards Commission, which was a statutory authority; and the National Measurement Laboratory, which was a division of the CSIRO. They were brought together to create the National Measurement Institute. This variation is a consequence of the transfer out of the ownership of that asset from a combination of those three back to Finance.

Senator GEORGE CAMPBELL—I had wrongly assumed that it was related to the application of AEIFRS. With respect to TCF6, page 27 of the document states:

The \$5 million decrease in subsidies expenses is due to reclassification in the budget financial statements of the TCF post 2005 strategic investment program from subsidies to grants.

What is the reason for the reclassification from subsidies to grants?

Mr Peel—That is not actually an AusIndustry issue, so I do not think I can give you an answer. It is the structural adjustment component of the program, as I understand it, which is looked after by somebody else.

Ms McLusky—The definition of subsidies and grants are defined by the whole-of-government financial framework and it is to be consistent with that classification that those items have been moved.

Senator GEORGE CAMPBELL—The difficulty for us is that we do not sit and read those documents every day.

Ms McLusky—I have that pleasure.

Senator GEORGE CAMPBELL—I am glad it is you who has that pleasure and not me. Can you define for me what the difference is between these subsidies that now have been classified to grants and the subsidies that are payable under ACIS?

Ms McLusky—I do not have the formal definition of ‘subsidies’ at my fingertips. I can come back to you on that, if you would like.

Mr Peel—Under the ACIS program, we do not actually give people money; we give them import credits that they can use to reduce the cost of their imports. It is not actually cash that they get under ACIS.

Senator GEORGE CAMPBELL—It is a subsidy; that may explain the difference.

Mr Peel—It may, but I am not an accountant.

Mr Paterson—The note on page 27 with respect to TCF clearly indicates there is no reduction in the appropriation because the decrease in subsidies is matched by an increase in expenses.

Senator GEORGE CAMPBELL—I understand. I wondered why the term ‘expenses’ was used. It talks about going from ‘subsidies’ to ‘grants’ and then it talks about an increase in expenses. Perhaps Ms McLusky can take that on notice and give us a detailed answer that is understandable.

Ms McLusky—Certainly, I will do that.

Mr Paterson—Could we do it on the basis that we provide that answer if it is any different from the answer Mr Peel has just given to you? I think Mr Peel has actually provided the answer to your question.

Senator GEORGE CAMPBELL—I would not mind also having in writing the definition of a ‘grant’ and a ‘subsidy’ in this document that Ms McLusky referred to, just for future reference. Pages 27 and 28 of the document state:

Administered Receivables have decreased by \$15.824m (down 4.08%) mainly due to the lower than expected advances made under capital programmes in 2004-05 ...

Then it identifies the IIF, the Commercial Ready Program and the Competitive Pre-Seed Program. It goes on:

... this has the effect of reducing the opening 2005-06 balances for these programs.

How is that \$15 million split by program?

Ms McLusky—I will get that break-up for you. I have the balances, but I do not have the movement of the \$15 million. I will come back to you on that shortly.

Senator GEORGE CAMPBELL—What is driving those changes?

Ms McLusky—The receivables balance will reflect the level of activity. The way we calculate our budget estimate is driven by the actual balances from the previous financial year. In some cases, it may be reflective of activity, it may be a reflection of the timing that receipts are coming in et cetera. There could be several factors that would be impacting on those balances.

Senator GEORGE CAMPBELL—Does it reflect a slowing up of the take-up of the programs?

Mr Peel—There is reference here to the Commercial Ready Program, which I think is incorrect. It should really be a reference to the R&D Start program. You might recall—

Senator GEORGE CAMPBELL—I thought that was part of the Commercial Ready Program?

Mr Peel—It is, but under the R&D Start program you could get a loan which then becomes a receivable, something that has to be paid back to the department. Under the Commercial Ready Program, there are not any loans; there are just grants. I expect that, because we are not giving out loans anymore, that is one of the reasons that there might be a reduction in the receivables. I am sure Ms McLusky can give you a more detailed answer than that, but I suspect that is probably a major impact on that.

Ms McLusky—If you are after specifics, we would have to talk about the specific program item that makes up those receivable balances.

Mr Paterson—We will give that to you on notice.

Senator GEORGE CAMPBELL—I thought they were outlined there, Ms McLusky. I just outlined them: IIF Fund, Commercial Ready Program and Competitive Pre-Seed.

Ms McLusky—That is correct, but the reasons for the movement may vary between programs.

Senator GEORGE CAMPBELL—Can you look at them specifically and give an answer? In respect of ACIS, estimated subsidies payable have increased by \$25 million, up almost 20 per cent. It says that the majority of this relates to the Automotive Competitiveness and Investment Scheme increasing by \$25 million, up 19.6 per cent. What drove that change?

Mr Sexton—The value of credits that are awarded under the ACIS program less the value of credits that are actually used leaves us with the administered liability which, because of the accounting practice, we are required to put onto our books. The administered liability shown is the amount of credits that have not actually been used yet, although they have been awarded to the various participants in the ACIS program.

Senator GEORGE CAMPBELL—Are these companies holding this in hand?

Mr Sexton—That is correct.

Senator GEORGE CAMPBELL—Which companies are affected by it?

Mr Sexton—It is a timing issue. Companies are awarded their credits and there is no set time in which they have to use those credits. For the program as a whole, they have up until December 2006 to use the credits that they have been awarded as part of the ACIS 1 program. At any one time the amount of credits that are not yet used will fluctuate widely. In the budget forecast, we estimated that the credits that would be unused at the end of this financial year would be about \$128 million. We are now estimating that the credits that are unused at the end of the financial year will be about \$153 million.

Senator GEORGE CAMPBELL—What are the specific reasons for that?

Mr Sexton—It is simply a timing issue. They use the credits to reduce duty on their imports and so it will very much be a question of the timing of those imports.

Senator GEORGE CAMPBELL—Does it reflect anything else that is happening within the industry?

Mr Sexton—No.

Mr Peel—It is simply the decision of individual companies as to when they will spend the credits, based on their own business decisions.

Senator GEORGE CAMPBELL—Are all companies affected by this?

Mr Sexton—Those companies that use their credits to reduce import duty—and there is only a small number of those; most participants in the ACIS program sell their credits to other participants in the ACIS program—

Senator GEORGE CAMPBELL—When you say there is only a small number, is that the four?

Mr Sexton—No, there are probably about 30 to 40 companies that are actively using credits to reduce duty imports.

Senator GEORGE CAMPBELL—Is that going to be a feature of the budget statements for as long as this program exists?

Mr Sexton—I would expect so.

Senator GEORGE CAMPBELL—On page 30, in table 3.1, the forecasts of revenue from government for the department shows a decrease from a revised figure of \$266 million, I think it is, in 2005-06 to \$238 million in 2008-09, which is a decrease of about 11 per cent. What divisions in the department are going to be affected by that?

Mr Paterson—This is a position of the forward estimates that reflects decisions already taken by government to fund activity in the current year and in the out years. As we progress further, as we proceed through the next budget and the budget after that, we would expect changes in programs and changes in the appropriation to the portfolio, and they would be reflected in these. You cannot look at that and say which division is directly going to be affected by that, because it depends on the treatment of lapsing programs and the approvals that come through the budget process.

Senator GEORGE CAMPBELL—Can I put the question another way? Does that reflect what would be the state of the department over those out years if there are no changes to the current position that was allocated in the last budget?

Mr Paterson—If there were no funding of lapsing programs, if there were no additional programs and no additional activities requested to be undertaken by the department and if activities that lapsed were concluded, then that is what the budget position would reflect. But that is an unlikely occurrence. I do not look at the number of \$237.6 million in the forward estimate of 2008-09 and decide that you need to reduce the size of the department by 30 per cent to accommodate that change. We would deal with managing the appropriation on an annual basis, knowing what we are confronted with at that time.

Senator GEORGE CAMPBELL—I understand that. In table 3.7, on page 36, it forecasts grants to decrease over the same period. Is the same explanation that you have just given relevant to those? Is that what that is saying?

Mr Paterson—That is the current estimate of grants that we would administer under the various programs based on the snapshot now of the administration of those programs. If there were transfers of funds from one year to another that we have been talking about in relation to some of the other programs, that would affect those numbers.

Ms McLusky—We spoke about Hismelt and Hawker de Havilland. They are some of the expenses that are classified as grants, and they are to be completed in the next financial year. That is a typical example of programs that finish across the forward-year periods.

Senator GEORGE CAMPBELL—Can I go the venture capital review. Has that been completed?

Ms Kelly—The venture capital review was provided to the Treasurer and the minister for industry in December.

Senator GEORGE CAMPBELL—Are you aware when that report will be made public?

Ms Kelly—No, that is a decision for the ministers.

Senator GEORGE CAMPBELL—When is the Tradex review due for completion?

Mr Miley—The Tradex review is almost completed to the point of there being a report to provide to ministers. We expect that certainly within the next few weeks it will go to ministers.

Senator GEORGE CAMPBELL—I am just trying to skip through some of these questions. Some I will have to put on notice. In January this year, Professor Cameron Rider of the Melbourne University Law School released a study titled *Taxation problems in the commercialisation of intellectual property*. The study recommends or suggests that, while the federal government subsidised R&D through a tax concession and provided capital gains tax concessions for those companies that were ultimately successful, there is no meaningful tax assistance for the critical intervening development phase. There is not much point having a concession at the research phase if it then becomes so difficult to move through into commercialisation. It goes on to outline what that does to companies. Is the department aware of this report?

Mr Morling—The department is aware of this report.

Senator GEORGE CAMPBELL—Is the department aware of the issues raised in the report? Has the department been addressing those issues?

Mr Morling—I will focus on some of the comments Professor Rider made in relation to tax issues. He basically has three main parts to his proposal. The first one is that, although he makes some comments about the corporate structure in terms of its tax treatment, he sees some benefits—non-tax advantages—to using a corporate structure, such as limited liability. His proposals to implement a flow-through corporate structure for commercialisation purposes, I think, have implications well beyond commercialising intellectual property. In Australia generally our tax system is based on what we call entity taxation. The entity in

which the investment is made is actually taxed. A key exception to that is the VCLP structure that the government has introduced.

Senator GEORGE CAMPBELL—This issue has been around for some considerable time now. I accept that all of this has been a hotbed of debate in terms of what you do in this area, but there are weaknesses in the way in which taxation is treated within the area of innovation commercialisation. This individual has put a number of proposals/ideas forward. Is the department doing any work on assessing those proposals or looking at alternatives?

Mr Morling—The department has only just recently become aware of those proposals. If you look at his proposal for a flow-through corporate structure, he basically is suggesting that Australia adopt an American idea known as an S corporation. While that may have flow-through taxation treatment, it is a very limiting structure in terms of its other conditions that operate on that structure.

Mr Paterson—You would be aware that tax policy is not a matter that is the responsibility of this portfolio.

Senator GEORGE CAMPBELL—Yes, I understand that. But I also understand that you have a substantive section of your department working on innovation, and you cannot go anywhere in talking about innovation without talking about tax. That is the reality of it, because a lot of the money that goes into this area is high-risk investment, as you well know. I am not being critical of the department; I am really asking: are you aware of the issues that are being raised, are you addressing them, and can we look forward to some views being expressed about those at some stage?

Mr Paterson—Whether you can look forward to some views being expressed on those matters will be a matter for another portfolio.

Senator GEORGE CAMPBELL—So you will not have a view?

Mr Paterson—We may well have a view and we may provide advice to government. But if you have something to look forward to in terms of some announcement—

Senator GEORGE CAMPBELL—So I should not expect any announcements out of the industry department?

Mr Paterson—Tax policy is a matter for another portfolio.

Ms McLusky—Could I come back to you with the movement in the administrative receivables we were discussing before—the \$15 million? I have the break-up of that for you. Four million dollars is associated with the IIF; \$8.7 million is associated with the Pre-Seed; \$656,000 is associated with the R&D Start program; and there is \$4 million in minor movements of various items.

Senator GEORGE CAMPBELL—Thank you for that. Mr Morling, are you aware of the comments by Mr Dick Wells, the CEO of the Food and Grocery Council, that encouragement for innovation is crucial? But he warned that innovation was not easy in Australia. He said, ‘We have risk averse regulators. They are wary about it.’ Are you aware of those comments?

Mr Morling—No, I am not aware of those comments.

Senator GEORGE CAMPBELL—You are not aware of them?

Mr Morling—No. My responsibility within the department is to the venture capital review as such. The department obviously has a broader innovation interest.

Senator GEORGE CAMPBELL—Is there anybody from the innovation section?

Mr Paterson—This portfolio is not responsible for regulating Mr Wells's sector of the industry.

Senator GEORGE CAMPBELL—No, but he is talking about innovation.

Mr Paterson—I think his comments referred to risk-averse regulators.

Senator GEORGE CAMPBELL—But he is talking about innovation—specifically about innovation—and saying that regulation is an impediment to actually getting innovation. I was simply going to ask the question whether anyone from the department was aware of his comments and whether or not they had held any discussions with Mr Wells to pursue the issue further.

Mr Paterson—Food matters are for the AFFA portfolio.

Senator GEORGE CAMPBELL—Pardon?

Mr Paterson—They are covered by the agriculture, fisheries and forestry portfolio.

Senator GEORGE CAMPBELL—But he is talking about innovation. Are you saying your department does not deal with innovation issues when it comes to the food industry?

Mr Paterson—I am saying that food and the support mechanisms associated with the food industry are administered by the AFFA portfolio.

Senator GEORGE CAMPBELL—He is not talking specifically about—

Mr Paterson—With respect to the innovation programs, there was a carve-out in relation to R&D Start, which was transferred from this portfolio to the AFFA portfolio, I think, two years ago.

Senator GEORGE CAMPBELL—Yes, I understand.

Mr Paterson—So the administration of the programs in relation to the food industry and the innovation programs for the food industry are part of the AFFA portfolio.

Senator GEORGE CAMPBELL—I understood that. What I am saying is that I do not think that Mr Wells was talking specifically about the food industry, he was talking about innovation more generally.

Mr Paterson—I do not take his comments to say that.

Senator GEORGE CAMPBELL—Therefore you are not concerned, despite the fact that your department is the department that has major responsibility for innovation issues?

Mr Paterson—I think if you take the comments that he made in context, as I understand them, they were talking about regulators. We have a very real concern in relation to regulation, but with respect to the comments—

Senator GEORGE CAMPBELL—They were talking about keeping companies in Australia and saying that the only way you were going to do it was to get innovative products. There was difficulty in getting innovative products because of the burden of regulation.

Mr Paterson—Yes.

Senator GEORGE CAMPBELL—They were not necessarily talking about food or any other industry. We are talking about manufacturing generally.

Mr Paterson—I thought Mr Wells was from the Food and Grocery Council.

Senator GEORGE CAMPBELL—That is fine. If you are able to separate your department from it purely on the technical aspect of whether it is a patty instead of a brake disc, fine. I am not making a big issue of it. I am ultimately asking: are you aware of the comments and have you attempted to talk to him about what he is raising? What are the concerns about the regulation and in what areas?

Mr Paterson—As you are aware, there was a significant regulation task force review chaired by—

Senator GEORGE CAMPBELL—Also, there has just been \$30 million on-spent in this financial year. We did have a promise by Minister Reith in 1997 to cut red tape in half. We are still waiting to see where the axe went—or the scissors, whatever he was going to use to cut it. I think I can put the other questions I have on notice. I will not get many answers today.

CHAIR—Senator Campbell, are you finished? I do not want to hurry you along.

Senator GEORGE CAMPBELL—I will put the rest of my questions on notice.

Senator McLUCAS—I have some questions for the Australian Building Codes Board.

CHAIR—That is part of this section. Are all of the witnesses from the department other than the Building Codes Board and those concerned with Tourism Australia excused? All witnesses from the department, other than those concerned with resources and energy and the Building Codes Board—

Senator O'BRIEN—And tourism.

CHAIR—and Tourism Australia are excused. Can I just get some clarification, perhaps from you, Senator O'Brien? Does that include officers of the department concerned with tourism other than officers of Tourism Australia?

Senator O'BRIEN—Do not jump to excuse them. I would like to put a couple of questions.

CHAIR—You want all officers of the department concerned with tourism and with resources and energy to be kept?

Senator O'BRIEN—Yes.

CHAIR—Are those the only officers of the department who may not be excused?

Senator O'BRIEN—As far as I am aware.

CHAIR—Senator McLucas has a few questions for the building codes people. All other officers of the department are excused.

Senator McLUCAS—I have some questions. Forgive me if I am covering ground that you have covered in this committee before about the standard for premises, in particular as it

relates to disability access. I understand there has been an ongoing process. Could you briefly walk me through the process that has taken place to date?

Mr Donaldson—We need to go back some time.

Senator McLUCAS—I thought that would be the case, but let us do it in quick steps.

Mr Donaldson—We need to go back something in the order of 10 years. The process emerged because, at the federal level, new legislation was introduced in 1993 called the Disability Discrimination Act. That is the responsibility of the Attorney-General. Prior to that, state governments and territory governments, through their building laws, addressed discrimination issues in terms of access to public buildings. What we had historically was two sets of laws addressing this sort of issue. There were concerns in the community and in industry that having those two sets of laws created a great deal of uncertainty and there was a strong push in the mid-nineties for codification of the rights under the Disability Discrimination Act. But it was not until 2000 that the Disability Discrimination Act was amended to enable a premises standard to be brought into effect.

There was quite a bit of work being done during that period to change the Building Code, but that did not really address the fundamental issue of the tension between federal law and state law. In 2000, when the act was amended to enable the premises standard to be written, the Australian Building Codes Board was asked to participate in the process to develop that standard, using the building code as the technical base for the standard. The process that we engaged in as a board was to draw together a whole range of stakeholders from the community, industry, the professions and the building industry and work with that group over time, starting in 2000 and continuing to this day, to develop the detailed technical provisions that could be taken up into that standard. The culmination of that process was that in 2004—very early—we did release a draft standard. When I say ‘we’, I mean the policy committee that the board commissioned to do this, the Building Access Policy Committee, came up with that draft and there was an extensive consultation period that went on for about a year. That attracted considerable interest. Something like 300 submissions came through that process. In May 2005 the board was in a position to review that material, to review the impact analysis it had published as well and to take into consideration its committee’s deliberations. Off the back of that, in early June 2005 the board wrote to federal ministers providing advice about how it saw the technical provisions of a standard being developed. Since that time there have been—

Senator McLUCAS—Sorry, Mr Donaldson—who did the board write to in June 2005?

Mr Donaldson—It is very hard for me to hear you. I am partially deaf.

Senator McLUCAS—Yes, I had the same problem in the other room. In June 2005, whom did the board write to?

Mr Donaldson—The board’s chairman wrote to the Attorney-General and to Minister Macfarlane.

Senator McLUCAS—To indicate what?

Mr Donaldson—That was advice that had been asked for by the Commonwealth ministers and it was advice that was provided that set out the board's view about what a premises standard would look like.

Senator McLUCAS—The draft standard was released for consultation in 2004, and in May 2005 there was a review. Was that the final meeting of the BAPC, in May 2005?

Mr Donaldson—The board considered it in May 2005, yes, and provided its advice in June 2005. However, that advice was preliminary advice and there were a number of matters that we needed to satisfy ourselves about. We indicated what those issues were and we have been asked to do some more homework on the proposal that we put forward. Since that time, we have been working with the proposal, and I anticipate that we would be able to provide our final advice to Commonwealth ministers within the next month or so.

Senator McLUCAS—You said that you were asked to do some more homework—asked by whom?

Mr Pettifer—The Minister for Industry, Tourism and Resources, Minister Macfarlane, asked the board to do some further work on the details of the proposal, the advice that had been brought forward, and also to do some further work on the costs and benefits of the particular proposal.

Senator McLUCAS—So this is not public information, the advice from the board to the minister, obviously?

Mr Pettifer—No. That is correct.

Senator McLUCAS—I am trying to track whether or not it is still the draft premises standard that we are talking about or whether we are talking around the edges of it between the board and the minister.

Mr Pettifer—What we are talking about is a draft standard that has been provided to our minister as well as the Attorney-General. Some further work has been asked of the board in relation to that preliminary advice. That work is under way. What you heard from Mr Donaldson was that they expect to complete that work in the relatively near future.

Senator McLUCAS—What are the issues that are still being discussed?

Mr Pettifer—The ministers have asked for advice in relation to the preliminary proposal, including some analysis of the costs and benefits of the proposal. I cannot go into any more detail than that.

Senator McLUCAS—Then, Mr Donaldson, you said that you are expecting the board to be able to provide that advice to ministers within a month?

Mr Donaldson—Certainly in the first quarter of 2006. I have a board meeting next week and I will be briefing the board about our progress and where we have got to. Coming out of that meeting, I hope to be in a position to be able to finalise the material. This is a complex issue. It is not simple at all. We have been involved in some fairly intense analysis in the last few months to get this to a point where it all hangs together.

Senator McLUCAS—On your board do you have any people who are from the disability sector?

Mr Donaldson—No. The Australian Building Codes Board is a Commonwealth-state body set up under an intergovernmental agreement. That intergovernmental agreement with the states and territories actually defines who should be on the board. In terms of their responsibilities, there is a member from each of the governments, so there are nine people from government, and the Australian Local Government Association, and in addition to that four industry people. I am not aware of any of them having a disability.

Mr Pettifer—Mr Donaldson indicated earlier on that there was a Building Access Policy Committee established that provided advice to the board, and that certainly did include a number of representatives of the disability community as well as industry and some state government representatives.

Senator McLUCAS—Is the Building Access Policy Committee still in operation?

Mr Donaldson—It has not met since April, but it has not been disbanded.

Senator McLUCAS—April of which year?

Mr Donaldson—The last time it met was in April 2005, because it had completed its advice to the board at that point.

Senator McLUCAS—The point I am making is that there is now this iterative process between the minister and the board, and I am wondering where the disability community have an input into that process.

Mr Donaldson—The Building Access Policy Committee was originally formed for this purpose in 2000. It has been working on this subject for over five years. It has had considerable input, and the engagement at the detail level of all interested parties has been quite intense. There were negotiated terms of reference for the Building Access Policy Committee between the human rights commission, the Attorney-General's Department, the states, disability groups and industry. Those terms of reference spell out very clearly the relevant responsibilities of the parties. At the end of the day, the advice to Commonwealth ministers is the responsibility of the Australian Building Codes Board drawing on the expertise and the issues raised and discussed in the Building Access Policy Committee. At the end of the day, they are policy issues and it is policy advice that is being provided, and that clearly is the board's responsibility. It is a matter for government as to what happens next, but that is where we fit into that. Those terms of reference are a public document. They are available on our website, but I would be happy to provide them to you if you wish.

Senator McLUCAS—No, I can find them.

Mr Pettifer—Certainly, our minister has met—since the preliminary advice was provided to him—with representatives of the disability sector, and indeed I think next week he is meeting with Graeme Innes, who is the new head of the Human Rights and Equal Opportunity Commission—

Mr Donaldson—He is the Human Rights Commissioner.

Mr Pettifer—Yes, the Human Rights Commissioner. That process is continuing. The other point to bear in mind here is that the Attorney-General's Department are part of the process going forward with this, and they have policy responsibility for human rights issues as part of their portfolio.

Senator McLUCAS—The point I am making, though, is that you are getting to the pointy end of getting this standard together and there are discussions between the board and ministers, but the sector of the community that it is most likely to affect is not part of that discussion now.

Mr Pettifer—I am not sure I accept that proposition. The board has provided advice to the minister and, as we have said, that was informed very much by disability sector interests. There is some further advice to be provided to ministers in relation to the costs and benefits, and some other aspects, of the proposals that have been brought forward. Then there will be a deliberative process going on, involving ministers, in terms of deciding the final policy on this. What I am saying is that that is not happening in a vacuum; that is informed by contact with our minister and the Attorney. I do not want to speak for the other portfolio, but certainly there is ongoing contact with representatives of the disability community. So I would not accept that there is a kind of vacuum there or there is no capacity to influence this thing going forward.

Senator McLUCAS—Can you advise the committee if there have been any changes to the draft that was released in 2004?

Mr Pettifer—I really cannot comment on that, because what you are asking me about, I think, is the policy advice that has gone to ministers on this particular issue, and if I provide a comment on that I think I am indicating what sorts of changes might have been made there and what might be in that policy advice, so I prefer not to do that.

Senator McLUCAS—I thought you would say that. Finally, the process after this will be the receipt of legislation. Is that what you imagine? That is the next logical step, isn't it?

Mr Pettifer—The next step is to get the further input to determine a policy position on it. My understanding, and Mr Donaldson might be closer to it than I am, is that the regulation would be an instrument under the Disability Discrimination Act, so it would be a disallowable instrument. That would involve a legislative process in that sense, but before we get to that there is the policy decision-making process that would go on.

Senator McLUCAS—You are not expecting another round of consultation or anything like that?

Mr Donaldson—As part of the process under the Disability Discrimination Act for proposals to introduce standards, there is a formal requirement for consultation with state governments, so there will need to be an engagement, when it gets to that point, formally with the states. In any case, in this particular instance, if the building code is going to mirror a DDA standard, it will be administered at state level through the certification of building approvals, so it is very important that they be part of that.

Senator McLUCAS—Thank you very much for your time, gentlemen.

ACTING CHAIR—Any further questions?

Senator O'BRIEN—Yes, in the resources area. How often does the LNG Action Agenda working group meet?

Mr Hartwell—The LNG Action Agenda group has essentially terminated its work in the true sense of an action agenda. There was a strategic leaders' report, there was an

implementation group and essentially the LNG Action Agenda has been wound up in that formal sense.

Senator O'BRIEN—So there are no issues currently on its agenda; it has gone?

Mr Hartwell—There are issues related to the LNG industry, but there are processes available to take those forward.

Senator O'BRIEN—What are they?

Mr Hartwell—In terms of development issues, there are a number of projects being considered in Australia in the LNG area. Obviously, there are always a number of issues related to marketing LNG.

Senator O'BRIEN—Given that an objective of the LNG Action Agenda is to maximise Australian participation in LNG projects, what proportion of the North West Shelf and Darwin LNG plants' construction was undertaken by Australian residents?

Mr Hartwell—I do not have those precise figures with me, but I will take that on notice and provide you with them.

Senator O'BRIEN—What proportion of those plants' operations are undertaken by resident Australians?

Mr Hartwell—Again I would take that question on notice. They are specific aspects of those operations that I would need to check with the operators themselves.

Senator O'BRIEN—What proportion of the North West Shelf LNG transportation is undertaken by resident Australians.

Mr Hartwell—You are specifically talking about the shipping aspect of LNG there?

Senator O'BRIEN—Yes.

Mr Hartwell—They are subject to commercial negotiations, often between the LNG supplier and the LNG buyer. There are different aspects to that depending on the project involved. Again, I would have to take that on notice. They are very specific questions going to the specific projects.

Senator O'BRIEN—Could you give me that information and the same in relation to the Darwin LNG transportation?

Mr Hartwell—Certainly, to the extent that we are able.

Mr Paterson—Senator, I make the point that the nature of the questions that you are raising seeks material that would not be available to the department. We would not have the information that would enable us to answer those questions.

Senator O'BRIEN—Are you saying you do not or you do not think you do?

Mr Paterson—I am absolutely confident that we would not have the information that would enable us to answer those questions.

Senator O'BRIEN—The officer just said that he would check.

Mr Paterson—I heard him say he would take it on notice, but I am just clarifying for you that I am confident that we do not have the information within the department that would enable us to answer the four detailed questions that you just put forward.

Senator Minchin—I would have thought, Senator O'Brien, you would need to go to the industry itself for that sort of information—the shelf operators, for example.

Senator O'BRIEN—You have had an action agenda with an objective of maximising Australian participation. I would have thought you would have been inquiring about that participation and getting an idea of whether it was being maximised. How else do you know whether you have been successful?

Mr Paterson—You are asking questions that go to the commerciality of individual businesses and I am confident that we would not have the detail that you have asked for.

Senator O'BRIEN—There are many businesses that routinely advise government of their employment input.

Mr Paterson—I am saying to you that I am absolutely confident that we would not have within our records information that would enable us to answer the four very detailed questions that you have just put to us, or any of them.

Senator O'BRIEN—I have asked four questions.

Mr Paterson—Yes. You asked four.

Senator O'BRIEN—I want to be clear. Are you saying you do not have the information to answer any of the questions?

Mr Paterson—I am confident that we cannot answer those four questions that you have just asked in the detail that you asked for. I do not want to create an expectation—

Senator O'BRIEN—There was no material that the department received saying: 'This has been a successful project. We built these plants. We used this many Australian based labourers.'

Mr Paterson—I am absolutely confident that we do not have the information within the department that would enable us to answer the questions that you have raised.

Senator O'BRIEN—Is the department able to ascertain that information?

Mr Paterson—It is a question of the extent to which resources are directed towards that task. It is not a matter in relation to estimates. We would not, in the normal course of our business, pursue answers to those questions from those companies. I do not want to create an unreasonable expectation that we can just take those questions on notice and respond to them, because I am confident we will not be able to.

Senator O'BRIEN—Can you tell me how the LNG Action Agenda decided whether it actually was able to maximise Australian participation in these projects?

Mr Hartwell—The companies which participated in the LNG Action Agenda—and, in addition to the specific companies, the industry association which represents petroleum-producing explorers in Australia was represented—said that, to the maximum extent, they

would try and make opportunities available for Australian industry and Australian workers. I think that was the commitment there, but there were no mandatory targets set, there was no—

Senator O'BRIEN—The department did not follow that up?

Mr Hartwell—Occasionally, as Mr Paterson has indicated, some companies will make a bit of information available in relation to that, but in a sense it is very difficult for us because a lot of them are, as you would appreciate—whether it is about the purchase of capital equipment, or shipping, which you referred to—subject to the specific commercial negotiations of that project. Sometimes that is public information and sometimes it is not.

Senator O'BRIEN—The question I am asking is: if you have an action agenda objective which is about maximising Australian participation, how do you go about testing whether that has been successful?

Mr Hartwell—We rely on the companies on a best endeavours basis to do that. They will look for the most cost-effective capital equipment purchase they can make. They will look for the most cost-effective shipping arrangements they can make. They will look towards the most cost-effective labour arrangements they can make. I cannot be more specific than that.

Senator O'BRIEN—That might all be true. I am asking whether the department took any steps at all to see whether that objective of the action agenda was being met.

Mr Paterson—That was an objective of the companies who were parties to that action agenda. If you go back and think about the purpose of action agendas, they are to identify impediments to development and growth for individual sectors. The commitment of government was to focus on those impediments that were within the gift of government, if I can call it that—within the province of government—that it could seek to address to remove impediments to investment and growth. As part of that process that sector committed itself to maximise Australian participation, but are we a gatekeeper there so that they have to report every element of their business endeavours to us after the conclusion of that action agenda? The answer is no.

Senator O'BRIEN—So the answer is that the department took no steps to ascertain whether that objective was met. Is that right?

Mr Paterson—I am saying that we do not stand as a gatekeeper to assess each project on a project-by-project basis. It was an objective of the companies to maximise Australian participation.

Senator O'BRIEN—So I am interpreting that to mean that the department took no steps to determine whether that objective of the LNG Action Agenda was met. Correct me if I am wrong.

Mr Ryan—One of the programs that we do run within the department is to deal with what we call National Supplies Office. So when there is a major project on, whether it is LNG or any other major project, those officers do get in to promote the capability of Australian industry to these suppliers, so I think the issue that we have got is that there is no auditing done of the degree of activity that has taken place.

Senator O'BRIEN—So there was no action take to audit that objective by the department?

Mr Ryan—The suppliers of capability offices do record what their successes are in what they are doing.

Senator O'BRIEN—Where do they record that?

Mr Ryan—I would have to check with one of my colleagues exactly where that recording takes place, but certainly they do try to monitor what they do.

Senator O'BRIEN—Do they record those facts with the department?

Mr Ryan—Does that information become available to the department? It can.

Senator O'BRIEN—Did it or did it not?

Mr Ryan—It depends on what you are asking. You are asking questions about very specific projects and asking for very specific proportions of how much of it was Australian content, as against imported content, and I am not sure that they would record it in that way. It is more about which companies were actually successful.

Senator O'BRIEN—So which companies are successful is one thing. I want to know if you are actually recording material which would give some indication of the use of resident Australians in the project and the answer must simply be yes or no. Do you or do you not?

Mr Ryan—Do we?

Senator O'BRIEN—Yes, does the department?

Mr Ryan—No.

Senator O'BRIEN—No. So there has been no audit of that aspect at least of the LNG Action Agenda?

Mr Paterson—To short circuit this, can I commit to you that we will provide to you the information that is public that has been provided to us that would fall within those four specific questions? What I am saying to you is that I do not believe that we can answer the questions that you have asked in detail, but I can commit that we will provide to you the information in respect of each of those areas that has been publicly provided to us.

Senator O'BRIEN—I do not know what 'that is public' means, if they write you a letter without a caveat that it is confidential, but is not public, then I do not know why you could not supply it to me.

Mr Paterson—We will provide to you that information that we can in response to your questions. I just do not want to create expectation that we can answer the questions in the detail that you have asked them, but I will commit to you that we will provide you with the information that is on the public record that we have in respect of those four questions. I will not commit to provide to you stuff that has come to us commercial-in-confidence.

Senator O'BRIEN—Well, you can't.

Mr Paterson—That is right. So I am not committing to that. What I am saying is that I commit to you that we will give to you what we have that is on the public record.

Senator O'BRIEN—Being on the public record and being commercial-in-confidence do not include all of this. I understand what you are saying—I might not agree with it—about the commercial-in-confidence, but if you received material on the file of the department that is

not public but was not subject to a caveat of confidentiality, I do not see any reason why you could not supply that to us, yet your statement seems to suggest that you would not.

Mr Paterson—Let us look at what we have got. As I said to you already, I do not believe that we can answer your questions in the detail that you have asked them.

Senator O'BRIEN—Let us see what detail you can provide.

Mr Paterson—We will see what we can give you, and we can maybe have a debate at another time as to whether we have given you everything that you think we can.

Senator O'BRIEN—If you give me everything you can—

CHAIR—I am sure, Mr Paterson, what you will do is give Senator O'Brien everything that he is entitled to, having taken a considered view of the extent of your obligations and the limitations on his capacity to demand or request the production of material.

Mr Paterson—That is a much more elegant response than the one I provided.

CHAIR—There is no difference between you. You both understand the rules.

Senator O'BRIEN—I do not think we are going to get very far debating sets of words. I just want to make sure that we end up with what the department has.

CHAIR—I just did not want the impression to be left that Mr Paterson was not being fully cooperative. As I heard him, he was being fully cooperative and merely making the caveat about commercial-in-confidence information. Is that right, Mr Paterson?

Mr Paterson—Correct, yes.

Senator O'BRIEN—I have never known officers to be fully cooperative at estimates, but I read it in that context.

Mr Paterson—From my perspective within the rules that apply to Senate estimates we are fully cooperative.

Senator O'BRIEN—Exactly. Given that there are several new Australian LNG projects in the planning stage or under investment consideration, what are the prospects for Australian firms supplying seafarers to participate in the future LNG transportation task?

Mr Ryan—The prospects are very good, I would have thought. There is going to be a shortage of maritime seafaring quality staff around the world, globally.

Senator O'BRIEN—Has the government raised the issue of Australian participation in the transportation task with the LNG operators, given that the transportation issue is a key heads of agreement with buyers which are signed up to four to five years in advance of LNG operations coming on stream?

Mr Hartwell—I think the answer to that is that the shipping part of an LNG project is often an integral part of the commercial negotiations—the long term contractual arrangements that surround LNG developments. In that context it is something which is agreed between the buyers and sellers and often there is an agreement between the supplier to share the shipping, if I can put it that way, with the buyer and the arrangements that might apply are sometimes variable between projects. They are variable between projects, but also again the specifics can often be, as Mr Paterson has indicated in answer to your previous questions, commercial-in-

confidence arrangements. So it is very difficult for us to answer that precisely. That is not to say that there is not significant Australian participation often in the LNG shipping arrangements.

Senator O'BRIEN—Why is it difficult to tell me whether the government has raised the issue of Australian participation in the transportation task with the LNG operators?

Mr Hartwell—I think what we are saying is that, if it is a part of the commercial negotiation between the buyer and seller, it is not something that the government would take part in. We do not tread in that territory.

Senator O'BRIEN—You do not know that. All I am asking is: have you raised the issue?

Mr Hartwell—In my experience we have not raised the issue.

Senator O'BRIEN—Is there a reason, other than you just do not want to get involved in that?

Mr Hartwell—I can only answer again on the basis that these are part of the commercial negotiations between buyers and sellers. The shipping, as I said, is an integral part of the transaction between buyers and sellers.

Senator O'BRIEN—If you do not ask you probably do not get. Isn't that a fair comment as well?

Mr Ryan—Can I try to answer? In the broad there have been discussions that we have had which have involved the industry and other governments about skilled labour shortages generally, but in particular the issue has been raised about seafaring skilled labour shortages that are going to emerge, not just in Australia's context but around the globe. So when you are asking about what was the potential for Australian seafarers, then in that global context we just know that there is going to be a shortage. As to the actual commercial negotiations that take place between buyers and sellers, they will be taking into account the labour market situation that they are faced with.

Senator O'BRIEN—If they are smart.

Mr Ryan—If they are smart.

Senator O'BRIEN—My question was about whether you had asked. One never knows your chances of success until you chance your arm. Is the action agenda a finished agenda as far as the government is concerned?

Mr Hartwell—It is a finished agenda in terms that the LNG Action Agenda implementation group no longer meets, but if you are describing it in the sense that the objective of the LNG Action Agenda is being the preferred supplier for new LNG, in particular in the Asia-Pacific region, if you are talking about trying to realise the potential in commercialising our gas resources and expanding our share of the Asian market, you could say that is not a finished agenda; that is ongoing. But there are processes going forward on all of that and there are a number of projects as you have mentioned in prospect which will, if they all come to fruition, seriously increase our LNG capability. So in that sense it is not finished, but in a formal sense it is finished.

Senator O'BRIEN—So is the agenda, as it has been enunciated, a driver for the initiatives of the department in any sense?

Mr Hartwell—The department will continue through the minister to be very supportive of developments in the Australian LNG industry, to the extent that it is appropriate the government take an active role, and I think in that sense what the LNG Action Agenda did was to bring the industry and government together to look at the issues and some of the impediments that might be facing the industry, both on the industry side and the government side. To the extent that they still exist, and we do not believe that there are major ones, because given the amount of projects coming forward, that process continues but what I am saying to you is it does not formally meet through the LNG Action Agenda implementation group, but the sentiment that was expressed there is still going forward.

Senator O'BRIEN—So do you think the agenda insofar as it is currently in place sufficiently emphasises maximising Australian participation in the transportation aspects of the LNG supply chain?

Mr Hartwell—I think we have traversed that question fairly well. I do not think there is much more we can say on that issue.

Senator O'BRIEN—Given the critical shortage of skills in certain essential national industries, what are the government's medium- and long-term plans to secure key operational transport maritime skills for the LNG industry?

Mr Hartwell—In a sense this is a subset of the government's intention to try to address the skills shortage which is emerging because of the high demand for labour caused by expansion in a whole range of resource industries. I am not just talking about the oil and gas industry here and LNG, but mining generally. As you would be aware, the government has announced a number of initiatives in that area going forward. While a lot of them are not within this portfolio, I think if you wish to get the specifics of some of that, I think it is probably best addressed to the appropriate departments and agencies.

Senator O'BRIEN—So there are no specific initiatives through this department?

Mr Hartwell—Not in the maritime sense that you are talking about.

Senator O'BRIEN—Not just maritime, but maritime is one of them.

Mr Hartwell—We have been a participant in an initiative related to skills shortages in the mining industry, but we have been joined in with a number of agencies for that part of the Prime Minister's broader announcement. I might ask my colleague to say a little bit more about that.

Ms Constable—My colleague Mr Hartwell is absolutely correct in what he is saying about participation in broader skills initiatives. Certainly the department has contributed very effectively to the national skills shortage program. You will note the recently announced funding agreements by the Minister for Vocational and Technical Education, Gary Hardgrave, on several Australian technical colleges throughout regional Australia, specifically in relation to the mining industry. Some of those initiatives include regional areas like Gladstone and Townsville, which have very significant mining interests.

Senator O'BRIEN—To the extent the skills required there are being developed and overlapped with LNG, that is your contribution to the LNG sector?

Mr Hartwell—Again as I think we have explained, we do not have anything specific that we could refer to applicable to the LNG industry. As my colleague Mr Ryan has pointed out, however, there is an issue relating to a skilled labour force coming forward in the maritime industry. We believe there are a whole range of opportunities there, and I am sure that there are some programs that we are not running ourselves, but that are attempting to address some of those issues.

Senator O'BRIEN—Do you know whether there are other departments running programs which would satisfy—

Mr Hartwell—Are we talking about specific to the LNG industry or to the maritime industry?

Senator O'BRIEN—To the skills which would assist the LNG industry. You have been talking about the maritime sector and I cannot think of any particular programs that are running.

Mr Hartwell—I am not an expert in skills training in the maritime sector, but of course there are a number of initiatives right across the sector addressing the broader issue of skills which are relevant to the LNG industry and which essentially reflect the building and construction trades which are important in terms of project development and that sort of thing.

Senator O'BRIEN—Thank you for that. Given that the federal government strongly supported and assisted the North West Shelf project to win an LNG supply contract with China and that one aspect of that process was the establishment of training opportunities for Chinese LNG employees, would the government similarly commit to assisting the Timorese government in establishing employment and training opportunities arising from our joint interests in the Timor Sea LNG industry?

Mr Hartwell—At this point in time there has not been specific consideration of a program similar to the one that we have established with China. However, as the Timor Sea Treaty itself indicates, that issue is recognised. There is a provision in there which recognises the need to build the skill base of East Timor and in particular there is provision in there which gives preference to the employment of East Timorese in the joint petroleum development area.

Senator O'BRIEN—At this stage we have not taken the next step?

Mr Hartwell—There is no specific fund established along the lines at this point in time that we have with China. That is correct.

Senator O'BRIEN—Does that need to be initiated by DFIR?

Mr Hartwell—I will not necessarily comment on who should initiate that. The responsibility for administering the Timor Sea Treaty lies with this portfolio.

Senator O'BRIEN—So it is a matter for Mr McFarlane to make a decision on or to consider?

Mr Hartwell—I think, given the broad breadth of that proposal, that would be something that would be subject to a whole-of-government approach and obviously Mr McFarlane would be a part of that, but others would be involved. I am not saying that there is anything on the table, as I mentioned to you, but should such a thing emerge.

Senator O'BRIEN—Thank you for that. I thank the department for its answer to my questions about the value of excise foregone on condensate for the North West Shelf. I do not accept, however, that a range of estimates for the revenue could not be provided and appropriately qualified by reference to a set of assumptions made with respect to annual and accumulated historic production from each field, dates of discovery, dates of first production and so on, and I note that it has only been for the last two years that foregone revenue has not been included in the tax expenditure statement. It seems to me that just over two years ago it was not so difficult to do this. Can you explain why it would be so difficult now, but it was not difficult two years ago?

Mr Hartwell—I will not go through the detail of the replies that were put on notice for you. I hope the difficulties of doing that were reasonably well explained there. We did conclude that question by saying that the difficulty in assessing the forgone revenue from condensate has been recognised in the tax expenditure statement required under the Charter of Budget Honesty which for the past two years has referred to condensate excise for each state as an unquantifiable tax expenditure. We also indicated in the answer to you that we understand that Treasury are currently reviewing that assessment and may quantify that tax expenditure in the next tax expenditure statement. Treasury did release their tax expenditure statement in December and they have included an estimate of forgone revenue in 2004-05 resulting from the excise concession for condensate, and that figure is \$330 million.

Senator O'BRIEN—So we do have an estimate?

Mr Hartwell—Yes. It is very much an estimate. If you need to take that issue further I think it is best taken up with Treasury. It is a part of the Treasury tax expenditure statement.

Senator O'BRIEN—That information became available in December?

Mr Hartwell—December.

Senator O'BRIEN—That is for the 2004-05 year?

Mr Hartwell—Yes.

Senator O'BRIEN—That leaves one year where there has been no estimate, 2003-04?

Mr Hartwell—The only figure they have not provided is for 2004-05. Again, I think detailed questions should be directed to them in relation to that issue. The tax expenditure forgone issues are part of their portfolio and responsibilities.

Senator O'BRIEN—I do not know when the answer was prepared to the question from the last round, but it would have been useful if that was available.

Mr Hartwell—We foreshadowed in our response to you to the question that was put on notice that Treasury had that under consideration. I am just updating you subsequent to that answer being submitted.

Senator O'BRIEN—Thank you for your answer to my question regarding the additional revenue forgone as a result of crude oil excise changes in 2001. I note that for the year to June 2005 this was an amount of \$90 million. Am I correct in assuming that the beneficiaries of this \$90 million were Woodside, BP, BHP Billiton, Shell, Chevron and MIMI, in equal one-sixth shares?

Mr Hartwell—As was provided to you at a previous Senate estimates hearing, that is correct.

Senator O'BRIEN—What was the estimate of forgone revenue for the year to June 2005, when the crude oil excise changes were first proposed?

Mr Hartwell—I can give you an estimate, that from 2001-02 to when the changes were made to what we expect to be the revenue forgone at the end of 2005-06. We expect in total that will be around \$360 million.

Senator O'BRIEN—If it is available, what is the estimated revenue forgone for the end of the current financial year?

Mr Hartwell—I do not have that precise figure, but up to this point in the year we estimate it to be around \$36 million, up to the present. So we can extrapolate that forward.

Senator O'BRIEN—Is that to the end of January?

Mr Hartwell—I think that is the last figure we have, because this depends on production and it depends on movement in oil prices, a whole range of issues.

Senator O'BRIEN—Thank you for the answer to my question regarding the five other potential LNG projects presently in play: Greater Gorgon, Sunrise, Scarborough and one or two further projects in the Browse Basin. The answer is narrow in its scope. Has an approach been made to government for any form of assistance to the additional five potential LNG projects on any basis?

Mr Hartwell—Since that answer was provided there are other projects that are possibly going to emerge, including Pluto, including the excess development in the Browse. On your question in relation to specific assistance, we have not had any approaches on any of those new projects to emerge, but the government has under consideration in relation to the Gorgon project what may or may not be done.

Senator O'BRIEN—I did not hear that last phrase?

Mr Hartwell—On the Gorgon project. My colleague from Invest Australia has indicated that, of course, if you are talking about fiscal assistance, then most of those projects have been granted major project facilitation status, which is a way of clearing.

Senator O'BRIEN—All of the projects have been given major project status?

Mr Ryan—We are just checking that. We think so.

Senator O'BRIEN—Can you confirm that? If you subsequently find that that is not the case, can you tell me which ones have and which ones have not, what stages of approvals they are at and what market arrangements do they currently have in place?

Mr Ryan—What we will also be able to do for you is that we will give you any projects that have not been listed in that last answer if they have MPF status.

Senator O'BRIEN—What activities have the department or the minister undertaken with respect to assisting companies with LNG marketing overseas?

Mr Hartwell—We will assist companies where they request our assistance, and it is not only us, of course, it is our international network provided by our embassies, through the Department of Foreign Affairs and Trade and through Austrade. That can vary from market to market, depending on where the government-to-government relationship is considered important in terms of the framework and climate for LNG exports.

Senator O'BRIEN—Which markets are you working in?

Mr Hartwell—You would be aware that the intergovernment relationship in China remains an important one that we still have some interest in, and at least our LNG prospective suppliers do. Korea is another one where the government relationship is considered important. And of course, given the issues surrounding the export of LNG to the west coast of the United States, the approvals process there in relation to offshore receiving terminals is something of an interest to some of our potential exporters. So where appropriate we may assist them in trying to clear those hurdles.

Senator O'BRIEN—Are there any projects in Mexico?

Mr Hartwell—There is under construction an offshore receiving terminal off Mexico and others are being considered.

Senator O'BRIEN—Have you been working in assisting that project from an Australian point of view?

Mr Hartwell—Assisting in the extent that: have we maintained an interest and has the government supported it in terms of being supportive of the interests of our prospective LNG suppliers using that terminal? The answer to that would be yes.

Senator O'BRIEN—Can you provide a further update on the status of the Syntroleum technology licence and confirm the final exposure in terms of losses to the Commonwealth with respect to its agreement with Syntroleum through the Strategic Investment Incentives Program?

Mr Hartwell—I can do that. Yes, we continue to discuss the issue of the Syntroleum licence with the Syntroleum company. At the moment they are looking to commercialise that licence. It is in prospective coal gasification projects in Australia and possibly in Papua New Guinea. The licence is still held as an asset on the Department of Industry and Tourism portfolio. We have a capacity to get a return on that up to \$15 million. At the moment the licence is valued at just over \$9 million, because it has been depreciated. Every other bit of money that was formally advanced to Syntroleum or held in escrow on behalf of Syntroleum has now been recovered.

Senator O'BRIEN—What does that mean? We do not have any money that is outstanding other than what we lost on the asset?

Mr Hartwell—The only money which might be considered outstanding, but it is really an asset on the books, relates to the technology Syntroleum licence. All other money that was either paid over to Syntroleum or held in an escrow account has been recovered.

Senator O'BRIEN—I will return to the issue of labour shortages. We are hearing from resource companies that labour shortages in the industry are having a severe impact and may lead to the deferment of some investments. Are there any other initiatives from the department you can draw to my attention, other than the ones you have already mentioned, which might address this significant issue for industry?

Mr Hartwell—The labour skill shortage generally?

Senator O'BRIEN—Yes.

Ms Constable—We have recently conducted a coal and mining forum jointly with India. During the course of that particular forum and preceding that forum, in conjunction with the Chamber of Mines and Energy in Western Australia, Curtin University, the Department of Education, Science and Training, the Department of Immigration and Indigenous Affairs, we have put together a very targeted case study that will sit within the bounds of the national skills shortage program, but concentrating on skilled migration, a program that would assist some students from India to participate in postgraduate training in Australia for a specific period of time, with the intention of providing opportunities in the mining sector after that period and permanent residence status.

Mr Mackey—In terms of the economy generally, the government has a government-wide initiative to address those issues, mainly run through DEWR. Our department is a member of the IDC which is chaired by DEWR and we provide input into that process on any particular needs of the industries that provide us with that information.

Ms Constable—Certainly as part of the national skills shortage program and looking at skilled migration generally, part of what has been proposed and approved is an additional 20,000 places for skilled migration to specifically deal with skill shortages, primarily across a broad range of areas but taking into account the resources industry as a whole.

Senator O'BRIEN—On the answer in relation to the coal and mining forum with India, you are talking about skilled workers from India?

Ms Constable—Skilled workers from India as a first stage of a very targeted case study with the intention of building the relationship between Australia and India in the long term. That could see a much broader program to address not only skill shortages in Australia but assist in capacity building with India itself.

Senator O'BRIEN—Does the department have any data on capital cost increases in the sector which have resulted from labour cost increases over the last year?

Mr Hartwell—We had quoted to us, and this is only anecdotal, that construction costs generally, whether they be related to material costs, such as steel and other primary materials, and to labour costs, would mean that the costs of a project might have risen 40 per cent in the last 12 to 18 months. But that is only anecdotal evidence.

Senator O'BRIEN—Can someone give me an update on the status of the proposed oil code and the petrol retail reform legislation?

Mr Payne—The proposed reform package is under consideration by the government.

Senator O'BRIEN—Has legislation been drafted or drafting instructions prepared, or have we not yet reached that stage?

Mr Hartwell—As Mr Payne has indicated, the government still has this under consideration. So the answer to that is that until a decision is made to go ahead we have not reached that stage.

Senator O'BRIEN—How long has it been under consideration?

Mr Ryan—A considerable time.

Senator O'BRIEN—A considerable time? We can work that out, I suppose. I thought you would have a clock ticking and you would be able to tell me hours and minutes. What is the status of the low emissions technology fund at the moment?

Mr Peel—We have called applications, which close on 31 March.

Senator O'BRIEN—Are the details of the application calling on the departmental website?

Mr Peel—The application forms, the program guidelines, all that sort of thing, are on the AusIndustry website.

Senator O'BRIEN—After the closing of applications, is there an expected timetable for the approvals et cetera?

Mr Peel—Yes, there is. We expect an announcement in June or July of successful applicants.

Senator O'BRIEN—Is the minister the final determinant of successful applicants?

Mr Peel—The successful applicants will be decided by the minister for industry and the minister for the environment.

Senator O'BRIEN—Thank you to Senator Minchin and Minister Macfarlane for the very quick answers to my questions regarding ethanol production subsidies. Can I extrapolate from the answer you have provided to question 1485 that Manildra produces almost 85 per cent of the subsidised production and that that is based on wheat?

Senator Minchin—That sounds right.

Mr Payne—That would be correct. Manildra produces 31.8 megalitres of the total of 37.6.

Senator O'BRIEN—And both CSR and Schumer are sugar, molasses or cane based production?

Mr Payne—That is correct.

Senator O'BRIEN—They account for the remaining 15.5 per cent?

Mr Payne—Yes, there are only three producers.

Senator O'BRIEN—I assume there are some other ethanol production facilities?

Mr Payne—There are other projects which have been identified, but actual fuel ethanol production facilities are just those three companies.

Senator O'BRIEN—I think there is another facility that produces ethanol but it is for food or sake or something like that.

Mr Payne—Yes.

Senator O'BRIEN—I have not tasted it, either—I can see it in your face! That would be a much smaller production facility, wouldn't it?

Mr Payne—I honestly do not know how much it produces.

Senator O'BRIEN—It is fair to say that although production is higher than it was last year, it is still well below the production levels which were achieved in 2002-03?

Mr Payne—That is correct.

Senator O'BRIEN—It seems that the volume of production on the year-to-date figures available would be marginally higher than the 2003-04 figures, assuming a constant rate of production. Are you saying that for the first half of this financial year it is \$5.7 million in subsidies, which is directly related to quantity produced?

Mr Payne—I think that the situation is that the production of ethanol between 1 July 2005 and 31 December 2005 was actually 44 per cent higher when compared to the corresponding period in the 2004-05 financial year.

Senator O'BRIEN—But I was going to the year before that, just looking at the annual figure of \$10.8 million in subsidies. If I double the 2005-06 figure to date, I get \$11.4 million, so it would be a marginal increase on the 2003-04 figures. Is that how the statistics generally run through?

Mr Payne—They are calculated on a regular basis according to the claims by the companies for payment of the subsidy.

Senator O'BRIEN—Do they put in monthly claims?

Mr Payne—Yes, I believe it is monthly. It is either fortnightly or monthly.

Senator O'BRIEN—This subsidy could hardly be seen to be being a great success in increasing production.

Mr Payne—There are factors to do with public confidence in the use of ethanol which explain the drop-off in production since 2003.

Senator O'BRIEN—What about the capital grants program for ethanol production—what is happening there? There are no additional producers yet. Are any of the plants under construction?

Mr Peel—You are talking about the biofuels capital grants program?

Senator O'BRIEN—Yes.

Mr Peel—There were seven grants under the program. I think that two or possibly three are under construction at the present time.

Senator O'BRIEN—Have they been paid moneys?

Mr Peel—The ones that are under construction have been paid. The first payment is commencement of construction.

Senator O'BRIEN—Which ones are under construction and therefore in some way under way?

Mr Sexton—I am not sure I am able to release to you that sort of detail. I can say that of the four biodiesel plants, two of them are under construction. Of the three ethanol plants, two of them, I understand, have let contracts but construction has not yet started.

Senator O'BRIEN—That is two of how many?

Mr Sexton—Three.

Senator O'BRIEN—Are they all grain based productions? The biodiesel would be.

Mr Sexton—No, most of them are actually grease, animal fats, tallow based.

Senator O'BRIEN—That is the biodiesel?

Mr Sexton—That is the biodiesel.

Senator O'BRIEN—What about the two ethanol plants?

Mr Sexton—Two of the ethanols are sugarcane molasses, one is grain based.

Senator O'BRIEN—Of the ethanol production plants, can you tell me what volume of production the plants are being constructed to produce?

Mr Sexton—Excuse me while I do my calculations. In total it is 30 million litres per year for one, 15 million litres another, and 62.5 million litres.

Senator O'BRIEN—That is 107 million litres. Can you tell me, of the ethanol plant contracts let, whether that is the majority of the volume expected to be produced or less than the majority of the volume? I am just looking at the quantity that might actually end up on the market. For obvious reasons, the existing capacity without these plants is obviously underutilised at the moment.

Mr Peel—That is the total proposed capacity of the three plants, the figures we have just given.

Mr Sexton—They would be the individual minimum capacities that the companies must achieve if they are to satisfy the terms and conditions of the grantees.

Senator O'BRIEN—How much grant money has been paid to date for the biodiesel plants?

Mr Peel—For biodiesel there have been two payments so far, one of \$5.36 million and one of \$960,000.

Senator O'BRIEN—That is the two plants combined, the total amount, is it?

Mr Peel—No, that is \$5.3 million for one and \$960,000 for the other. If we add those together it is about \$6.3 million.

Senator O'BRIEN—Has any money been paid to the ethanol production facilities under the biofuels program?

Mr Sexton—None yet.

Senator O'BRIEN—What milestone do they have to achieve?

Mr Peel—Commencement of construction, for the first payment.

Senator O'BRIEN—What proportion of the grant is paid on commencement?

Mr Peel—Twenty-five per cent on commencement of construction, 25 per cent on commissioning of the plant and 50 per cent on first commercial sale into the domestic transport fuels market.

Senator O'BRIEN—They have to achieve these minimum production levels, don't they? Is that what you told me?

Mr Sexton—The minimum production levels are an average which have to be achieved over three years. Can I also correct something I said earlier. The volume figures that I gave you were indeed the proposed plant capacities that will come out of these projects, but the actual annual agreed production that they must meet in two of the cases is less than those figures that I gave you.

Senator O'BRIEN—When do they actually get the last 50 per cent of the grant?

Mr Peel—On the first commercial sale into the domestic transport market.

Senator O'BRIEN—Once they have the plant up and the potential capacity meets the basis of the grant, and they sell the first million litres or 100,000 litres, or whatever the quantity, they get the last 50 per cent?

Mr Peel—That is right.

Senator O'BRIEN—Is that recoverable if they do not?

Mr Peel—Yes, we monitor them after that and, if they do not meet their contractual conditions, we can call the money back from them.

Senator O'BRIEN—Is there some financial guarantee or some bank guarantee that ensures that the money will be available, or do you plan to take over the plants?

Mr Peel—There are no financial guarantees provided under the deeds. I hope we do not intend to take over plants.

Senator O'BRIEN—It sounds like you might. Is there any evidence that demand for ethanol is growing at a sufficient pace to provide a market for these plants in the context of existing capacity?

Mr Payne—In terms of the government's target for 350 megalitres of biofuels production by 2010, the Prime Minister announced on 22 December that following the preparation of action plans by the industry, so that is the oil majors and other players as well as the ethanol and biodiesel producers, the government was expecting that the 350-megalitre target would be achievable.

Senator O'BRIEN—That is the government's view. What evidence is that based on?

Mr Hartwell—I think it is fair to say that, while it was announced by the Prime Minister, the figure that the Prime Minister and other ministers associated with the announcement gave is based on what the industry itself put forward in terms of their overall targets and the way they see the ethanol market developing. It is essentially based on what industry have indicated to the government is achievable in terms of the target.

Senator O'BRIEN—Manildra is capable of producing 90 million litres, but at the moment it is only getting a subsidy for 31.8 million litres.

Mr Hartwell—But as you have probably seen, in recent months there has been a roll-out by a number of the major petroleum refineries of E10 plans and now there are some 400 outlets in Australia marketing an ethanol blend. The forward trend is continuing in that direction.

Senator O'BRIEN—If you take the trend from last year to this year and say that the market is growing 25 per cent a year, it is going to take an awful long time to get to 350 million litres, isn't it?

Mr Ryan—I think the answer is that the difference is that now the oil majors are actually starting to take market share, which is the new breakthrough that has happened in the last 12 months and what those action plans are based on. That is the big difference. Who in the marketplace will be supplying the product is I think what we are starting to see with the new investments.

Senator O'BRIEN—What other initiatives are on foot? Is the government going to promote the use of the E10 product in some way, or is that down to the industry?

Mr Ryan—There have been a lot of changes done to build up the consumer confidence, changes in the way that the labelling is done in the service stations. As of January this year all the motor vehicle producers in Australia now put a label on their filler caps saying that the product can be used in these cars, so there is that form of educative, if you like, approach.

Senator O'BRIEN—When is it said to be realistically achievable, this 350 million litres?

Mr Payne—By 2010. That was the target.

Senator O'BRIEN—There is going to have to be nearly a tenfold growth in consumption by 2010—37.6 million last full financial year, I think from the answer you gave me.

Mr Payne—Yes.

Mr Hartwell—You are talking at the moment about ethanol, but of course the biofuels target does include biodiesel as well.

Senator O'BRIEN—What is the current production level nationally for biodiesel?

Mr Payne—It is about four megalitres.

Senator O'BRIEN—It is about four million, and if all of these plants come on line it will be how many million?

Mr Payne—In the report of the Prime Minister's task force on biofuels there is a list of all the known and potential projects, both ethanol and biodiesel, with their capacity identified.

Senator O'BRIEN—Where is this document?

Mr Payne—This is the report of the Prime Minister's task force on biofuels, which was released publicly last September.

Senator O'BRIEN—Could you describe the list again for me?

Mr Payne—It includes 12 known or potential ethanol projects and 10 biodiesel projects, and their capacities are identified in that report.

Senator O'BRIEN—Do you know what proportion of the vehicle fuel market has been gained by ethanol-blend petrol?

Mr Payne—I could do that calculation for you, but I just do not have that figure with me at the moment.

Senator O'BRIEN—The question that I was leading to is what sort of penetration has to be achieved for 350 million litres—do you know?

Mr Payne—No. Off the top of my head I do not, but you are looking out to 2010, as you know.

Senator O'BRIEN—The price of petrol or consumption might have gone down, so I will have to get a bigger percentage! I think there are a couple of other questions that may arise but I will check those and put them on notice for resources.

CHAIR—Thank you, Senator O'Brien, that is the end of resources?

Senator O'BRIEN—Yes.

CHAIR—As I understand it, we only have tourism left and you are handling that, Senator O'Brien.

Mr Ryan—Senator, we have the answer now to an earlier question you asked about the LNG projects which have MPF, or major project facilitation, status.

Mr Jones—There have been six LNG projects which over the years have been granted major project facilitation status. They are the fourth processing train on the North West Shelf project and the Darwin LNG project, both of which are now in production; the Sunrise project, which is suspended; and the Gorgon, Pluto and Pilbara LNG projects, all of which are going through the approval stages at the moment.

Senator O'BRIEN—Thank you for that information.

Proceedings suspended from 6.26 pm to 6.29 pm

Tourism Australia

CHAIR—I welcome to the table departmental officers concerned with the tourism aspect of the portfolio and the officers of Tourism Australia.

Senator O'BRIEN—The minister has written to the board of Tourism Australia to express her dissatisfaction about a lack of progress from the Tourism Events Australia division, and specifically business events. When was this—when did that letter emerge?

Mr Morrison—In relation to that correspondence between the minister and the office of our organisation, can I firstly say that does not reflect the nature of the correspondence as suggested. The minister has a very keen interest in a whole range of areas, Tourism Events is one of those and we speak to her regularly about it, as you would expect.

Senator O'BRIEN—How do you respond to the criticism that there has been a lack of progress from the Tourism Events Australia division specifically in relation to business events?

Mr Morrison—I am not aware of that criticism. I am not aware of who has made that criticism or what that criticism is based on. That criticism has not been made to me or our organisation, to my knowledge.

Senator O'BRIEN—To your knowledge? Are you satisfied with the progress made by the Tourism Events Australia division specifically in relation to business events?

Mr Morrison—Yes, I am. The Tourism Events Australia division of TA was only established some months ago, late last year. It is overseeing and working with our officers overseas to deliver a whole range of programs. There are major events happening in Asia over the course of the next few weeks. There are seminars taking place in Korea as we speak. The office, together with our offices overseas, spend well over \$5 million promoting business events. There was a 13 per cent growth in the convention market to 2005, in visitors, so I would suggest that the business is healthy. It is actually very hard to get exhibition space in a lot of our major exhibition centres around Australia today. I think that is a product of the success of the sector.

Senator O'BRIEN—If Tourism Events Australia was only launched late last year, but Tourism Australia has been around for a year, why was there such a gap between the creation of Tourism Australia and the launch of Tourism Events Australia?

Mr Morrison—It was only a matter of months, so I would not suggest it was a particularly long delay. We were set up in July 2004 and it was set up late last year. We had to recruit the right staff. We were already operating a whole range of events. It is not as if Tourism Australia was not engaged in the tourism events area. We have been running major events in the area of business events for many years in the predecessor organisation and this one. The TABEE events that are run through Asia are highly successful. In January 2005 we hosted the single largest incentive group Australia has ever hosted, which was the Amway Group out of China. There have been numerous incentive groups that have been to Australia since then. The business is healthy and Tourism Australia has been doing its job in that respect. With the establishment of Tourism Events Australia and the establishment of a manager of Tourism Events Australia, which was a key request of the industry, I think it is adding value.

Senator O'BRIEN—When you say 'a matter of months', it is more than a year and probably approaching 18 months from the establishment of Tourism Australia in July 2004 to the launch of Tourism Events Australia late in 2005.

Mr Morrison—I do not think it inhibited any of the activity that Tourism Australia was undertaking in that area and I do not think there is any evidence of that, to my knowledge, either.

Senator O'BRIEN—My question was: why did it take that period of time?

Mr Morrison—Our focus in setting up a new organisation, which is no simple task as I am sure you are aware, included the sort of organisational change that needed to take place to find the right people, the recruiting of senior management—my own appointment was not made until late in 2004—the establishment of a new corporate plan and, over the last 12 months, a whole range of activity. So it was a matter that was attended to. It has been established, it is under way, and in the markets our officers kept pace with the activity. I think it is progressing well.

Senator O'BRIEN—Since its establishment, what has it actually done?

Mr Morrison—As you know, Tourism Events Australia is part of Tourism Australia. It is not a separate legal entity, it is a part of this organisation, so Tourism Australia's activities, including those which were formally taken over by Tourism Events Australia, include embarking on a major research project to assess the value of the sector. It has undertaken and overseen a whole range of corporate familiarisations, the production of destination supplements to over 160,000 business groups around the world, through either direct mail or inserts in major publications. It has engaged itself in major trade events offshore, in Europe, in the UK, in Asia and also in the United States and later this year will host Dreamtime, which is the ATE equivalent for business events which will be held on the Gold Coast, and has been working hard on setting up the arrangements for that very major event which brings business event buyers to Australia from all over the world. So it has been a very busy program.

Senator O'BRIEN—Does it have a separate staffing—

Mr Morrison—It has a manager based in Sydney and a number of staff who report to that manager in Sydney.

Senator O'BRIEN—They are dedicated to Tourism Events Australia?

Mr Morrison—Yes. We also have staff offshore who are also dedicated to business events, in London and in our Asia office based in Hong Kong, and the United States in Los Angeles.

Senator O'BRIEN—These are staff who were engaged after its formation or were they already engaged? It may have been a mix of the two.

Mr Morrison—It was a mix of the two. The manager was appointed externally through a recruitment process and there were two other additional positions that were also recruited following her appointment.

Senator O'BRIEN—Does it have a separate, although internal, budget?

Mr Morrison—It has an internal budget, yes.

Senator O'BRIEN—What is its budget?

Mr Morrison—We spend on business events \$5.1 million this year.

Senator O'BRIEN—That is the budget for this financial year?

Mr Morrison—Yes.

Senator O'BRIEN—Does that include all the salaries?

Mr Morrison—Yes.

Senator O'BRIEN—How much is budgeted for any promotional activity?

Mr Morrison—\$3.7 million, which I should stress is the eighth-largest budget of all of our marketing programs. The only markets we spend more on than business events are our top seven markets such as Germany, South Korea, China, New Zealand. We spend more on business events than we do on Singapore, Ireland, Hong Kong, Italy or France. It receives a solid weighting in the context of our other programs for leisure marketing across the world.

Senator O'BRIEN—When you say it is the eighth largest and you name countries that we are seeking to target to attract tourists from, if you spend money on business promotion, it is in addition to the general tourism promotion for that country?

Mr Morrison—Yes.

Senator O'BRIEN—With the \$3.7 million, do you have particular target countries or is it a broader brush approach because it is business?

Mr Morrison—About 75 per cent of our incentive business that we look for actually comes out of the Asian region, and that is the focus of most of our activity, but we also have staff based, as I mentioned before, in London and in the United States.

Senator O'BRIEN—In the \$3.7 million, is your overseas staff budgeted for there, or is it in another part of it?

Mr Morrison—No, that is in the balance of the \$5.1 million, so I have included those in those figures and their overhead costs.

Senator O'BRIEN—Your approach is direct mail?

Mr Morrison—It is the range of programs I mentioned before, which includes research and insights, corporate familiarisations, the production of destination supplements, the participation in trade events and being part of a broader coalition called 'Team Australia' which brings together all of the convention bureaus and promotional bureaus from the major cities all around Australia and regions. We host and put together an event called a range of different names in different places, but is best known as TABEE, which is a major trade exchange between business event operators and the business event product. So it is a major program.

Senator O'BRIEN—Are we able to see a hard copy of some your promotional material, to the extent that it is in English?

Mr Morrison—Destination supplements and those sorts of things?

Senator O'BRIEN—Yes.

Mr Morrison—Yes, happy to. They are publicly available.

Senator O'BRIEN—Do I have to go overseas to get them publicly? I am sure you will provide them, but is that what you mean when you say they are 'publicly available'?

Mr Morrison—When answering the question about when Tourism Events Australia was established, I should have mentioned that there is also a website, which is titled events.australia.com and that includes a whole range of information. It has an Australian business news section, it has incentive sample itineraries, it has interactive maps, it has weather and distance charts, it has events calendars of major conferences and exhibitions; the list goes on. That was a fairly major initiative also since it was established. Some of that destination material you will find on events.australia.com.

Senator O'BRIEN—In terms of attracting the corporate market, is any of the promotional material connected with incentives to attend Australia?

Mr Morrison—That is its predominant focus. The business tourism market, as you are aware, comprises a range of different sectors: the convention side of it, the incentive side of it, the meeting side of it. We focus our efforts predominantly on the incentives and the smaller corporate meetings side, because the convention business is largely driven by the convention bureaus. They are the ones who do the bids, and it was also the view when Tourism Events Australia was set up following the white paper and the formation of Tourism Australia that there should not be a stepping on toes or duplication of efforts, and that Tourism Australia should not get into the business of picking winners of different convention cities as to which should be the Australian bid. It is an open process and we provide broader support and a stronger focus on the incentive side of the market.

Senator O'BRIEN—Basically it is brokering those incentives?

Mr Morrison—Yes. We do direct presentations to groups like the Amway groups and others throughout the region and direct promotions, attendance at the various trade shows and so on, which the incentive buyers actually attend. We facilitate meetings between the Australian industry when they are up in market through our contacts with those incentive providers.

Senator O'BRIEN—The Brand Australia campaign, is that used in the context of the Events Australia campaign?

Mr Morrison—Yes, it is. Australia is what Australia is, so the notion of Australia's brand is obviously weaved through everything we do, yes.

Senator O'BRIEN—Is there a specific aspect of the campaign which promotes Australia as a business destination in itself, or is that an adjunct? Are they coming here because it is a business destination or are they coming here because it is a leisure destination and a good place to have a conference?

Mr Morrison—There are a lot of opinions on that as to why they come. The specific promotions we do around business tourism, whether they be video productions or as we did most recently at the 'G'day LA' event where we hosted and set up a function with 400 young presidents in Los Angeles and showcased Australian events and put that to them. That had a strong Australian brand theme to it, but it also had a business tourism element to it. Yes, and as we go forward with the new campaign as well, people come to Australia because it is Australia. Everybody has convention venues, everybody has a range of different things, but the appeal of Australia is what plays a fundamental role in the decision and we do not resile from that.

Senator O'BRIEN—Under the white paper, \$45 million was allocated to domestic tourism. There was an \$8 million advertising campaign. What is the state of the remaining \$37 million?

Mr Morrison—In this current year, we would have spent around \$10 million on that program. What that program has also concluded most recently is a lot of our involvement in the Commonwealth Games and the Queen's baton relay. We have had young tourism ambassadors moving around the country with the baton from different parts of the country, using those events as opportunities to talk about the need to go out and see Australia. There has been a website which has followed that on which a lot of work has been done. We have

done a lot of work on research into everything from leave-taking to consumer behaviour within the domestic sector. That has been the nature of activity, including the campaign you mentioned.

Senator O'BRIEN—How much of the \$45 million has actually been spent in total?

Mr Morrison—I will have to get that figure for you as of today. Literally the events take place every day. I could give you a figure at the end of February to close off the month.

Senator O'BRIEN—Perhaps if you tell us what you expect to spend at the end of this financial year. I am looking for a budget figure. Obviously I am not going to hold you to that.

Mr Morrison—Our budget figure for this year, as I mentioned, is \$10 million.

Senator O'BRIEN—Given that, how much of the \$45 million will remain? I have not got the sum for the previous—

Mr Morrison—I would have to check what the expenditure was in the previous year.

Mr Hopwood—The white paper funding has about \$11 million for each subsequent year, and they will be the amounts in our funding budgets. So two years by \$11 million—\$22 million.

Senator O'BRIEN—That is about right. Was any effort made to evaluate the success or otherwise of the advertising campaign?

Mr Morrison—As always, we undertake tracking of our work. I can say that 40 per cent of respondents believe the campaign helped them decide to take their next holiday break in Australia; 44 per cent of respondents believe the campaign 'made me think Australian holidays would be better than overseas'; 45 per cent believed it 'made me think about taking a holiday or break soon'. All these benchmarks are higher than in previous campaigns, including the See Australia one.

Senator O'BRIEN—Did you actually get a response that said what percentage actually decided to take a holiday soon, rather than think about it?

Mr Morrison—You will have to go back to the objective of the campaign, which was that Australia was not in the consideration set of these consumers. The objective was to get it into their consideration set. There is an enormous amount of advertising that takes place in the domestic scene by product specifically and by the states. The states are actually the primary promoter of domestic tourism in Australia. They have the largest budgets combined and they put the most money into it outside of the corporate sector. So we are just one part of that jigsaw, albeit quite a small part in the overall picture, so our job was to get it in the consideration set and the tracking base on the campaign said that it did a pretty reasonable job of doing that.

Senator O'BRIEN—Did you ask the question: how many people actually decided to take a holiday? When you said these people said it made them think about taking a holiday, I am just wondering, did you ask the question?

Mr Morrison—I would have a percentage on that. I do not have it in front of me, but they are the key figures that related to the objectives of the campaign. The campaign was not designed to get people to book their holiday that second, because it was feeding in to work

which particularly the states and the territories were doing. As I said, 44 per cent were in the zone of getting them to think about Australia and 40 per cent said it helped them to decide to take their next holiday break in Australia. So we were pleased with those results.

Senator O'BRIEN—What would you judge that against? Forty per cent decided to take their next holiday in Australia.

Mr Morrison—Yes. With the previous campaigns.

Senator O'BRIEN—Is that the normal percentage or better?

Mr Morrison—No. It was higher than our previous campaign. It was an improvement on the campaign that had been run under See Australia on those measures.

Senator O'BRIEN—Do you have figures as to the proportion of Australians that holiday in this country versus those that choose to holiday overseas each year?

Mr Morrison—It shifts each year, based on prices and exchange rates and a whole range of those things.

Senator O'BRIEN—Yes.

Mr Morrison—It is the outbound sector, as you know, which in response to that has been doing very, very well in the last few years.

Senator O'BRIEN—If your survey result says 40 per cent are going to think about holidaying in Australia but the norm is that 50 per cent usually do, then I am not sure that that gives you the good, positive result you are projecting to the committee.

Mr Morrison—I disagree. We are talking to a specific audience which has a high predisposition to travel overseas. The people we were researching was not mainstream Australia. It was a proportion of people that actually tended to spend a lot on holidays and were in growing numbers going overseas, so to get 40 per cent of them putting it back on to their agenda we were pleased with that result for the campaign and where it is at.

Senator O'BRIEN—What proportion of the Australian market was your target?

Mr Morrison—I have to get the specifics for you. I do not have it in front of me, but I am happy to provide what the target was. I think it was around a million Australians we were talking to basically, who spend around \$5 billion on travel. They are the figures I recall.

Senator O'BRIEN—Have you got a formal report evaluating the advertising campaign?

Mr Morrison—We have an internal report, yes, which is provided to our board.

Senator O'BRIEN—Is there any reason that that cannot be shared with the committee?

Mr Morrison—I will take that on notice.

Senator O'BRIEN—Can you describe the liaison that is going on with state tourism bodies to address this issue?

Mr Morrison—Pardon?

Senator O'BRIEN—I wanted you to let us know what liaison is occurring between Tourism Australia and state tourism bodies regarding the issue of the promotion of the domestic tourism market and the information that you have gleaned.

Mr Morrison—We meet regularly. It is literally a daily/weekly occurrence our sitting down with the states on this issue, like many others. The CEOs of all the state tourism organisations and I meet on a regular basis. Our marketing directors, through our marketing alliance, also meet on a regular basis. On this campaign in particular there were workshops held with the state and territory tourism authority marketing groups as well as debriefings undertaken with the CEOs and other parts of the organisation. There was a fairly extensive discussion of this issue. At the end of the day, the states are the ones who primarily drive this agenda, and the intergovernment agreement on tourism between the Australian government and the states reflects that as well. But it is Tourism Australia that is to look to the states really to provide the lion's share of the effort. I am just talking about domestic.

Senator O'BRIEN—How important are the airlines in domestic tourism promotion? It seems to me that they are the domestic travel-to-destination ads that I see most.

Mr Morrison—The airlines are critical domestically, as they are internationally. Airlines are one of the few commercial operators who actually have the most interest in promoting destinations. People want to fly to get to destinations, so they tend to focus on that pretty heavily. We have seen a lot of change in the aviation sector over the last few years. It has opened up new regional destinations in particular, places such as Hervey Bay. Tasmania itself did extremely well, as you know, out of the air services going to Tasmania through Virgin and others. They play a massive role and we work closely with them, as do the states.

Senator O'BRIEN—How does the Aussie Specialist program work?

Mr Morrison—The Aussie Specialist program is probably one of the most successful programs Tourism Australia and its predecessor, ATC, has ever undertaken. It is a program of enlisting travel agents all around the world, through Asia, through the Americas, through the United Kingdom and Europe. We have literally thousands of agents signed up to this program, under which they are trained on how to sell Australia as a destination. That is done through online tools, through seminars, communications, conferences, the provision of promotional material. In some states we have a tiered approach; we have a selection of top agents and we push on referrals from consumers who go to our website. They have proven to be very successful in converting the business when we spend attention on educating them about Australia and how to promote and sell Australia. It is how we, in particular, seek to drive up yield in the sale by having a better informed sales force, which is what the travel agents are.

Senator O'BRIEN—Are some of your overseas staff specifically involved in the training of agents?

Mr Morrison—Yes.

Senator O'BRIEN—We talked about seminars. Do you put on seminars or do you attend seminars?

Mr Morrison—No. We put them on and train the agents. In China, a critical part of that process is taking them through the whole ADS process and the visa process. It has put us in a much more competitive position than many of those who are seeking to get a foothold in that market, because we have the best relationship with the agents.

Senator O'BRIEN—After you have trained them do you accredit them?

Mr Morrison—They work through an online training module, which they have to complete in order to participate in the program. They have to complete certain modules over time. When they have done that, they can gain that status. In other places they pay a small fee in recognition of getting access to consumer referrals and things like that. We have involved them in our major trade events. At the Australian Tourism Exchange last year we brought quite a number of them down, particularly from the United States, and gave them direct interface with our Australian product.

Senator O'BRIEN—Was that at your cost?

Mr Morrison—Yes. It is part of the familiarisation program. We often bring travel agents to Australia and conduct familiarisations. That is done often with the states and with the Australian industry, as we do with journalists and a whole range of others.

Senator O'BRIEN—What part of your budget would be applied to that?

Mr Morrison—That is our marketing budget. It is part of our consumer marketing activities.

Senator O'BRIEN—How much of it?

Mr Morrison—We will take that on notice. It is what we call 'trade marketing'.

Senator O'BRIEN—Is it being used in emerging markets or just the currently performing markets?

Mr Morrison—We have another program called the Aussie Enthusiast program, which is another less intensive aspect of that program. We work on the Aussie Enthusiast program with Austrade, particularly in places where as yet we do not have a presence. It follows a similar type of model. It is just not as intensive. That provides us with a point of contact with agents in places like Russia, through the Gulf countries and so on. It is a key part of our focus for India moving forward as well.

Senator O'BRIEN—Can you detail the countries where you have each of those two programs working?

Mr Morrison—Yes, we can. I will take it on notice.

Senator O'BRIEN—I am just trying to understand what you mean by 'develop a comprehensive channel strategy' for this Aussie Specialist program.

Mr Morrison—We talk about channels in the tourism industry, distribution channels. There are some channels that work on a direct consumer basis over telephone sales, others work with internet and retail outlets. It is a matter of having a presence in each of those channels and an appropriate balance to reflect how consumers are behaving and seeking to buy travel product.

Senator O'BRIEN—A British photographer was chosen over Australian photographers for the new advertising campaign by M&C Saatchi. I believe there were many Australian photographers who vied for this job, including one particularly well known and respected for his landscape images of Australia. Why could Saatchi not use Australian photographers?

Mr Morrison—That selection was undertaken by our agency. We appointed that agency based on its credibility in this area, and it has made that creative judgment. Around 60

portfolios were submitted. It is a professional and well-respected agency and we respect its judgment and have supported it.

Senator O'BRIEN—Does that have any impact on the cost and value for money?

Mr Morrison—No, it does not. All of these matters are balanced in the equation. The agency is seeking to source the right photographer to do the job that we brief it to do. That is what we have charged it to do. We have our budgets for these exercises and it works within those budgets. There was no requirement to change the budget on the basis of its selection.

Senator O'BRIEN—Is it possible to segregate the photographer's costs in that campaign?

Mr Morrison—The project is still ongoing, but I am happy to take that question at a future date when the project is completed.

Senator O'BRIEN—When is it expected to be completed?

Mr Morrison—These things are often contingent on weather; you have to have the right conditions. At this stage, it is a bit hard for me to say.

Senator O'BRIEN—You have to bring a photographer from overseas and then travel Australia to take photographs. I presume they are going to be photographs of Australia. Why would that not have an impact on cost?

Mr Morrison—I said that we have a budget for the production and we have had no requirement to change that budget as a result of its selection.

Senator O'BRIEN—But your budget is an upper limit, is it not? You are not guaranteed to spend that amount, are you? You can spend less than the budget?

Mr Morrison—Our budgets are set to do the job. It had a budget to work within and it is working within that budget, as we would expect it to do. It is about the quality of the work and the quality of the job, for which we hold the agency accountable, and it has made a selection against that.

Senator O'BRIEN—When was the campaign commissioned?

Mr Morrison—When was the work commissioned?

Senator O'BRIEN—Yes. Not the photographer but M&C Saatchi for this particular—

Mr Morrison—They were first contracted to us back in July of last year, and the work has then progressed as part of that contract. The photographer himself was commissioned in January, I understand.

Senator O'BRIEN—I was presuming it was a phase of its work, a definable project as part of their work?

Mr Morrison—A strategy is developed, a creative brief is worked up, which is provided to your agency. Then it sets out a program of things it needs to do. Then it goes through the process of selecting the talent and the work that needs to be done. As I understand it, that part of the work was commissioned in January.

Senator O'BRIEN—How is the inbound Japanese tourism market at the moment?

Mr Morrison—Of our top seven markets, only two markets did not achieve double digit growth in holiday arrivals for 2005. Those were New Zealand, which had around a seven per cent increase for holiday arrivals in 2005, and Japan, which had a one per cent decline for holiday arrivals. The report released by the minister just a month or so ago in Tokyo indicated quite a range of facts and figures on the performance of the Japan market. Some of those I would refer to include that, in the year to June 2005, spending in the holiday sector of the market for Japan was up 8.9 per cent. Equally, if we were to look at the issue of Australia's share in yen of the market for 2004, that had gone from 82 points up to 98 points.

There is no doubt that the Japanese market has been very difficult, but Australia has been maintaining its presence relative to other players in the market. That is not to say that we do not have problems. I think we have some very significant problems in the market, and the report indicates that. Tourism Australia has been talking about those problems for some time and has engaged in a whole range of initiatives, many of which are outlined in that report, that are ongoing, from research through to brand activities, promotions and working with the trade. It is a difficult market. It is not our best performing market at the moment, but one thing I would say is that over the last 10 years we have broadened our markets so that we can say that, while Japan is down, we have five out of our top seven markets growing at double digit levels—and that is on arrivals, on expenditure figures. We will know those figures in a few months time in terms of how the economic dividend has played out for those markets.

Senator O'BRIEN—I can understand the share in yen going up because of the value of the yen against the Australian currency depreciating, so it costs them more to come here. I just wonder how important that is.

Mr Morrison—That comparison is based on our percentage of outbound spend out of Japan. That is indicating that our share of outbound spend from 2003 to 2004 has increased. That is relative to our competitors. Overall outbound spend has been declining out of the Japanese market for outbound expenditure to all destinations. It has fallen from 100 points in 2000 down to 87 points in 2004. But over that same period, our share has gone from 2 per cent to 2.6 per cent. It is a tough market, in which we have been eking out a fairly good performance.

Senator O'BRIEN—Our currency has bounced from around 60-something yen to 80 to 90 yen to the dollar, so I am not surprised there is a reduction but you are still getting an increase in spend; it costs that much more to come here.

Mr Morrison—But as your own currency appreciates, it also becomes more difficult to remain price competitive in those markets at the same time. It is two sides of the one coin.

Senator O'BRIEN—I think the Japanese case is a particularly strong appreciation of our currency vis-a-vis the Japanese currency.

Mr Morrison—As I say, that does make our job harder in terms of ensuring that we remain competitive in those markets as your prices go up. The need for us to focus on the value of the experience is no more important now than it has ever been.

Senator O'BRIEN—What is the trend in the US market?

Mr Morrison—In the US market we had growth in holiday arrivals for 2005 of 11 per cent.

Senator O'BRIEN—Off what base?

Mr Morrison—It went from 175,000 to 194,000 in 2005. One of the points I would like to stress is that, in the last few years, there has been quite a parting of the ways between the overall trends in visitor arrivals figures and the broken down trends within the various components. There has been a lot of commentary on what the total figures have been, but when you break it down to what has been happening with holidaying and visiting friends and relatives, the trends are quite different. We have been doing a lot of work on this, because it would be quite a mistake for us to base strategies on trends that we are not seeing evident in our own holiday markets. The holiday markets trends are far more encouraging than the total figures suggest.

Senator O'BRIEN—Does that mean there is fewer friends and relatives visiting going on?

Mr Morrison—No, it means that education visitation has not been growing as fast, and education visitation has a fairly significant impact on the number of nights stayed and the total expenditure. It is a relatively smaller percentage of total visitors, but its impact on nights and spend is some three to four times as great.

Senator O'BRIEN—I think the remainder of my questions are for the department. Are tourism workers to be included in the government's emergency management plan on bird flu?

Mr Noonan—The government has been working on a number of aspects of the avian flu issue in relation to the tourism industry. The question of how particular workers in particular industries are categorised is something that the government as a whole still has before it.

Senator Minchin—Do I interpret Senator O'Brien meaning that officers of Tourism Australia are now free to go or not?

CHAIR—It might be safer, Senator Minchin—

Senator Minchin—I am thinking of our officers and their welfare.

CHAIR—It is only 22 minutes till 7.30.

Senator O'BRIEN—But there were consultations with industry on bird flu last November.

Mr Noonan—That is right. In fact, we have been doing a number of things in relation to avian influenza, trying to disseminate information about what the current situation is, particularly through a webpage that is updated on a fortnightly basis. As you say, there were consultations specifically focused on the tourism sector on 17 November, and there have been other consultations with broader business constituencies. We have also been working with a number of other agencies through IDCs on the overall government strategy.

Senator O'BRIEN—Ms Kelly mentioned fortnightly email bulletins to the industry.

Mr Noonan—That is true. That takes the form of an email that draws attention to updates on that webpage that I mentioned earlier.

Senator O'BRIEN—Are any other practical steps being taken?

Mr Noonan—We have a National Tourism Incident Response Plan, which we have had in place for a few years now, and we are planning to run a simulation using that plan hopefully next month. That plan involves federal and state agencies and industry associations, and we will be testing it, particularly the communication links to make sure that they work.

Ms Kelly—It is not particularly for the tourism sector. The other thing that was asked for in the tourism consultations was assistance with business continuity planning. The department is leading a group preparing guidance for business on business continuity planning.

Senator O'BRIEN—That is the big issue, is it not?

Ms Kelly—Yes, it certainly is one of them.

Senator O'BRIEN—Is there any plan, proposal or consideration for an education plan to be put in place for tourism workers?

Mr Noonan—Communication strategy is certainly one of the things that the IDCs are considering in the context of a whole-of-government strategy.

Senator O'BRIEN—I want to ask some questions about the Emerging Markets Strategy released late last year. On page 36 there is a reference to new inbound tourism legislation and consultations with industry. Is this distinct from the approved destination status scheme?

Mr Noonan—Let me find the page reference first. Was that page 36 you were looking at?

Senator O'BRIEN—Yes.

Mr Noonan—There is reference to whether legislation should proceed, which would be separate from the approved destination scheme proposals and would be, if it proceeded, targeted at other aspects of the inbound tourism market to make sure that fair practices prevail.

Senator O'BRIEN—Do you know how the legislation would operate? Would you register people and have a code of conduct and accreditation?

Mr Noonan—The government has not made a decision in relation to that matter.

Senator O'BRIEN—There is a recommendation in the Emerging Markets Strategy that the government urgently introduce legislation to stamp out unethical practices. This is the same legislation we are talking about, is it not?

Mr Noonan—Yes, the government is considering its response to the Emerging Markets Strategy.

Senator O'BRIEN—How long has it been considering it? How old is this report?

Mr Noonan—I think it was launched in December.

Senator O'BRIEN—There is no formal decision, so obviously no legislative instruction at this stage?

Mr Noonan—That is right.

Senator O'BRIEN—Is there a consultation process with industry about it at this stage? Has that taken place?

Mr Noonan—There was quite a consultative process by the consultative group that produced this report. The government now has to consider a response to the outcome of that process.

Senator O'BRIEN—What feedback did industry give? Was it generally supportive of this strategy?

Mr Noonan—Industry was certainly concerned about unethical practices affecting inbound tourism, particularly from China.

Senator O'BRIEN—You can characterise the industry view as being supportive of the suggested approach?

Mr Noonan—It is certainly of the view that something needs to be done in this area. The Approved Destinations Scheme itself has been significantly enhanced over the last year, so the question for the government will be whether legislation in addition to that is needed.

Senator O'BRIEN—Is it possible to get an updated detailed breakdown of the spending from the white paper initiatives?

Mr Noonan—Yes. What aspects were you interested in?

Senator O'BRIEN—All of them.

Mr Noonan—I can provide you with some information on that. I will run through the main components of the Australian Tourism Development Program, and I will give you estimated figures as at the end of December 2005, the last time we looked at these.

Mr Noonan—Some of the figures are something of an apportionment. \$13.8 million was remaining to be spent there. In addition, a total of \$7.5 million was allocated from other initiatives in the white paper as in the first budget after the one that was handed down.

Senator O'BRIEN—What do you mean by that? Originally it was going to be spent on something else and it was reallocated to ATDP?

Mr Noonan—That is right.

Senator O'BRIEN—Where did the \$7.5 million come from?

Mr Noonan—It came out of money that had been allocated for Tourism Australia marketing activities, but this was in the 2004 budget.

Senator O'BRIEN—Was that because it was an underspend?

Mr Noonan—No, there was a conscious decision to build up the resources in the Australian tourism regional program.

Senator O'BRIEN—Does that mean there is \$21.3 million left? Or is the \$7.5 million in the \$13.8 million?

Mr Noonan—No, I think you are right; \$21.3 million would be pretty close, on adding those numbers together. There are a number of components in Tourism Australia's side of things, so I might deal with all of the departmental measures and then hand over to Tourism Australia.

On the research and statistics side, the department had an allocation of \$5.3 million, and about \$2 million of that had been spent as at 31 December 2005. On the accreditation initiative, the allocation was \$2.3 million, and about \$1.45 million had been spent as at that date. On Indigenous Tourism Business Ready, the allocation was \$3.83 million, and about \$1.4 million had been spent. On Tourism in Protected Areas, there was about \$4.2 million in the allocation, and about \$1.8 million had been spent. For the administration, implementation and coordination of the paper \$1.5 million allowed, and about \$1.1 million of that had been spent.

Senator O'BRIEN—Is that figure the entirety of the departmental allocation or some of the funds include departmental allocations?

Mr Noonan—All the matters that I have given you were the responsibility of the department to administer.

Senator O'BRIEN—Perhaps I should make my question clearer. Is the money provided to the department for administration entirely in the last figure or are there amounts out of the other sums as well that go to the department's budget?

Mr Noonan—Yes, your second alternative is correct. There are in each case—or certainly in the case of the programs—a departmental component as well as an administrative component in the numbers that I am giving you.

Senator O'BRIEN—What is the value of that component?

Mr Noonan—Yes, I can—

Senator O'BRIEN—I am looking for how much has been spent, not the theoretical. What was actually expected to be spent?

Mr Noonan—In the case of the ATDP, the departmental allocation was \$3.6 million, and a bit over \$1 million had been spent at this date that I indicated. In the case of research and statistics, the number I gave you is all departmental. In the case of the accreditation initiative, of the number I gave you, \$0.3 million was the departmental component, and most of that had been spent; there was just \$40,000 left as at the date. In the case of Indigenous Tourism Business Ready, the departmental component was \$830,000. The money spent would be \$410,000, so there would be \$470,000 remaining. In the case of Tourism in Protected Areas, that was all departmental. In the case of the administration implementation coordination white paper, it was all departmental. One other element for the department was membership of the World Tourism Organisation. This is all departmental, but it is essentially transfer payments, subscriptions, to the World Tourism Organisation. That is \$1.437 million, of which a bit over \$500,000 had been spent as at the date I mentioned.

Senator O'BRIEN—So the rest was Tourism Australia, was it?

Mr Noonan—That is right.

Senator O'BRIEN—We have done part of this. Mr Morrison or Mr Hopwood, can you help us?

Mr Morrison—I cannot right now, because my colleague has left with that information. But I am happy to provide that on notice.

Senator O'BRIEN—I am happy if you can do that. With regard to the Australian Tourism Development Program, are we talking about \$52.5 million in total?

Mr Noonan—No, I do not get that; \$31 million in total.

Senator O'BRIEN—Does that include the additional \$7.5 million?

Mr Noonan—It does. It also counts \$5 million that predated the white paper but was rolled in.

Senator O'BRIEN—Of that, about \$21.3 million remains, on the figures you told me earlier?

Mr Noonan—Yes.

Senator O'BRIEN—Is it the department that assesses the grant applications?

Mr Noonan—That is right. That is done within AusIndustry.

Mr Peel—We make those assessments. We also approve the grants as well.

Senator O'BRIEN—Is it entirely within AusIndustry or do you refer it to the minister for final approval?

Mr Peel—No, it is entirely within AusIndustry. We advise the minister of our decisions.

Senator O'BRIEN—Do you normally approve projects that involve planning approvals before approvals have been granted?

Mr Peel—We get a large number of applications. In the assessment process we cannot possibly check that all of the approvals have been given, but we certainly insist on those approvals coming forward before we sign a contract and provide a grant. During the application assessment process, all the approvals might not be there, but before the money is provided we ensure that they are.

Senator O'BRIEN—I understand that a grant of \$92,000 was granted to a facility in Warrnambool that helped it build an indoor pool and day centre for plastic surgery. Is that normally the sort of matter that would attract a tourism development grant?

Mr Peel—There are two categories of grant. That one—and I am still checking as to whether it is true that we have given that grant—would probably come under category 1, which are grants that support businesses that are in the tourism industry and wishing to expand their activities. That sounds as if it could come under there, if we have given one.

Senator O'BRIEN—I think it is a tourism facility. It is called Logan's Beach Resort.

Mr Peel—It sounds as if it would qualify. We are still checking as to whether we actually gave a grant to anyone in Warrnambool.

Senator O'BRIEN—Is a plastic surgery day unit bona fide tourism, I am tempted to ask? I suppose anything is bona fide tourism if you want to call it that.

Mr Peel—For Logan's Beach Resort, the grant was for \$91,886, and the description of the project was:

The current facilities at Logan's Beach Resort will be enhanced, offering a five-star, world-class package including the development of a bath house, medispa services and ancient indigenous

treatments. In addition, the accessibility, size and beautification of the reception area of the Logan's Beach Resort in Warrnambool will be upgraded.

So it was enhancing an existing tourism facility, which would appear to fit into the requirements of the program.

Senator O'BRIEN—That is interesting terminology. The member for Wannon put out a press release stating 'part of the funding is subject to final planning approval' and that 'Warrnambool City Council has issued a notice of decision to grant a permit to allow for a building enhancement and the introduction of a medical component to the existing facility', which I am told is a day centre for plastic surgery.

Mr Peel—That may or may not be part of the resort. It does not sound as if it would be something that we would provide funding for—the plastic surgery part.

Senator O'BRIEN—Not knowingly; is that what you are telling me?

Mr Peel—What I can tell you is that we have agreed a grant of that amount to that facility. Whether it has actually been paid or not I would have to take on notice and get back to you.

Senator O'BRIEN—What is a medispa service?

Mr Peel—I have to check the details. I have not had one myself.

Senator O'BRIEN—I can confirm that I have not either. But if what has been funded is something to do with a plastic surgery unit I would just like to know if that would be—

Mr Peel—We will check whether any of it has gone to the plastic surgery unit. I would be surprised if that was the case. The description I wrote out was the 'enhancement of an existing resort'. It may well be that within the resort there is a plastic surgeon, but I would be very surprised if any money went to the plastic surgeon.

Senator O'BRIEN—If you can check—

Mr Peel—Yes, we will.

Senator O'BRIEN—Could you repeat what you believe you were funding?

Mr Skrzypek—The description we have of that project is as follows:

The current facilities at Logan's Beach Resort will be enhanced, offering a five-star, world-class package including the development of a bath house, medispa services and ancient indigenous treatments. In addition, the accessibility, size and beautification of the reception area at the Logan's Beach Resort in Warrnambool will be upgraded.

Senator O'BRIEN—I suppose we may never know what a medispa is.

Mr Peel—We will endeavour to find out and let you know.

Senator O'BRIEN—You do not have to go there to find out, I am sure. If you could, I would appreciate that. You tell me the grant would not be approved before planning approval was given; is that right?

Mr Peel—That is right. We would insist that all the necessary approvals were in place before we made the grant payment.

Senator O'BRIEN—So you could approve it subject to—

Mr Peel—Subject to that process. No money would change hands is what I mean.

Senator O'BRIEN—Would that be a normal circumstance?

Mr Peel—That is correct.

CHAIR—Thank you very much indeed. Ladies and gentlemen, you are excused. Can I remind honourable senators that the deadline for written questions is the close of business—I suppose that is 5 pm—tomorrow; and the deadline for answers to questions taken on notice is Friday, 31 March.

Committee adjourned at 7.30 pm