



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## **SENATE**

STANDING COMMITTEE ON ECONOMICS

ESTIMATES

**(Supplementary Budget Estimates)**

WEDNESDAY, 1 NOVEMBER 2006

CANBERRA

BY AUTHORITY OF THE SENATE



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**SENATE**

**STANDING COMMITTEE ON ECONOMICS**

**Wednesday, 1 November 2006**

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

**Senators in attendance:** Senators Bernardi, Brandis, Carr, Chapman, Conroy, Eggleston, Fifield, Joyce, Ludwig, O'Brien, Parry, Sherry, Stephens, Trood, Watson and Wong

**Committee met at 9.05 am**

**INDUSTRY, TOURISM AND RESOURCES PORTFOLIO**

**In Attendance**

Senator Minchin, Minister for Finance and Administration

**Department of Industry, Tourism and Resources**

Mr Mark Paterson, Secretary

Ms Patricia Kelly, Deputy Secretary

Mr Tim Mackey, Deputy Secretary

**Outcomes and Outputs**

Mr Drew Baker, General Manager, ICT Services, eBusiness Division

Mr Jeff Beeston, Acting General Manager, Automotive, TCF and Engineering Branch, Manufacturing, Engineering and Construction Division

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

Mr Chris Birch, General Manager, Research, Development and Commercialisation, AusIndustry

Mr Jamie Bound Acting Executive Officer, Resources Division

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

Mr Richard Byron, General Manager, Human Resource Management Branch, Corporate Division

Ms Chris Butler, General Manager, Strategy and Communications Branch, Corporate Division

Mr Wayne Calder, General Manager, Business Development Group, Tourism Division

Mr Peter Chesworth, General Manager, Office of Small Business

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

Mr Peter Clarke, Head of Division Acting, Manufacturing, Engineering and Construction Division

Ms Sarah Clough, General Manager, Energy Futures Division, Energy and Environment Division

Mr Alan Coleman, Manager, TCF Group, Manufacturing, Engineering and Construction Division

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

Mr Craig Cormick, Manager, Biotechnology Australia, Innovation Division

Ms Helen Cox, General Manager, Market Access Group, Tourism Division

Mr John Dicer, General Manager and Chief Legal Counsel, Legal and Procurement Branch, Corporate Division

Mr Ivan Donaldson, Executive Director, Australian Building Codes Board, Manufacturing, Engineering and Construction Division

Ms Cherie Ellison, General Manager, Business and Ministerial Services Branch, Corporate Division

Ms Robyn Foster, General Manager, Business Development Branch, AusIndustry Division

Mr David Gallagher, Manager, National Nanotechnology Strategy Taskforce, Innovation Division

Ms Ruth Gallagher, Manager, Trade and International Branch, Industry Policy Division

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

Mr Tony Greenwell, General Manager, Office of Small Business

Mr Paul Griffin, General Manager, Online eBusiness Services and VANguard Advisor, eBusiness Division

Mr John Griffiths, Manager, International Energy Branch, Energy and Environment Division

Mr John Hartwell, Head of Division, Resources Division

Dr Barry Inglis, Chief Executive, National Measurement Institute

Mr Gary James, Manager, Energy Technology Section, Energy and Environment Division

Mr Barry Jones, Executive General Manager, Invest Australia

Ms Wendy Launder, Manager, Low Emissions Technology Demonstration Fund, AusIndustry

Mr Mike Lawson, General Manager, Aerospace, Defence and Industry Participation Branch, Manufacturing, Engineering and Construction Division

Mr Peter Livingston, Acting General Manager, Ministerial Council on Energy Secretariat, Energy and Environment Division

Mr Terry Lowndes, Head of Division, Industry Policy Division

Ms Melissa McClusky, General Manager, Corporate Finance Branch and Chief Financial Officer, Corporate Division

Ms Tess McDonald, Executive Manager, Biotechnology Australia, Innovation Division

Ms Mimi Mastrolemba, Manager, Business Development Branch, Finance and Administration Section, AusIndustry

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/Special 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, eBusiness Division  
Ms Christine Pitt, General Manager, ICT Infrastructure, eBusiness Division  
Ms Trish Porter, General Manager, VANguard, eBusiness Division  
Ms Margaret Rule Business Manager, Energy and Environment 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 Mike Sibly, General Manager, Online eBusiness Services, eBusiness Division  
Mr Geoff Stone, Acting General Manager, Offshore Resources Branch, Resources Division  
Ms Marie Taylor, General Manager, Energy Reform Implementation Group, Energy and Environment Division  
Ms Lynne Thomson, Manager, Venture Capital Programs, AusIndustry  
Dr Peter Tucker, General Manager, Industry Sustainability Group, Tourism Division  
Ms Sue Weston, Head of Division, Office of Small Business  
Mr Bruce Wilson, General Manager, Environment Branch, Energy and Environment Division  
Ms Judi Zielke, General Manager, Innovation and Collaboration, AusIndustry

**IP Australia**

Dr Ian Heath, Director-General  
Mr Derek Ambrose, Chief Financial Officer

**Geoscience Australia**

Dr Marita Bradshaw, Group Leader, Petroleum Prospectivity and Promotion, Petroleum and Marine Division  
Dr Barry Drummond, Group Leader, Geospatial and Earth Monitoring Division  
Dr Clinton Foster, Chief, Petroleum and Marine Division  
Dr James Johnson, Chief, Minerals Division  
Dr Phil McFadden, Chief Scientist  
Dr Chris Pigram, Deputy CEO and Chief of Geospatial and Earth Monitoring Division  
Mr Tony Robinson, General Manager, Corporate Branch  
Mr Paul Trezise, Chief Information Officer

**Tourism Australia**

Mr Geoff Buckley, Acting Managing Director  
Mr John Hopwood, Director, Corporate Services

**CHAIR (Senator Brandis)**—I declare open this public hearing of the Senate Standing Committee on Economics to consider supplementary budget estimates for 2006-07. In accordance with standing order 26(10), a number of senators have given notice of matters they wish to raise. The committee will conduct this hearing in accordance with the agenda, which has been circulated in the committee room. The hearings will begin with officers of the Department of Industry, Tourism and Resources, after which it will proceed to the Treasury

portfolio. It is anticipated, I understand, Mr Paterson, that officers of your department will be finished by lunchtime and that we will take the Australian Competition and Consumer Commission as the first Treasury agency after lunch.

The committee has fixed Friday, 15 December 2006, as the date for the return of answers to questions taken on notice. Under standing order 26 the committee must take all evidence in public session, including answers to questions on notice. I remind all witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to the committee. Such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

The appropriate bounds of questions are determined by Senate resolutions. In 1999, the Senate endorsed the following test for relevance of questions at estimates hearings:

Any questions going to the operations or financial positions of the departments and agencies which are seeking funds in the estimates—

that is, the estimates contained in Appropriation Bills Nos. 1 and 2 of 2006—

are relevant for the purpose of estimates hearings.

I remind officers that the Senate has resolved that there are no areas, in connection with the expenditure of public funds, where a person has a discretion to withhold details or explanations from the parliament or its committees, unless the parliament has expressly provided otherwise. By parliamentary privilege resolutions agreed to by the Senate on 25 February 1988, the Senate determined as follows, and I will read the resolutions bearing upon evidence and the compellability of answers. By resolution 1, subresolution 9:

A chairman of a committee shall take care to ensure that all questions put to witnesses are relevant to the committee's inquiry and that the information sought by those questions is necessary for the purposes of that inquiry. Where a member of a committee requests discussion of a ruling of the chairman on this matter, the committee shall deliberate in private session and determine whether any question which is the subject of the ruling is to be permitted.

Resolution 1, subresolution 10, provides:

Where a witness objects to answering any question put to the witness on any ground, including the ground that the question is not relevant or that the answer may incriminate the witness, the witness shall be invited to state the ground upon which the objection to answering the question is taken. Unless the committee determines immediately that the question should not be pressed, the committee shall then consider in private session whether it will insist upon an answer to the question, having regard to the relevance of the question to the committee's inquiry and the importance to the inquiry of the information sought by the question. If the committee determines that it requires an answer to the question, the witness shall be informed of that determination and the reasons for the determination and shall be required to answer the question only in private session, unless the committee determines that it is essential to the committee's inquiry that the question be answered in public session. Where a witness declines to answer a question to which a committee has required an answer, the committee shall report the facts to the Senate.

Resolution 1, subsection 16, provides:



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

In addition to those particular resolutions, there are a number of other limitations upon what might appropriately be asked which have been established by resolutions of the Senate and by custom of the committee, in particular the mode of dealing with claims of commercial-in-confidence information.

I now welcome to the table Senator the Hon. Nick Minchin, the Minister representing the Minister for Industry, Tourism and Resources; Mr Paterson, the Secretary of the Department of Industry, Tourism and Resources, and officers of the department. Mr Paterson, would you like to make any opening remarks?

**Mr Paterson**—No, thank you.

**Senator O'BRIEN**—I want to ask some questions in relation to small business. Firstly, there is a question from Mr Fitzgibbon on the House *Notice Paper*. According to the answer No. 3121, more than 600,000 taxpayers have elected to be in the simplified tax system since its introduction. How does that figure compare to the targets set for that scheme?

**Ms Weston**—Targets were not set by this department. The tax office may be able to clarify that further or Treasury.

**Senator O'BRIEN**—Do you know whether there has been an increase in the take-up in the current financial year?

**Ms Weston**—Anecdotally, I was speaking to one of the CPA profession recently and, under the government's new 25 per cent entrepreneurs tax discount, the current software is saying: 'There would have been a rebate of X dollars for this client had they been in the simplified tax system.' The information from the CPA is that many of them were electing to go in to take advantage of the 25 per cent entrepreneurs tax discount. I can say, anecdotally, that it is likely there will be some increase. In addition to that, over the last two budgets there have been a number of initiatives to make the simplified tax system more attractive. In the last budget, for instance, they were allowing taxpayers who were on an accruals basis of accounting to go into the system. This next budget has changed thresholds and other things that will make the simplified tax system more attractive.

**Senator O'BRIEN**—What role does the Office of Small Business play in understanding the mood of the community about these initiatives, such as the tax initiative, and the relevance to small business?

**Ms Weston**—We have an active role in consulting with both Treasury and the ATO. We are on a number of their committees and speak with the Treasury on issues of concern to small business. We do have our own forums as well, such as the National Small Business Forum, and other consultations with small business through which we are able to obtain information of concern around taxation matters. We pass that on, obviously, in our consultation with the tax office and the Treasury.

**Senator O'BRIEN**—What feedback have you received through your fora about the simplified tax system?

**Ms Weston**—Just going back in my recollections—and I may have something here too—the accruals basis of accounting restriction was one issue that was raised with us through our forums. It was considered that a lot of accountants liked to do their clients' accounts on an accruals basis—it meets the accounting standards, for instance—and put them on a cash basis to access the simplified tax system. They found this to be a little bit of a challenge, or they were not so inclined to do that. Banks, for instance, also want to know who your debtors and creditors are, so it is easy to put your accounts on an accruals basis. That issue was raised with us through those forums.

**Senator O'BRIEN**—Are you suggesting that it is perhaps a barrier to taking up the scheme?

**Ms Weston**—It is not anymore because it has been changed.

**Senator O'BRIEN**—What role, if any, has the Office of Small Business played in promoting the scheme?

**Ms Weston**—The central tool used by the department to get information out to small businesses is [www.business.gov.au](http://www.business.gov.au), which has links to the tax office. Another division manages the portal. There are also a number of publications that provide other information, and we would refer small businesses and their representative bodies to them on their release. On budget night, for instance, we do a small business facts, budget facts paper, which we send out to industry associations and put out for general consumption. It says what the initiatives are that the government has put forward. Obviously, the minister would work in consultation with the Treasury ministers.

**Senator O'BRIEN**—In relation to the Regulation Reduction Incentive Fund, could you let us know, if you can, what percentage of the compliance burden on small business can be attributed to local government, what percentage to state government and what percentage to federal government?

**Ms Weston**—That is probably a fairly big ask. I am not sure that I can give you that sort of answer. Suffice to say that the bulk of regulations—several thousand—that businesses undertake apply at the local government level, a lesser number apply at the state level and a lesser number again apply at the federal government level. Obviously, the federal government regulations would apply to more businesses than not, and state regulations are probably replicated in each state. When we were developing the Regulation Reduction Incentive Fund, the biggest issues were around development applications. It was the number one thing at the local government level that was of concern to small business.

**Senator O'BRIEN**—How did the government arrive at a saving of \$450 million through the Regulation Reduction Incentive Fund?

**Ms Weston**—When local governments applied, we encouraged them to use the business cost calculator. It allowed them to assess what the regulation levels were at the status quo, and then they were going to say what they were going to do in the competitive project to reduce red tape. They did an assessment of the reduction in compliance that would have resulted from going down this path. The balance, the difference, is where the \$450 million came from.

**Senator O'BRIEN**—In the department's annual report for the last financial year, the estimated dollar value of concession is described as N/A. That stands for 'not applicable', doesn't it?

**Ms Weston**—What page, Senator?

**Senator O'BRIEN**—The table with that information appears on page 61.

**Mr Peel**—I think you are looking at a table which has a heading 'Estimated dollar value of concessions delivered'.

**Senator O'BRIEN**—Yes.

**Mr Peel**—That refers to the programs administered by AusIndustry that do not provide a cash benefit to people under the programs but provide a concession, by way of a tax concession or a duty concession. That particular column is not relevant to the Regulation Reduction Incentive Fund.

**Senator O'BRIEN**—So the reason 'N/A' is there is that no grants were delivered under that column. Is that what you are saying?

**Mr Peel**—No. If you look further over in that column, you will see a figure of \$20.3 million next to the Regulation Reduction Incentive Fund, which is the value of payments made for that particular year. The other column is not applicable because it only applies to tax concessions, duty concessions and those programs that deliver benefits in that way.

**Senator O'BRIEN**—What is the significance of the amount of \$20.3 million in that column you have just been discussing?

**Mr Peel**—That is the value of grant payments made in the financial year covered by the annual report for the Regulation Reduction Incentive Fund.

**Senator O'BRIEN**—What administered payments will continue in the current financial year?

**Mr Peel**—The estimated amount of payments for grants under the program is \$40.647 million. The difference between the figure in the annual report and the total is \$20.347 million, and that is expected to be spent this year.

**Senator O'BRIEN**—Was it expected that the funds would be expended over the two financial years that were announced?

**Mr Peel**—Yes.

**Senator O'BRIEN**—When the minister announced the benefit, he advised: 'Local councils today'—that is, 13 December 2005—'have received funding for 31 projects.' How much was actually paid on that date?

**Mr Peel**—On that particular day?

**Senator O'BRIEN**—Yes.

**Mr Peel**—I think on that day the minister would have announced the grants under the program. The payments would not have started flowing until we had signed contracts with the individual councils. Payments would have flowed after that date, up until the end of the financial year. As we have just mentioned, \$20.3 million was spent in 2005-06.

**Senator O'BRIEN**—Who were the recipients, and when did they receive the money?

**Mr Peel**—There were 31 grantees representing 232 local government authorities. They received their payments on a staged basis. The payments are based on milestones that they achieve in their projects, and these payments are often tailored to the particular grant.

**Senator O'BRIEN**—Could you supply on notice the details of the grantees and the payment schedule for each grantee.

**Mr Peel**—The payments are generally 50 per cent upfront, 30 per cent on receipt and acceptance by AusIndustry of a satisfactory progress report, and 20 per cent on finalisation of the project and receipt of an audited financial statement.

**Senator O'BRIEN**—I repeat: could you supply on notice the list of the grantees and the payment schedule—the amounts and the dates the payments were made under this program.

**Mr Peel**—Yes, I can do that.

**Senator O'BRIEN**—Thank you. I see that the minister's press release on the department website stated:

Local councils have today received funding for 31 projects.

What you are telling me is that they did not receive funding on that day.

**Mr Peel**—Funding had been offered to them on that day.

**Senator O'BRIEN**—But you are telling me that they did not receive funding on that day.

**Mr Peel**—As I have just mentioned, they received the money in staged payments over the two years of the program.

**Senator O'BRIEN**—What is the timetable for the payment of the balance of the \$20.347 million, and has it been determined who the recipients of those funds will be?

**Mr Peel**—Yes. All the grantees have been determined. The full \$40.6 million has been allocated. As I have mentioned, half of that was paid in 2005-06. The remainder will be paid this financial year.

**Senator O'BRIEN**—Is it the same 31 grantees?

**Mr Peel**—Correct.

**Senator O'BRIEN**—Will the 30 per cent milestone arise, or has it arisen, some time in this financial year?

**Mr Peel**—The 30 per cent milestone may arrive at different times, depending on the particular grantee and the nature of their project. But the 30 per cent is paid when we receive and accept a satisfactory progress report midway through the project, halfway through the two years. The various contracts were signed on different dates, so that will be required a year after they receive the funding.

**Senator O'BRIEN**—Presumably the contracts were signed some time after 13 December in all cases?

**Mr Peel**—Yes. They were announced on 13 December. We would have then contacted all of the grantees and arranged for them to sign the contracts. Then a payment of 50 per cent of

the grant would have been made. Each of those contracts have different sorts of projects that they are connected to, with different time frames, and the 30 percent will be made to all of the grantees once they provide a satisfactory progress report midway through their project.

**Senator O'BRIEN**—Should I understand your answer to be indicating that none of the grantees have received the 30 per cent milestone yet?

**Mr Peel**—We have spent so far this financial year, as at the end of September, \$5.71 million.

**Senator O'BRIEN**—But you paid 50 per cent to each of the 31 grantees some time after 13 December 2005—possibly not until the current year, so some time in 2006.

**Mr Peel**—No. We paid the whole \$20.3 million, which is half of the total grants, in 2005-06.

**Senator O'BRIEN**—When I said 'year', I did not say 'financial year'. I meant 'calendar year'. So, if they sign some time after 13 December then you pay them—

**Mr Peel**—They would have been paid before the end of June, yes.

**Senator O'BRIEN**—I thought you said in one of your earlier answers that the first milestone was payable somewhere midpoint in the two-year contract.

**Mr Peel**—Midway in the project. The program goes over two years.

**Senator O'BRIEN**—You described it as a two-year contract. But if that was not what you meant, I accept that.

**Mr Peel**—The program is of two years duration; it is funded for two years. But individual projects may be shorter than two years, for example. That 30 per cent milestone could be a different date, depending on the nature of the project. We expect to spend all the money by the end of 2006-07.

**Senator O'BRIEN**—Could you also let us know what the term of each of the project periods is.

**Mr Peel**—I will take that on notice.

**Senator O'BRIEN**—Thanks for that. Could you outline for us how the Small Business Interest Rate Relief Program operates.

**Ms Weston**—The Small Business Interest Rate Relief Program is no longer operating. It was closed down on 30 June 2004. It was a program to assist businesses in exceptional circumstances declared areas that were significantly affected by the drought of 2002-03.

**Senator O'BRIEN**—It was still on your website yesterday. Why is that? It is a bit confusing.

**Ms Weston**—I will need to clarify that.

**Senator O'BRIEN**—I have a printout of the page titled 'Small Business Programs Drought Assistance'. The date for yesterday is printed on it, so it is still there.

**CHAIR**—I think it has been removed.

**Senator O'BRIEN**—It has gone? This refers to the previous drought?

**Ms Weston**—Yes, that is right.

**Senator O'BRIEN**—There is no equivalent payment for the current drought?

**Ms Weston**—Not at this stage.

**Senator O'BRIEN**—None of the announcements made to date about drought assistance have dealt with assistance to small business?

**Ms Weston**—Except to the extent that the states have provided assistance.

**Senator O'BRIEN**—Except for farmers.

**Ms Weston**—Yes. In terms of direct assistance to small business, obviously there is a paradigm there that some of that assistance to farmers flows through.

**Senator O'BRIEN**—Presumably, as the annual report says, there was an evaluation of the program. What was the outcome of the evaluation?

**Ms Weston**—I have only a bit of information here. The evaluation found that the program was developed promptly in response to rapidly deteriorating conditions in much of rural Australia. The design implementation and administration of the program in these circumstances required significant coordination and establishment of new administrative arrangements. There was a clear acknowledgement in key policy documents that the rapid development in implementation brought with it a range of policy and delivery risks.

**Senator O'BRIEN**—What was the take-up?

**Ms Weston**—The take-up was not great. We had \$1.15 million spent on 182 grants.

**Senator O'BRIEN**—There were 182 successful applicants?

**Ms Weston**—That is right.

**Senator O'BRIEN**—Do you know how many actually applied?

**Ms Weston**—It was 452.

**Senator O'BRIEN**—Was there a barrier to success? That is less than half the applicants succeeding. Is there any understanding of why people thought they could apply and found they were not eligible?

**Ms Weston**—Centrelink did do a survey—I am just trying to find some details—early on in the piece, and after that there was some relaxation in the criteria. Certainly, a lot of them did not have the time to do it. Some of them felt that they required some assistance to fill out the form. The form was a bit complicated. The other issue, too, is that small businesses are able to diversify a little more than others and adjust to changing conditions. For instance, we had some people on the ground up there who were told by the local Retravision guy that he had moved from selling to repairing and that he was able to do well there. The florist was not doing well, but they were selling hydroponic lettuces and so on. Small businesses are able to be a bit more flexible than farmers in the short term.

Also in relation to that drought, business expectation and confidence in rural and regional Australia was quite steady. I remember an *Australian Financial Review* article, in June 2003, citing the Yellow Pages and other surveys that said the impact of the drought was diminishing. Maybe some other factors were affecting their take-up, along with the criteria being a bit of a

challenge for them. It is a challenge in terms of what is just a decline in the economy versus what is a drought.

**Senator O'BRIEN**—I think one of the common themes in regional communities in drought is that, when the farming businesses are not going well, they stop spending and the cash flow in the town businesses dries up. It puts pressure on employment, the cash flow, the ability to pay rents and the profitability of business. I thought that is what the interest rate subsidy was there to assist, but you are suggesting that it was not as necessary as thought.

**Ms Weston**—I am just saying that it might not have been the most appropriate solution at that time for those people. Small businesses are different from a farming community, and there are other factors at play that need to be taken into account.

**Senator O'BRIEN**—The annual report tells us that the government paid almost 95 per cent of small business invoices within 30 days, between 1 July 2005 and 31 December 2005. Is that something that this department has been working on to get the government in general to actively improve?

**Ms Weston**—You are asking whether this department has been active?

**Senator O'BRIEN**—It is in the annual report.

**Ms Weston**—Yes. It is a good news story that payments have improved since the first survey was conducted by the department in 2002. At that time, government departments were paying small business 85 per cent of their invoices within 30 days and now it is just on 95 per cent. So it is a good news story that things have improved and that the government's payment policy is having an impact. This department has had responsibility in the past for conducting surveys—it is now an annual survey—of the performance of FMA Act agencies in relation to the government's 30-day payment policy.

**Senator O'BRIEN**—Where do you get the figure from?

**Ms Weston**—The 94.9 per cent?

**Senator O'BRIEN**—Yes.

**Ms Weston**—It comes from surveys of FMA Act agencies.

**Senator O'BRIEN**—Conducted by?

**Ms Weston**—Us.

**Senator O'BRIEN**—Do you have data on which government departments are doing better and which government departments are doing worse?

**Ms Weston**—I do not have it with me. There are only a couple of departments and agencies that are not paying on time. We like them to pay at least 90 per cent of their payments on time.

**Senator O'BRIEN**—Which ones are they?

**Ms Weston**—Can I take that on notice and provide that to you?

**Senator O'BRIEN**—Yes. I would appreciate it if you would provide the committee with the results of your survey.

**Ms Weston**—It would be the last survey, which would have been to December 2005.

**Senator O'BRIEN**—Can we have the previous one for comparison?

**Ms Weston**—Yes. Can I just add that there is a question on notice asking for that specific detail. It will probably need to be resolved before I need to provide that to you, so I can just—

**Senator O'BRIEN**—What is to hide?

**Ms Weston**—Nothing. I am just saying that the information will be available more readily—or sooner.

**Senator O'BRIEN**—You will be able to supply it twice and get it in ahead of the 15 December deadline.

**Ms Weston**—I look forward to it.

**Senator O'BRIEN**—There is a first for everything. With regard to government departments, or particular areas of payment where those deadlines are not met, do you survey the departments as to the reasons they are not meeting those deadlines?

**Ms Weston**—Yes. That is part of the set of questions we ask departments and agencies. We are just about to go through a process of re-evaluating the survey. But, yes, we do find that out. There are a number of reasons why departments and agencies may or may not meet their requirements. There are issues such as decentralised payment systems or a financial management information system that might not, at this point, be able to correctly make the identification that we are asking for and we are waiting for an upgrade with that particular department to put those flags in place.

There are delays by line areas in processing invoices and deficiencies. I mentioned the FMISs. There is geographical dispersion, for instance and staff turnover rates. You have to retrain people on what they need to flag when they are putting invoices into systems so we can get the correct information. There are things like that that come up. Some departments are doing major restructures of their administrative arrangements. Sometimes you will see a dip down one year that is reflected in much better figures the year after.

**Senator O'BRIEN**—Does the department have an idea of how big business performs in this regard? You are talking about what government departments do, but do you have any information about how the larger businesses in our community perform with regard to their punctual payment of bills?

**Ms Weston**—We have the Dunn and Bradstreet Australian trade payments analysis survey, which is released regularly. The last one was 17 October this year. It shows average trade payments of around 54 days, which was a one-day improvement on the same time last year. We can use that as a proxy for payments of that nature.

**Senator O'BRIEN**—But you do not have a breakdown of figures with an idea of how small business is finding its terms of trade with the larger businesses in the community.

**Ms Weston**—There may be some other information, but only anecdotal evidence.

**Senator O'BRIEN**—Does the department seek to influence how big business deals with its small business creditors?



**Ms Weston**—Could you say that again?

**Senator O'BRIEN**—Does the department seek to influence how big business deals with its small business creditors—how it pays bills to small business?

**Ms Weston**—By the government setting an example, I think that is the way the government intends to influence big business.

**Senator O'BRIEN**—Has the department considered the benefits that might be available to small business if there were some legislative arrangement to allow them to charge interest when payments are not met within 30 days?

**Ms Weston**—I am aware of discussion from time to time about whether we need to legislate payments. A little while ago we had a look at the UK experience. I am sure I have some data here. As I recall, a large number of small businesses said that they would not follow up on the payments. It is more important for them to have the contract.

**Senator O'BRIEN**—It is a power relationship, of course. They would find it difficult to charge interest of their own volition.

**Ms Weston**—Yes. That was already legislated in law, so that was not necessarily working for small businesses either. I am not necessarily convinced that that would achieve any desired ends.

**Senator O'BRIEN**—Is there any statistical information available to the department which would tell us how many small businesses have lodged complaints about payment delays?

**Ms Weston**—With Australian government departments?

**Senator O'BRIEN**—Yes, with Australian government departments.

**Ms Weston**—Not that I am aware of. I do note that the Small Business Ministerial Council this year also discussed late payments. We were looking at how, across the state and Australian governments, payment performance was measured. States are also moving on this area because they want to make sure that small businesses are not being disadvantaged and likewise they are setting an example for the firms in their states.

**Senator O'BRIEN**—According to the department's annual report, the small business assistance program was re-evaluated and relaunched under the new name Building Entrepreneurship in Small Business. Can you tell us more about the evaluation and why there is a new name?

**Ms Weston**—Yes. It was last reviewed in 2005.

**Mr Paterson**—While Ms Weston is looking for the response to that question, could I engage in an interaction with Senator Carr. Senator, you foreshadowed that you wanted to ask some questions. Before we go and do the work, I want to clarify a couple of issues if we could take a short break from Senator O'Brien's questioning.

**Senator CARR**—Yes.

**Mr Paterson**—I have been provided with a table and a printed document which is a list of questions in relation to a variety of program costings. With respect to the table, the R&D tax concession is a revenue foregone measure administered by the tax office, but we believe we

can get access to data that will enable us to complete the historical columns that you have requested of us, and, rather than identify budget or committed funds in the out years for the R&D tax concession, we can provide you with the estimate of the revenue foregone in those years.

**Senator CARR**—Of course. Thank you very much.

**Mr Paterson**—But because they are revenue foregone measures, they are estimates and they are an entitlement.

**Senator CARR**—That is reasonable.

**Mr Paterson**—With respect to each of the other elements in that table, with a minor alteration, the structural adjustment fund is administered by Invest Australia, not AusIndustry, but we believe that we can complete that table for you, both on a historical basis and on the out years that you have requested.

**Senator CARR**—Thank you very much.

**Mr Paterson**—In the published document, which is the list, on the last page you ask us to, for each program identified involved, provide key assumptions that underpin the costing methodologies. The costing methodologies for programs that we administer are matters that are resolved between us and Finance, and that is not material that I believe we would be in a position to provide to you.

You asked a question in relation to FTE staff positions. A lot of the programs have staff that are involved in administration in AusIndustry—not exclusively on a particular program; they work across a variety of programs—and we also have people, clearly, from our corporate finance area that are actively involved. I doubt that we will be able to provide a response to your question in relation to FTE staff positions today, and it may prove problematic in terms of being able to give you—

**Senator CARR**—I understand that. But I take it you will come back to us with the best data that you have.

**Mr Paterson**—We will.

**Senator CARR**—I have asked these things in the past from you and I am sure you will do the best you can in that regard. As to the assumptions question, are you able to provide me with any data, any information, at all on that?

**Mr Paterson**—We will provide you with the data that we have in relation to the programs if that is available. But the costing methodology is an issue between us and Finance, and we are not in a position to provide that information to you.

**Senator CARR**—Who is?

**Mr Patterson**—I am not sure that anyone is likely to provide that information to you.

**Senator CARR**—Is the department of finance in a better position to provide the assumptions that underpin the costing methodology?

**Mr Patterson**—I think it is more broadly a policy question in relation to the use of assumptions that are made in terms of funding of the programs. I would certainly not be in a

position to provide that information to you. I cannot say whether Finance would or would not; I am saying that I would doubt that they would. That is not something I can provide to you today.

**Senator CARR**—Fair enough; I accept that. But obviously I seek to have whatever information you can provide in those two points within the period that we can do it. If I can get the rest of the material, I would appreciate that today.

**Mr Patterson**—We will concentrate our attention on the table in the first instance.

**Senator CARR**—Thank you very much. If the chairman wishes, I will table those questions if that is required.

**CHAIR**—Yes, certainly.

**Mr Patterson**—Thank you.

**Senator O'BRIEN**—I was in the middle of a question.

**Ms Weston**—An internal review of the program was conducted, which finished in August 2005. It assessed how the program was tracking in the mid-term stage of its life and recommended adjustments to make sure that the program can better meet its aims. We conducted a survey of Australian business owners and managers to follow up on a survey we had conducted earlier. It found that the program had high levels of satisfaction with the skill development being provided, although essentially it is not a large program.

The name was changed to better reflect the focus on small business growth and entrepreneurship—the Small Business Assistance Program does not really have that same sort of flavour as Building Entrepreneurship in Small Business. There have been changes to the existing structure of the program, although the changes are consistent with the program's description due to the increased emphasis on entrepreneurship and the introduction of the new funding element around mentoring succession planning and some policy refinements, including some changes to the incubator element to bring it into the same competitive process as the other grants for the skills development element.

**Senator O'BRIEN**—Was the relaunch formal or did you just change something on the website? Did you have a launch? Was there a cost involved?

**Mr Peel**—The launch was simply calling for applications. That occurred on 25 November 2005.

**Senator O'BRIEN**—According to the annual report, on page 47, \$11.5 million in funding was allocated under the Building Entrepreneurship in Small Business for 58 projects. What kinds of projects have been funded?

**Mr Peel**—Perhaps I could just explain the sorts of areas that the program funds first. It funds training and mentoring projects which are designed to deliver entrepreneurial focus and business skills development through a combination of training and mentoring services to small business owners and managers. That element of the program had 49 grants totalling \$8.1 million. There was then a succession planning element which was designed to deliver succession planning skills development through a combination of training and mentoring services to help small business owners maximise the value and marketability of their

businesses and to provide strategies to exit the businesses while ensuring business continuity. In the annual report the additional 11 grants were to that element of the program, to a value of \$3.48 million. That gives you the \$11.5 million total that you mentioned earlier.

**Senator O'BRIEN**—Are they administered payments?

**Mr Peel**—Correct.

**Senator O'BRIEN**—Can you explain this for me: on page 61, with the same description, Building Entrepreneurship in Small Business Program, the number of customers assisted or the number of payments administered was 168; the value of administered payments was \$14.194 million.

**Mr Peel**—The reason for that is what I described was the first round of the Building Entrepreneurship in Small Business Program, which had the 59 grants. As Ms Weston mentioned, this was a new program which really brought into it existing programs that had been around for a number of years, so a number of those payments that are mentioned and a number of the grants that are mentioned there relate to the predecessor programs to the Building Entrepreneurship in Small Business.

**Senator O'BRIEN**—You just rolled them together without footnoting it?

**Mr Peel**—That is correct.

**Senator O'BRIEN**—Is there a footnote there somewhere?

**Mr Peel**—It is the same appropriation. There does not appear to be a footnote.

**Senator O'BRIEN**—It is the same appropriation and the title has changed after a review. Could you tell me how many small business field officers the department has?

**Mr Peel**—Sixty two currently.

**Senator O'BRIEN**—What sort of workload do they have? Do you have any idea how many queries they would field on average per month?

**Mr Peel**—I think the last figure we had was around two million contacts since the program commenced.

**Senator O'BRIEN**—Is utilisation fairly even or do you have areas where the level of contact is much greater than in others?

**Mr Peel**—Obviously there are different population areas serviced by these small business field officers. The resources that are deployed overall are handling the inquiries quite appropriately. We are not aware of any that are particularly underwhelmed. Most of them are fairly busy with the inquiries.

**Senator O'BRIEN**—If you are collecting statistics, can you give us some details of the highest and the lowest number of contacts?

**Mr Peel**—We could. We get regular reports from them on their workload. If I could take that on notice, I could provide it to you.

**Senator O'BRIEN**—Yes—I would appreciate it if you would. Thank you for that.

**Senator CARR**—I have asked questions and they have already been put on notice. I thank the secretary and the minister for their cooperation on that matter—it will assist the work of the committee quite substantially. I have some questions that go to the operations of Invest Australia. I have a number of questions that go to machinery matters, which I will put on notice. They are to do with the estimates of departmental and administrative appropriations in the out years and the funds spent over the forward estimates; locations of offices; rents paid; and staffing levels, including staffing levels for Axiss Australia. They are all standard questions on notice. If it is possible to get them in a tabled form today, it would be helpful. If it cannot be, we will have to wait for them, but it is all routine information. In regard to Invest Australia officers, can you indicate what level of contact or liaison occurs with those officers in DFAT and Austrade? Is there any way of providing information on that?

**Mr Jones**—I am not sure how to quantify that. We liaise with DFAT and Austrade.

**Senator CARR**—Neither am I—that is why I have asked the question in this format.

**Mr Jones**—We liaise with DFAT and Austrade frequently.

**Senator CARR**—You are next door to one another, so I would expect that.

**Mr Jones**—Indeed, and in our overseas posts we are literally sometimes sitting next to each other.

**Senator CARR**—You have no form of statistical analysis to describe that interaction?

**Mr Jones**—No—as I say, it is on a continual basis.

**Senator CARR**—And that is as a result of the close working proximity of the officers—is that what you are saying?

**Mr Jones**—Both the close proximity of the officers and also the close nature of our working interrelationship, particularly with Austrade. It is very much a complementary relationship. We are trying to get business into Australia and they are trying to take Australian companies abroad. The priority is very much the same. There is a lot of commonality in what we do.

**Senator CARR**—So why can't the same officers do both jobs?

**Mr Jones**—Because they have a different emphasis. As I have indicated, our emphasis is on bringing the investment into Australia—so we are talking to foreign companies about locating here—and Austrade is generally talking about either Australian companies investing abroad or Australian companies exporting to foreign countries. So there is a different emphasis.

**Senator CARR**—I understand that the annual report indicates that Invest Australia played a key role in attracting or facilitating 94 new investment projects at \$16 billion. It is argued that it generated \$2.9 billion in annual export earnings. Do those figures sound roughly right?

**Mr Jones**—From my recollection, yes, those are right. If they are in the annual report, they are certainly right.

**Senator CARR**—I was sure that was what you would say. How do you actually arrive at those figures?

**Mr Jones**—For the projects that we assist to come to Australia, we ask the project proponents to sign a verification report, to actually declare on a piece of paper that we have played a role in assisting them to come to Australia. It is all on the basis of verification by the person we have helped come to Australia that we have played a role in that project.

**Senator CARR**—Mr Jones, is a company that is dealing with an Australian government official and is seeking to invest in Australia likely to sign a form that says you have nothing to do with them coming to Australia?

**Mr Jones**—Certainly; they could refuse to sign the form. They could indicate that we did not play much of a role and therefore were not willing to say that we did.

**Senator CARR**—And how often has that occurred?

**Mr Jones**—Not very often, I am pleased to say.

**Senator CARR**—Has it ever occurred?

**Mr Jones**—Yes, occasionally.

**Senator CARR**—It has? Can you give me an example?

**Mr Jones**—Not a specific example. But some companies, I guess, would not want to commit themselves to putting things in writing. Some American companies in particular are careful about any potential for future litigation, for example, and are unwilling to commit themselves for—

**Senator CARR**—I see. So that would be the reason that they would refuse, not because you have not helped them.

**Mr Jones**—That is right.

**CHAIR**—Senator, it is not for him to speculate on the reasons why third parties might be doing things.

**Senator CARR**—I am just wondering what is the value of the validation process on that basis—if it is actually self-assessment—when you are dealing with officials from a foreign government about working in a foreign country. Isn't it reasonable for me to question the reliability of such validation processes?

**Mr Jones**—Our services are free. Our services come with no strings attached. There is no reason for a company to sign a piece of paper if they did not feel willing to say that we had contributed to their project.

**Senator CARR**—Can you give me some examples of the types of activities that occur under the major project facilitation scheme?

**Mr Jones**—Certainly. Typically we would initially convene a roundtable to enable the project proponent to explain what their project is about to all relevant government departments around Canberra and to allow all of the government departments that may have a role in that project, through project approvals or whatever, to at the same time gain an assessment of what the project is about; what it is likely to involve for them and what interactions there may have to be between government departments. That also serves as an

introduction between the project proponents and the range of Commonwealth government departments they have to deal with.

We frequently involve the state governments in those roundtables as well so there is a link established between the different levels of bureaucracy who also have to cooperate in getting approvals going. We then act as a continuing point of contact for the project proponent so that, rather than them running around trying to find out which bureaucrat to talk to on any particular issue, we can in effect provide for them that service of cutting through a lot of red tape and cutting through a lot of bureaucracy for them.

We try to identify what kinds of government programs might be applicable to the project. Often the project proponent is not aware of the full range of government programs, so we try to find out which programs in a range of departments might be applicable to the project. We also talk to the project proponent about any impediments that might be affecting their project: if there are any regulations, for example, that might be out of date. If there is any part of government that perhaps is not being as quick as it could be in getting back to the project proponent, we try to speed the process up for them.

**Senator CARR**—Are similar types of activities supported by the Supported Skills Program?

**Mr Jones**—No. The Supported Skills Program is quite a different beast. The Supported Skills Program is actually a small migration program which provides for a degree of upfront approval for elements of migration processes. The people from the company still have to go through the normal visa processes but there is a degree of work done upfront between ourselves and the department of immigration.

**Senator CARR**—Why isn't the department of immigration doing it?

**Mr Jones**—The department of immigration is closely involved in it. It is a supplement to normal business migration processes to, as I say, allow for a degree of upfront processing where a company knows that over a period of time it is going to have to bring in a number of managerial or specialist employees.

**Senator CARR**—You do not regard that as duplication?

**Mr Jones**—Not at all. It is a very small program.

**Senator CARR**—How much is it worth?

**Mr Jones**—There is no money involved in it.

**Senator CARR**—How many officers are there? There must be salaries.

**Mr Jones**—It is very hard to tell. It is purely demand driven. There are not many applications.

**Senator CARR**—How many applications were there in the last year?

**Mr Jones**—In the last financial year, in fact, there were none.

**Senator CARR**—And the previous year?

**Mr Jones**—I will have to check. It was small number—maybe three or four.

**Senator CARR**—You do not have any time allocation that you can attribute to this program at all?

**Mr Jones**—To the Supported Skills Program?

**Senator CARR**—Yes.

**Mr Jones**—There is one officer who, as part of her duties, monitors the program, if you like. When an application comes in, it is then given to the most appropriate officer, depending on the industry sector in which the company is operating.

**Senator CARR**—With regard to strategic investment coordination, what activities occur within that program?

**Mr Jones**—That is the process by which the Australian government considers giving investment incentives to foreign companies wishing to locate in Australia. It is a process which is not very often applied but does provide the opportunity for Australia to attract projects that would otherwise have been located somewhere else.

**Senator CARR**—What is the budget for strategic investment?

**Mr Jones**—There is no budget for the process.

**Senator CARR**—It is funded out of the Treasurer's advance, is it?

**Mr Jones**—No. The way the process works is that, if cabinet agrees to give an incentive to a project, then a separate appropriation is made for that project.

**Senator CARR**—Where does the money come from?

**Mr Jones**—Out of the appropriations. A separate appropriation would be made.

**Senator CARR**—A separate appropriation to your agency?

**Mr Jones**—For the purposes of that individual project, yes.

**Senator CARR**—If I were to look at, say, the top 10 projects where the government has provided investment incentives, would you be able to provide me with a list?

**Mr Jones**—Certainly.

**Senator CARR**—And would you be able to provide me with a list of the details of the investment incentives—not the name of the project but what actual incentives were paid?

**Mr Jones**—Certainly.

**Senator CARR**—Will you take that on notice or do you have it with you now?

**Mr Jones**—I can probably give you something now. I have a piece of paper that I can give you. It has 'ITR in confidence' on it, but there is nothing actually confidential in the document.

**Senator CARR**—I appreciate that. I always like those kinds of documents.

**Mr Jones**—Apart from the header and footer, this document is correct.

**Senator CARR**—That will save a lot of time. Thank you very much, Mr Jones. Do you still have a copy of those particular projects there so I can refer to them?

**Mr Jones**—I can remember most of them.



**Senator CARR**—I will need a copy so I will know what they actually are.

**Mr Jones**—That is my only copy at the moment.

**Senator CARR**—I will come back to the specifics while we are waiting for that document to be copied. Can you advise me on the nature of any independent evaluation of the effectiveness of Invest Australia in actually attracting investment?

**Mr Jones**—Yes. There was an evaluation last year by the Allen Consulting Group.

**Senator CARR**—Has that been published?

**Mr Jones**—Not yet. We are in the process of finalising that for publication at the moment, and I would expect that to be publicly available within weeks.

**Senator CARR**—Obviously when it has been published, can I get a copy, please, or can a copy be provided to the committee?

**Mr Jones**—Certainly.

**Senator CARR**—Is that the only form of evaluation that you have?

**Mr Jones**—That is the most recent external evaluation. There was an earlier evaluation, in 2001, so the program as a whole is regularly reviewed.

**Senator CARR**—Is that an internal evaluation?

**Mr Jones**—No. That is publicly available as well.

**Senator CARR**—Can I have a copy of that, please, to update my knowledge?

**Mr Jones**—Certainly.

**Senator CARR**—Who undertook that evaluation?

**Mr Jones**—That was conducted by Dr Ian Blackburne.

**Senator CARR**—What did it find—that you do a terrific job?

**Mr Jones**—I am pleased to say that both of those reviews, in 2001 and in 2005, found, yes, that there is a need for some kind of investment promotion facilitation program and that Invest Australia does a good job.

**Senator CARR**—Was Axiss separately evaluated within those two studies?

**Mr Jones**—At the time of the Blackburne review in 2001, Axiss was a part of the Treasury, not part of Invest Australia. It was looked at as part of the Blackburn review, not in a great deal of detail but it was looked at. In the Allen review last year, Axiss had by then become part of Invest Australia. It had transferred out of the Treasury and was evaluated as part of Invest Australia's overall operations.

**Senator CARR**—Are you able to indicate to the committee what the findings were of that evaluation in regard to Axiss?

**Mr Jones**—In regard to Axiss, I cannot recall the specific finding, but, in general, there was strong support found for Axiss activities. It attracts very strong support from its stakeholders and the companies that it has helped come to Australia as well.

**Senator CARR**—I can obviously read the documents when they are provided, so thank you for that. What was the basis for the decision to expand Invest Australia's activities? It was recently announced in the budget.

**Mr Jones**—That arose from the findings of the review that there was a continuing need for the program and that, in particular, the value of the program lies in its international officers, our international network, and the ability of those people to talk directly to foreign investors in their countries of origin. The review found that there was a case for increasing our overseas presence, and the government agreed with that finding.

**Senator CARR**—So in a sense it is a response to the review reports?

**Mr Jones**—Yes.

**Senator CARR**—If I could return to the top 10 projects, could you advise the committee, in regard to each of these, what role your agency played in attracting the investment funds? For instance, I understand Visy has had an incentive payment of \$36 million, was it?

**Mr Jones**—That is correct.

**Senator CARR**—What was the total investment for Visy and the size of the project?

**Mr Jones**—The table gives the investment amount on the fifth line.

**Senator CARR**—My apologies; it is \$375 million. Is that right?

**Mr Jones**—That is correct.

**Senator CARR**—There was a \$36 million incentive payment paid and the size of the investment is \$375 million. Have I read that correctly?

**Mr Jones**—That is correct.

**Senator CARR**—Thank you. So you are saying the 9.6 per cent figure is a percentage of the investment?

**Mr Jones**—That is correct.

**Senator CARR**—What role did the department play or what role did your agency specifically play in attracting that \$375 million project?

**Mr Jones**—In that particular project, our role would have been to assess the request for assistance by Visy and to determine whether or not there was in fact a case to provide them with an incentive. So our role in attracting the investment was tied up with our role in assessing the case for an incentive to be paid. If the incentive was not paid, then the investment would not have gone ahead.

**Senator CARR**—How do you know that?

**Mr Peel**—That is our considered view after considering the application they made for assistance.

**Senator CARR**—Are you aware of any alternative offers that were being put to pulp and paper?

**Mr Jones**—There was an alternative location for that investment, yes.

**Senator CARR**—What was the site in question? Are you able to tell me that?

**Mr Jones**—I am not sure whether the alternative site in that case was public. It may be commercially sensitive information to the company.

**Senator CARR**—I see. Do you think that is commercial in confidence?

**Mr Jones**—In that case, I think it is.

**Senator CARR**—Can you check that for me? The reason I am asking is, because in my experience in this portfolio, many manufacturers have drawn my attention to the subsidy levels that are available from foreign governments and it is a bone of considerable contention. Have you any studies that are available on the incentive payments from competing governments in the region?

**Mr Jones**—We do not do formal studies of that, no. We are certainly aware of studies that indicate the general importance of incentives as part of the overall factors that are responsible for companies deciding where to locate their investments. In individual cases, companies certainly make us aware of what is on offer from other countries.

**Senator CARR**—I am sure they do. If I take, for instance, the incentive payment here of \$400 million to Holden—

**Mr Jones**—That is the size of the investment.

**Senator CARR**—Sorry, \$12.5 million. What role did you play in that particular project?

**Mr Jones**—Again, our major role was in assessing the application for an incentive and determining whether or not there was a case for the government giving an incentive to Holden to make that go ahead.

**Senator CARR**—How did that differ from the incentives that were paid by the Victorian government in terms of the state department of industry?

**Mr Jones**—Typically with these strategic investment projects the incentive package requires both a contribution from the Commonwealth and a contribution from the state. We would typically work with the relevant state government to try and make sure there was a coordinated effort in attracting the project.

**Senator CARR**—The APSC, which is a space launch facility, has an incentive payment of \$100 million.

**Mr Jones**—The incentive offer was \$100 million.

**Senator CARR**—It is not paid?

**Mr Jones**—As I say down the bottom in the status column, that offer has now been withdrawn.

**Senator CARR**—Yes. What role did the agency play in that?

**Mr Jones**—Once again, with that one, it was a matter of playing a major role in assessing the application for an incentive.

**Senator CARR**—Yes. So the same answer is going to apply to each one of these 10 projects. Is that right?

**Mr Jones**—Not all of them. In some—

**Senator CARR**—How is it different? Which ones are different?

**Mr Jones**—For projects like Syntroleum, IBM, Methanex, GTL Resources, for example, we not only assessed the application for incentives but also worked to make sure that Australia was in effect on the short list of countries for the location of the project in the first place. We played, in those cases, both an attraction role as well as an assessment role.

**Senator CARR**—In terms of the 94 projects that you list in your annual report, were there any distinguishing features about any of those 94 or is the same type of answer going to apply to each of those?

**Mr Jones**—No, in the majority of the projects listed in the annual report, we would have played an active investment attraction role—that is, we would have been responsible for drawing the attention of the project proponents to Australia in the first place, working with them to answer any questions they had about Australia as an investment location, making the case for Australia as opposed to other locations they may have been considering and doing some hand holding, if you like, when the project proponent was actively considering Australia.

**Senator CARR**—So hand holding, door opening—

**Mr Jones**—And promotion.

**Senator CARR**—And promotion. They are the three major functions of the agency in regard to each of those 94 projects?

**Mr Jones**—Yes.

**Senator CARR**—What about the negotiation of incentives?

**Mr Jones**—No. In the vast majority of those 94 projects there were no incentives necessary, certainly not from the Australian government.

**Senator CARR**—In regard to these 10 was the additional role that you played a negotiation of incentives?

**Mr Jones**—The assessment of the application for incentives, which included a negotiation element; yes.

**Senator CARR**—People do not just wander up and ask for an incentive, do they? They actually have quite specific requests, which I presume they have canvassed with you beforehand.

**Mr Jones**—That is correct; and then, as well as an assessment process, there is a negotiation element to come down to the final offer.

**Senator CARR**—Yes, can you advise me on the case of Methanex. I see that has been abandoned. What is the basis for that?

**Mr Jones**—At the end of the day, Methanex decided that they could not make the investment work in Western Australia after all.

**Senator CARR**—So they withdrew on a commercial basis.

**Mr Jones**—Yes.

**Senator CARR**—They did not get a better offer?

**Mr Jones**—Not directly, no. They were considering alternative locations. They, as a result of the incentive offered, decided on Australia but then essentially circumstances changed and, as I say, they could not make the project work at the end of the day.

**Senator CARR**—In regard to GTL Resources, why was the offer withdrawn?

**Mr Jones**—GTL Resources did not meet the conditions laid down by cabinet for the delivery of an incentive payment.

**Senator CARR**—And that is the same for APSC?

**Mr Jones**—Yes.

**Senator CARR**—I will put the rest of my questions on notice, but I appreciate the candour with which you approached that. I turn now to Program Management Services.

**Mr Paterson**—You foreshadowed some questions.

**Senator CARR**—I did. I am sure that somebody is watching this and no doubt they are busily at work translating my brief into questions. All the dollar questions are coming. We will have them in the first six questions. I turn to the issue of Mitsubishi. In regard to Project Phoenix, which has now received considerable publicity and been reported on by the ABC as a result of what they term their ‘investigations unit’. I recall I heard about this first in reports on radio back in September and reports on *The 7.30 Report* in October. Mr Clarke, do you now have a copy of Project Phoenix?

**Mr P Clarke**—No, I have seen the reports of Project Phoenix; but, no, we do not have a copy of the supposed report.

**Senator CARR**—Have you asked for a copy of Project Phoenix?

**Mr P Clarke**—No, we have not.

**Senator CARR**—Why not?

**Mr P Clarke**—If you look at Mitsubishi’s public comments on that, you see that they have commented that there was some work done by a consultant that was rejected. It is not a document that we have an entitlement to. The company said they rejected it. It is not something we have thought to ask for.

**Senator CARR**—So that is despite the fact that it has now received considerable public attention. Have you made any effort to get a copy of the report from any other sources?

**Mr P Clarke**—Have we made any effort to acquire a confidential document from other sources? No, we have not.

**Senator CARR**—Have you spoken to Mitsubishi about it?

**Mr P Clarke**—Mitsubishi have made public comments about it.

**Senator CARR**—I have asked if the departments have sought assurances from Mitsubishi. I would presume that you would have?

**Mr P Clarke**—The minister has made comments about that—that Mitsubishi has certainly made comments that there are no plans for closure, and the minister has indicated publicly that he accepts that.

**Senator CARR**—How much is the department spending with Mitsubishi through the ACIS program?

**Mr P Clarke**—Mitsubishi are a participant in ACIS.

**Senator CARR**—How much do they get from the Commonwealth through that program?

**Mr P Clarke**—They get money under ACIS.

**Senator CARR**—You must be able to advise me on how much they get.

**Mr P Clarke**—I think we can probably give you a figure, because there is a figure that has become public. The figure that is public is that they have received \$9 million in the first six months of this year.

**Senator CARR**—Yes, only \$9 million?

**Mr P Clarke**—Yes.

**Senator CARR**—So that is the public figure?

**Mr P Clarke**—Yes.

**Senator CARR**—Are there additional amounts of money that have not been made public?

**Mr P Clarke**—I am not sure that I want to characterise it that way. For the stage of ACIS that ran from 2001 to 2005 there was a degree of confidentiality that attended that, which does not apply to the stage 2 element. For the stage 2 element, the minister is able to disclose the amounts that companies receive; and he has done so in relation to Mitsubishi.

**Senator CARR**—Yes, I am not disputing that he has made statements concerning public investment in Mitsubishi. I am asking you: is the \$9 million that he has disclosed the total extent of the public investment in Mitsubishi.

**Mr P Clarke**—Yes.

**Senator CARR**—It is the total?

**Mr P Clarke**—I do not know the answer for any other departments, but there is nothing else that we know.

**Senator CARR**—That is a fair enough response.

**Mr Peel**—That is the total under the ACIS2 program. Mitsubishi would have received benefits under ACIS1.

**Senator CARR**—I am not trying to be tricky here. I would just like to know how much money the Commonwealth has put into Mitsubishi.

**Mr Peel**—We are not able to tell you the answer.

**Senator CARR**—Are you able to tell me if it is in excess of \$9 million?

**Mr Peel**—Yes, it would be in excess of \$9 million.

**CHAIR**—Could I ask you, Mr Peel, why you are not able to tell us? Is it because you do not have the figures available or for some other reason?

**Mr Peel**—Firstly, yes I do not have the figures available, but also under the ACIS1 program we guaranteed the companies receiving benefits under that program confidentiality of the benefits that they received, because it could impinge upon their commercial operations. When ACIS2 was designed the act was amended to allow us to disclose publicly the amount of money received or the amount of benefits received by participants in the program.

**CHAIR**—Allow or require?

**Mr P Clarke**—It says that the minister ‘may’.

**Mr Peel**—The minister may at his discretion disclose that, and Mr Clarke has mentioned the \$9 million. Under ACIS1 we can disclose the information with the agreement of the company concerned. We have asked Mitsubishi if they would agree to that information being made available. They do not want us to disclose that information.

**Senator CARR**—So ACIS1 has now concluded.

**Mr Peel**—Correct.

**Senator CARR**—What was the aggregate amount of money made available to Australian motor manufacturers?

**Mr Peel**—There was \$2.8 billion available under ACIS1 over five years. The program actually supports over 200 companies; four of whom, of course, are the major car manufacturers.

**Senator CARR**—I understand that. But the bulk of the money did go to the actual manufacturers, did it not?

**Mr Peel**—The manufacturers would get a fair proportion of the money. I do not have an exact figure, but probably around 50 per cent of that would have gone to the car manufacturers.

**Senator CARR**—So \$1.4 billion—

**Mr Peel**—Approximately.

**Senator CARR**—over 5 years. Do not misunderstand me: I am a supporter of these programs as I think I have made publicly clear on numerous occasions. I think the motor industry employs tens of thousands of Australians. It extremely important to the economies of south-east Australia. But I do think we are entitled to know how much money is going to each of the companies. You are saying there was a legal impediment on the first part of that \$2.8 billion.

**Mr Peel**—In the first round of the program, we gave a guarantee of confidentiality to the car manufacturers.

**CHAIR**—What was the confidentiality which was guaranteed?

**Mr Peel**—In the documentation that relates to the program we have indicated that we would not disclose the amount of benefits received by individual companies. We can disclose

the amount of benefits received totally under the program—by all companies—but we have said that we will keep confidential the exact amount received by individual companies.

**CHAIR**—Was that a term of the agreement, the contractual document or whatever you want to describe it as under which the payments were made?

**Mr Peel**—Yes, we guaranteed that in the application.

**CHAIR**—Is that a standard form of document?

**Mr Peel**—Perhaps I could explain. Over the years as we have introduced new programs or amended existing programs we have sought to ensure that we can release information about the amounts of benefits received by individual companies. Some older programs do not allow for that, but as we have gone forward and changed programs and introduced new ones we have made sure that information can be released. That is what has happened under ACIS stage 2 and stage 3.

**CHAIR**—Mr Peel, what Senator Carr was asking about, and what has attracted my interest a little as well, is—and just confine yourself to those programs in respect of which the amount of the funding has not been released—that you say that prohibition arises from some sort of contractual undertaking given by the Commonwealth to the recipient companies. Is that right?

**Mr Peel**—It is covered by what I understand to be the common-law concept of confidentiality.

**CHAIR**—That is rubbish. There is no common-law concept of confidentiality that says that, if a government pays money to a beneficiary under a program, the beneficiary has a right to have the amount of that payment kept confidential.

**Mr Peel**—My understanding is that information provided in confidence would be kept in confidence under that.

**CHAIR**—That is why I asked you what is the document that generates the obligation of confidence?

**Mr Peel**—And I mentioned the application form for the program indicates that we will keep that information confidential.

**CHAIR**—We are back to where we were five minutes ago. Is that a standard form of document?

**CHAIR**—It was relatively standard for older programs, but, as we have introduced new programs or amended existing programs, we have gradually removed that condition.

**CHAIR**—You have said that. I am not interested in the new programs

**Mr Peel**—I was answering your question.

**CHAIR**—May we see a sample of the document, please—not filled out for any particular recipient, but a sample of the standard document in blank?

**Mr Peel**—The ACIS application document?

**CHAIR**—The document that you say is the ground of the obligation of confidentiality.

**Mr Peel**—I do not have one with me.



**CHAIR**—I did not imagine you would, but may we see one, please? Will you take that on notice, please?

**Mr Peel**—I will.

**CHAIR**—And, unless you can tell me now, would you also take this on notice: what is the statutory source that you say constitutes the prohibition on disclosure?

**Mr Peel**—There is no statutory source. The legal advice that I have is that it is the common-law concept of confidentiality that would apply.

**CHAIR**—If the Commonwealth enters into a covenant with a recipient company that it will not disclose something, then that is a matter of contractual obligation, that it will not disclose it.

**Mr Peel**—Yes, it is part of the arrangement as spelled out in the application documents for ACIS. People who apply for the program have an expectation that we will keep that information confidential and that is why I understand it to be contractual.

**CHAIR**—But unless the Commonwealth assumes that obligation by way of some sort of contractual undertaking or covenant to the payee of the benefit, there is no obligation to keep that payment confidential; and the disbursement of public moneys ought ordinarily to be transparent. If the Commonwealth has undertaken a contractual obligation to maintain the confidentiality of a payment to a particular payee, what I am wondering is: what is the statutory source, if there is one, requiring the Commonwealth to disburse the moneys under the old scheme in that manner? If there is not a statutory source requiring the Commonwealth only to pay these moneys on the undertaking of entering into a confidentiality agreement with the payee, I wonder why the Commonwealth did that?

**Mr Peel**—I will have to take legal advice on that.

**CHAIR**—Would you identify, if there is one, the statutory source governing this—what you have called the ‘application document’. If there is not a statutory source for it, can you tell us what the source of the document is? Because if it is merely a decision within the department, I am at a little bit of a loss to see why the expenditure of public money should be concealed in this manner.

**Senator CARR**—Given that there would appear to be hundreds of millions of dollars—and I get that figure by calculating roughly the size of the industry, the relative position of Mitsubishi and the components manufacturers that supply that plant—worth of public investment gone to support this plant, I would be interested to know why officers have not asked Mitsubishi directly about Project Phoenix.

**Mr P Clarke**—I suppose I can answer that in this way: we have asked and been told that there are no plans for closure. I think to focus on a particular document that Mitsubishi itself has said is a document that has been rejected is not the question. The question is: are there plans for closure. Mitsubishi has said repeatedly, and very publicly, that there are no plans for closure.

**Senator CARR**—And you are satisfied that that is the truth?

**Mr P Clarke**—I do not know what you expect us to do. The company has said that there are no plans for closure.

**Senator Minchin**—Let me make it clear, Senator Carr. The government does accept properly the statements of the managing director of the company, which were repeated today in *The Age*. He is quoted as saying that there is no plan—there is no decision to cease manufacturing at Tonsley Park. So, yes, of course we as a government accept what the company has stated.

**Senator CARR**—That is all I am asking. And you have made no other inquiries that would lead you to the view that there is any reason to challenge those statements?

**Senator Minchin**—Sorry.

**Senator CARR**—Mr Clarke, has the department undertaken any other inquiries that would lead it to challenge those public statements?

**Mr P Clarke**—We do not have a basis to do so.

**Senator CARR**—Apart from ACIS, what other programs do Mitsubishi currently access from the department?

**Mr Peel**—As far as I am aware, only the ACIS program.

**Senator CARR**—What about the structural adjustment fund for South Australia?

**Mr P Clarke**—No, they are actually excluded from that.

**Senator CARR**—So no other funding from other sources has gone to Mitsubishi from the department?

**Mr Peel**—I will perhaps get in trouble from the chairman for saying this, but we do have a program called the research and development tax concession, which companies can apply for. But under the taxation legislation, we are unable to say whether a particular company is accessing that or not. So that is a possibility.

**Senator CARR**—I think you have answered my question though.

**Mr Peel**—That is a possibility.

**Senator CARR**—Is R&D funding through this department?

**Mr Peel**—They register for the tax concession through the department.

**Senator CARR**—Could you explain to me why the government has continued to fund Mitsubishi under ACIS, given its output has fallen from the threshold figure that was set at the time of the granting of those applications?

**Mr P Clarke**—The threshold you mentioned is 30,000 vehicles a year, and that is the default minimum for a motor vehicle producer to be registered under ACIS. In relation to Mitsubishi, Mitsubishi fell below this and applied for and received national interest registration under ACIS which is a provision—section 20, from memory—that allows the minister to register a participant under ACIS if they are a vehicle producer, a component producer or a service provider, or whatever, that does not meet one of the volume criterion in the national interest, having regard to one of a number of criterion. He has done so. It is a disallowable instrument. That was lodged, from memory, in late 2004.

**Senator CARR**—When was that special interest provision under ACIS introduced?

**Mr P Clarke**—The national interest provision I think was a feature of the—

**Senator CARR**—No, not national interest. It is special interest, isn't it?

**Mr P Clarke**—No, it is a national interest provision. It was a feature of the 1999 legislation.

**Senator CARR**—Can you explain the background to the decision to apply the national interest provision?

**Mr P Clarke**—The background to the national interest provision is that the broad range of companies that contribute to the car industry would fall into certain minimal requirements, but it was accepted that there might be exceptional circumstances. To pull an example out of the air: say there was a component producer that failed to meet the minimum volume requirement but produced an absolutely essential component for the industry. A provision was put in to allow the minister to say, 'Thank you. I know what the general rule is, but, having regard to this provision, it adds to the competitiveness of the industry, and I will do so.'

**Senator CARR**—Were these special provisions to actually offset or circumvent the minimum eligibility requirement of 30,000 cars per year generally known in industry?

**Mr P Clarke**—It is in the act, Senator.

**Senator CARR**—So it was generally known. Was the decision made at cabinet level or was it just ministerial discretion?

**Mr P Clarke**—It is the minister's discretion; it is a disallowable instrument. You would have seen it.

**Senator CARR**—Given that the Project Phoenix documents referred to in the press were dated 6 September, did departmental officers not express any surprise that consultants were engaged by the company on such a topic as late as September?

**Mr P Clarke**—I am not sure I am in a position to make comment. The company has acknowledged there was some existence to the document, but it has rejected it. I cannot offer a useful comment on that.

**Senator CARR**—You have not sought advice from the company as to why they commissioned such a project?

**Mr P Clarke**—I said earlier, the company has publicly stated it has no plans for closure. It has made a media release with regard to that particular project, and said that it was rejected. That is the total of our knowledge on that.

**Senator CARR**—Is it your expectation that over the next three years the company will move above the threshold figure of 30,000 cars a year?

**Mr P Clarke**—There is a provision in the national interest registration that requires the secretary to make an evaluation each year on that, if it does fail to get above the 30,000. I cannot remember the precise wording but it actually requires the secretary to do that each year. There is a requirement that it release a new model I think by the end of 2006—which it actually has done—and then there is a provision that requires the secretary to make an

assessment, to look at what they are doing and form a view. It is in the document. It is in the disallowable instrument.

**Senator CARR**—If a company in receipt of ACIS moneys closes production, or closes down, is there any obligation to refund moneys?

**Mr Peel**—Payments under ACIS are made in arrears, so there would be no obligation to repay the money.

**Senator CARR**—Have any other companies sought dispensation under this provision of ACIS? Obviously not.

**Mr P Clarke**—I could not speculate on that.

**Senator Minchin**—Seeking. Whether they have been granted is the only legitimate question.

**Senator CARR**—Have they sought it?

**Senator Minchin**—It is not legitimate for officers to comment on any internal requests that may or may not have been received. It would be appropriate to ask whether or not any other dispensations have been granted, but not, in my view—strongly—about any internal inquiries.

**Senator CARR**—Have any other requests been granted?

**Mr P Clarke**—I do not know.

**Senator Minchin**—That is not to say that any requests have necessarily been received.

**Senator CARR**—How important is Mitsubishi to the overall structure of the industry?

**Mr P Clarke**—Are you talking about in terms of volumes?

**Senator CARR**—Yes, and in terms of its competitive position.

**Mr P Clarke**—Their annual rate of production at the moment is somewhere between 12,000 or 13,000 to 15,000. The industry this year is likely to produce about 350,000 vehicles, give or take a few thousand.

**Senator CARR**—How many people are employed directly at the plant now?

**Mr P Clarke**—We understand about 1,200.

**Senator CARR**—And how many people, through the components and other multiplier effects, are directly, are employed as a result of the operations of the plant? Do you have an estimate for that?

**Mr P Clarke**—We do not have an estimate as such. There are a number of companies that supply Mitsubishi. The exposure they have to Mitsubishi varies from very substantial in a particular operation or two to peripheral in other areas. We do not have numbers of people who supply that.

**Senator CARR**—You do not have any estimates at all?

**Mr P Clarke**—I cannot give you a figure. These are internal company figures. We know that there are a number of suppliers to Mitsubishi, quite obviously, but I cannot tell you the dollar value that they supply to Mitsubishi. That is something that they and Mitsubishi would know.

**Senator CARR**—So your research has not been able to identify the employment consequences of Mitsubishi's operations within the Australian market?

**Mr P Clarke**—It is not an easy question to answer, but I suppose the answer is no.

**Senator CARR**—For how many suppliers would the predominant proportion of their business be tied up with Mitsubishi?

**Mr P Clarke**—I would say very few. Again, I cannot tell you exactly how many. We do not have an absolute list of all the suppliers to Mitsubishi. It is not something that we collect.

**Senator CARR**—So, for funding under ACIS, you would not be able to provide that information?

**Mr P Clarke**—No. Mr Peel and Mr Sexton can probably detail the information they are required to produce, but it is not about who they supply. They obviously have to fulfil eligibility requirements.

**Mr Peel**—We have a breakdown of the numbers in each sector of the industry but not a breakdown as to which manufacturer they support.

**Senator CARR**—When will the next assessment be for funding for Mitsubishi?

**Mr P Clarke**—This is the next assessment by the secretary?

**Senator CARR**—Yes.

**Mr P Clarke**—It may be at the end of this year and it may be at the end of next year. I would have to look at the document. I do not have the document with me.

**Senator CARR**—Will you take that on notice, as to the interval?

**Mr P Clarke**—Yes.

**Senator CARR**—Are there any companies that have received funding under ACIS that have become ineligible or have stopped receiving funding over the life of the program?

**Mr Peel**—There would be a range of companies that have stopped receiving funding under the program because they have gone out of business or for whatever other reason, but not in relation to the major car manufacturers.

**Senator CARR**—Obviously not in relation to the major car manufacturers. Do you have a list of those companies in the component industry?

**Mr Peel**—I do not, but I could get it for you on notice.

**Senator CARR**—Thank you. How many component manufacturers have actually received funding under ACIS?

**Mr Peel**—The breakdown for ACIS is: four motor vehicle producers, as we have already discussed; 172 automotive component producers; 50 automotive machine tool producers; and 16 automotive service producers.

**Senator CARR**—What is your estimate of the total employment in the component sector?

**Mr P Clarke**—We answered this in a submission to the House of Representatives inquiry on this; I will just flail around a bit and see if I can find it for you.

**Senator CARR**—Thank you.

**Mr P Clarke**—I will get back to you on that one, Senator.

**Senator CARR**—Has the department undertaken any independent assessment of the viability of Mitsubishi's manufacturing in South Australia?

**Mr P Clarke**—No.

**Senator CARR**—Have you done any assessment of the significance of ACIS funding for the continuation of Mitsubishi in South Australia?

**Mr P Clarke**—ACIS provides substantial assistance to encourage structural adjustment in the context of trade liberalisation. It is not meant to just keep it going; it is meant to provide assistance to encourage companies to adjust to cover the increasing globalisation of the world economy and in particular in motor vehicles.

**Senator CARR**—So you cannot answer that, in effect.

**Mr P Clarke**—As I say, I am not sure I can accept the basis for your question. It provides a percentage obviously of their turnover.

**Senator CARR**—Thank you very much. That concludes my questions on Mitsubishi. I have a question on the Ionospheric Prediction Service, IPS. In fact, I might put that on notice because it is all pretty straight forward.

**Mr Paterson**—We will take that on notice.

**Senator CARR**—They are straight funding requests. I take it you do not have those at hand. Do you have those figures at hand?

**Mr Mackey**—They are part of our departmental appropriations, but we are happy to take them on notice. We do not have a representative from IPS here today.

**Senator CARR**—That is all right. I will put them on notice if I could. I also have six questions in regard to Invest Australia which I have sought to put on notice. I will leave those with the secretary.

**Senator Minchin**—Is this a convenient time for a break, Chair?

**CHAIR**—We will have a 10-minute break now.

#### **Proceedings suspended from 10.58 am to 11.13 am**

**ACTING CHAIRMAN (Senator Chapman)**—I call the committee to order. Are there any further questions?

**Senator CARR**—I would just like to confirm something with Mr Paterson. I have asked a couple of questions on notice with regard to Invest Australia. The first question goes to the expenditure and a breakdown of that expenditure to departmental and other expenditures. Is it possible to get the first question answered today?

**Mr Paterson**—I am hopeful we will be able to come back with an answer this morning. You asked Mr Clarke a question just prior to the break in relation to the number of component companies.

**Senator CARR**—Yes.

**Mr Paterson**—He has the answer to that question.

**Senator CARR**—Thank you.

**Mr P Clarke**—The figure that we can provide you with is an estimate because the last ABS figures date back to 2000 and 2001. We have done some estimates that we have put into a submission to the House of Representatives inquiry into employment and the component sector. The most recent figure we calculated, and it is an estimate, is that, in 2004-05, there were 48,450 in the automotive component manufacturing sector in Australia.

**Senator CARR**—That is jobs?

**Mr P Clarke**—Yes.

**Senator CARR**—Do you have any estimate of its decline since 2001?

**Mr P Clarke**—Yes. For 2000-01, we estimate 46,757; 2001-02, we estimate 41,648—that is a decline; 2002-03, we estimate 56,731; 2003-04, 55,650; and, 2004-05, 48,450.

**Senator CARR**—It is quite sharp, is it not?

**Mr P Clarke**—It varies a lot. If you recall, there were changes in the level of exports in 2002-03. I think Holden got its exports increased.

**Senator CARR**—But at the height it was 56,000.

**Mr P Clarke**—It was the height, yes.

**Senator CARR**—And it was down to 48,000 three years later.

**Mr P Clarke**—In 2004, yes. That is correct.

**Senator CARR**—I might take the opportunity to look at the proposed statement on manufacturing that the minister announced he would like to conclude. On 10 July, the industry statement set future directions. Are you familiar with that statement?

**Mr Paterson**—That is very much a work in progress at the present time.

**Senator CARR**—I will come back to that. Perhaps Mr Clarke can assist me with these statistics. Before I do that, the only other matter that relates to ACIS is the funding of \$52.5 million granted to Ford for a global pick-up truck. When was that announced?

**Mr P Clarke**—From memory, it was announced in May.

**Senator CARR**—Is that an R&D project?

**Mr P Clarke**—It was announced on 5 May 2006. The assistance is for \$40 million for the design, engineering and manufacture of the next generation of Ford Falcon and Territory vehicles at Geelong and Broadmeadows, and \$12.5 million for the design and engineering in Victoria of a light-commercial vehicle architecture that will have a variety of body styles and configurations. The truck is to be manufactured overseas and marketed in more than 80 countries under the Ford Motor Company brand.

**Senator CARR**—Is it essentially for the design centre at Broadmeadows?

**Mr P Clarke**—It is in part that, but I think the design centre is actually at Geelong. There was a ceremony last Friday which I did not get to go to.

**Senator CARR**—You would be familiar with it if it was last Friday.

**Mr P Clarke**—Yes.

**Senator CARR**—I recall I visited the design centre in Broadmeadows.

**Mr P Clarke**—There is clearly a design centre—

**Senator CARR**—The major one is now in Geelong, is it?

**Mr P Clarke**—This relates far more to the major one at Geelong, I believe.

**Senator CARR**—Is the \$6.7 million for Holden for the rear-wheel drive vehicle another design project?

**Mr P Clarke**—That is to support research and development, as well as training to allow re-engineering on the selected models.

**Senator CARR**—Is that at Port Melbourne or Fisherman's Bend?

**Mr P Clarke**—Holden produce the Commodores in South Australia and they do two types of engines at Port Melbourne.

**Senator CARR**—Are they joint projects with the various state governments?

**Mr P Clarke**—In both cases, yes, they are.

**Senator CARR**—What is the state of Victoria putting into the Ford project?

**Mr P Clarke**—I am not sure that that is a public statement. They are certainly putting in money.

**Senator CARR**—Is that is a secret too?

**Mr P Clarke**—It is not for me to say. I do not believe it has been publicly disclosed.

**Senator CARR**—How much are they putting into the Holden project?

**Mr P Clarke**—The South Australian and Victorian governments are matching the \$6.7 million.

**Senator CARR**—In what proportions?

**Mr P Clarke**—I believe it is 50-50—it is something like that.

**Senator CARR**—So 50 per cent from the Australian government—

**Mr P Clarke**—Yes.

**Senator CARR**—And 25 per cent from each of the governments. Is that how it works?

**Mr P Clarke**—I believe it is something like that

**Senator Minchin**—Yes.

**Senator CARR**—I should be able to work that out. Thank you for that. You say that the industry statement is a work in progress. Have consultations now concluded?

**Mr Paterson**—They have.

**Senator CARR**—I am told there are 44 submissions. Is that the total number of submissions that were received?



**Mr Paterson**—I indicate that it is very much a work in progress, but we can provide a formal response to that in terms of the actual final number of submissions.

**Senator CARR**—Thank you.

**Mr Paterson**—Because it is a matter on which we are providing advice to government at the present time, there are no conclusions reached in relation to it.

**Senator CARR**—But you can tell me the number of submissions you have received?

**Mr Paterson**—Yes.

**Senator CARR**—Did you just seek public submissions or did you invite particular organisations?

**Mr Paterson**—We invited a variety of organisations to participate in the consultations.

**Senator CARR**—So by invitation. Was it advertised?

**Mr Paterson**—I am not conscious of any public advertising in relation to it.

**Senator CARR**—Could you assist me, Mr Paterson: I am led to believe that the submissions have actually come from industry bodies rather than companies. Is that the case?

**Mr Paterson**—That is a level of detail I could not answer.

**Mr Mackey**—I do not have the list in front of me, so I do not know the exact number. It was a mix of individual companies and industry associations.

**Senator CARR**—Did you invite any unions to contribute?

**Mr Mackey**—I cannot recall, but we can get back to you on that issue.

**Senator CARR**—Did any unions make a submission?

**Mr Mackey**—I do not know.

**Senator CARR**—My understanding is that there are none listed on your website, but perhaps some are in secret. Is that the case?

**Mr Paterson**—Was that a question? I thought it was a rhetorical observation.

**Senator CARR**—Where there any secret union submissions?

**Mr Paterson**—Not that I am aware of.

**Senator CARR**—There were no invitations to the unions to provide submissions to this inquiry. That is the case, isn't it?

**Mr Paterson**—I am not aware of any invitations to them.

**Senator CARR**—So who did you consult with? Are you able to tell me that?

**Mr Paterson**—A variety of companies and industry associations around the country.

**Senator CARR**—Yes.

**Mr Mackey**—Sorry to interrupt, but I have just checked our internet site and we now have all the submissions on the internet site.

**Senator CARR**—Thank you.

**Mr Mackey**—That information is obviously publicly available. I could just read them out or I could refer you to the site.

**Senator CARR**—The characterisation I put to you is that there are very few individual companies on the list.

**Mr Paterson**—A number of individual companies participated in the consultation process.

**Senator CARR**—But did not make submissions?

**Mr Paterson**—They may not have formally made submissions. There were consultations in a number of key centres around Australia and there were both direct company participants and association participants at that variety of consultations.

**Senator CARR**—And no unions?

**Mr Paterson**—Not that I am aware of.

**Senator CARR**—Is there a report on the consultations? Is there any documentation arising from the consultations?

**Mr Mackey**—I am not aware of any public report on the consultations. However, the outcomes of the consultations have been discussed with other departments in Canberra.

**Senator CARR**—Are you engaging a consultant to prepare the statement?

**Mr Paterson**—No, we are not.

**Senator CARR**—So it is going to be prepared internally?

**Mr Paterson**—It is the government's intention to have an industry statement released in the first half of next year, and at this stage that is work that the department is undertaking on behalf of the government.

**Senator CARR**—I am told that only six companies actually made submissions. Is that right? Of the 44 submissions, only six were from individual companies?

**Mr Mackey**—It would be of that order. I have not gone through and counted them all up.

**Senator CARR**—The rest were the paid lobbyists?

**Mr Mackey**—I would not characterise them—

**Mr Paterson**—That is your characterisation.

**Senator CARR**—There is ACCI, as you know. They are sort of a branch of the Liberal Party these days. I would not put them in that category, but, apart from that, why do you think there were only six companies?

**Mr Paterson**—There were not only six companies involved in the consultation.

**Senator CARR**—There were not?

**Mr Paterson**—No.

**Senator CARR**—How many were there, then?

**Mr Mackey**—About 20 companies were invited and took part in each of the consultations.

**Senator CARR**—Can you provide us with a list of those companies?

**Mr Mackey**—I do not have that list with me.

**Senator CARR**—Could you take it on notice?

**Mr Mackey**—Yes.

**Senator CARR**—Thank you. Could I ask—

**Mr Paterson**—We take the question on notice, including whether we are in a position to provide that detail to you.

**Senator CARR**—Were the consultation sessions confidential?

**Mr Mackey**—They were under the Chatham House Rule.

**Mr Paterson**—And, as you are aware, the Chatham House Rule is that you do not identify the conversation, the location or the participants.

**Senator CARR**—Yes.

**Mr Paterson**—That is why I took the question on notice as to whether we can provide the information.

**Senator CARR**—Has a draft statement been prepared yet?

**Mr Paterson**—We cannot respond to that question at this stage. It is a matter of policy advice to the government.

**Senator CARR**—Is it likely that the timetable as set out in the original statement by the minister will be met?

**Mr Paterson**—That is our expectation.

**Senator CARR**—In terms of the statements I have seen and the paper the minister published in July, I do not recall seeing any figures about employment in manufacturing. Can you confirm the decline in employment and manufacturing in the last five years?

**Mr Paterson**—We will take that on notice.

**Senator CARR**—I have a figure prepared by the Department of Employment and Workplace Relations. They set the figure at 3.3 per cent to February 2006—that is, 36,600 positions. Are you in a position to confirm or deny that figure?

**Mr P Clarke**—I can give you some figures on employment. In manufacturing, the current employment figure as at August 2006 is 1,056,200-odd. Going back over the years, I have figures: August 1996, 1,118,000; August 2003, 1,075,000; August 2004, 1,103,800; August 2005, 1,043,000. Effectively, since 1996 there has been a loss of 50,000 people over 10 years.

**Senator CARR**—Is that a 5.9 per cent decline?

**Mr P Clarke**—It is 0.5 per cent. It is very static. The figure has held up very well.

**Senator CARR**—In manufacturing, over the previous five years, the department of employment has told me it is 3.3 per cent and you are saying it is 0.5?

**Mr P Clarke**—A 3.3 per cent decline?

**Senator CARR**—Yes—a decline in the last five years. I am quoting directly from their report.

**Mr P Clarke**—I do not have the figures.

**Senator CARR**—*Australian jobs 2006* it is called. It is as of February—that is, this year. I am just wondering why there is a discrepancy between your estimates and theirs.

**Mr P Clarke**—I was not giving you a figure as at five years ago; I was giving you a figure as in 1996, 2003, 2004, 2005 and 2006. I do not have one from five years ago.

**Senator CARR**—Would you like to take that on notice and confirm for me whether or not, in your assessment or the department's—

**Mr P Clarke**—They are ABS figures; they will not change.

**Senator CARR**—So it is 3.3 per cent. What they are also suggesting to me is that the further rate of decline for the next five years is about 3.6 per cent.

**Mr P Clarke**—This is out into the future?

**Senator CARR**—Yes.

**Mr P Clarke**—You would have to talk to them about that.

**Senator CARR**—You have no forward projections on employment over the next five years?

**Mr P Clarke**—Not as such. A lot of that gets down to business confidence and various economic conditions. There is a bunch of variables. There are consultants who do that sort of work.

**Senator CARR**—If you cannot do it, how come the Department of Employment and Workplace Relations can?

**Mr P Clarke**—I imagine they are in the employment business.

**Senator CARR**—You are preparing a statement on Australian industry and its next 10-year plan—that is what you are saying it is, are you not; that is the claim that you are making? You are proposing a statement setting out directions for the next 10 years?

**Mr P Clarke**—The minister has—

**Senator CARR**—I mean the collective 'you', not you personally Mr Clarke. I do not want to put your name on this document. Mr Paterson, what I would like to know, though, is: how does the department reconcile these statements—that the government is proposing to establish industry policy settings for the next 10 years without being able to predict or forecast the employment opportunities in the industry in that time?

**Mr Paterson**—I indicated to you earlier that the preparation of the industry statement was very much a work in progress and is a matter of policy advice that we are providing to government at the present time. We have not finished preparation for the statement. What will be considered by government and what will be released by government is a matter for government at the time.

**Senator CARR**—What I am referring to here, Mr Paterson, is the statement that the department presumably has prepared, entitled *Global integration*—background paper.

**Mr Paterson**—Correct.

**Senator CARR**—That paper does not contain—by my reading of it—any reference to the future of manufacturing in Australia.

**Mr Paterson**—It is a background paper—

**Senator CARR**—Yes.

**Mr Paterson**—for the consultations.

**Senator CARR**—I would have thought that would be a key issue in the policy paper that is being prepared. Why is there no reference here?

**Mr Paterson**—It is a question of whether you seek the views of others—in relation to what their views might be of the future and the challenges that are before them—and then have a government response to that or whether you start with the end position. The consultation process was about seeking the views of a variety of participants across a wide spectrum of industry, and that provides input to the consideration for government in terms of what it might incorporate in the statement.

**Senator CARR**—So will there be economic modelling contained within the—

**Mr Paterson**—No decisions have been taken as to what will finally be in the statement.

**Senator CARR**—This is a statement you—

**Mr Paterson**—I said ‘in the first half of next year’.

**Senator CARR**—The first half of next year, and you cannot tell me whether or not economic modelling is associated with this statement?

**Mr Paterson**—I have indicated to you that I cannot say what will be in the statement.

**Senator CARR**—How many people within the department are working on this statement?

**Mr Paterson**—We have a task force of staff—eight people dedicated to that task—plus input from a number of other areas within the portfolio.

**Senator CARR**—What is the total budget for the project?

**Mr Paterson**—The staffing costs associated with the individuals.

**Senator CARR**—No other costs associated with the project?

**Mr Paterson**—Not directly attributed to the project.

**Senator CARR**—No research?

**Mr Paterson**—We have a variety of inputs to the process in preparing that advice.

**Senator CARR**—No consultancies are planned?

**Mr Paterson**—It is still very much a work in progress.

**Senator CARR**—It is to be published in less than a year—10 months—

**Mr Paterson**—Correct.

**Senator CARR**—and you cannot tell me whether or not you plan to employ any consultants?

**Mr Paterson**—I have indicated to you that no decisions have been taken yet as to what will be incorporated into the statement.

**Senator CARR**—I will put the rest of those questions on notice. Mr Paterson, are you able to provide me with an update on the progress you have made on the provision of answers to those questions on notice with regard to Invest Australia—in particular the one with regard to the forward estimates period? I did not hear back as to whether you were able to meet that request.

**Mr Paterson**—There are three figures. I do not have that piece of paper in front of me.

**Senator CARR**—Can provide them today? That is all I am interested to know.

**Mr Paterson**—The total divisional costings for Invest Australia are as follows: 2005-06, \$22.504 million; 2006-07, \$23.314 million; 2007-08—and it is an indicative allocation; it is part of departmental appropriation that is not yet confirmed—\$23.586 million.

**Senator CARR**—Is there any chance we can get the other material today?

**Mr Paterson**—We are working on that. We are aiming for the 12.30 target.

**Senator CARR**—Thank you.

[11.38 am]

**ACTING CHAIRMAN**—We will now move to resources and energy.

**Senator O'BRIEN**—I refer firstly to the Low Emissions Technology Demonstration Fund. Which applicants missed out on grants in the first round of the application of this program?

**Mr Peel**—Could you repeat the question?

**Senator O'BRIEN**—Yes. I want to know which applicants missed out on grants in the first round of applications under the LETDF.

**Mr Peel**—Ministers are announcing the grants progressively. Those announcements are not yet complete, so at this stage it would not be appropriate to indicate that.

**Senator O'BRIEN**—How many applications were received?

**Mr Peel**—We received 30 applications.

**Senator O'BRIEN**—How many have been announced as approved?

**Mr Peel**—Four have been announced to date.

**Senator O'BRIEN**—How many are pending?

**Mr Peel**—That is a matter for ministers to announce.

**Senator O'BRIEN**—You do not know?

**Mr Peel**—It is a matter for ministers to announce.

**Senator O'BRIEN**—Do you know?

**Mr Peel**—I do know.

**Senator O'BRIEN**—So some have been approved but have not been announced?

**Mr Peel**—Correct.

**Senator O'BRIEN**—Why can you not tell us the number?

**Mr Peel**—That is for ministers to announce.

**Senator O'BRIEN**—What, the number?

**Mr Peel**—Correct.

**Senator O'BRIEN**—Rather than the project?

**Mr Peel**—The government has not yet announced the successful applicants under the program. It is up to the government to do that.

**Senator O'BRIEN**—How many applications can be approved under this program?

**Mr Peel**—There is a budget of \$500 million. Each application would be for varying amounts of money, so it would depend on the size of those projects.

**Senator O'BRIEN**—Of the four applications approved, how much is involved?

**Mr Peel**—Two hundred and fifty million dollars.

**Senator O'BRIEN**—What is the time line for announcing the projects which will take up the balance of the \$250 million available?

**Mr Peel**—The rounds of the program go out to 2012 so it is open to the government to have further rounds of the program or to use all the funding in a particular round.

**Senator O'BRIEN**—So, if four projects have taken half the funding, it is not just half for the funding for this year; it is half the funding for the eight years as well.

**Mr Peel**—That is correct. It is a \$500 million program.

**Senator O'BRIEN**—Thirty applications have been received. Four have been approved. Have any applicants been told their project will not be approved?

**Mr Peel**—Yes.

**Senator O'BRIEN**—How many?

**Mr Peel**—We will have to take that on notice.

**Senator O'BRIEN**—What is oxyfuel technology?

**Mr Birch**—This is a technology where the combustion processes are fired using pure oxygen. That provides a concentrated stream of CO<sub>2</sub> from the back of the boiler, and that concentrated CO<sub>2</sub> is very amenable to capture and storage.

**Senator O'BRIEN**—Is the department aware that the oxyfuel technology selected for funding in Queensland is already commercialised and there is a 300-megawatt oxyfuel powered plant being constructed in Canada?

**Mr Peel**—I think that is a question for our colleagues in the energy division.

**Mr D Clarke**—I do not have firsthand knowledge of the project to which you refer, but I would observe that the criteria under which LETDF projects were considered did not preclude the fact that there may have been one or a small number of other large-scale applications around the world. The point is whether it was a mature, widely-deployed technology. The

assessment that the expert panel made on the advice of independent technology experts was that this was a project that met the eligibility criteria of this program.

I would emphasise senator that oxy firing has a particular characteristic, which is that it is a retrofit technology. There are a range of projects that were looked at under LETDF that are either new technologies, building and applying technologies not widely deployed, or technologies that could be fitted back to the existing installed asset base of power stations. So retrofit technologies, of course, have to be customised to the particular sites and circumstances of the existing installed base. Our interest in this oxy-firing technology is its application to the existing installed power stations in Australia.

**Senator O'BRIEN**—Has the department considered the ZeroGen project in Queensland for funding in this round?

**Mr Peel**—I do not think it is for us to reveal who actually applied under the program until the government has made its announcements.

**Senator O'BRIEN**—When can we know this? You are suggesting that the program goes until 2012. Are you saying that you will hold that information until 2012?

**Mr Peel**—I mentioned that the government is in the process of announcing the successful applicants. We expect that to occur over the short term, not out to 2012.

**Senator O'BRIEN**—When those announcements are made, will we be able to learn which applications have been unsuccessful?

**Mr Paterson**—It is not normal practice for us to identify unsuccessful applicants for competitive grants programs, across the full range of grants programs we administer. It is not normal to announce unsuccessful applicants. It is a matter for the individual companies if they wish to declare that they were an applicant and if they wish to declare their status following consideration, but it is not our practice to identify unsuccessful applicants for competitive grants programs. It has commercial consequences for individual firms. That is the reason that we do not make announcements in relation to who the applicants were.

**Senator O'BRIEN**—The other aspect to this is, of course, what the government chooses to fund and not to fund and whether that technology choice is the best one that could be made. I think we are entitled to know how that money is being spent and not spent.

**Mr Paterson**—The money that is being spent is the money that is going to the applicants that were successful and were announced by government. As I said, it is not our practice to disclose applicants for competitive grants programs. There is an expert panel that has already been referred to—technology experts that have provided advice to government. It is a matter for government to decide how it wishes to proceed with those applicants.

**Senator O'BRIEN**—Has the paper that the Prime Minister referred to in his energy statement in August, regarding the commercialisation and development of gas to liquids technology, been prepared yet?

**Mr Paterson**—It is a matter of advice to government.

**Senator O'BRIEN**—Whether it has been prepared—

**Mr Paterson**—Correct.



**Senator O'BRIEN**—is not a matter of advice to government; it is a matter of fact. Whether you have provided certain advice may be a question of the advice you provided to government.

**Mr Paterson**—The nature of policy advice being provided to government is something that we are not expected to respond to.

**Senator O'BRIEN**—The Prime Minister has announced that this work is going to be done. I am asking about the work of the department and whether it has been done. That is not advice; that is a matter of the work of the department—not the nature of the advice but whether you have done the work. Are you refusing to answer?

**Mr Paterson**—I am indicating to you that that is a matter in relation to policy advice to government, and we are not required—

**Senator O'BRIEN**—It is not policy advice; it is whether you have done it. The nature of the advice is policy advice. It is whether you have done the work of the department, using money approved by the parliament. Are you refusing to answer?

**Mr Paterson**—I have declined.

**Senator O'BRIEN**—You are declining to answer—all right. Is there any basis other than the one you have claimed? Is the government aware of any new proposals for gas to liquids projects or feasibility studies in Australia in the near term?

**Mr Hartwell**—Yes, there are a number of companies that certainly are looking at the possibilities of gas to liquids projects in Australia.

**Senator O'BRIEN**—Which ones?

**Mr Hartwell**—The ones that have got the most publicity are the Sason Chevrol proposal, which has been around for some time, which is based on gas deposits in Western Australia, and the Monash project, which is essentially a coal to gas to liquids project, which is a bit further down the track, of course.

**Senator O'BRIEN**—They are talking about 2015 or thereabouts for that.

**Mr Hartwell**—Yes.

**Senator O'BRIEN**—Are there any that have an expectation of commercialisation before then?

**Mr Hartwell**—In a sense, because the success of gas to liquids projects largely depends on there being available large volumes of gas at a competitive price. While we are fortunate enough to sit on large reserves of gas, there are countries around the world that have more extensive reserves and have cheaper rates of exploitation. Essentially the first wave of gas to liquids projects, as you are probably aware, has been taking place in the Middle East and, to some extent, in Africa.

**Senator O'BRIEN**—So there are none here in the short term?

**Mr Hartwell**—It depends on what you would define as the short term.

**Senator O'BRIEN**—You talked about the 2015 project as the—

**Mr Hartwell**—That essentially is a project which is based on the gasification of coal in the Latrobe Valley and then turning it into liquids in a final product. But they have indicated—and that project has received quite a bit of publicity—that 2015 is about the time that they would hope to bring that project into fruition, yes.

**Senator O'BRIEN**—What impediments exist so far as the department is aware for the initiation of gas to liquids projects in this country? We are aware that projects are up and running in Qatar, for example, so what are the impediments?

**Mr Hartwell**—We do not believe that there is anything in our policy settings that are averse to gas to liquids developments. Essentially that is a commercial decision by the project proponents. Of course there are alternative uses of gas: you can push it into the domestic gas supply and you can convert it to LNG for export. It is a commercial decision. We do not believe that there are any impediments as such. It is essentially a commercial decision based on what would appear to be the best rate of return.

**Senator O'BRIEN**—Does the department have a view as to the current potential of the industry?

**Mr Hartwell**—The department has certainly kept abreast of various views that have been put forward. There have been views that Australia could have gas to liquids projects in a few years, but that would of course depend essentially on the right economics. The right economics depend often on the price of oil—as I said, being able to access reasonably large volumes of gas at a competitive price. There are a whole range of factors which would bear in on that particular issue. There are some who claim that Australia will have gas to liquids projects, and we continue to monitor that situation. But in the end I am not sure that we have a view whether that will happen or not. As I say to you, it is a commercial decision and we do not believe there is anything in the policy settings that the government has at this point in time which is averse to that being an outcome.

**Senator O'BRIEN**—Is there some difference in the price of gas here versus Qatar? Is that something that we should be aware of?

**Mr Hartwell**—Essentially Qatar sits on 900 trillion cubic feet of gas. It is much more accessible than much of our gas. By definition their costs and their ability to extract that gas would be somewhat cheaper than we could do it.

**Senator O'BRIEN**—Is that a known fact or do you think that is the case?

**Mr Hartwell**—I think that is something that, if you talk to industry proponents, is a fairly well established fact.

**Senator O'BRIEN**—I thought that the input price of the gas itself was the same here as it might be for a project there.

**Mr Hartwell**—I am talking about the costs of extraction. There is a whole range of other things that might determine the final gas price to a consumer but, in terms of rates of extraction, the nature of, say, gas deposits in Qatar and some parts of Africa would lead you to that conclusion.

**Senator O'BRIEN**—Is it a vertically integrated project in Qatar with production straight to liquefaction?

**Mr Hartwell**—I cannot answer that in a precise way. I would need to take that question on notice if you wish to have further advice.

**Senator O'BRIEN**—Thank you. Is there any work being done on the level of assistance to the industry which might promote gas to liquids projects in this country?

**Mr Hartwell**—I would not say that there is any specific work being done in relation to promoting that. A number of project proponents are around in this area and they often propose the sorts of things that they might require to get projects across the line. However, much of it at this point in time is very much in the embryonic stages, so we are not really at that point.

**Senator O'BRIEN**—What sorts of things are potential proponents saying would assist them in getting projects off the ground? Lots of money?

**Mr Hartwell**—I probably do not need to go into that detail. There are lots of project proponents who believe that, if only the government could provide some assistance in this particular area or that particular area, they could make this thing commercial now. We see that. That is not confined to the gas to liquids sectors.

**Senator O'BRIEN**—Does the department have an understanding of the cost of gas to liquids projects—converting gas to a diesel fuel?

**Mr Hartwell**—We have certainly had some work done in the past looking at the prospects for gas to liquids in Australia. I think the broad conclusion was one that I have already articulated, which is essentially that it really depends on, firstly, where you view the price of oil going in the longer term and, secondly, what the costs are in relation to obtaining reasonably large volumes of gas. To make these gas to liquids projects competitive they need, for the most part, reasonably large volumes of gas at very competitive prices.

**Senator O'BRIEN**—If we can supply to the Chinese we should be able to do it. During the last estimates, Mr Hartwell, you said:

The Gorgon joint venture are still confident of making a final investment decision sometime towards the end of this year or early next year, as we understand it.

Has that changed?

**Mr Hartwell**—No, that is still the position.

**Senator O'BRIEN**—Does Gorgon have any strategic investment incentive application under consideration by the government?

**Mr Hartwell**—At this point in time the government is not considering any application from the Gorgon joint venture under the strategic investment incentive program.

**Senator O'BRIEN**—Are there any other specific project assistance or other beneficial measures being sought by the joint venture?

**Mr Hartwell**—The Gorgon joint venture did seek some assistance in relation to the low emissions technology fund.

**Senator O'BRIEN**—I am taking your answer to mean they are one of the remaining 26 applicants, then?

**Mr Hartwell**—Yes. I am not close to that but that is a fair assumption.

**Senator O'BRIEN**—What other new LNG project proposals currently have major project facilitation status?

**Mr Hartwell**—I would need to ask my colleagues from Invest Australia to answer this one.

**Mr Paterson**—Senator Carr asked us a variety of questions in relation to major project facilitation.

**Senator O'BRIEN**—You can take that on notice.

**Mr Paterson**—Mr Jones may be able to respond. He was working on answers to some other questions that we had taken from Senator Carr.

**Mr Jones**—The LNG projects which currently have MPF status are, as well as Gorgon, BHP Billiton's Pilbara LNG project, Woodside's Pluto LNG project and the Inpex proposed project based on the Ichthys gas deposit.

**Senator O'BRIEN**—Are they new projects and not expansion projects?

**Mr Jones**—They are all new projects.

**Senator O'BRIEN**—Are there any expansion projects currently with major project facilitation status?

**Mr Jones**—The only expansion project at the moment would be the North West Shelf project. The latest stage of that does not have major project facilitation status. The ConocoPhillips plant based on Bayu-Undan gas in Darwin did have major project facilitation status but that is now commissioned and operating.

**Senator O'BRIEN**—With regard to the three project proposals with major project facilitation status, can you give us the outlook for those three projects—the likely date of final investment decision, for example?

**Mr Jones**—I am not sure I have the details of that at the moment. Woodside is certainly pushing ahead quickly with the Pluto project and is hoping to make decisions about that certainly in this financial year. I think it is fair to say that the BHP project and the Inpex project are a little behind that, but they are all moving as quickly as they can. I think that is the best answer I can give.

**Senator O'BRIEN**—In terms of domestic gas exploration, will I raise that with the department? Perhaps I will rephrase that—I am talking about gas industry development with a bias towards LNG. It is true, is it not, that, despite the promise of the gas industry, few LNG projects have actually proceeded to actual investment decisions over the last decade and many, including Sunrise and Gorgon, have failed to reach the final investment point. Do you think the domestic gas markets, including gas to liquids, have been sufficiently explored by large gas producers?

**Mr Hartwell**—That is a question, of course, that industry is in the best position to answer. Given that the challenges have always related to selling gas internationally, you would expect that domestic gas producers would certainly look at the options that might be available in a domestic sense to market their gas.

**Senator O'BRIEN**—What role does the department play, if any, to try and ensure that gas producers make the best of the marketing arrangements for their product as well as pursuing vertically integrated LNG opportunities?

**Mr Hartwell**—The role of the department in a marketing sense is a limited one. That is a commercial decision. It is true, as I have explained at previous Senate estimates, that, as requested, we sometimes assist Australian LNG exporters in their international marketing efforts—in particular, where the government-to-government relationship is important. But as to their decision of whether they will focus on the international market or the domestic market, that is a decision that they make on a commercial basis.

**Senator O'BRIEN**—Is it something the department would have regard for when it considers the next retention lease renewals over fields that have been held for long periods with a view to LNG development?

**Mr Hartwell**—Again, as we have explained before, retention leases are subject to certain conditions. Essentially, retention leases come up for renewal every five years. They are based on the fact that the deposit is not commercial at this point in time but should become commercial within 15 years. We also go through a test to ensure that the holders of that retention lease are making every effort to commercialise the gas.

**Senator O'BRIEN**—Which fields come up for retention lease or production licence renewal in the next two years?

**Mr Hartwell**—There is probably quite a list of them. If you bear with us, we might be able to give you some information in relation to that. Just off the top of my head, a number of the Gorgon leases come up for retention decisions in the next two years, but I cannot give you the list of them.

**Senator O'BRIEN**—If you could supply that on notice, I would appreciate that.

**Mr Hartwell**—We will do that.

**Senator O'BRIEN**—I note that the recent ministerial councils for energy and petroleum and mineral resources have included in the work program a proposal to investigate domestic gas needs for Australia in the light of our growing LNG exports, work which we think is overdue. What exactly is proposed, and who will be doing the work?

**Mr Hartwell**—A working group has been set up by both the Ministerial Council on Mineral and Petroleum Resources and the Ministerial Council on Energy. It is intended that officials from both those councils will meet jointly to consider issues surrounding future gas supplies in Australia. The exact terms of reference for that study are yet to be determined.

**Senator O'BRIEN**—Do you know when it is likely to be completed?

**Mr Hartwell**—We have work underway. The Ministerial Council on Energy met just recently. We will shortly be bringing together the senior officials from both those councils to sign off on and then get ministerial clearance for the terms of reference.

**Senator O'BRIEN**—What is the current status of work of the Uranium Industry Framework Steering Group?

**Mr Hartwell**—I might shortly ask my colleague Ms Constable to talk in a little more detail on that. The Uranium Industry Framework Steering Group has completed its work and has forwarded its report to the minister.

**Ms Constable**—As my colleague Mr Hartwell said, the work has now been given to the minister for consideration. The steering group expects to meet again in December to consider the next phase of the work program, which will include an implementation phase of two years.

**Mr Hartwell**—If I could just go back to our original issue of the number of retention leases that will come up in the near future, my colleague Mr Stone has just identified that we have—

**Mr Stone**—Twenty two retention leases that are due in the next two years.

**Senator O'BRIEN**—Can you tell us which ones they are?

**Mr Hartwell**—We can tell you which ones; it would take some time to go through those now.

**Senator O'BRIEN**—So the initial work, Ms Constable, is well under way, if not past the initial phase. You are looking at an implementation phase from December onwards for a period of two years?

**Ms Constable**—The work that we have undertaken within the uranium industry framework has, of course, been input into the nuclear task force review that is currently being undertaken within Prime Minister and Cabinet. The work that we have finalised within the uranium industry framework has a series of recommendations for consideration by the minister. One of those recommendations has in fact been implemented at this stage. The uranium industry itself has now formed an Australian Uranium Association and appointed a new chief executive officer, Mike Angwin, on 16 September 2006.

**Senator O'BRIEN**—Okay. The minister has the document and is implementing the recommendations that he chooses to implement.

**Ms Constable**—He will consider the recommendations within the report.

**Senator O'BRIEN**—And obviously sharing some of the recommendations with the industry.

**Mr Hartwell**—The industry was obviously a major part of putting this report together. It had a large steering group made up of all the operating uranium producers in Australia, but a number of other stakeholders as well. Many of the recommendations would fall to industry to implement; that is correct.

**Senator O'BRIEN**—So I take it that industry has the document?

**Mr Hartwell**—Yes. The document has not been publicly released at this point in time, but those members of the industry who are a part of the steering group and were obviously central to the preparation of the document would have a copy of it.

**Senator O'BRIEN**—Can this committee have a copy of the document?

**Mr Hartwell**—That is a decision for the minister.

**Senator O'BRIEN**—Given that it is effectively in the public domain I would think, I would ask that you request that of the minister.

**Mr Paterson**—It is not in the public domain and it is a matter of advice that is being provided to government.

**Senator O'BRIEN**—It is with other people as well as government, which we just established. That is why I said it is effectively in the public domain. You may choose to quibble about that, but that is the reality.

**Mr Hartwell**—I think, as Mr Paterson said, the people who were charged with preparing this document would have a copy of it and, as I mentioned, that included a number of industry representatives, but it is not in the public domain in the sense that—

**Senator O'BRIEN**—Was there a confidentiality agreement signed?

**Mr Hartwell**—I do not believe so, but I will check on that.

**Ms Constable**—No, confidentiality agreements were not signed.

[12.13 pm]

#### **Geoscience Australia**

**Senator O'BRIEN**—I want to ask a question of Geoscience Australia. I note that additional funding was provided for Geoscience Australia in the Prime Minister's energy statement in August. Can you update the committee on the program priorities of Geoscience Australia with respect to precommercial data gathering and evaluation of new frontiers for oil and gas exploration and minerals?

**Dr Pigram**—I will ask my colleague Dr Foster, who is head of our petroleum division, to respond to that question.

**Dr Foster**—With the new announcement of moneys that you referred to, planning has gone ahead for the next tranche to be spent commencing in June 2007.

**Senator O'BRIEN**—What are your program priorities?

**Dr Foster**—The program priorities are to provide precompetitive data in underexplored or unexplored areas and, in consultation with industry, we will determine the best areas. That is what we are working on.

**Senator O'BRIEN**—What is the process of industry consultation? Do you have a special group that does that?

**Dr Foster**—The process of industry consultation, for example, involves presentation to APPEA—which will take place next week—and individual company visits both to Geoscience Australia and indeed to companies in Australia and around the world.

**Senator O'BRIEN**—How far ahead is your actual field evaluation work?

**Dr Foster**—Geoscience Australia has pulled together a preliminary portfolio of potential areas for discussion with industry. So we have identified some geographic areas to begin the discussions.

**Senator O'BRIEN**—Which ones are you putting forward?

**Dr Foster**—They are for consideration and consultation, but we are looking at the Capel and Faust Basins and the extension of work that is being undertaken there now—these are deepwater areas—further work in the south western part of Western Australia in the Mentelle Basin and more continuum work in shallow water areas in the northern Arafura Sea. They are the areas so far.

**Senator O'BRIEN**—In terms of mineral prospectivity, what specific proposals are you looking at?

**Dr Pigram**—I will ask my colleague, Dr James Johnson, to answer that question.

**Dr Johnson**—In terms of the minerals program, we are putting forward potential programs for energy related minerals from across Australia, particularly in one geological time period, which is more uranium rich than other time periods. We are considering thorium, uranium, geothermal and on-shore petroleum.

**Senator O'BRIEN**—Which particular areas are you proposing to look at in regard to on-shore petroleum?

**Dr Johnson**—We are currently in consultation with our state geological survey counterparts. We have not finalised the areas in which we will be working. We are in the midst of discussions with our state counterparts which are yet to be finalised.

**Senator O'BRIEN**—When will those discussions be concluded?

**Dr Johnson**—By December this year for the states, and there is a process also concurrent of industry consultation which commences next week in Perth. There were also some individual company consultations in September.

**Senator O'BRIEN**—I have asked questions at past estimates about ethanol production subsidies and I particularly refer to question on notice from 18 January this year, No. 1485. You supplied me with some 2004-05 and current financial year-to-date information on ethanol production subsidies. I was wondering if I could have that information brought up to date for the whole of the financial year 2005-06 and, if possible, any year-to-date information.

**Mr Peel**—The end-of-year spend for 2005-06 for the ethanol production grants is \$15.381 million and year to date for 2006-07 is \$6.184 million.

**Senator O'BRIEN**—Is that to 30 September?

**Mr Peel**—30 September, yes.

**Senator O'BRIEN**—Which companies received the ethanol production grant program subsidy?

**Mr Peel**—CSR, Honan Holdings, Schumer and Tarac.

**Senator O'BRIEN**—How much did the Manildra Group receive in 2005-06?

**Mr Peel**—Honan Holdings received \$11,387,565.

**Senator O'BRIEN**—And CSR?

**Mr Peel**—\$3,922,281.

**Senator O'BRIEN**—And Schumer Rocky Point?



**Mr Peel**—Schumer received \$71,163.

**Senator O'BRIEN**—And Tarac?

**Mr Peel**—Zero in 2005-06. They are a recent addition to the program.

**Senator O'BRIEN**—Where are they based?

**Mr Peel**—I do not know. I do not know if any of my colleagues know the answer to that. It is South Australia.

**Senator O'BRIEN**—Senator Chapman must know something about them. You have given me the figures previously for volume produced; can you give me an update?

**Mr Peel**—Production for 2005-06 for CSR was 10,283,094 litres. For Honan Holdings it was 28,854,927 litres.

**Senator O'BRIEN**—Schumer?

**Mr Peel**—That was 186,568 litres—and Tarac zero for 2005-06.

**Senator O'BRIEN**—Do you know what the feed source is for Tarac?

**Mr Peel**—Grapes. I can think of better things to do with grapes!

**Senator O'BRIEN**—People have found it hard to make a living out of the better things to do with grapes, unfortunately. That might be the explanation there. I suppose it is close to brandy, isn't it?

**Mr Peel**—Close.

**Senator O'BRIEN**—Thank you very much for that update. The only questions I have left are for Tourism Australia.

[12.24 pm]

#### **Tourism Australia**

**Senator O'BRIEN**—Can I get Tourism Australia's view on the current health of the tourism industry—the domestic and the international sectors, if I can put it that way.

**Mr Buckley**—I am Geoff Buckley. Can you repeat the question?

**Senator O'BRIEN**—I will—if the music has stopped! Can I get a view from Tourism Australia on the industry's current health, in respect of both the domestic sector and the international sector.

**Mr Buckley**—Yes, certainly. In terms of the international sector, the current statistics for the year ended August show that there has been no growth, but we have maintained the growth we had from the previous year. It has been quite strong in markets such as China and India. The UK has held its own. The US has held its own in those markets against quite significant competition and strong exchange rate growths for Australia, which has meant our costs are higher. So there has been a reasonably good response from the international markets.

**Senator O'BRIEN**—What about Japan?

**Mr Buckley**—Japan is the struggling market; it is the challenging market. It is down four per cent on the previous year. It has a significant range of challenges in the marketplace. We

are finding that in both Asia generally and Japan. Increased low-cost carrier pricing and strong fares to intra-regional Asia are really pulling some of the market out. However, in Japan, although we are down four per cent, we are certainly doing better than our medium- to long-haul competitors. Markets like Hawaii are down 11 per cent, and Canada is down. We are putting a lot of attention into the Japan market to try and work that market up. It is an important market for us.

**Senator O'BRIEN**—What about tourism domestically?

**Mr Buckley**—The domestic side is flat. In fact, 2005 was a really challenging year—one of the most challenging the market has faced. We have seen a slight turnaround in the first six months of this calendar year in the domestic market. I think it is fair to say that the market is flat at the moment. There is a lot of movement amongst the sectors—business versus visiting friends and relatives.

**Senator O'BRIEN**—Why is the domestic tourism sector so flat if the economy is going well?

**Mr Buckley**—We have been trying to do some significant research to try and answer that question. It has been flat for a long period of time. It is not as though this is a recent phenomenon. It is a lot to do with, we think, changing consumer spending patterns. We have been mapping leisure travel against the total domestic household expenditure. We see, again, a percentage drop in that against the increased costs of mortgages and increased expenditure in a number of discretionary areas. That is certainly one challenge.

**Senator O'BRIEN**—In the 2005-06 corporate plan of Tourism Australia it says:

Our challenge domestically is to unlock the size of the overall domestic market and increase the amount of leave taken by Australians and ensure that Australia is in their consideration set of preferred holiday destinations ...

Is this an area that Tourism Australia takes some responsibility for, or do you say it is a state and territory government responsibility?

**Mr Buckley**—Tourism Australia has two key strategies in the domestic area. One is very much getting an understanding of just what is happening within the domestic market. So we engaged in a significant amount of domestic market research, mainly through Tourism Research Australia. That is certainly a Tourism Australia responsibility.

The second strategy has been to work with the states and territories who take the lead in this marketing area. We have been working in two areas. One is the No Leave, No Life program which is very much trying to understand what is happening with leave taking. Research has shown that there are something like 70 million untaken leave days on the books of corporate Australia at the moment, which is quite a significant number. It is not a tourism issue; we think it is more of a business and cultural issue. We are working with businesses in a pilot program just to better understand how that might be changed.

**Senator O'BRIEN**—Have you actually taken the step of going out and asking people why they store up their leave rather than take it?

**Mr Buckley**—Yes, there has been a significant amount of market research done on that. It is because a combination of factors, which vary from life cycle—where you are and whether

you are a young person, an older person or married with children. There are multiple issues; there is not a single major issue that is coming out that we might tackle. It is complicated.

**Senator O'BRIEN**—Can you explain the rationale behind the My Australia campaign, the domestic tourism initiative that was launched by Minister Bailey and went to air on 26 October on Channel 7?

**Mr Buckley**—It is one of a series of initiatives we are looking at to work with national media to try and lift the 'bragability' of Australia as a leisure destination against outbound competitor destinations. In that program we have a number of partnerships. That was a partnership developed with Channel 7 and the Yahoo 7 website to really try and get some strong endorsement from the Channel 7 celebrities about fantastic Australian experiences they have had. We wanted them to tell their stories to try and stimulate Australians to think about Australia as a fantastic holiday destination.

**Senator O'BRIEN**—How long will that campaign run and what is it costing?

**Mr Buckley**—It is scheduled to go through to the end of June 2007 in two tranches. There will be a burst for the next three months on Channel 7 and then there will be a second burst in the latter half of the financial year starting about February and again running through to the end of that financial year.

**ACTING CHAIRMAN**—How do you monitor the effectiveness of that?

**Mr Buckley**—Each of those initiatives are quite separate, but that particular case has a website connection. Yahoo 7 My Australia is the connection. What we will do is monitor people going on that site to see how they go through that site. Once they are in that site, they then spread out to other regional destinations. So it is not just that story. It actually gets them into a broader range of experiences that they can actually look at and tap into through that website.

**Senator O'BRIEN**—So how much is it costing?

**Mr Buckley**—I will have to come back to you on the exact numbers. The partnership itself at this stage is close to a \$2 million partnership, but I would probably prefer to come back to you with some specific numbers on that specific initiative. I do not have those numbers. It is actually still being rolled out as an initiative. There are some other options we could take.

**Senator BOSWELL**—Tourism Australia's approach is essentially following up on its current corporate plan I take it, or have you changed that approach?

**Mr Buckley**—It fits within the current corporate plan. As we said, we see two key strategies there, which are research and what we have termed content strategy. That is particularly working with the states and territories. We do not do any above the line advertising in our own right; it is done through partnerships, which is consistent with the current corporate plan.

**Mr Noonan**—Could I supplement that by talking about what tourism ministers' council has been doing and that is the establishment of a task force to look at domestic tourism. That is due to report back to Commonwealth, state and territory ministers by the end of February. It is based on the research Tourism Australia has been doing and some more research which is under way about the changing social trends that are leading people away from domestic

tourism and towards other expenditure areas. The intention is to come up with some practical outcomes.

We see the Commonwealth government's role with tourism as being research, which Tourism Australia does, and coordination. We are providing the secretariat services from the department to run that task force. Tourism Australia does the international marketing and the states and territories are responsible for domestic marketing. The messages to the states and territories that might come out of this task force would be: 'These are the things you need to target better in your domestic marketing campaigns'.

**Senator O'BRIEN**—Is it true that the trend against domestic tourism, with people spending their discretionary income in other ways, is more than national; it is international?

**Mr Noonan**—Yes. One aspect of the research that has been done—we are going to do some more of over the next few months—is to look at similar Western economies. All of them are experiencing flat trends with domestic tourism.

**Senator O'BRIEN**—What work has been done on the strategies being used in overseas domestic markets to seek to accelerate the spend in the domestic tourism sector?

**Mr Noonan**—The department will work on that over the next few months, contributing to this report. Having identified there is a similar trend, now we want to talk with those governments and find out what their responses are and whether they have been successful.

**Senator O'BRIEN**—What does Tourism Australia think about the 'Where the Bloody Hell Are You' campaign and its success or otherwise.

**Mr Buckley**—Tourism Australia launched its new destination campaign to trade and consumers earlier this year. Since that time we have had a single burst of activity in what we call the seven tier-one markets, our key markets, progressively depending on which was the right period for the consumer. At this early stage we are only still in launch phase of the campaign. We are pleased with the early indications. The main indication we have is website hits, which have grown 90 per cent, when you count all website hits to Tourism Australia websites in that period. So it is very early days and we have had positive response so far.

**Senator O'BRIEN**—Do you have key performance indicators for the campaign? I would expect you do.

**Mr Buckley**—Yes we do. They are based around a brand tracking program that we have in all markets. It is too early to pick up those numbers yet, but we do surveys in each of those seven markets continuously. We would expect a campaign of this nature to take 18 months to show a significant shift. It is a brand campaign, not a tactical campaign.

**Senator O'BRIEN**—It is a follow-up brand campaign, isn't? 'Australia in a different light' was the first stage from Tourism Australia; now you have changed it to the so-called 'Where the bloody hell are you' strand of the campaign. But isn't it really all the one campaign?

**Mr Buckley**—Where this campaign is slightly different is that, firstly, we have taken a more focused, targeted approach to the market we are going after. We have done a lot of research to identify a key segment in each of the key geographic markets, people who will spend more, stay longer and who are very interested in what we offer as a destination. The second aspect is that this is very much focused around trying to increase the intention to visit.

Our awareness in most of our markets is quite strong, and that has been the focus and the success of previous campaigns. With this campaign we have tried to focus the campaign around trying to get people to shift along that purchase curve and to actually intend to come and visit Australia in the next 12 months. That will be one of the key indicators that we will map.

**Senator O'BRIEN**—To be frank, that is a familiar tale. That has been the tale all along: all of the campaigns that we have heard about suggest that there are a lot of people who, when surveyed, talk about coming to Australia as something that they would like to do, but converting that into actual visits has been the challenge. Are we succeeding? Have we made any progress in that regard?

**Mr Buckley**—That is the focus of this campaign and, as I said, we have tracking mechanisms in place to measure that progress. Early indications are strong; that is all we can say at this point.

**Senator O'BRIEN**—What about the previous campaign, 'Australia in a different light'? Was that successful?

**Mr Buckley**—All I can say is that it raised the awareness; we still have a challenge with the intention to visit and, ultimately, the actual visit itself. That is a challenge right around the world.

**Senator O'BRIEN**—Do you have any idea of the conversion rate from, 'Think it is a good idea; you might like to,' to actually coming?

**Mr Buckley**—The conversion rate?

**Senator O'BRIEN**—Yes. That is what I am saying: getting people from the point of thinking it might be a nice idea and being aware of it to actually making the trip.

**Mr Buckley**—Certainly, and we have those benchmarks already in place for all of our markets. We have numbers on every market along those lines: from awareness to consideration to intention to visit in the next 12 months and then to actual visits. They are the KPIs that we have set up as benchmarks for this campaign. As I said, it is too early yet to actually—

**Senator O'BRIEN**—Can the committee be supplied with a copy of those KPIs? It is something that we have talked about, but it would be good to have your targets in front of us so that we can assess them in the knowledge of what the targets are and judge them down the track.

**Mr Buckley**—We can supply those.

**Senator O'BRIEN**—Thank you for that. Were they the KPIs at the start of the campaign, or have you adjusted them?

**Mr Buckley**—Yes, they were. I think at least at its broadest level, if you have a look in the current corporate plan, you will see a target number in terms of benchmark.

**Senator O'BRIEN**—Just as a matter of curiosity, what about the ban of the ad in the UK? Was that a positive for the campaign or a negative? Did it give us more publicity than we paid for?

**Mr Buckley**—It certainly gave us more publicity than we paid for. The public relations response was enormous; it was not intended but it was obviously something that worked in our favour in terms of interest. We certainly saw it in the numbers of people going to the website to have a look at the campaign.

**Senator O'BRIEN**—Going back to the decline in the Japanese market, you say that other markets are experiencing similar problems. We have spent a fair bit of money in market research in Japan, haven't we, over the last couple of years?

**Mr Buckley**—I do not think any more than for any of our other major markets.

**Senator O'BRIEN**—That may be so, but there is still a significant amount of money being spent there.

**Mr Buckley**—Absolutely. I think that will be continually needed if we are to really understand the nature of the challenges. Research is telling us that it is not a simple challenge that we have. There are changes occurring from a consumer point of view, from a distribution point of view, from a competitive point of view and from an economic point of view.

**Senator O'BRIEN**—So we are less competitive now, are we?

**Mr Buckley**—Are we less competitive?

**Senator O'BRIEN**—Yes. I have been watching the yen conversion, and it has been around 90 for a fair while. That seems to have been a significant point.

**Mr Buckley**—My memory is—and do not quote me on the figures—that the exchange rates have shifted in the order of something like almost 50 per cent in five years.

**Mr Noonan**—That is correct. Since 1998 or 1999 there has been an exchange rate movement of something close to 50 per cent. I agree it has stabilised in recent times.

**Senator O'BRIEN**—It has in the United States as well, but Japan has been much more sensitive.

**Mr Buckley**—There has been a big move in Japan. It has stabilised over the last 12 to 18 months.

**Senator O'BRIEN**—In the high 80s and 90, yes.

**Mr Buckley**—That has given us some challenges. I think it has been exacerbated, though, by the very strong competitive environment, particularly with airfares and even a drive to visit markets like China. So the intraregional for Japan has certainly seen some growth.

**Senator O'BRIEN**—Do we need a different campaign for Japan?

**Mr Buckley**—We do not believe so. We feel that the campaign we have is the right campaign. It is about cutting through the market. As I said, we are doing better than our competitors.

**Senator O'BRIEN**—If it does not cut through it is the wrong campaign, isn't it?

**Mr Buckley**—We will see. We are not there yet, so I cannot respond one way or the other. We believe it is. Our market research tells us that it will have the desired effect. We will continually watch the market. We work closely with a range of partners in that market. Certainly our Japan partners are strongly supportive. We have just done a major campaign

with JAL as another partner. I do not think they would be investing in something that will not deliver.

**Ms Kelly**—We think one of the key factors with Japan is that there has been a real explosion of budget airlines operating into Asia. We could supply you with diagrams that show you the growth over the last three years. It has been absolutely exponential. That means that the value proposition changes a little, and that disadvantages us to some extent. The people in Japan have a great deal more options and some very cost-effective options to do shorter haul inter-Asia travel. We see that as a key factor in our current situation with the Japanese market.

**Senator O'BRIEN**—Given those factors of the exchange rate and the cheaper airlines, are you confident, Mr Buckley, that we will achieve the KPIs for Japan?

**Mr Buckley**—We are going to do everything we can with the dollars we have available to keep—

**Senator O'BRIEN**—You were saying you were confident before. Are you resiling from that?

**Mr Buckley**—No. I am confident in the campaign.

**Senator O'BRIEN**—But, if it is not successful, you cannot be.

**Mr Buckley**—I do not think I can take out from the equation the external factors that affect any market in terms of end results.

**ACTING CHAIR**—You are confident as to what is within your control, but obviously you cannot be confident about something that is outside your control.

**Mr Buckley**—Correct.

**Senator O'BRIEN**—It is in your control, not individually but as an organisation, as to how we pursue it, how much we spend there and whether the spend is value for money. Sometimes you make the decision that it is not worth the spend because the impediments are so great that you are really not going to get value for money.

**Mr Buckley**—Yes.

**Senator O'BRIEN**—What I am really saying is that we are making a spend there; we have invested a fair bit and we are continuing to do so. Is it worth the money? Do you stand behind the KPIs you say you will supply to us, which were set out at the start of the campaign?

**Mr Buckley**—Absolutely.

**Senator O'BRIEN**—How many offices worldwide does Tourism Australia operate?

**Mr Hopwood**—Outside Australia, we operate in China, Germany, Hong Kong, Japan, Korea, Malaysia, New Zealand, Singapore, Taiwan, Thailand, United Kingdom, United States and Canada.

**Senator O'BRIEN**—How many are in Australia?

**Mr Hopwood**—Two offices in Australia: one in Sydney and one in Canberra.

**Senator O'BRIEN**—Why?

**Mr Hopwood**—The Canberra base is Tourism Research Australia, which was a transfer from the department two years ago. It was more cost effective at that point in time to maintain it in its current location.

**Senator O'BRIEN**—I have got some other questions about administration, but I will put them on notice. When will the annual report be tabled?

**Mr Hopwood**—Some time prior to 17 November.

**Senator O'BRIEN**—I take it that it is finalised and with the minister—is that right?

**Mr Hopwood**—Yes.

**Senator O'BRIEN**—When was it supplied to the minister?

**Mr Noonan**—I think I have seen correspondence from Tourism Australia seeking a short extension for the lodgement of the annual report. That is the reason for the mid-November date rather than the end of October, and the minister has agreed to that extension so that the report can be finalised.

**Senator O'BRIEN**—So the minister has not got the report yet?

**Mr Noonan**—No, there has been an extension.

**Senator O'BRIEN**—So the department has not got the report yet?

**Mr Noonan**—We have become aware of drafts of the report, but the report has not been submitted for tabling at this stage.

**Senator O'BRIEN**—Is it finished, Mr Buckley?

**Mr Buckley**—Not quite finished—there are a couple of minor matters to complete.

**Senator O'BRIEN**—I make the point that one of the purposes of this estimates round is to enable us to examine agencies about their annual reports. It is very difficult for us to do that if the report is not in the system. The interim evaluation of the tourism white paper was to be completed by the end of this year. What progress has been made? Are we nearly at that point?

**Mr Noonan**—That is a matter for the department. Yes, we are on track to achieve that interim evaluation by the end of the year.

**Senator O'BRIEN**—Is the evaluation to be made public?

**Mr Noonan**—I think that would be a matter for the minister to decide, once it has been completed.

**Senator O'BRIEN**—Will it be shared with industry?

**Mr Noonan**—The development of the framework that is being used has been subject to consultation with industry, but, again, I would say that distribution arrangements have not been addressed because we have not finished the job yet.

**Senator O'BRIEN**—Could you take that on notice and see if you can give us an answer.

**Mr Noonan**—Yes.

**Senator O'BRIEN**—Thank you. What has the project cost?



**Mr Noonan**—I can give you some indication about that. The department received a sum of money for administration, implementation and coordination of the tourism white paper. So that involves a number of components and I would not be able to break out this particular interim evaluation.

**Senator O'BRIEN**—Perhaps I will put some questions on notice that you can help us with. On page 51 of the department's annual report under the heading 'Regional tourism', there are some details provided of 11 regional tourism projects managed by the department valued at \$20 million. You state that some projects have been completed with all projects progressing well. What is the name of the program allocating this \$20 million?

**Mr Noonan**—Did you mention \$20 million?

**Senator O'BRIEN**—Yes.

**Mr Noonan**—That sounds like the total of the 2004 election commitments—so that is all of them put together.

**Senator O'BRIEN**—Which projects have not been completed?

**Mr Noonan**—A number of them are coming towards finalisation—for instance, Cairns Esplanade. It is mentioned in the annual report; it is the largest one. It is certainly on track, but we have only spent a little over \$8 million of the \$10 million so far, and a number of others of similar proportions if they are not already completed.

**Senator O'BRIEN**—There has been some media about rogue tourism operators in New South Wales and Queensland who have been fleecing Chinese and Korean tourists with forced retail experience. The Australian Tourism Export Council reported in the *Sydney Morning Herald* that Chinese package tour operators were confiscating plane tickets and passports before herding tourists into bogus backstreet duty-free stores that had inflated prices. It also reported that tourists were being charged to walk on the beaches of Sydney.

The Queensland government have introduced the Tourism Services Act. On page 51 of the annual report, under the heading 'Approved destination status scheme' some details are provided of the department's response to the issue of rogue tourism. There is an allocation of \$3.9 million in the current budget to strengthen the approved destination scheme. What has been and is being done with that money and otherwise to strengthen that scheme?

**Mr Noonan**—We talked a little about that last time. Essentially, the approved destination scheme relates to the Chinese market. All inbound tour operators are required to be registered under the scheme. The expenditure involves, firstly, assessing their applications and evaluating whether they are fit and proper to operate in this market and, secondly, monitoring their activities once they are licensed. There is a program of some scheduled and some unscheduled inspections of tours to make sure of compliance with the ADS code.

**Senator O'BRIEN**—What evaluation is being conducted on an ongoing basis to see how that is working?

**Mr Noonan**—An evaluation is underway. The program has been in operation for only a little over a year, but it is underway.

**Senator O'BRIEN**—On 8 September, the member for Braddon, Mr Baker, announced via a video message at a tourism forum at Tall Timbers in Smithton, Tasmania, that Australia would provide a \$200,000 grant to fast-track the Tarkine Development Plan. Later that day, Mr Baker released a media statement that was posted on his website. It noted that Mr Baker had been 'involved in ongoing discussions with the Hon. Fran Bailey, the Minister for Tourism, to secure this grant'. The grant was issued through the Department of Industry, Tourism and Resources, Tourism and Conservation Initiative. The Cradle Coast Authority is the recipient. But the grant is not mentioned on the department's website. What was the procedure for approval and the approval of media statements regarding the grant announcement?

**Mr Noonan**—The reason the sum of money that this grant will be drawn from is not listed there is that the details of the contract are still being negotiated. Basically, it will be drawn from a discretionary sum of money. It was used in the past to pilot approaches and demonstration projects in tourism and conservation areas. This was one such project the minister decided to fund.

**Senator O'BRIEN**—How much is in this discretionary fund?

**Mr Noonan**—It is about \$800,000, from recollection.

**Senator O'BRIEN**—Where is it mentioned in the PBS? I do not have the PBS with me, but I will look it up.

**Mr Noonan**—I doubt whether the PBS would get into this level of detail because it is departmental funds. It is referred to in the annual report.

**Senator O'BRIEN**—What page are you talking about?

**Ms Kelly**—It is page 50.

**ACTING CHAIRMAN**—Senator O'Brien, this will have to be your last question.

**Mr Noonan**—This report is on the use of last year's funds, which was about \$737,000 for 14 ventures to undertake feasibility studies. So the approach with the Tarkine grant is to try to achieve a project where sufficient funds are injected in order to achieve a solid outcome.

**Mr Paterson**—Acting Chair, Senator Carr asked us to endeavour to respond to a series of questions and to provide some detail for him before we adjourned this hearing. He asked a question specifically in relation to Invest Australia which Mr Jones will respond to, with your indulgence. Senator Carr also provided me with a template spreadsheet in relation to a whole series of programs that we administer—both historical data and outyear data—and when Mr Jones has finished his response to the question then I will seek to table the response to Senator Carr's question. We can then deal with any other issues.

**ACTING CHAIRMAN**—Please go ahead, Mr Jones.

**Mr Jones**—Senator Carr asked us to provide Invest Australia expenses in 2005-06 and estimates for 2006-07, 2007-08, 2008-09 and 2009-1, broken down into departmental and administered appropriations. The secretary gave the numbers for 2005-06, 2006-07 and 2007-08 earlier. I would expect that in both 2008-09 and 2009-10 our expenses will increase slightly in relation to each of those years by around \$300,000 to \$400,000 in each year. All of

Invest Australia's expenses are departmental. We do not have any administered appropriations.

Senator Carr then asked what has been committed for or spent in 2006-07 and over the forward years. Expenditure in 2006-07 year to date is \$6.8 million. Commitments for the remainder of this financial year are just over \$1 million. For 2007-08, commitments are \$330,000. For 2008-09, commitments are \$80,000. For 2009-10, commitments are \$82,000 at this stage.

Senator Carr then asked how many offices there are and where they are located. Invest Australia has 15 offices, located in Canberra, Sydney, London, Paris, Frankfurt, Dubai, New Delhi, Mumbai, Singapore, Guangzhou, Shanghai, Beijing, Tokyo, San Francisco and New York.

Senator Carr asked how much rent is paid on office accommodation. For 2006-07, we expect to pay \$634,000 in respect of our rent for the overseas posts. The rental for Canberra and Sydney is not readily available because it is included in overall departmental rent expenditure.

Senator Carr asked us to provide a breakdown of staffing levels within Invest Australia since 2000-01 to the present, including a breakdown by Axiss Australia and providing staff numbers by location. In 2006-07, we have budgeted for 66 people in Canberra, 29 in Sydney, two in London, two in Paris, five in Frankfurt, one in Dubai, 0.5 in New Delhi, one in Mumbai, two in Singapore, one in Guangzhou, 4.5 in Shanghai, two in Beijing, five in Tokyo, five in San Francisco, three in New York and, from January 2007, one in Seoul. Of those numbers, 12 staff work in Axiss in Sydney and there is one dedicated financial services specialist in our New York office and one in our London office.

It is not really meaningful to provide a breakdown from 2000-01, given the organisational changes that have occurred over that time, with some offices closing, some offices opening and the incorporation of activities from other departments into Invest Australia over that time. But it is fair to say that numbers have significantly increased since 2000-01.

Senator Carr's final question asked us to provide estimates of staffing levels over the forward estimates period, again providing a breakdown by Axiss and by location. At this stage, staff numbers in the forward years are not expected to vary significantly from the numbers I just read out.

**ACTING CHAIRMAN**—Thank you very much, Mr Jones. By putting those answers on the record, they will be conveyed to Senator Carr. I appreciate your time in doing that.

**Mr Paterson**—I now table the response to Senator Carr's earlier question.

**ACTING CHAIRMAN**—Thank you very much.

**Proceedings suspended from 1.05 pm to 1.47 pm**

[1.47 pm]

## **TREASURY PORTFOLIO**

### **In Attendance**

Senator the Hon. Nick 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

Mr David Pearl, General Manager, International Economy Division

Mr David Turvey, Manager, International Economy Division

Mr Nathan Dal Bon, Manager, International Economy Division

Dr Steven Kennedy, General Manager, Domestic Economy Division

Mr Graeme Davis, Manager, Macroeconomic Policy Division

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

Mr Greg Coombs, Macroeconomic Policy Division

Mr Russell Campbell, Manager, Macroeconomic Policy Division

Ms Meghan Quinn, Principal Adviser, Domestic Economy Division

Mr John Hawkins, Manager, Domestic Economy Division

Mr Roger Brake, General Manager, International Finance Division

#### **Outcome 2: Effective government spending arrangements**

##### **Output Group 2.1: Fiscal Group**

Mr David Tune, Executive Director

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

Ms Maryanne Mrakovcic, General Manager, Industry, Environment and Defence Division

Mr Michael Burton, Chief Financial Officer, Corporate Services Division

Mr Neil Richardson, Manager, Budget Policy Division

#### **Outcome 3: Effective taxation and retirement income arrangements**

##### **Output Group 3.1: Revenue Group**

Mr Nigel Ray, Acting Executive Director

Mr Paul McCullough, General Manager, Tax System Review Division

Mr John Lonsdale, General Manager, Superannuation, Retirement and Savings Division

Mr Patrick Boneham, Senior Adviser, Superannuation, Retirement and Savings Division

Mr Phil Gallagher, Manager, Tax Analysis Division

Mr Colin Brown, Manager, Tax Analysis Division

Mr Martin Jacobs, Acting General Manager, Individuals and Exempt Tax Division

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

Mr Haydn Daw, Manager, International Tax and Treaties Division

Ms Jo Laduzko, Manager, International Tax and Treaties Division

Mr Damien White, Acting Manager, Tax Analysis Division  
Mr Patrick Colmer, General Manager, Indirect Tax Division  
Mr Nigel Murray, Manager, Superannuation, Retirement and Savings Division  
Mr Matt Flavel, Senior Adviser, Business Tax Division  
Ms Sue Vroombout, General Manager, Board of Taxation

**Outcome 4: Well functioning markets**

**Output Group 4.1: Markets Group**

Mr Jim Murphy, Executive Director  
Mr Ian Beckett, Acting General Manager, Foreign Investment and Trade Policy Division  
Mr John Hill, Manager, Foreign Investment and Trade Policy Division  
Mr Mike Rosser, Manager, Foreign Investment and Trade Policy Division  
Mr Chris Legg, General Manager, Financial System Division  
Ms Vicki Wilkinson, Manager, Financial System Division  
Ms Veronica Glanville, Manager, Financial System Division  
Mr Trevor King, Manager, Financial System Division  
Mr Andre Moore, Manager, Financial System Division  
Ms Kerstin Wijeyewardene, Manager, Financial System Division  
Mr Geoff Miller, General Manager, Corporations and Financial Services Division  
Mr Andrew Sellars, Senior Adviser, Corporations and Financial Services Division  
Mr Matt Brine, Manager, Corporations and Financial Services Division  
Mr David Love, Manager, Corporations and Financial Services Division  
Ms Ruth Smith, Manager, Corporations and Financial Services Division  
Mr Bede Fraser, Manager, Corporations and Financial Services Division  
Mr Jorge del Busto, Senior Adviser, Corporations and Financial Services Division  
Mr Steve French, General Manager, Competition and Consumer Policy Division  
Ms HK Holdaway, Manager, Competition and Consumer Policy Division  
Mr James Chisholm, Senior Adviser, Competition and Consumer Policy Division  
Mr Aidan Storer, Senior Adviser, Competition and Consumer Policy Division  
Mr Brad Archer, Manager, Competition and Consumer Policy Division  
Mr John Karatsoreos, Senior Adviser, Competition and Consumer Policy Division  
Mr Michael Johnston, Manager, Competition and Consumer Policy Division  
Ms Jane Melanie, Senior Adviser, Competition and Consumer Policy Division  
Mr Peter McCray, General Manager, Financial Literacy Foundation  
Mr Grahame Crough, Manager, Financial Literacy Foundation  
Mr John Riley, Financial Literacy Foundation  
Mr Peter Martin, Australian Government Actuary

**Australian Bureau of Statistics**

Mr Denis Farrell, Deputy Australian Statistician, Services Group  
Mr Peter Harper, Acting Australian Statistician, Economics Statistics Group  
Ms Barbara Dunlop, First Assistant Statistician, Population Statistics Group  
Dr Siu-Ming Tam, First Assistant Statistician, Information Management and Census Division  
Ms Teresa Dickinson, Assistant Statistician, Office of the Statistician  
Ms Julie Evans, Director, Secretariat

Mr Mark Whybrow, Chief Financial Officer

**Australian Competition and Consumer Commission**

Mr Graeme Samuel, Chairman

Mr Brian Cassidy, Chief Executive Officer

Mr Adrian Brochlehurst, Chief Financial Officer

Mr Joe Dimasi, Executive General Manager, Regulatory Affairs Division

Mr Mark Pearson, Executive General Manager, Enforcement and Compliance

Ms Margaret Arblaster, General Manager, Transport and Prices Oversight

Mr Michael Cosgrave, Group General Manager, Communications

Mr Scott Gregson, General Manager, Adjudication

Mr Tim Grimwade, General Manager, Mergers and Assets Sales

Ms Helen Lu, General Manger, Corporate

Mr Nigel Ridgeway, General Manager

**Australian Prudential Regulation Authority**

Dr John Laker, Chairman

Mr Ross Jones, Deputy Chairman

Mr John Trowbridge, Member

Mr Charles Littrell, Executive General Manager, Policy, Research and Statistics

Mr Tom Karp, Executive General Manager, Supervisory Support Division

Mr Ramani Venkatramani, General Manager, Central Region, Specialised Institutions Division

**Australian Securities and Investment Commission**

Mr Jeffrey Lucy, Chairman

Mr Jeremy Cooper, Deputy Chairman

Mr Malcolm Rodgers, Acting Commissioner

**Australian Taxation Office**

Mr Michael D'Ascenzo, Commissioner

Mr Greg Farr, Second Commissioner

Ms Donna Moody, Chief Finance Officer

Ms Margaret Crawford, Chief Operating Officer

Ms Raelene Vivian, Deputy Commissioner

Mr Mark Jackson, Deputy Commissioner

Mr Mark Konza, Deputy Commissioner

**Corporations and Markets Advisory Committee**

Mr John Kluver, Executive Director

**Inspector-General of Taxation**

Mr David Vos, Inspector-General of Taxation

Mr David Pengilley, Senior Advisor, Office of the Inspector-General of Taxation

**Productivity Commission**

Mr Bernard Wonder, Head of Office

Mr Garth Pitkethly, First Assistant Commissioner

Mr Michael Kirby, First Assistant Commissioner

**Australian Competition and Consumer Commission**

**CHAIR**—The hearing will resume and we now turn to the examination of Treasury estimates. The first Treasury agency is the Australian Competition and Consumer Commission. I welcome to the table Mr Samuel and officers of the commission. Mr Samuel, do you have an opening statement?

**Mr Samuel**—I would not disappoint you! I am going to focus my opening remarks on two areas: the first will relate to the commission's recent enforcement and court actions and the process of enforcement, and then I want to provide some comments on the developments that have taken place in more recent times in our assessment of merger proposals.

Since the ACCC's last appearance before the committee, our 2005-06 annual report has been tabled. There are some interesting statistics in that in the context of our enforcement activities. What they demonstrate is that there has been an increase in the number of activities that we are actively resolving—that is, enforcement issues that are being resolved—and at the same time there is a significant increase in the focus on resolving matters by the use of Trade Practices Act section 87B court-enforceable undertakings as distinct from litigation.

There are currently 34 matters before the courts, including one matter before the High Court that relates to Baxter Healthcare. In 2005-06—so, the financial year ended—a total of 68 enforcement matters were resolved where action was taken through either court action or a section 87B undertaking. In terms of litigation, the number of court matters where litigation was instituted numbered 14, and the number of 87B undertakings accepted was 54. Eighty-seven per cent of all those matters related to part V of the TPA, and of course the balance of them, 13 per cent, were part IV matters. Those statistics on the surface actually do not paint any picture at all. They simply provide a snapshot of what has occurred through the 2005-06 year.

Just to give you an example, in the first quarter—or, indeed, to date—of the 2006-07 year, there are a total of 26 enforcement matters which have been resolved either through court action or through section 87B undertakings. That is 26 for the first three or four months of this year as distinct from 68 for the whole of last year. In litigation terms we have instituted seven court proceedings, which is 50 per cent of the total number of litigation proceedings instituted last year, and undertakings amount to 19. Eighty-one per cent of the matters where action has been taken in the current year were TPA part V matters.

Let me give you what we call our 'funnel numbers', that is the funnel from matters, calls and emails being received from the infocentre through to, if you like, resolution through litigation, that is commencement litigation or undertakings. In the 2005-06 year, there were 75,319 calls and emails received by the infocentre. That is probably one of the highest levels of recent times. Of those, 47,112 matters were entered into our TrackIt system. The balance of the matters is normally resolved very quickly through the initial phone call that has been received in the infocentre. On many occasions they will not be matters that are to be dealt with by the ACCC but they are referred to other agencies or other organisations that may be better suited to deal with the matters. Of these matters, 4,292 were the subject of initial investigations, 160 were the subject of in-depth investigations and then, as I mentioned before, 14 were the subject of first instance litigation and 54 were the subject of undertakings.

We have dealt quite effectively in the administrative manner with a number of matters that had some quite widespread issues concerning consumers. Let me just give a couple of examples and they will perhaps paint a picture as to why we are focused on dealing with matters either administratively or by means of undertakings. Many of you will be aware that BP Australia joined, what I may call, 'shopper docket' schemes just recently and provided a promotion which used signage above some roadside petrol price displays at their service stations. The signage contained large lettering noting the five per cent off petrol and five per cent off everything offer. It indicated at the foot of the signage that certain conditions applied. These included that consumers must obtain a BP Citibank Mastercard before being entitled to the discounts. We at the commission were concerned about the small size of the print that referred to the terms and conditions. The matter was raised with BP at the highest of levels. They responded promptly and adopted a larger font in their advertisement to ensure consumers are not confused. That was an administrative settlement that had widespread significance to consumers around Australia that may have been confused by the lettering and the advertising that appeared on their board displays.

Then there are real or true tone operators, that is, those who are offering so-called true tones for mobile phones. We have become aware that a large number of traders are marketing what they call real or true tones in a way that may mislead consumers into believing they are buying a ring tone of their favourite artist singing, but they are really downloading a cover version performed by unknown or sound-alike artists. In most cases the conduct of concern involved the use of well-known artists' names and/or images next to the song titles. Without an effective disclaimer we believe that such conduct is likely to lead consumers to conclude that the name or the pictured artist performed the ring tone song. We wrote to the operators of more than 20 sites, both locally and internationally including Europe and the United Kingdom, to advise them of our concerns and placed them on notice, and in most cases the matter was rectified very quickly.

Just to give some statistical information: our past three annual reports have shown that in the 2003-04 year we concluded 52 court cases—that is the litigation is concluded—in 2004-05 there were 39; and in 2005-06 there were 23. The litigation continuing at the end of the year in 2003-04 was 43; in 2004-05 it was 26; in 2005-06 it was 30; and in terms of undertakings accepted, in 2003-04 there were 33, in 2004-05 there was a big jump to 55, and then in 2005-06 there were 54.

It is clear that there has been a shift in the composition of our enforcement outcomes. We are accepting more section 87B undertakings than perhaps was the case in the past. There are very good reasons for this and perhaps I should explain what they are. The use of 87B undertakings often leads to a more efficient and timely outcome for consumers when the outcome is broadly the same as could be achieved through litigation. Our guiding benchmark is that if we are going to accept 87B undertakings we want to achieve at least as much as we would otherwise be able to achieve through litigation, and in many instances we can achieve more. Most importantly, we can achieve it in a timely fashion, which we are finding difficult to achieve through the court process, and I will have more to say about that in a couple of moments.



Secondly, the Medibank Private decision, which we have discussed previously in Senate estimates hearings, means that the ACCC cannot obtain refunds for consumers who have been damaged particularly in relation to part 5 consumer protection matters through court based outcomes unless we take a representative action, and the process for doing that is very complex indeed.

The result of our use of 87B undertakings is that we can, through quickly resolving matters, reduce the extent of consumer harm or detriment. There has been a fundamental cultural shift within the organisation in terms of our enforcement activity. I would like to try to summarise in these terms, without being entirely specific about it. Investigations now into enforcement matters are generally being dealt with in matters of weeks or months, rather than a matter of years. It is very pleasing to note that many of the enforcement reports that are coming to us projecting that settlement will take place, or a matter will be dealt with, within the next few weeks, commence to occur in terms of investigation some two, three or four months earlier than, as might have been the case with some matters in the past, two or three years before settlement. At that time, after two, three, four or five years have taken place, the harm has been done and it can be very difficult to bring about the enforcement.

We have been unsuccessful in obtaining court actions for corrective advertising orders, primarily as a result of some of the delays that have occurred in taking matters through the court process. I will mention a number of those. There was the commission v Henry Kaye—that is, the property spruiker—the MBF v Cassidy; the commission v Wizard; and the commission v Berbatis. In each of these cases the Federal Court found that in the circumstances there was no utility in corrective advertising orders, or other more extensive orders that we were seeking, being given. This included the reason that time had simply passed. It was well past the time in which the circumstances had occurred. The damage had been done but there was not much point in obtaining corrective advertising orders. I think those of us who have been in the law would well recognise that court processes by their nature are slow and are not conducive to obtaining corrective advertising orders particularly where a long time has transpired since the particular harm has taken place.

On the other hand, there are recent section 87B undertakings where we have obtained refunds not available through court processes—for example, LG Electronics. In September 2006 enforceable undertakings were given, which meant that up to \$3.1 million would be available in rebates for eligible consumers who bought five popular LG Electronics air-conditioner models that did not comply with the energy efficiency values claimed on the rating labels.

With Collection House, an enforceable undertaking was obtained in February 2006 for ex gratia payments up to \$660,000 to a group of approximately 500 New South Wales debtors from whom old debts were collected. The Stores Online matter began as court proceedings, with the sum of \$658,000 being frozen in an Australian bank account at our instance. The ultimate settlement in April 2006 was by way of undertakings rather than consent orders, as this allowed the implementation of a mechanism to allow consumers to claim refunds from those frozen funds.

In a matter against Reckon, a company that develops and supplies specialist accounting software for small and medium-sized businesses, we obtained administrative settlement in

June 2005. Customers were provided refunds or upgrades depending on the circumstances in which they had not had relevant terms and conditions fully disclosed to them. In Manningham Real Estate, a GST liability of \$24,175 incurred by purchasers was refunded.

The instances of court delays and other issues have substantially impacted on outcomes for consumers. Let me give perhaps a well-known example—well-known only because of one of the identities involved in it. I refer to the Advanced Medical Institute, probably better known as the Ian Turpie case. The advertising that was the subject of that case was published in March and April 2004. On 19 July 2004—only two or three months after that—we instituted court proceedings against the relevant parties. The final hearing dates were in September 2005, some 14 months after the institution of the proceedings. The judgement was handed down in August 2006. We are talking about the judgement being handed down some 25 months after the institution of the proceedings. Justice Lindgren found as follows:

There should not be either an injunction or an order for corrective advertising. The sorry events are long past and there has long since ceased to be any threat of repetition. The Letter of Agreement contract expired in about July 2004. The representations made in the advertisement have long since ceased to have any influence that might be overcome by corrective advertising.

Let me just remind you that the matter was brought to the attention of our investigations committee in March and April 2004. On 19 July 2004 we commenced the proceedings. Judgement was handed down in August 2006. By the court's own admission the fact that so much time had lapsed meant that certain orders that we sought in the court proceedings were no longer, in the court's view, appropriate.

**CHAIR**—Was there an interlocutory injunction in place during the currency of the proceedings?

**Mr Samuel**—No.

**CHAIR**—Had one been sought?

**Mr Samuel**—We could not get an interlocutory injunction for corrective advertising.

**CHAIR**—Is that what the permanent injunction was: an order for corrective advertising?

**Mr Samuel**—Yes, and to stop making the representations. The representations had ceased to be made. What we wanted was for those who might have been misled or deceived by the advertising that had already taken place to have had drawn to their attention the corrections. By the time it actually got to the final court adjudication, which was some 25 months after the commencement of the proceedings, the court said, 'It has long since passed so it is no longer appropriate to seek those orders.'

**CHAIR**—Indeed, but as you will understand, Mr Samuel, the reason I ask that question is that it is not really a complete view of the situation if the advice sought to be dealt with by the litigation has been corrected by the currency of interlocutory orders during the proceedings. It would not really matter that much in those circumstances how long the case took. But you say in this case it was not appropriate to seek orders like that?

**Mr Samuel**—No, but just to emphasise, Chairman: to seek interlocutory orders to prevent the conduct continuing is one issue; getting interlocutory orders to bring about corrective advertising to correct the misleading or deceptive impression that may have been given to

those who saw the advertisements in the first place would not be appropriate for interlocutory orders, and that is the matter that would have caused the concern. To the extent that the advertisements have been out there in the market place and to the extent that consumers may have been misled, it was not until 25 months after the institution of the proceedings that we then found that it was at that point inappropriate to get corrective advertisements.

There have been certain exceptions to the rule, such as a court case involving refunds in Global Prepaid and In-Touch Networks, refunds totalling \$3.5 million for 23 businesses affected by false business opportunity advertising. We took proceedings on behalf of these businesses under section 87. It was expensive litigation because of the need to plead each business person's case individually and obtain detailed witness statements from them so the court could then make orders in respect of each of the businesses that had been harmed. Then in L&L the ACCC was able to have funds frozen pursuant to Mareva orders paid to the six businesses named in our application. Again, it was those six named businesses. These six companies were ones identified as appropriate claimants at the time we sought the Mareva orders and did not necessarily represent the full extent of those affected by the fraud.

We are not the only regulatory agency experiencing difficulties with the court process and delays. For example, we are aware that some of the fair trading agencies in the states are having similar sorts of difficulties. There is a reason for us attempting to focus on obtaining resolution of matters where we can do so by court proceedings. That is not to say, however, that we do not undertake court proceedings with, shall I say, enthusiasm and aggression where it is appropriate. I have on previous occasions indicated the circumstances where we will do just that.

I have to say to you that we have on several occasions in recent times taken criminal court proceedings, that is, criminal prosecutions, through the DPP for breaches of what is in effect part 5C of the Trade Practices Act, that is, breaches of the consumer protection provisions. We take a view that where there has been deliberate fraud then that is appropriate for criminal proceedings to be taken. Where those proceedings are successful, of course there is an indelible record against the name of the party in respect of which there has been a criminal conviction and that sits there forever and can have significant impacts on the parties concerned.

It is also our approach that, where businesses are, for example, the subject of court proceedings and they might have an order for costs or, indeed, in some cases, penalties—particularly with respect to part VC matters or part IV matters where penalties are payable—and then they plead liquidation or inability to pay, we will proceed to liquidation to put them out of business for good if we can. We think that is the appropriate course of action to take in that set of circumstances.

In relation to cartels and criminal investigations, we have in excess of 20 serious or in-depth investigations that we are dealing with at the moment. There are seven before the courts and others have been recently concluded. The alleged conduct covers a wide range of goods and services at all functional levels and, I have to say, extends to international, national and localised bases. So there is a broad geographical spread. The investigations cover possible cartels of a longstanding position and some that have been recently formed—although, you wonder why people would be forming cartels in more recent times when they would be well

aware of both our leniency or immunity policy and the fact that that has the real prospect of breaking open the secrecy of those cartels. As passed by parliament just a week or so ago, we will have in place substantially increased financial penalties and the prospect of criminal penalties early, one would hope, in the new year.

Since 5 September 2005, which was the commencement of our new immunity policy, the ACCC has received 15 approaches by possible cartel conspirators. Several parties are now queuing for immunity—that is, they put down markers that indicate they believe that there may well be a cartel that has been operating within their organisation and with other cartel conspirators. They need time to investigate that. We accept the markers. Then other parties who believe that they may also be implicated in the cartel will come up and queue behind those that have already put in markers with the hope that the first marker in the line might fall over or withdraw and they can then step into the breach and achieve immunity through the immunity policy.

Over half the applications for immunity that have been made to us since 5 September last year are international approaches. That statistic is very interesting in that it is in excess of about one per month and I think the figure for the United States Department of Justice is about two per month. Given that the US has something like 10 or 12 times our population, it is very interesting to do a very quick superficial comparison. Approximately one-third of current in-depth investigations include the international element.

Since our last appearance before this committee, one cartel matter has been instituted. It is *ACCC v Fchem & Ors* (Timber chemicals). Proceedings were filed on 31 July 2006. The matter is before Justice Cowdry and a directions hearing is scheduled for 2 November 2006. Another is likely to be instituted in the very near future. Recently concluded cartel litigation includes Barton Mines, which involved industrial alluvial garnet. On 22 September 2006, Justice Tracey awarded penalties totalling \$1.525 million as well as injunctions and a \$70,000 contribution to the ACCC's costs. These orders were made by consent. That is the extent of the comments I want to make in relation to enforcement matters.

I now move to mergers. There has been a marked increase in the number of mergers reviewed. There has been a 44 per cent increase in the total number of mergers considered in the 2005-06 financial year compared with 2004-05. The trend is continuing in 2006-07, with 127 matters already considered as at 30 September. It is perhaps worth noting a few of the statistics. In 2003, 2004 and 2005 around 190 mergers were considered by the commission. In 2005-06, the commission considered 272. In 2006-07, there were 127 considered by the commission. The general trend in relation to opposition and non-opposition and the like of mergers is about the same as we have seen in the past. I will not go into all the statistics but can provide them if requested subsequently.

It has become clear that there has been an increase in the number of companies seeking to solve competition concerns by offering section 87B undertakings to deal with those competition concerns. I think it is appropriate that I make the position of the ACCC clear in respect of the acceptance of 87B undertakings. We look at the totality of the proposed outcome of a merger and the potential flow-on effects such as they are likely to affect competition. Our primary test is that contained in section 50 of the act, which is whether the acquisition is likely to result in a substantial lessening of competition.

However, if merger parties offer an undertaking that is court enforceable under section 87B of the act to implement transactions and procedures that will resolve competition concerns, we consider that there would be no reason that we should not accept those undertakings provided that—and this is an important proviso—the ACCC can be satisfied after assessing all the risks that the totality of the merger transaction will not result in a substantial lessening of competition, which is of course the threshold test under section 50 of the act.

We believe this position is consistent with the approach of the Federal Court, which was perhaps most recently expressed in the matter of *Ironbridge Capital v the ACCC* in 2005, where the court, in effect, determined that the ACCC's discretion to accept undertakings is to be exercised with regard to the object of the Trade Practices Act expressed in section 2, which in relevant terms is 'to enhance the welfare of Australians through the promotion of competitions.'

As merging parties are pursuing the undertaking path, we have observed a number of difficulties associated with the undertakings being proffered to us and any potential acceptance of those undertakings. Complex processes are being built into undertakings transactions which potentially obscure the fundamental objective, which is to resolve the competition concerns. We are building extra safeguards into merger undertakings. The primary safeguard which is now being required in all new undertakings is the inclusion of what is called an interpretation or objectives clause. This ensures compliance not just with the strict letter of the undertaking but also with the spirit and intention and after taking into account extraneous documents including where relevant statements of issues, correspondence between the ACCC and merger parties and any other matters that may be incorporated into the document by way of reference. This is not an unusual course of action; it has been in place in relation to interpretation of statutory law in this country as a result of the introduction of sections 15A and 15B of the Acts Interpretation Act, and we have, in effect, transposed with appropriate amendments those provisions into our interpretations and objectives clauses of undertakings.

The deliverability of undertakings has become an important factor in terms of our acceptance of them. I did indicate that it is our practice to accept undertakings if we can be satisfied after assessing all the risks that the totality of the merger transaction will not result in a substantial lessening of competition. If we have doubts about a company's ability to deliver on its undertakings and those doubts cannot be resolved, we will be less inclined to accept undertakings. We have fall-back positions which are written into undertakings, including set dates for assets to be sold and fire sale provisions. Failure to complete divestiture of assets may require the company to give up some of their own existing assets as distinct from those that may have been acquired under the merger itself.

We are now requiring the appointment of interim independent management to hold assets separately so that there can be no interference with those assets, to ensure that sellers cannot undermine any businesses that are planned to be on-sold and they cannot undertake anti-competitive transactions while holding those businesses pending the sale of the businesses which may take place some months after the merger has occurred.

**CHAIR**—What about the Toll merger?

**Mr Samuel**—The Toll merger is proceeding in accordance with the undertaking that was provided. We are in constant communication with Toll and dealing with a fairly complex set of transactions, including divestiture of 50 per cent of Pacific National and the making available of what is known as the starter kit in respect of the east-west rail route. That is proceeding at pace in accordance with the undertakings that were provided by Toll.

**CHAIR**—Are you happy with the process and the timeline?

**Mr Samuel**—I think the process has proved to be difficult because of the complexity of the undertakings. I would have to say that at this point in time we have no evidence of any fundamental breaches of the undertakings by Toll.

**Senator CONROY**—Fundamental breaches?

**Mr Samuel**—Sorry?

**Senator CONROY**—Any non-fundamental breaches?

**Mr Samuel**—We have no evidence of any breaches but we would certainly be aware of any fundamental breaches and whether there are any marginal breaches.

**Senator CONROY**—Do you look for non-fundamental ones?

**Mr Samuel**—We look for any breaches at all.

**Senator CONROY**—So there are no breaches?

**Mr Samuel**—Not that we are aware of at this point of time, but I stand corrected. Finally, we are requiring the appointments of independent auditors to deal with problems arising from what are called ring-fencing arrangements and conflicts that might be faced by company directors that have a conflict of interest in being involved in one or two boards of directors involved in the merger arrangements.

Our message to merging parties is, I think, twofold. The first is to keep the undertakings simple and clear. The second is not to proceed through the iterative process of developing undertakings. I think our position on undertakings is becoming a lot clearer, and we are making our position a lot clearer to parties. Frankly, the iterative process simply involves an extensive delay in the completion of a merger transaction. Our position rarely changes. Invariably, merger parties' positions change as they begin to realise that we have formed a clear view about our position and what we believe is appropriate to be accepted and what we believe is inappropriate to be accepted in dealing with the requirements of section 50 of the Trade Practices Act.

**Senator JOYCE**—And you can do all this in 40 plus 20 days?

**Mr Samuel**—We believe it is within our capacity to deal with matters within that period of time. The record of our dealings in merger matters is that the vast bulk of those 272 mergers that I indicated have been dealt with within the 40 business days—which I know is the subject of the new formal procedures. Generally, the more complex ones take up to about 12 weeks, which is the extra 20 business days.

**Senator JOYCE**—Of those 272, you did not oppose 260-odd, did you?

**Mr Samuel**—No. I will deal with the 272. The vast bulk will be dealt with well within the 40 business days. Where they are more complex and they, for example, involve a statement of issues then generally we would take, on past practice, up to about 12 weeks, which is 40 plus 20 business days—60 business days—to deal with those.

Where parties are difficult, in the context of the merger itself being very complex and undertakings are being proffered to us that are just unsatisfactory then, of course, in the context of the parties concerned, they are generally taking longer than 60 days. There have only been about two or three where those circumstances have arisen. In those circumstances, we say to the parties at the end of 40, 50 or 60 days or whatever it might be: ‘If that’s all you are offering us and that’s the end of it then we’ll simply oppose the merger. It is up to you.’ They have an alternative, and that is to say: ‘We don’t want you to oppose the merger; we want to provide you with the ultimate undertaking that we really should have provided in the first place.’ Alternatively, they will chance their arm before the Federal Court.

**Senator JOYCE**—What of the Australian Competition Tribunal?

**Mr Samuel**—We are dealing now with the new provisions under the new legislation. Let me just give an example—Toll Patrick. Toll Patrick came to us in August 2005. It could have been resolved in September 2005 had the undertaking ultimately proffered to us in January 2006 had been proffered in September. It was not. There was a whole series of five iterative undertakings that were proffered to us until we got to early January 2006. At that point in time, Toll said that they were not going to proffer any more and said, ‘Take us to court.’ We took them to court and, as we got to the court door, they effectively said, ‘We can give you yet another undertaking.’ That was the next iteration of the process. It was at that point in time that we determined that that undertaking was satisfactory to overcome the issue of potential breaches of section 50 of the Trade Practices Act.

So it is in the hands of the parties. In the context of the new legislation that was passed just last week, if parties turn around at the end of 60 days and say, for example, ‘We haven’t completed our negotiations with you in terms of the proffering of undertakings,’ then we would say: ‘You have a choice. You can either let the matter sit as it is, in which case we will reject the merger—we will oppose it—and then it will go on review to the tribunal. But the review to the tribunal will be done on the papers, including on the basis of the undertaking proffered to us which we have rejected.’ Alternatively, the parties will say: ‘It is not satisfactory for us to do that; we want to extend.’

**Senator JOYCE**—Do you believe that the Toll merger would have gone through on the section 50 test after 60 days or would they have headed off to the Australian Competition Tribunal?

**Mr Samuel**—It is not for me to try to guess what they would have done. If the practice that was pursued in the Toll Patrick matter had been pursued in the context of the new legislation, if it had been a formal process and if they had adopted the same approach as they adopted in the informal process that we had last year, then what they effectively did was ask for an extension of time. They did not want to close off after the 60 business days. At the end of five months or whatever it might have been—early January—they decided to close off. It was then

dealt with by going to the Federal Court under a formal process that would go onto review to the Australian Competition Tribunal.

Let me conclude by saying that, in the context of the new legislation, we will be endeavouring to maintain the operation of the informal merger review process. It is our view that that process, particularly with some of the refinements that have taken place over the past year or so, has become a very attractive process for parties to follow in order to take not only simple but also very complex merger transactions through the ACCC to deal with competition issues and to seek to obtain a clearance. We are prepared for the formal process and will endeavour to ensure that the two processes are not played off against each other in a way that could do damage to our ability to effectively administer section 50 of the Trade Practices Act.

**CHAIR**—You said that, if I understood you correctly, that in the last year 14 items of litigation had begun and 54 section 87B undertakings accepted, of which 13 per cent were in relation to alleged breaches of part IV. How many of those, if any, were principally in relation to alleged breaches of section 46?

**Mr Cassidy**—We have not commenced any new litigation in relation to section 46 since the High Court decision in the Boral case.

**CHAIR**—That is what I wanted. That decision in the Boral case is now nearly three years ago, isn't it?

**Mr Cassidy**—That is correct.

**CHAIR**—It was 7 February 2004, wasn't it?

**Mr Cassidy**—That is correct. As I have said on previous occasions, we have not in any sense given up on section 46. We currently have 10 46 matters under detailed investigation, and that is a normal state of affairs. We have somewhere between eight and 10 at any point in time.

**CHAIR**—That is all I wanted to know, Mr Cassidy. I do not want to go over old ground. In previous hearings of this committee you have given us your view of the effect of the Boral case on the operation of section—

**Mr Cassidy**—I would simply like to make the point, because there are people out there who are saying that we have basically given up on section 46. We haven't. We are still actively investigating but, for reasons you are well aware of, we do have problems in getting section 46 cases into court.

**CHAIR**—Indeed, there is much discussion of the government's promised imminent section 46 changes. I noticed as recently as yesterday in *The Financial Review*—

**Senator CONROY**—Would that be the grandest amendment?

**CHAIR**—Professor Fels and Mr Brenchley had an article about it. May I take it that the ACCC's position as to what those amendments ought to be remains as it was when it submitted to this committee's review of that provision about two years ago?

**Mr Cassidy**—That is correct.

**CHAIR**—That remains your current view?



**Mr Cassidy**—Yes.

**CHAIR**—Thank you.

**Senator CONROY**—I wanted to talk about the collapse of the discussions between Telstra and the ACCC regarding the company's plans to roll out a fibre-to-the-node broadband network. There has been a series of public comments on the reasons for the collapse of these discussions, including by you. Could you summarise the reasons these discussions collapsed from the ACCC's perspective?

**Mr Samuel**—If you will forgive me, I want to be a bit cautious about what we say about Telstra at present. A prospectus is out there. The prospectus contains a wealth of information of over some seven pages concerning the regulatory environment. Those seven pages were derived as a consequence and following on some extensive due diligence that was undertaken by Telstra and the department of finance in conjunction with the ACCC. We answered a large number of questions very carefully to ensure that the parties involved with that prospectus were able to provide full information based on all the available information to us. I would prefer to rest on what is contained in the prospectus. There have been no circumstances, to the best of my knowledge, that would give us cause to change any of the information we provided to the due diligence team that were involved in the preparation of the T3 prospectus.

**Senator CONROY**—I am not asking you to change any information supplied. You are not a signatory to the prospectus.

**Mr Samuel**—No, but I did not want to make a comment—

**Senator CONROY**—No legal responsibility whatsoever for what is in the prospectus.

**Mr Samuel**—No, I understand that, but I did not want to make a comment which might lead to those responsible for the preparation of the prospectus to say that varies, albeit in small way from comments that were provided by the ACCC or by me in oral due diligence examinations which would give them cause then to believe that they needed to provide some amendments to the prospectus or a supplemented prospectus.

I can say that at this point in time we have provided all the relevant information to the due diligence team. That has been then outlined in the prospectus. I am most concerned that, on the basis of providing answers to you that attempt to satisfy your inquiries, I do not give rise to a difficulty with the prospectus, particularly in the last two weeks of the proceedings.

**CHAIR**—I am sure, Mr Samuel, that none of us, including Senator Conroy, would be so foolish as to ask you questions about market sensitive information concerning T3.

**Senator CONROY**—I am not going to ask for information that is market sensitive on T3. I have confidence in Mr Samuel's fabled photographic memory that he remembers exactly—

**Mr Samuel**—I have slightly less confidence as I have got older.

**Senator CONROY**—I am actually confident that you will know what you said previously and be able to answer any questions I have on this issue. You have made a whole string of public comments on this matter and I would like to talk to you about them.

**Mr Samuel**—If you recall, I have not made any public comments on this matter since the prospectus was issued—that is, since the completion of our due diligence. Anything that has

been said in relation to Telstra since the prospectus was issued has been on matters that have been entirely on the public record—that is, material that has been provided by the commission in the public arena. I would have to say to you that I would prefer to rest on what is on the public record. If you want to quote to me some material that I have put on the public record or others of the commission have put on the public record then I will be able to say, ‘Yes, that is a correct report,’ or ‘It is an incorrect report.’

**Senator CONROY**—I am not going to read out to you what is in the Telstra prospectus and ask you to confirm it. Last time I checked this was Senate estimates. You are accountable to the parliament.

**Mr Samuel**—I would not confirm—

**Senator CONROY**—Maybe if I actually ask a question, you could get a flavour without endangering the T3 sale—which I am not actually trying to do.

**Mr Samuel**—That is fine.

**Senator Minchin**—Chair, as a general comment, I would ask the committee to understand the delicate process that we are currently in and respect the prerogative of the chairman of the ACCC in his endeavours to ensure that he does not inadvertently, by a mere slip of the tongue, cause the necessity of the issue of a supplementary prospectus. That is a very serious matter and I would ask the committee to respect the chairman’s position with respect to that. I am sure the chairman can manage the questions and answers, but I hope the committee will observe that injunction.

**CHAIR**—That is effectively what I intimated in my own intervention a few moments ago, Senator Minchin. I am sure Mr Samuel can handle himself in that regard. I cannot rule Senator Conroy’s questions out of order until he has asked them, so we had better wait and hear what the questions are first.

**Senator CONROY**—I am sure he will manage. You might want to read out what the grounds for asking questions are. I think there is a paragraph that says there is no area that I cannot ask questions about.

**CHAIR**—If you want to apply that very strictly, Senator Conroy, which I, of course, do not, I would rule out of order on the grounds of irrelevance any question that did not bear a direct relationship to appropriation bills Nos 1 and 2, because we are here to consider the supplementary estimates of proposed expenditure under appropriation bills Nos 1 and 2. I do not want to get into a quibble about that. I think Mr Samuel and I and the minister have all asked you, among all members of the committee, to be circumspect, given the sensitivity of this matter at the moment.

**Mr Samuel**—I wonder if I might assist. I wonder whether it would be appropriate for any matters relating to Telstra and the ACCC’s regulatory relationship with Telstra to be put on notice. Then what we could do is check our answers as against the information that is provided as part of the due diligence process—

**Senator CONROY**—I am sorry; that is a blanket ‘I refuse to answer’—

**CHAIR**—Excuse me, Senator Conroy; do not interrupt him. Mr Samuel, please finish.

**Mr Samuel**—That would prevent any inadvertent slip of the tongue on my part that might give rise to the necessity of producing a supplementary prospectus. I would certainly feel a lot more confident that we could provide accurate answers to Senator Conroy if we could perhaps treat it in that fashion.

**CHAIR**—Mr Samuel, as is the practice of the committee, any question you think you ought to take on notice, please indicate and that is what we will do.

**Senator CONROY**—I simply make the point that, unfortunately, Mr Samuel has made reference to the annual report of the ACCC in his opening evidence, so I am entitled to ask him any question to do with the annual report, because that is in his evidence.

**CHAIR**—Senator Conroy, you are entitled to ask him any relevant question.

**Senator CONROY**—Yes, and relevant to his answers.

**CHAIR**—You are entitled to ask him any relevant question, and if Mr Samuel considers that the appropriate way to deal with it is to take it on notice, then that is what will happen.

**Senator CONROY**—How far had you gotten in the discussions before they collapsed?

**Mr Samuel**—I will take that on notice, if I may.

**Senator CONROY**—You are not serious.

**Mr Samuel**—I am sorry. For the reasons—

**Senator CONROY**—You have agreed in the past that the negotiations were 98 per cent complete, so presumably you had made a lot of progress.

**Mr Samuel**—I really am going to insist that each of these matters be taken on notice because I want to be sure that the answers that I provide to you are accurate and that they are accurate in the context of the careful due diligence that we undertook in providing answers in respect of the—

**Senator CONROY**—This is about matters of fact in the past.

**CHAIR**—Order! Senator Conroy, just be silent for a moment.

**Senator CONROY**—This is about matters of fact.

**CHAIR**—Senator Conroy, you are out of order. I have already said that if Mr Samuel wishes to take any of these questions on notice, he is at liberty to do so. He has indicated that he will be taking that question on notice; and that, as far as I am concerned, is the end of the matter. Please go onto your next question.

**Senator CONROY**—Telstra has produced a summary service description of the access product that it told the ACCC it was willing to offer to competitors called the ‘high-speed access service’, and it has made this available on its website. Is this service description an accurate description of the discussions between Telstra and the ACCC?

**Mr Samuel**—I will take that on notice.

**Senator CONROY**—On what basis do you need to take that on notice?

**CHAIR**—That is not a proper question. A witness is entitled—

**Senator CONROY**—I am entitled to ask him any questions I like, George—tough! On what basis, Mr Samuel—

**CHAIR**—Senator Conroy, you are entitled to ask him questions about the estimates. You are not entitled to question his motives—

**Senator CONROY**—I am entitled to ask about his evidence. I asked him to explain his decision.

**CHAIR**—You said, ‘On what possible basis could you be taking that on notice?’ You are not at liberty to question his motives. If he says he is taking the question on notice, that is the end of the matter. Next question, please.

**Senator CONROY**—You are treating parliament with contempt, Mr Samuel.

**CHAIR**—Senator Conroy, come to order. Ask your next question: no questions about Mr Samuel’s motive, or casting aspersions on his motives. No editorial comment from you is appropriate. If you choose to do that, we will go to another senator.

**Senator CONROY**—You are entitled to give editorial comments all you want?

**Senator Minchin**—That is an outrageous reflection on Mr Samuel, with great respect—through you, Mr Chairman. It is quite uncalled for.

**Senator CONROY**—Was that a question or was that a commentary?

**CHAIR**—Senator Conroy, I am giving you some indication as to what is acceptable from all senators, including you, in this evidence. Please move onto your next question.

**Senator CONROY**—You do not get to determine what is acceptable for me.

**CHAIR**—Yes, I do, as a matter of fact. I am chairing the meeting.

**Senator CONROY**—If you want to give your opinion as a majority of numbers on this committee, that is fine. But do not attempt, at any stage, to censor me.

**CHAIR**—Senator Conroy, the question of whether or not a question is a proper question is for the chair. Move to your next question.

**Senator CONROY**—Were you able to come to an understanding about what the ACCC would view as acceptable non-price terms of access to Telstra’s proposed network?

**Mr Samuel**—For the reasons previously stated, I will take that question on notice.

**Senator CONROY**—What did these terms of access provide for?

**Mr Samuel**—I will take that question on notice.

**Senator CONROY**—Did these access terms provide access seekers with the ability to tailor the quality of service enjoyed by their customers?

**Mr Samuel**—I will take that question on notice.

**Senator CONROY**—Did these access terms provide the option for competitor points of interconnect at Telstra exchanges?

**Mr Samuel**—I will take that question on notice.

**Senator CONROY**—Perhaps a suggestion.

**CHAIR**—Is this to me?

**Senator CONROY**—Just a general question.

**CHAIR**—To whom are you asking this?

**Senator CONROY**—In general, perhaps, to Mr Samuel and Senator Minchin. As I said, I am not actually seeking this information to have anything to do with the T3 sale. I am actually just after this information because it is a public matter and it is questions and issues that Mr Samuel has spoken on publicly many times. If Senator Minchin is comfortable with allowing this portion of Senate estimates to reconvene after whatever the date is, I would happily accept that as a fair and reasonable way to get around this problem. I am not actually attempting to cause trouble for the T3. I actually genuinely want to discuss this with Mr Samuel.

**Senator Minchin**—Thank you, Senator Conroy. Mr Chairman, I accept that Senator Conroy is not motivated to upset the sale; but the fact is we are in a sale process, which does not conclude until 20 November. I would invite the committee to consider that proposition, in discussion with Mr Samuel. But certainly from our point of view the critical date is 20 November, and Mr Samuel, quite properly, does not wish to inadvertently cause the parties involved to have to issue a supplementary prospectus prior to the finalisation of the sale. So if the committee would like to, and if Mr Samuel is agreeable, that is, from my perspective, an eminently sensible suggestion.

**Senator JOYCE**—It sounds like a reasonable outcome, if your position is bona fide and your position is bona fide—

**Senator CONROY**—I am happy to accept that as a compromise.

**Mr Samuel**—It is a sensible and acceptable position as far as the ACCC is concerned.

**Senator CONROY**—Senator Brandis, as chair of this committee?

**CHAIR**—That is a matter the committee would have to decide for itself.

**Senator CONROY**—It will save a lot of time. We ask him a bunch of questions that he is going to take on notice. Senator Minchin seems to think it is a fair and reasonable thing—

**CHAIR**—Senator Conroy, are you asking for a private meeting of the committee?

**Senator CONROY**—Do you think we need to go that far? I am happy to accept a rough indication from you, Senator Brandis, in all seriousness.

**CHAIR**—In all seriousness, I do not think I am in a position of my own motion to do that without the committee making a decision. What you are effectively saying—and I am not saying it is a bad idea—is that we should postpone to a date in the near future this part of the estimates.

**Senator CONROY**—Effectively.

**Senator JOYCE**—What you are saying is your questions will be held over to a time in the future.

**CHAIR**—Can you deal with them in the February estimates?

**Senator CONROY**—February is three months away and the matters I am trying to get to—

**CHAIR**—Can you give us some sort of indication as to how long this would take?

**Senator CONROY**—An hour or two at best.

**CHAIR**—I will suspend the hearing for a moment and we will have a private meeting of the committee.

**Proceedings suspended from 2.36 pm to 2.45 pm**

**CHAIR**—Order, the proceedings are resumed. Can I just report to those present that the committee has had a quick private meeting and has resolved to postpone all questions to the ACCC concerning the subject of Telstra to a further hearing of the committee to be convened on a date to be fixed in the next sitting fortnight of the Senate after 20 November.

**Senator Minchin**—I thank the committee for its cooperation on this matter.

**CHAIR**—Thank you, Minister. Senator Conroy.

**Senator CONROY**—I thank the committee and the Minister and Mr Samuel for being available at a future date. We will do our best to work around your availability, Minister. There has been a lot of discussion about the first mover advantage under the new media rules. I do not think they are in the Telstra prospectus, so I think we are safe. There is an expectation that people will be racing to get their media groups registered by ACMA to beat the five-four voices test. As you have pointed out the ACCC has a role to play. Would you envisage that companies will not be able to register with ACMA until a merger has been cleared by the ACCC?

**Mr Samuel**—There is a specific procedure—I will have to defer to Mr Grimwade on that, Senator—that works in terms of the collaboration and coordination between ACMA and the ACCC. As you properly pointed out, much of the commentary that has been made on the issue of media mergers over recent times has focused on some fairly easy number's games—that is five, four, two and three. I guess those who are making the commentary find it easy to count up to that level! Most of them have not made any reflection on the continued existence of section 50 of the Trade Practices Act, which in one form or another has been in existence for some 32 years. Whatever mergers might pass the five-four test or the two out of three tests still have to pass section 50 of the Trade Practices Act. Mr Grimwade might want to comment on the interrelationship of ACMA and the ACCC's processes.

**Mr Grimwade**—As I understand it, merger parties can seek approval from ACMA prior to consummating a transaction but they can also register afterwards. It is my expectation that merger parties will self-assess and determine whether they consider a clearance from the ACCC is required. I would expect them to approach both ACMA and the ACCC at around the same time.

**Senator CONROY**—You think they would be able to register with ACMA before they got clearance from you in that sense?

**Mr Grimwade**—I believe there is a 45 days period for ACMA to undertake—

**Senator CONROY**—I am really just seeking to understand how the process is going to work, that is all.

**Mr Grimwade**—In terms of seeking our clearance, the timing would be dependant a little on the type of transaction that is proposed and indeed whether informal or formal clearance is sought.

**Senator CONROY**—ACMA are required to deal with registrations in the order that they are received. Will this be the ACCC approach in relation to merger clearances?

**Mr Samuel**—No, not necessarily. We have already circumstances in relation to mergers where they may be two or more parties that are considering a potential merger. Our approach is to look at all the circumstances surrounding the merger arrangements and to determine whether there are any given set of circumstances that might give rise to a substantial lessening of competition. You will be aware, of course, that we had a variety of potential circumstances that arose in relation to Toll and Patrick, Patrick and FCL and some other transactions that were all occurring in the melting pot at the time of that particular transaction. We were dealing with each of those separately and also interdependently, rather than independently, on the basis that it may have been that in a given set of circumstances, that is one party taking over another, that would give rise to a circumstance where one of the other transactions before us would amount to a substantial lessening of competition, and in those circumstances the transaction could not proceed or a divesture might have to take place.

It is also our position that if the target company is target company C, and A is seeking to take over C, and B is seeking to take over C, and we look at those transactions and say to ourselves, 'What is the counterfactual in terms of A seeking to take over C, what is the counterfactual of B seeking to take over C?' There are two potential counterfactuals, one is that there be no takeover at all and C remains not taken over. The other counterfactual is that the alternative merging party, the alternative acquirer, is in fact the successful acquiring party.

In terms of substantial lessening of competition and measuring the issue of a substantial lessening of competition, we will look at the counterfactual, we will look at the alternative scenario and determine whether or not there is a substantial lessening of competition taking the alternative scenario into account. Although we are not in the process of picking winners in takeovers, it might well be that, for example, if you have a high probability, a near certain circumstance of A taking over C, and in the alternative a near certain circumstance of B taking over C, and we look at the competitive consequences or the effect on competition if either A were to proceed or B were to proceed, and that the difference between A proceeding and B proceeding was substantial in terms of a lessening of competition, that we might well prevent A proceeding with the acquisition on the basis that it would lead to a substantial lessening of competition compared with the circumstances were B to proceed with the acquisition.

**Senator CONROY**—I see a lot of fraught situations for you just looking at the way the legislation is structured, where there is this first mover advantage, because as you drop from 11 to five, there is an incentive not to be the last transaction that would breach the five, and the law is quite specific about how ACMA are to deal with them. I fear for your situation where you are going to be caught trying to make these judgements which are serious

judgements. Somebody is going to be saying, 'I have lodged before they lodged with ACMA,' and it is just going to be fraught with legal consequences.

**Mr Samuel**—Not, if I may so, without wanting to beg certain questions that might arise—

**Senator CONROY**—I am trying not to ask you any questions.

**Mr Samuel**—No, sorry, I was not referring to your question, I am talking about questions that might arise in the context of the new legislation, but the five-four rule will not be that relevant to us, the two out of three rule will not be that relevant to us. Parties might well pass those and might well be into first mover. What we will be focusing on is applying our section 50 test irrespective of whether or not the five-four or the two out of three rule is passed.

**Senator CONROY**—I think that is a fair way to describe the situation. Given that speed is the essence, have any media companies sought your advice since the legislation was passed on the ACCC's attitude to particular media transactions?

**Mr Samuel**—We have been having discussions with media companies largely instituted by ourselves over many months in the lead-up to this legislation or that we can be better—

**Senator CONROY**—You are touting for business?

**Mr Samuel**—With 272 applications before us, I do not think we need to tout for business at the present time. We, as I think we make quite public, we are working the market so to speak. We have been out there talking to media companies all around Australia and other interested stakeholders, including media buying companies and others to better inform ourselves as to not only the existing state of the market but also as to prospective developments in the market over a period of time. Parties are consistently communicating with us, both before and after the legislation was passed, in an endeavour to understand our position in relation to prospective mergers.

One of the things we have done, and we have put this on the public record—although I am still a bit surprised that some people do not realise it exists—is this document published in August 2006 which is our guidance to media mergers. It is there. You could be forgiven for thinking at times if you read some of the media discussion on this process that has taken place that it either disappeared from our website or else was so obtuse that many found that they could not read it or understand it, although we did try to make it reasonably accessible. It does try to provide, in a somewhat unprecedented form, our guidance as to what other markets we would look at and how we might access competition without giving some of those investment analysts that would desperately love to have it a clear definitive view on whether A can take over B or C can take over D.

**Senator CONROY**—I appreciate that you have been out there having these discussions. The legislation did contain, at the last minute, a fairly substantial change—the two out of three rule was introduced there. If I could narrow it down to have any media companies spoken to you about possible mergers since the legislation passed, and given that that was on virtually the same day as the two out of three was put into the legislation. I am really looking to identify who has approached you, rather than your ongoing discussions which are all part of your job. Have any companies spoken to you since the legislation passed?



**Mr Samuel**—I am not aware of any companies that have approached us to seek our views on specific mergers since the legislation has been passed.

**Senator CONROY**—General discussions?

**Mr Cassidy**—We are obviously watching, if you like, some of the positioning that has been occurring in recent times and have been talking to the relevant companies about what they are doing and why. If I can interpret your question as being have we been approached by any media companies specifically to ask us about our attitude to a possible merger, the answer is no.

**Senator JOYCE**—When you see that movement in the market, do you ever get people within the ACCC that say, ‘You had better jump on that and start doing some homework on that possible position’?

**Mr Cassidy**—Invariably.

**Mr Samuel**—That is the point I think Mr Cassidy was making. When we see moves like that we are constantly on the watch and will approach the parties to seek information from them as to their intentions or what might be occurring. The specific question Senator Conroy asked me was had we been approached in relation to any specific mergers since the legislation was passed and the answer, to the best of my knowledge, is no, we have not.

**Senator JOYCE**—When Murdoch took up 7.5 per cent of Fairfax the other day did you get on the phone to them and say, ‘What are you up to?’

**Mr Samuel**—We would make inquiries about any of the moves that you have seen reported in the media on the basis that we have a constant watch on these issues. Like any industry, if we see moves that are being speculated upon or where transactions have taken place then we make inquiries of the parties and seek to inform ourselves as to what has been proposed and prepare ourselves for potential mergers that may require our consideration under section 50.

**Senator JOYCE**—That was to go to the next step, to the 15 per cent which was the trigger mechanism, or whatever it is—

**Mr Samuel**—In respect to the ACCC it could be something less than 15 per cent. It would be that level of percentage where we would see a prospect of control being able to be influenced by an acquiring party.

**Senator JOYCE**—You would have a substantial brief by the time that period actually arose, hopefully.

**Mr Samuel**—It depends how fast it happened. If, for example, a party were to acquire 20 per cent or whatever it might be of a particular company overnight then we may not be prepared because it would not have been notified to us. That would not necessarily cause us a difficulty in the sense that we would be saying to parties, and parties are well aware that first we need to examine the matter, we would need to conduct appropriate inquiries, and in the event that they were to proceed without dealing with us in accordance with the processes that you need to follow, then we may well take some pre-emptive court action to prevent the acquisition proceeding and/or potentially to seek divestiture of those shares or assets that might have been acquired in blatant contravention of section 50 of the act.

**Senator JOYCE**—Unless they presume they are going to head off to the Australian Competition Tribunal and win there anyhow.

**Mr Samuel**—That is the issue of the new formal process, which, of course, is not yet in place. At the present point, they would have the option of taking the matter before the Federal Court. Under the new informal process, if they choose to go down that line, then at a point of time, remembering that 40 business days, or at our instance 60 business days, needs to expire before they can then reach a position, at which stage it would be potentially then referred to the Competition Tribunal for review.

**Senator CONROY**—Is the ACCC prepared to consider proposals and give clearance before the legislation is proclaimed?

**Mr Samuel**—It would be unusual for us to deal with that for two reasons, Senator. The first would be that we would need to conduct full market inquiries. It would be very unusual indeed if we were, in the context of media mergers, providing confidential clearances before the legislation was passed. Secondly, it is not our practice to provide hypothetical answers to hypothetical situations and until the legislation is proclaimed it would be somewhat hypothetical.

**Senator CONROY**—I think you are being a little narrow there. I mean, if people come to you and say look at some date next year—no one knows what that date is—this law is going to be proclaimed and this is what we are looking at doing, are you going to say, ‘You can’t talk to me until after that?’

**Mr Samuel**—No. I will explain—as you acknowledged or pointed to, I gave a narrow answer before. Parties come to us many times at present to seek our views on prospective mergers they may be wishing to undertake. For example, it came quite public that when Wattyl was seeking to take over Barloworld it came to us several months before to canvas the issue and to seek a clearance. We gave a response which ultimately came into the public arena when the matter became public so it is not unusual for parties to approach us to seek our views as to prospective mergers. We may give a view or some guidance as to our position but it would be very unusual for us to give an absolute clearance on a matter. It may well be that there is sufficient material on the public record for us to give absolute opposition to the matter and to indicate that the parties would need to address some serious competition concerns before we would allow them to proceed.

**Senator CONROY**—Now as you have already discussed with Senator Joyce, News have bought 7½ per cent of Fairfax. Under the existing laws is there any way that News could take control/buy a greater share in and be approved by the ACCC?

**Mr Samuel**—I think the existing laws, as I understand, limit the ability of News Ltd to 14.9 or 15 per cent and without having examined in recent times the share register of Fairfax I am not sure whether we could express an opinion at this point as to whether that constituted a propensity to control Fairfax or otherwise. I read that it has a fairly wide open share register but we would need to examine those sorts of issues but—

**Senator CONROY**—Realistically—I am not asking you a hypothetical. This is a company which has bought in and there has been some comment they are going to buy Fairfax but any realistic assessment of either the existing or future laws would not allow News to buy Fairfax.

**Mr Samuel**—Well, again, I do not want to provide those answers at this point, Senator, because that would be to act contrary to all the processes that we adopt which is to conduct the appropriate inquiries, the appropriate independent and objective analysis. So forgive me if I do not give you a headline answer that says ‘ACCC will prevent News acquiring Fairfax’. I could not do that without conducting all the appropriate analysis and then there would be a whole range of factors that we would take into account.

**Senator CONROY**—There is a point where commonsense does come in to your answers as well, Mr Samuel.

**CHAIR**—Yes, but Senator Conroy and for your guidance Mr Samuel—

**Senator CONROY**—He is doing fine; he doesn’t need your guidance.

**CHAIR**—It has never been the custom of this committee and it is not going to become the custom to ask the ACCC to give an indication as to what it might do hypothetically in circumstances which might in fact come before it in the future. Sorry Senator Conroy, you wanted to say something.

**Senator CONROY**—Are you officially guided now on the state of the law, Mr Samuel?

**Mr Samuel**—I am most sufficiently guided and I think it provides an appropriate response.

**Senator CONROY**—I am sure Senator Brandis has now provided you extra guidance, which you value. I was interested in part of your response to Senator Joyce on 15 per cent or 10 per cent, what constitutes a control.

**Mr Samuel**—I think I used prospective or a propensity to—

**Senator CONROY**—I was just interested in the way you answered that because you also then made the point about the open share register, which is exactly the situation at Fairfax. I do not think it is possible for 7.5 per cent to be defined as control but it certainly makes it probably the major player. I am interested in how the ACCC determines that issue of control because it depends on things like how open is the share register, I presume. So I was just interested in your thoughts on that without putting a specific reference to Fairfax and News at the moment.

**Mr Samuel**—Primary guidance would include the sorts of issues that are reflected in the Corporations Law as to the thresholds at which control might or might not pass. In the context of takeovers, that is generally accepted to be at 20 per cent. However, in the context of broadcasting and I think in the context of banks, a lower threshold is set, which is 14.9 or 15 per cent, as the case may be. What I was indicating to you is that in the context of the Trade Practices Act we are not bound by specific benchmarks that are set by the Corporations Law, the banking legislation or the broadcasting legislation. We will look at each and every set of circumstances. For example, it may well be that there are two or more parties, each of whom have their own shareholdings which would not amount to anything like control but which together might give an ability to control and bring about certain outcomes which would have the potential for substantially lessening competition.

We would take all those factors into account. That is the reason why—when we see activities occur in relation to businesses or companies as reported in the newspaper or as we might otherwise hear in the marketplace; it might not necessarily be reported—our first step is

to communicate with the companies to see what they are proposing to do and to advise them that in certain circumstances they need to be put on notice that acquisitions should not proceed without giving us a period of notice and that, if they fail to provide undertakings to that effect, then we might well seek court injunctions to prevent them proceeding in any event.

**Senator CONROY**—How do you deal with the situation where there are essentially two major players and one of the major players buys not a controlling interest but a substantial interest in its major competitor and can be in a situation where it influences heavily the outcome of any future activity around that company? To put it crudely, if one player is able to buy into its major rival and then helps to break it up and weaken its major rival, that has got to be of concern to you. They may say, ‘We’re here for friendly reasons,’ as they invite people to move in, buy in and break up their major rival.

**Mr Samuel**—You are putting hypothetical situations and, as I think we have indicated, it is not appropriate to give hypothetical answers to hypothetical proposals. Let me say this—and I think it is terribly important in understanding the way that the commission and its analysis works: we are dealing with essentially 2½ to three lines of an act; we are not dealing with 50 or 60 pages of very specific regulation. That is an enormous advantage in certain respects because it enables us to look as wide and as far as we might consider appropriate with one particular focus in mind, and that is to ensure that there is not a substantial lessening of competition in any market. I have been at pains on recent occasions—I think you are well aware—to emphasise that there is a substantial lessening of competition in any market.

Competition concerns can arise as a result of a variety of transactions beyond the somewhat simplistic analysis that sometimes takes place, where A is acquiring shares in B and that means that A may then take over B, which could give rise to competition concerns. The sorts of circumstances you have described might well be circumstances that we would be contemplating, where A says it is buying a friendly shareholding in B, but we can see the propensity for that to lead to certain consequences which might be substantially anticompetitive. These are all factors that we are analysing. In a sense we conduct what we call—in terms of the MBA score—the decision-tree analysis, which looks at the various branches of the tree as to the various alternatives that can take place and try and keep ahead of the game as best we are able. There are a number within the commission—that is, on the commission staff as well as on the commission itself—who are experienced in the matters of keeping ahead of the game and understanding what is occurring.

It is a process of seeing what is reported; conducting market inquiries, often confidentially; and putting parties on notice that they cannot undertake certain transactions without dealing with us first. It is not a case of accepting on its face a comment a statement or even letter that is provided to us that says: ‘We’re friendly,’ or ‘We won’t do this.’ We cannot adopt that process. We have to focus on what opportunities are available to parties and what the incentives are for a certain course of action to take place that might give rise to anti-competitive consequences.

**Senator CONROY**—Let us take the situation where A and B are the major rivals in a market and A buys into B knowing that, ultimately, it is not going to be allowed to take it over

as it stands but buys in and says, 'We're here as a friendly force.' You do not believe in Santa Claus, do you?

**Mr Samuel**—No, I have not for many years.

**Senator CONROY**—Did you ever?

**Mr Samuel**—Actually, no.

**Senator CONROY**—I did not think so. I see letters and read reports that company A is buying into its major rival on the basis of a friendly, supporting hand. If you believed in Santa Claus, I would be a bit worried, Mr Samuel. I am pleased that you do not believe in Santa Claus.

**Mr Samuel**—It was one of the questions asked of me before I was appointed to this position.

**Senator CONROY**—I have a number of questions about the operation of the access provisions relating to channel B that were inserted into the digital TV bill at a late stage in the debate. Does the ACCC intend to issue an instrument setting out the criteria under which it is going to accept access undertakings in relation to channel B?

**Mr Dimasi**—Yes, we do.

**Senator CONROY**—Will there be any public consultation on the development of these guidelines?

**Mr Dimasi**—We would expect so.

**Senator CONROY**—And that would be under 118H of the Radiocommunications Act?

**Mr Cosgrave**—I cannot swear to the actual provision but it is expected that there would be public consultation, possibly prior to the end of the year.

**Senator CONROY**—When will you be able to publish—

**Mr Cosgrave**—Quite possibly prior to the end of the year.

**Senator CONROY**—Obviously, potentially bidders want to scrutinise this.

**Mr Cosgrave**—Yes.

**Senator CONROY**—Will the current exemption of broadcasting infrastructure from part 11C of the Trade Practices Act—which is due to expire at the end of this year—be extended or will the channel owner be required to adhere to the part 11C access regime and the content access regime recently inserted into the Radiocommunications Act?

**Mr Cosgrave**—I will have to take that on notice.

**Senator CONROY**—What sort of discretion will the ACCC have in considering channel B access undertakings? Will the ACCC be required to tick off as a matter of course any undertaking that is in line with the guidelines?

**Mr Cosgrave**—I think the legislation provides a fairly broad discretion to the commission. As you are aware, we are able to make both procedural rules in relation to the consultation and—as you have already adverted to—setting out criteria by which we will assess the undertaking, which we propose to do.

**Senator CONROY**—Do you take into account the market position of each individual company that lodges an undertaking?

**Mr Cosgrave**—That is one of the issues that would likely to be taken into account.

**Senator CONROY**—Can the ACCC's decision on channel B access undertakings be appealed?

**Mr Cosgrave**—It is an administrative decision, so subject to that general caveat in relation to our process. I am not aware of any other appellate provisions in relation to those.

**Senator CONROY**—My reading of it in the legislation is unclear.

**Mr Cosgrave**—Subject to administrative review there are no other specific appellate provisions.

**Senator CONROY**—How long will the ACCC have to consider channel B access undertakings? Is that specified in the legislation?

**Mr Cosgrave**—It is not specified in the legislation.

**Senator CONROY**—Will the access regime allow the owner of channel B to have exclusive content?

**Mr Cosgrave**—It is not a question of whether it would allow it; it is a question of parties putting access undertakings to us, and we will consider those access undertakings.

**Senator CONROY**—Can the ACCC give any indication as to how many individual channels, or what percentage of the channels, it considers the purchaser of channel B should be able to use for their own content without having to provide access to others?

**Mr Cosgrave**—Not at this stage. These matters are still at an early stage of consideration.

**Senator CONROY**—As an example, just to help you consider it, would a purchaser have exclusive access to, say, four out of 15 channels?

**Mr Cosgrave**—Thirty channels is what is available and is what is generally discussed. As I say, these are matters at an early stage of consideration, and the criteria are matters that we will go to public comment on.

**Senator CONROY**—Will the ACCC be required to keep any pre-bid access undertakings secret, including the fact that a company has lodged an undertaking, given that this information will be so sensitive in a pre-bid environment? That is one of the really tough issues.

**Mr Cosgrave**—Again, I am going to repeat the same answer, which is that we are still at the stage of considering our role pursuant to—

**Senator CONROY**—Sure. Clearly my officers have too much time on their hands. I will deal with them for you. Will the access undertakings require bidders to set out the price and non-price terms and conditions of access to the ACCC before bidding for the spectrum?

**Mr Dimasi**—We have not considered that level of detail at the moment.

**Senator CONROY**—I will speak to my office for you.

**Mr Dimasi**—I would say that access normally deals with terms and conditions; so that would be generally my expectation. But whether it is before the bid for the spectrum is a question we have not considered.

**Senator CONROY**—I am just wondering how they will do this when they will not know how much they need to pay for the spectrum. This is a chicken and egg situation.

**Mr Cosgrave**—Certainly we are in the process of considerable interaction with ACMA over the interaction between the undertaking process and any auction process that takes place.

**Senator CONROY**—In September the ACCC made a draft decision to reject Foxtel's special access undertaking for its digital set-top box. This was despite the ACCC finding out that Foxtel was undertaking provides access for content providers on reasonable terms. Can you explain why the ACCC, nevertheless, rejected the undertaking?

**Mr Cosgrave**—Yes, I can. The preconditions to acceptance of an undertaking are around not only reasonableness but also a legal obligation to comply with the standard access obligations that apply under part XIC of the Trade Practices Act. The commission found that the relevant undertaking did not meet those obligations, in effect. So what we are talking about is a structuring difficulty in the nature of the undertaking.

**Senator CONROY**—Just going back to the guidelines, do you have a rough timetable on the guidelines? The minister has indicated she wants to have the auction early next year. So do you have any indication of your timeline? Is it going to take a couple of months?

**Mr Cosgrave**—Broadly, as I say, we are hoping to go to public comment late this year and clearly we would be seeking to move to the guidelines as quickly as possible, given that time frame that has been set out by the minister.

**Senator CONROY**—Is that three months? What do you think is reasonable public access and reasonable debate after the public comments?

**Mr Cosgrave**—We would certainly try and move as quickly as possible. It may well be in that time frame.

**Senator CONROY**—Or it may not be.

**Mr Cosgrave**—It is always difficult to comment before you receive comment from the parties and assess the issues that they raise. But certainly we are aware of the time frames that the minister has sought to put in place.

**Senator CONROY**—Just going back to the Foxtel undertaking, what are the individual component services that make up the digital set-top box service?

**Mr Cosgrave**—It is a bundle of services, as you have indicated. There are a range of services, including conditional access services. I am struggling, as you can tell, to answer this. I might have to take this on notice, but there is certainly a bundle of services.

**Senator CONROY**—How will the issue be progressed from here?

**Mr Cosgrave**—The issue is fundamentally one around which we have been having some discussions with Foxtel to ensure they are aware of the nature of our concern. The matter is largely in their hands as to whether they seek to restructure their undertaking.

**Senator CONROY**—Is legislative change required?

**Mr Cosgrave**—We would not have thought so.

**Senator CONROY**—The flavour of your release is that you would have liked to have approved the undertaking but felt unable to for technical legal reasons.

**Mr Cosgrave**—I think that is what I have reflected and that is why we have been in some discussions with Foxtel.

**Senator CONROY**—I have a few questions but I might put them on notice. Some of them wander into Telstra as well. I may either put them on notice or hold off on them. You made reference to the annual report. In your opening statement you also talked about your merger clearance rates. In the annual report you indicated the ACCC examined 272 mergers, acquisitions and asset sales last year. Of these 261, 96 per cent were not opposed, three per cent were resolved through undertakings and one per cent were not allowed. Since becoming chairman how many mergers have you stopped? Mr Grimwade is indicating he may be able to help.

**Mr Samuel**—No, that is fine; I did not have my bits of paper in front of me. I am happy for him to give some numbers.

**Mr Grimwade**—In this financial year there have been eight expressions of opposition to mergers. Five of those have been in relation to confidential proposals and three have been in relation to public proposals. In addition to those, there have been four matters where concerns have been expressed but the matters have been resolved through undertakings. In the last financial year there were five matters that were opposed—three were on a confidential basis and two of those were opposed publicly. They were subsequently resolved with undertakings. Another six where we identified a substantial lessening in competition were also resolved with undertakings. I do not have figures—

**Mr Samuel**—I was hoping Mr Grimwade's memory would even stretch back to cover all of the others. He has been remarkably accurate so far. In 2004-05 we opposed two mergers and cleared nine with undertakings. In 2003-04 we opposed four mergers and cleared two with undertakings.

**Senator CONROY**—In your opinion piece in the *Australian Financial Review* on Monday, 30 October, you indicated how important it was to the merger clearance process for undertakings made as part of a clearance to be effectively enforced, and you raised some of these issues in your opening statement. You indicated that, where businesses are to be sold, the ACCC may require an interim manager to be appointed to run them. Where the ACCC has doubts about a company delivering on its undertakings, the approach will have to have an independent auditor whose job will be to monitor that companies are living up to their legally enforceable promises that they make. I know that you touched on this in your opening statement. Could you elaborate on these points and indicate whether such measures would require any legislative changes?

**Mr Samuel**—No, they will not require legislative change because the process of undertakings, as contained in section 87B of the act, is such that it provides us with a large degree of flexibility as to the undertakings we might accept or that we might reject. What it



requires is for parties to be accepting that the undertaking process—and this has been happening for many years now—is going through an evolution. The evolution I think is to reflect the increasing complexity of some of the transactions that are associated with mergers and with undertakings and our desire to ensure that, if an undertaking is provided to deal with competition concerns, it is in fact an undertaking that adequately deals with those concerns after we take account of all of the relevant risks.

Let me put this in the context of the issues that you have raised. If party A seeks to acquire party B, there are substantial competition concerns which can be resolved such as to bring the merger below the substantial lessening of competition threshold contained in section 50 if A were to undertake to divest either one of its own assets or an asset of B, the target company, and undertook to do so under a section 87B undertaking. There are two or three ways in which that can be handled. The first is for the divestiture to take place prior to the merger taking place. If that has actually taken place, you do not need an 87B because it has already occurred and the acquisition by A of B takes place without the competition concerns arising. The second is for an after-the-merger divestiture to take place.

Sometimes those divestiture processes will take several months. Indeed, on some occasions they have taken in excess of 12 months to complete. We set time deadlines in place. The time deadlines will contain two phases. The first will be a phase for sale under the control of the merging parties, and the second will be a sale that is out of their control—that is, where it is handed over to an independent party to sell under what we call a fire sale process. In those circumstances, although the fire vendor does so with an obligation to seek to obtain a reasonable price, frankly in the end it does not matter because our concern is that of dealing with the competition concerns and if a dollar happens to be the reasonable price so be it, that will be the net result.

In the intervening period, though, we are concerned that assets are held separate so that the competition concerns that might arise as a result of the assets being controlled by the acquiring party as part of the merged group cannot take place, cannot arise and cannot be implemented or exacerbated during the intervening period between the completion of the merger and the completion of the sale.

In the past we have put in place what were called ring fencing arrangements. Ring fencing arrangements are the behavioural side of what is fundamentally a structural undertaking. The structural undertaking is to divest; the behavioural side is the ring fencing arrangement. It is well known that the commission does not favour behavioural undertakings because they are difficult to audit, enforce and monitor, and we do not have the resources or, frankly, the desire to do just that. We have been less than satisfied with the compliance in the hold separate, or ring fencing, arrangements that have occurred. In certain cases we find that the ring fencing arrangements are becoming more and more complex. As they become more and more complex, the processes involved in setting up ring fencing arrangements are more difficult to monitor and thus to order and thus to enforce.

**Senator JOYCE**—Was it those ring fencing arrangements that you were referring to with Toll?

**Mr Samuel**—No, I was not referring to any specific one. There is one that is well on the public record, and that is the matter of Alinta and the Dampier to Bunbury natural gas pipeline.

**Senator CONROY**—We are coming to that at length.

**Mr Samuel**—I thought I would pre-empt you in anticipation of your question. We do have a court case currently involving the matter of Alinta and the Dampier to Bunbury natural gas pipeline where a ring fencing arrangement was put in place under an undertaking. It is currently before the court, so I do not want to make any more comment other than to say that we have alleged that the ring fencing arrangement has not been complied with.

**Senator JOYCE**—Just briefly—and I want your honest opinion—don't you find that whole substantial lessening of competition test in section 50 a pretty blunt instrument? The only thing you are left with is a monopoly position. With regard to your capacity to raise prices without losing customers, who are you dealing with there? From my naive point of view, isn't it too limiting as a test?

**Mr Samuel**—No, Senator. As I was observing, it is a very wide test. In its substantive form it probably covers only three or four lines, but the use of the words will result in, or is likely to result in, a substantial lessening of competition. Those very words 'substantial lessening of competition' have enormous implications and are subject to serious and extensive economic and legal interpretations. The test, with some variations, has been in place for 32 years in one form or another, and there is a well-established body of economic and legal analysis of what constitutes a substantial lessening of competition in a market. It is a matter that, if you were to take the vast body of precedent that we have as to our analysis, gives lawyers, economists and other advisers in this area a fair degree of precedent as to the way in which the test is interpreted.

**Senator JOYCE**—That is exactly the word I was about to use. So you put a lot of emphasis on the precedent section, where you can say, 'It might not lead to substantial lessening of competition now but, given the path this is going down, I can see where it is going in the future, therefore I will reject it.'

**Mr Samuel**—Yes, although we do not operate on the basis of what are called speculation or hypothetical possibilities in the future because of the words used in the law—and that has been interpreted as meaning 'having a reasonable probability'; something that is beyond mere speculation. We do look into the foreseeable future to see what the possibilities are and what the incentives are for the parties to undertake anticompetitive conduct or to develop anticompetitive structures as a result of a merger taking place.

**Senator JOYCE**—Do you believe the Australian Competition Tribunal would work on the same precedents that you do?

**Mr Samuel**—They are bound to work with the same law, and the binding precedent that has been established in this context has been established by the Federal Court. They are bound, as we are, to comply with the law and to interpret the law in accordance with the legal and economic analysis that has taken place over many years, keeping in mind of course that the economic analysis will be variable depending upon the economists that you have dealing with the economic analysis, as indeed legal analysis can vary depending upon the judge that

you are dealing with in the Federal Court. Broadly speaking, the law has remained and developed over a period of years with a fair body of precedent being developed to give some identification as to the way it is to be interpreted.

Perhaps I ought to finish my answer to Senator Conroy's question for the record. Having been increasingly concerned about the ability of the ACCC to monitor, and therefore ensure, compliance with ring-fencing arrangements, which as I have indicated are essentially a behavioural nature, we are now moving to a more structural form of dealing with what is called 'holding separate'. It is a form that has been adopted in the United States and elsewhere in some jurisdictions throughout the world, which is to simply require that hold separates of assets to be divested should take place by placing those assets under the control of entirely independent parties—so not under the control of, for example, independent directors or ensuring that independent directors have a majority say on a board of directors, but actually saying that they ought to be held separately and administered separately from the 'to be retained' assets of the merger parties or the merging parties. That is a process we are going through at the present time in some dealings with parties in relation to proposed section 87B undertakings.

**Senator JOYCE**—I would like to go on to section 46. I am going to refer firstly your former chair, Allan Fels, who said:

... there has only been one instance since 1990 where big business has used its market power to harm competition.

... ..

If section 46 does not work, then one of the most important protections of competition is missing from the Australian economy ...

I also refer to something you are reported to have said, Mr Samuel:

Realistically, section 46 market abuse causes were "very, very difficult" to successfully litigate, with the commission only successful in one case in some 30 years.

In the discussion pieces of that that are currently around regarding the tightening of section 46, are you aware of the current chapter 41 in the abuse of market powers act 1998 in the UK, and can you give your brief view of changes that are required to section 46 to bring it into line internationally with other abuse of market power legislation?

**Mr Samuel**—You are asking us to comment on matters of policy which, as you know, we have previously indicated is inappropriate for us to do in the context of these hearings.

**Senator JOYCE**—Okay, I will not do that.

**Mr Samuel**—There was a question that was asked of us a bit earlier in relation to section 46 by the chairman—that is, whether we still adhere to the views that we had expressed in our submission to the inquiry as to the application of the Trade Practices Act to small business. I think the answer given by both Mr Cassidy and me was to the effect that we stood by that submission. I do not think I can add or detract from that. I am not familiar with chapter 41 of the UK.

**Senator JOYCE**—It is 1988, chapter 41.

**Mr Cassidy**—I am not particularly familiar with that either. I suppose I caution in a sense that the abuse of market power provisions are difficult provisions in most national competition laws and I think you need to look at the way in which each individual country law is structured. There are different structures in those laws in different countries, and you need to be a bit careful about importing from, say, one country provisions which may not fit terribly well in a law that is structured differently in another country.

**Senator JOYCE**—I think it was Justice French in the Boral case who said that if an employer was an arsonist who burnt down a building of my competitor, section 46 does not cover that as an abuse of market power.

**CHAIR**—Neither would the UK act, Senator Joyce, because that is based on among other things, the Treaty of Rome. It is just not conduct in a market; it is an independently unlawful act.

**Senator JOYCE**—‘Conduct, in particular, constitutes such an abuse that consists of directly or indirectly imposing unfair purchases or selling prices limiting production, markets or technical development in to the prejudice of consumers’ and on it goes. I will move to another issue then. What is the ACCC’s current position on collective boycotts and does your position remain the same?

**Mr Samuel**—We have consistently been of the view that collective boycotts are very difficult to justify as being in the public interest, which is in broad terms the required test in terms of collective bargaining notifications under the law as it currently stands. We have in very few circumstances purported to authorise collective boycotts in the context of collective bargaining notifications. But, most recently, in a matter where we did authorise a collective boycott as part of a collective bargaining notification—I say, ‘authorise’; I am using that in the broadest sense of the word as distinct from the technical sense of authorisation—the matter was referred by way of review to the Australian Competition Tribunal. They rejected the collective boycott, and I think we have expressed the view publicly and we might have expressed it at a previous Senate estimates hearing that we think the result of the competition tribunal’s views on collective boycotts as expressed in that matter would make it very difficult indeed for us to authorise—and I use that in the broadest sense of the word—a collective boycott in the future. I think the threshold has been placed at a very high level probably close to being insurmountable.

**Senator JOYCE**—If small business wanted to collectively boycott on a statewide or Australia wide basis under the new notification process, would you deem that the ACCC would allow this?

**Mr Samuel**—I think it would be very difficult to see us allowing a collective boycott even under the regime of notification that is to be provided under the new legislation that has just been passed in the context of the Competition Tribunal expressing its views on collective boycotts as it did most recently.

**Senator JOYCE**—What is your view regarding collective bargaining when big retail competitors engage in predatory pricing? Do you think that even in that case that it is a worthwhile instrument?

**Mr Samuel**—We have been very supportive of collective bargaining by small business and have endeavoured to streamline our own processes to emulate as far as possible those that are contained in the legislation that has just been passed by parliament. We have authorised—when I say ‘authorised’, we have permitted—collective bargaining processes and authorisation for them to take place over recent years for small business in a whole range of different industries ranging from newsagents, hoteliers through to those that might be taking Sky TV, for example. There has been a range of instances. The sector which perhaps has taken the greatest advantage of this has been the farming sector—the agricultural sector—and there have been primary producers who have collectively gathered together in the area of dairy industry, chicken growing and the like and we have authorised those collective bargaining arrangements. We have encouraged small business to come to us to seek assistance in this area and we would anticipate that they continue to do so either under the current authorisation provisions or under the notification provisions that have been provided for under the new amendments to the Trade Practices Act.

**Senator JOYCE**—The current authorisation fee is still \$7,500. That is correct, isn't it?

**Mr Samuel**—That is set by regulation, yes.

**Senator JOYCE**—Would the ACCC have the capacity to handle that part of the authorisation process? I know that it has been envisaged that it might be reduced to \$1,000, which would be nice, but would the ACCC have the capacity to monitor that, to determine what the fee should be, if you were given that opportunity?

**Mr Samuel**—It is not within our power to do it. It is set by regulation. The \$7,500 fee needs to be put in a certain context—that is, that an application for an authorisation of collective bargaining can apply to a number of target companies; they are target big businesses. They can all be lumped into the one application and the one fee of \$7,500 applies. Under the new notification provisions, a separate fee will be payable in respect of each target. If the fee were set at \$1,000 and there happened to be eight or nine targets that were the subject of a collective bargaining notification, then you could be up for \$8,000 or \$9,000. It may be in those circumstances that parties will take a financial analysis and indicate they want to proceed by authorisation.

**Senator JOYCE**—That is an interesting point. Currently it is \$7,500 and that covers everybody. But now it can be \$1,000 but if you have eight or nine targets it will be \$8,000.

**Mr Samuel**—Correct.

**Senator JOYCE**—It could actually go up.

**Mr Samuel**—Yes.

**Senator JOYCE**—Mr Grimwade, you mentioned lately in a paper that eight per cent of mergers take more than eight weeks to finalise. Why would some of them take more than eight weeks?

**Mr Grimwade**—There are a number of reasons. The matters that take longer than eight weeks to finalise tend to be the most complex and the most contentious that we face. There might be a consideration of undertakings—undertakings being proposed after we identify concerns in relation to a matter. In some instances, like the Toll-Patrick matter, there might be

a series of undertakings, each of which requires some form of public consultation. That can delay proceedings. Under the informal process there may be delays by parties in responding to requests for information. There are a variety of considerations that can lead to a view being expressed by the commission in longer than eight weeks.

**Senator JOYCE**—With the new formal process, since it cannot be challenged, wouldn't all parties be likely to go down that process for greater assurance?

**Mr Samuel**—That will be very interesting to see. We have obviously been preparing for the formal process for some time and that in one form or another it would be passed. There are a number of factors that may result in parties continuing to adopt the informal process. The first is the very informality of the process. There can be an open dialogue with the staff of the commission on matters. There is not the need to put material on the public register in as open a fashion as occurs under a formal process. The formal process carries with it, as any formal process does, a large range of obligations which are inflexible in terms of requirements, inflexible as to information that must be provided, inflexible as to timing and can potentially be highly legalistic. We find that parties prefer for the most part, particularly at the business level, to deal with us in an informal process where they can work in an open consultative process with the commission rather than having to go through a much less flexible legal process.

I would anticipate—and it may well be proven to be wrong—that the vast majority of mergers that are brought before us, if they follow the same trend as in the past, will adopt the informal process. For those that are unlikely to reach areas of complexity or difficulty as to being approved, the informal process would be a much easier way of dealing with the issue. It may be that those that anticipate some complexity will choose to adopt the formal process but it may well also be that the complexity is exacerbated by the fact that they have gone down the formal process route.

Keep in mind that the formal process route will have a cut-off date at which, if material is not before us, we will make decisions based on the material before us. If we make an adverse decision and that is then taken on review to the Competition Tribunal, the tribunal is bound to consider the matter on the basis of the papers that were before us.

**Senator JOYCE**—They can just dismiss it, though.

**Mr Samuel**—When you say 'dismiss it', who can dismiss it—the parties or the tribunal?

**Senator JOYCE**—They can listen to it, take it on board and say: 'Thank you for coming in, Mr Samuel. We will now make our own decision.'

**Mr Samuel**—Yes, they can, but they will only be able to make the decision on the basis of the papers that came before us. If parties are holding information back that may be favourable to their case and we make a determination, it is the same limited information that will go before the tribunal. The tribunal will then have to make a decision based on that. They cannot take into account extraneous matters or new matters the parties may wish to bring before them. In most cases there will not, in fact, be a hearing. The tribunal will take the file and look at the papers on the file. They may seek information from us, but that is unlikely. It is more likely that they will simply look at the papers on the file and form a conclusion.

**Senator JOYCE**—On your own figures there were 272 mergers, and I think 261 went through.

**Mr Samuel**—Yes.

**Senator JOYCE**—So they would say, ‘Well, the section 50 test works in our favour.’ Even with the balance between the two, there were a few undertakings. I do not know how many. They would be more inclined to say, ‘If that is the precedent we have—261 out of 272 chances to get through—we will head off for the formal clearance structure.’

**Mr Samuel**—I am not sure that the 261 out of 272 or the similar statistics for previous years, since 2003 or indeed before 2003, would influence them one way or another as to whether they adopted the formal or informal process route. The test is a rigorous one in competition terms. For the most part, mergers that come before us do not give rise to the failure of a potential substantial lessening of competition. They pass that test. The test is a tough one. Ultimately, at the present time, it can be determined by the Federal Court. In the future if they adopt the formal route, it will be determined by the Competition Tribunal, which comprises as the presiding member a Federal Court judge, plus an economist, plus a businessperson selected from a tribunal which has a panel of 20-odd people.

**Senator JOYCE**—If I wanted to get around the section 50 test, would I not just go into a process of creeping acquisitions? The section 50 test cannot stop creeping acquisitions, can it?

**Mr Samuel**—The issue of creeping acquisitions is a separate issue. Creeping acquisitions are all very well, but there are very few sectors of the economy where we actually have to deal with the issue of creeping acquisitions, as you described them. For example, supermarkets are raised. We deal with every supermarket acquisition as a separate merger or acquisition on its own. It is dealt with under section 50 of the Trade Practices Act. It will be dealt with in the context of the market that constitutes the supermarket itself and, for example, as a rule of thumb, generally within about a five-kilometre radius of that particular supermarket. It is the same with liquor stores, for example.

Creeping acquisitions are an issue in respect of section 50. We have expressed the legal advice that we have had on that in the past, to the effect that genuine creeping acquisitions are probably not able to be dealt with under section 50 as it currently stands. To overcome that, we endeavour to narrow down the geographic market as far as we are permitted to do under section 50. That requires us to at least take account of substantive markets.

**Senator JOYCE**—You would obviously be aware of the play that is currently on for Coles and the likelihood that there are players out there who will buy it and break it up.

**Mr Samuel**—Yes.

**Senator JOYCE**—Is it ringing any bells at the ACCC that this might be a case of a predominant amount of Coles ending up with Woolworths and Aldi? Really, Woolworths would be the main player, wouldn't it?

**Mr Samuel**—As we said before, we do not comment upon hypothetical situations. We are well conscious of the comments that have been made publicly and that have been speculated upon in relation to Coles.

**Senator JOYCE**—When does the situation go from hypothetical to reality? You see the movements in the market. When the financial instruments are going in place to make a substantial play for a company, does it then move from hypothetical to likely?

**Mr Samuel**—In the event that we see either speculation occurring or reports of prospective transactions, we then start to make inquiries to the relevant parties as to what is occurring. We put the parties on notice that, in the event that certain transactions were to take place that have a prospect of lessening competition, we want some notice of the intention to proceed. You have talked about a whole series of hypothetical possibilities—that is, the acquisition of Coles by, as has been speculated, a private equity group and then the breaking up of Coles Myer. All those matters are extraordinarily hypothetical and way down the track of anything that has been speculated on at present.

**Senator JOYCE**—I will change the question. I do not want to know whether you have or you have not, but would you make the call to a private equity firm, once the situation went from hypothetical to real, about the issues regarding your role?

**Mr Samuel**—We might well make a call at the time of speculation, when it was being seriously speculated that a particular acquisition was possibly to take place. We might make a call at that point of time to put parties on the alert that we are focusing on this and that they need to consult with us before proceeding.

**Senator JOYCE**—The government has proposed to increase the threshold for unconscionable conduct cases to \$10 million. Can this be done immediately through regulation to the Trade Practices Act or do we need to wait for a second trade practices bill?

**Mr Samuel**—It is in the legislation at the moment, and I think it needs to be moved into regulations. It is currently under part 4A. Is that right?

**Mr Cassidy**—We are not quite sure. We suspect it can be done by regulation, but we had better take that one on notice for you so that we do not give you an incorrect answer.

**Mr Samuel**—We have a copy of the act here, so we will just look at it and see what is the case.

**Mr Cassidy**—Most of those sorts of things are done by regulation simply because you do need to change them from time to time.

**Senator JOYCE**—I just like to give other people a job to do every now and then.

**Mr Cassidy**—Yes, that is right.

**CHAIR**—Senator Joyce are you close to finishing?

**Senator JOYCE**—A quick question: how many mergers have you blocked in your time at the ACCC, Mr Samuel?

**Mr Samuel**—I have not blocked any but the commission has. I will give you the specific numbers in a minute. I added them up before.

**Mr Cassidy**—The \$3 million, contrary to what I was saying—so it is good we looked—is actually in the act. So you need to amend the act to change the \$3 million.

**Senator JOYCE**—It needs to be done by legislative instrument.



**Mr Samuel**—Regarding the mergers, we can take these numbers down then we can do a quick addition. In 2003-04 there were four; in 2004-05 there were two; and in 2005-06 there were five. But I think you mentioned, didn't you, Mr Grimwade, that of those five, two were cleared subsequently?

**Mr Grimwade**—Two were resolved subsequently.

**Mr Samuel**—In 2006-07, to date, there have been eight.

**Senator JOYCE**—Seventeen.

**Mr Grimwade**—It is also worth adding that there are a greater number where we had expressed the view that the merger was likely to breach section 50, but those matters were subsequently resolved with undertakings.

**Senator JOYCE**—I have many questions, but I will leave this as the final one. With mergers and acquisitions, the ACCC deals with divestiture powers in a very minor form at the front end of a merger process. Do you believe that you have the capacity, if given the power, to deal with it in a more encompassing form over a longer period of time?

**Mr Samuel**—Again you are sort of moving into policy areas—

**Senator JOYCE**—Would it assist you in doing your process?

**Mr Samuel**—Let me separate two circumstances. The first is divestiture where a merger has taken place and as a result, for example, of our having been misled in the information provided to us or not having been provided with the full information, we learn subsequent to the merger taking place that it is one that is likely to result in a substantial lessening of competition and ought to be prevented. In those circumstances we would have no hesitation in approaching the Federal Court for a divestiture order to order a divestiture of assets. Indeed, we now have in place undertakings by parties that say, in the event that they cannot divest themselves of certain specific assets, they will as a fallback divest themselves of the whole of the shares that might have been acquired as part of the merger itself. I think your question, though, is perhaps addressed to—

**Senator JOYCE**—I will make it so it is not hypothetical. What limitations of your divestiture powers do you currently run up against?

**Mr Samuel**—The divestiture powers primarily relate to breaches of section 50 of the act where acquisitions have taken place in circumstances where they are likely to result in a substantial lessening of competition. The divestiture powers that you are perhaps focusing on are those that are potentially available under US legislation and they relate to divestitures that might be ordered upon companies that have developed, through one process or another and not necessarily as a result of acquisitions, a very dominant or monopolistic position in market share.

**Senator JOYCE**—The Sherman and Clayton acts.

**Mr Samuel**—We do not have those divestiture powers and they are matters of policy for the government.

**Senator JOYCE**—But the limitations of your current divestiture powers are that, really, once the merger process is in train or has gone down a sufficient timeframe you have no divestiture powers.

**Mr Samuel**—Sorry?

**Senator JOYCE**—Once it has gone down a certain period of time, your divestiture powers are limited to really a small timeframe at the front end of a merger process.

**Mr Samuel**—No, certainly not. After the merger, where—

**Senator JOYCE**—Sorry, a month. But you cannot go a year later and go, ‘Hang on.’

**Mr Samuel**—Yes, we can. There is no reason why a year or two afterwards we could not. I think the area where we do not have a divestiture power is where a company or a business has grown very large just by its own growth process and it has become a very dominant party or become a monopolist in a market.

**Senator JOYCE**—A Standard Oil situation.

**Mr Samuel**—Yes.

**Senator JOYCE**—Thank you very much.

**Senator LUDWIG**—I would just like to follow up on some of those matters that Senator Joyce took you to. In terms of the Toll-Patrick matter, how long did that actually take from the time it started to the time it was completed?

**Mr Samuel**—I think it started, if I recall correctly, about the middle of August 2005 and completed, ultimately through court processes, towards the middle or latter part of January 2006.

**Senator LUDWIG**—Would that matter have easily fit within the formal structure or do you think that would have been an informal matter?

**Mr Samuel**—It could have been undertaken under the formal structure and if it had, then the 40 business day period—which is two months—would have run. If the same set of circumstances had arisen as occurred under the informal process, we would have unilaterally extended it to 60 business days, which is three months. Then it would have been a matter for Toll, at the end of those 60 days, to determine whether or not it wanted to continue to deal with us to seek an approval or a clearance of the merger, in which case it would have extended beyond the 60 days to 70, 80, 90 or whatever number of business days were required. In the alternative, Toll might have chanced its arm and said, ‘We will call a halt at the end of the 60 days.’ Taking the circumstances occurred in the Toll matter, the ACCC would have then opposed the merger and refused to give clearance. Then Toll potentially, if we follow the same pattern, would have referred the matter to the Australian Competition Tribunal and the tribunal would have had to consider the matter based on the information before the ACCC as at that 60-day period. If I take that 60-day period in the context of what occurred last year, we had before us an undertaking that we considered did not satisfy the competition concerns we had and our view would have been at that point of time that to allow the merger to proceed would have led to a likely substantial lessening of competition. It would then be a matter for

the Australian Competition Tribunal under a formal process as to whether they agreed with the opinion that we had formed.

**Senator LUDWIG**—Given that experience, do you think the 40 plus 20 days under the formal process is sufficient?

**Mr Samuel**—Under the current informal process there is, in fact, no minimum 40 or 60 days.

**Senator LUDWIG**—No, the formal 40 plus 20.

**Mr Samuel**—Let me put it this way. In the formal process there are at least 40—

**Senator LUDWIG**—Plus 20.

**Mr Samuel**—and, at least potentially, 60 business days for us to consider a merger. Under the current informal process, there is in fact no minimum 40 or 60 days.

**Senator LUDWIG**—That was the point I was asking you about. Given the experience that you had with Toll and the time it took, a formal process will allow for 40 plus 20—a maximum of 60 days. For complex mergers, one of which I think you would agree you have just described, is the formal process sufficient to capture that? It does not appear from the experience that we have just had that it would be.

**Mr Samuel**—That is what I just trying to explain. Under the formal process it in fact is not necessarily a maximum of 40 or 60 days. It is a maximum of 40 or 60 days at the commission's discretion but the maximum period can be extended by the merger parties beyond 60 days to whatever period of time they want—60, 90, 100 days, it does not matter. That is entirely their call.

**Senator LUDWIG**—The only fetter is your ability to put up with it.

**Mr Samuel**—Correct. Under the informal process at the present time, the maximum is actually determined by the merger party. At the present time, the merger party could say after day 10, 'We are simply going to proceed and if you want to stop us take us to the Federal Court.'

**Mr Cassidy**—This goes to your question earlier as well. The formal process is a different process to the informal process in the sense that it is geared to the fact that it needs to be done in a relatively short period of time. Right up front, when they walk in the door the merger parties are required to provide us with quite a significant amount of information. There is no dribbling in of information or providing us with the necessary details; that all has to be up front. We then specify the period they will have to provide us with any further information we need. We do not need to consider any information that does not come in within that period. If you like, it is a rather different process to the informal process—

**Senator LUDWIG**—Yes, I accept that. It is an interesting point as to whether—

**Mr Cassidy**—I do not know whether people fully appreciate that. It goes to some of Senator Joyce's questions earlier about which one merger parties are likely to prefer. The formal clearance process is not a process that merger parties are used to, either in terms of the time constraints that are built into the process or indeed the transparency and the volume of information that needs to be provided up front in order for it to even be a valid application.

**Senator JOYCE**—Can I just quickly ask something, because there is a previous point I put on notice. Can you check up about that regulatory instrument, because I think it is under 51AC(9) that, in cases of \$3 million and up, you can be a regulatory instrument. Can you check that up because you might have got it—

**Mr Pearson**—We just reread that section and it actually has the \$3 million in legislation but it also adds after that, ‘or as prescribed’. We were going to add that before we finished.

**Mr Samuel**—Can I explain, because I think it is very important to emphasise the issue that Mr Cassidy has just pointed out. The formal process actually imposes some significant burdens and obligations on merging parties—

**Senator LUDWIG**—I understand that. My concern is we will take far longer than we need to. I can certainly read about it if I need to appraise myself on it. The point I really wanted you to comment on was: is it the intention that the formal process will oust the informal system—that is, that businesses or merger parties will choose the formal system because of the certainty it might provide, firstly in terms of finality over the informal system? That is notwithstanding the 40-plus-20 days limitation. But it seems to be it is reasonably flexible, at least to the extent that you will put up with it.

**Mr Samuel**—I think also, given that the vast majority of clearance applications we have before us take place well within 40 days, and indeed in some cases within 14 or 21 business days, parties that consider that they have a relatively easy merger are more likely to go informal rather than give us the minimum, which is at our call a minimum of 60 business days if we want, to be able to consider the merger issues. You would expect in the vast majority that we ultimately clear, where we do so in a period of four to six weeks, parties would say that would be the quicker and easier course to follow. Why would they go formal? Because they ultimately are concerned that this is a very complex merger and that they want the matter to be referred ultimately to the Competition Tribunal. But they will only do so at a point of time that they figure they have got all the material out on the table to be able to present their case as fully as possible to the Competition Tribunal, keeping in mind that at a point of time there will be a cut-off date and the material not before us at that point will not be able to be put before the tribunal. So there are some tensions in the formal process that potentially operate against it being used with a great deal of enthusiasm.

**Senator LUDWIG**—So your assessment is that the informal process will be used for the less complex mergers and the formal system for more complex mergers?

**Mr Samuel**—No. I think the informal process may well be used for more complex mergers. I think we are going to have to wait and see how often the formal process is used but it may well be that parties take a view that the informal process gives them more flexibility to be able to deal with us on issues of undertakings within a time frame that suits them rather than the time frame that happens to suit us, as is imposed on parties under the formal process.

**Senator LUDWIG**—I think Senator Joyce got the numbers of mergers from you. They are the ones that are currently before the Australian Competition Tribunal—a total of 17. Would you expect that trend to continue? You have got, effectively, two, five and eight. In other words, there seems to be an increasing trend. Would you expect that figure to continue?

**Mr Samuel**—It is very difficult to indicate that there is a trend one way or another. The difficulty is because it depends on the nature of the matters that come here before us, the level of concentration that occurs in the industry and the like. Keeping in mind that you have talked of matters being referred to the Competition Tribunal, if you wanted a really rough guide on these things you would ask how many mergers have actually gone by way of challenge before the Federal Court where we have opposed them. I think that Senator Joyce added up for me 17 mergers that we have opposed. I think that, of those, two have gone before the courts. That was Toll-Patrick and Boral-Adelaide Brighton Cement. I do not think any others have gone before the courts, have they?

**Mr Grimwade**—That is right, recognising that within those figures are a number of confidential mergers where we have expressed opposition on a confidential basis, and for commercial reasons those parties may have chosen not to go ahead with the deal and so there would be no appeal right. The informal process still deals with a subset of mergers that are confidential which would not be able to go down that formal review process and in addition that informal process subsumes ACCC initiated investigations and reviews as well.

**Mr Samuel**—So you would expect those that have gone before the court would likewise go before the Competition Tribunal if they went through the formal process. As I say, two did. One withdrew, which was Boral-Adelaide Brighton—they withdrew before it ever got to court. The second one was resolved through the process of an undertaking. You would have expected that, in the majority of those 15 others that were opposed that did not go before the Federal Court, the parties together with their advisers had concluded that in the same way they were not going to get a clearance from the ACCC it was unlikely they would get a clearance from the Federal Court. They would form their own judgment they were unlikely to get a clearance from the Competition Tribunal.

It will still be possible, by the way, for parties not only to go to a review before the Competition Tribunal but also to run the gauntlet of the Federal Court in relation to a merger process. I could go through the detail of that if that was appropriate in a moment. But it is perhaps worth noting that, if a matter goes before the Federal Court for review at the present time, the Federal Court can consider not only the material before us but any other material that the parties want to bring before the Federal Court to justify the merger proceeding, whereas with the Competition Tribunal they will be limited to the material that has been brought before us well before the expiry of the 40 or 60 business days that are currently provided in the legislation.

**Mr Grimwade**—Just for the record, there was a third matter that went to the Federal Court—AGL-Loy Yang.

**Mr Samuel**—I beg your pardon, AGL-Loy Yang, yes.

**Senator LUDWIG**—Do you expect that, once the Dawson mergers take full effect, there will be a change in the number of mergers that come before the tribunal?

**Mr Samuel**—That would be speculation but I must say as a judgment call that I would be very surprised to see any change at all. I think that the Trade Practices Act and the ACCC and whatever processes are available at the Federal Court and the Competition Tribunal are that one of the matters considered by merging parties, and they will make their own decisions

based on the same factors. It is the same law; after all, it is the same section 50 of the Trade Practices Act that we are dealing with. It is the processes and procedures that have changed, not the law.

**Senator LUDWIG**—If I heard correctly earlier, if you could confirm this, the Alinta matter is currently before the courts.

**Mr Samuel**—That is right.

**Senator LUDWIG**—So we are limited in what we might be able to ask then in respect of that.

**Mr Samuel**—Yes. It is not our practise to comment upon matters before the courts; that is ultimately for the courts to adjudicate upon.

**Senator LUDWIG**—Are you able to say what matter? In other words, what is the nature of the matter before the court at the moment?

**Mr Samuel**—Without wanting to say too much because it would be inappropriate to do so, this was a ring-fencing structure that had been established under the 87B undertaking that was provided in 2003 or 2004—I forget. It was our view that the undertaking that had been provided and the details of the ring-fencing arrangement had not been complied with. It involved the alleged secondment—I am putting this in the broadest of form—of an Alinta employee to the management of the Dampier to Bunbury gas pipeline.

**Senator LUDWIG**—It was an undertaking that was provided to you.

**Mr Samuel**—There was an undertaking—

**Senator LUDWIG**—You have commenced action to enforce the undertaking—is that correct?

**Mr Samuel**—That is correct.

**Senator LUDWIG**—Then I will not ask any further questions. Are there other examples of where companies have not fully complied with undertakings to the ACCC in the last 12 or 18 months?

**Mr Samuel**—Certainly over the past three years there have been instances where undertakings have not been complied with in accordance with their letter. In some instances, it is related to divestitures that have not been able to be completed within the time period that has been required under the undertaking. Where it is appropriate, fair and reasonable to do so, we will accommodate circumstances that have been beyond the control of the parties in dealing with those matters. But I would have to say to you that we are adopting a much less flexible attitude to those sorts of delays. We are taking a view that, if parties say to us at the point of time of a merger, ‘We believe that we can undertake a divestiture within a given time frame and we accept that if we cannot undertake it within that time frame then the matter will go to an independently managed fire sale,’ then the parties know exactly what they are doing up front, and we ought to stick with those obligations. I would have to say to you that there is a less receptive mood at the commission towards accepting variations of undertakings in those circumstances.

**Senator LUDWIG**—Could you take on notice, unless you have the figures here, to provide an indication of how many companies have been required over the last three years to make undertakings to the ACCC that have remained unfulfilled, or have not been complied with fully—

**Mr Samuel**—I will take that on notice.

**Senator LUDWIG**—Could you also take on notice to provide the number that you have sought to institute actions against. I will not ask whether you are going to consider instituting actions. That would be a matter that you would have to decide.

**Mr Grimwade**—To clarify that question: are you talking about merger undertakings only?

**Senator LUDWIG**—No, the wider ambit of undertakings. You can indicate what the nature of the undertaking is without going to a page. If there is a way of describing whether it is a merger undertaking or another undertaking that would be appreciated.

**Mr Samuel**—There have been instances, as you may have read, where we have actually taken proceedings for contempt of court against parties that have breached undertakings and then failed to comply with court orders to comply with the undertakings. Contempt of court, as you will appreciate, is a very serious charge indeed that can result in jail being imposed.

**Senator LUDWIG**—Perhaps you could indicate that as well. It would be helpful to understand the process. Do you chase companies to ensure that they have complied with the undertaking?

**Mr Samuel**—Yes.

**Senator LUDWIG**—Do you spend resources—time, money and effort?

**Mr Samuel**—Yes.

**Mr Cassidy**—We have a fairly standard practice where we build into undertakings some sort of monitoring process, quite often by an independent auditor or monitor of some description who will give us regular reports, say, every six months or every 12 months, of whether in their view the undertaking has been complied with. We actively monitor those reports as they come in. If we get any reports of instances where it seems that an undertaking is not being complied with then we follow it up accordingly.

I concede this is a criticism that was made in the late nineties or early 2000 that perhaps we were not as active as we should have been in following up on undertakings. But we have since put in place a much more active monitoring regime. In recent years, we have built that into the undertakings that we accept to make sure that we are able to follow up when an undertaking looks as if it is not being complied with.

**Senator LUDWIG**—In that answer that you provide are you able to say whether, in circumstances where a company cannot meet the requirement and it says, for argument's sake, 'I can't find a buyer for the particular asset,' which is the undertaking you have required them to meet, is it frustrated at that point? What do you do?

**Mr Samuel**—No, it is certainly not. It is amazing how the concentration of the prospective vendor is brought to a peak when you indicate that it may be possible to find a buyer at \$1, under a fire sale. I think we are adopting a much tougher attitude to completion of these sorts

of transactions, and that is providing a lot less attitude. It is simply not satisfactory for businesses to provide formal, court-enforceable documents—undertakings to us—and then to turn around at the end of one month, six months, 12 months, or whatever the period might be, and say, ‘Look, we haven’t been able to find a buyer.’ Well, you will find a buyer at \$1.

**Senator LUDWIG**—Has that happened to date?

**Mr Samuel**—The fire sale provisions are, and have been, invoked and they do tend to focus concentration fairly quickly.

**Senator LUDWIG**—Perhaps in the response you can provide that detail as well. I was concerned as to whether, with respect to the frustration where a buyer cannot find the sale of an asset, they effectively create a situation where your enforceable undertaking becomes unenforceable and therefore the company, so to speak, does not have any compliance regime upon them.

**Mr Samuel**—You can make it difficult to find a buyer if you set a price that is too high or you make yourself unavailable to negotiate or you set terms and conditions that are too onerous.

**Senator LUDWIG**—There are many ways you can avoid it.

**Mr Samuel**—Yes. But, as I say, a fire sale provision that puts it in the hands of an independent agent to sell, with the reserve price being \$1, generally tends to focus concentration fairly quickly.

**CHAIR**—Senator Ludwig, are you close to being finished? I am worrying about the program.

**Senator LUDWIG**—About another five or 10 minutes. I did not realise Mr Samuel did not have economy of words in his reply.

**Mr Samuel**—You would be Robinson Crusoe on that, Senator!

**CHAIR**—I think Mr Samuel has been very generous with his information. Can you come to a conclusion as soon as reasonably practicable, Senator Ludwig.

**Senator LUDWIG**—If we take an example such as Toll Holdings’ proposed acquisition of Patrick Corporation Ltd, in a situation like that, if they are required to divest Pacific National, would you consider a deadline? In other words, you have indicated that you would consider fire sale provisions, but would you consider setting deadlines and saying, early on in the process, ‘If you’re not going to be able to do it by this date then this is what we’ll do next’?

**Mr Samuel**—That is invariably the case. I cannot imagine a circumstance where we would allow an unlimited period of time to complete a divestiture. Sometimes we do not disclose the deadline because that can operate against the vendor in terms of allowing buyers to sit back and wait until fire sales take place, but otherwise we would invariably set a deadline.

**Senator LUDWIG**—You would in that circumstance that I have outlined?

**Mr Samuel**—We have in that circumstance.

**Senator LUDWIG**—You have set a deadline?

**Mr Samuel**—Absolutely.



**Senator LUDWIG**—What deadline is that?

**Mr Samuel**—I do not think it has been disclosed. It is confidential, for the reason that I described, in that it can set the commercial circumstances against the vendor.

**Senator LUDWIG**—I understand that.

**Mr Cassidy**—Sometimes when we are considering this we actually think about whether there are prospective buyers for particular assets. If we feel that a major party is not going to be able to sell the development assets, simply because there are not, or are not likely to be, acceptable buyers as far as we are concerned, in that situation we are unlikely to accept the undertaking in the first place. Quite apart from the fire sale type provisions and cut-off dates by which assets need to be sold, we do give consideration before we accept the undertaking to whether the sale of the assets in question looks to be a reasonably feasible proposition.

**Senator LUDWIG**—These may be speculative questions in that sense, so bear with me if you cannot answer and indicate that. Are you aware of a buyer for that or is it commercial in confidence and you would be able to disclose?

**Mr Samuel**—A buyer for?

**Senator LUDWIG**—The proposal that I have indicated, for Pacific National.

**Mr Samuel**—I think that is a confidential matter.

**Senator LUDWIG**—That is what I thought. I prefaced my remarks with that.

**Mr Samuel**—It is part of the undertaking that we must be notified ultimately of the prospective buyer and approve the buyer to ensure that there are no competition concerns arising.

**Senator LUDWIG**—Rather than put those on the record, I might put a couple on notice. If you cannot answer them, then you can simply indicate that they are in confidence and they should not be disclosed. We can deal with it in that way. I enjoyed this one: you penned a short article that for the *Daily Telegraph* on 31 October 2006. It says: ‘Resolving franchise squabbles over rents’. I can provide the article, or perhaps you can recall it.

**Mr Samuel**—I remember the article.

**Senator LUDWIG**—In terms of that, in the third paragraph from the bottom, you said: ‘There are also cases where a franchisor tries to unfairly use the lease as leverage against a franchisee during a dispute, which is where the Australian Competition and Consumer Commission becomes concerned.’ What do you mean by you become concerned?

**Mr Samuel**—More than concerned—it is circumstances where we would consider that the franchisor might be engaging in unconscionable conduct. It may well also have been a case of misleading and deceptive conduct. We would then intervene, but, I think as you are aware, under the franchising code there are procedures that take place including, where possible, mediation to try and resolve disputes between franchisors and franchisees. But ultimately, if we consider that unconscionable conduct has been occurring through the inappropriate use of leverage, such as that described in the article, then we would consider court proceedings against the franchisor.

**Senator LUDWIG**—In terms of being able to crack down on that type of action, you consider that you have sufficient power to be able to do that? It just did not seem to be the tenor of your article.

**Mr Samuel**—The tenor of the article was to indicate that there are a number of areas where there is, or potentially is, unconscionable conduct where we can crack down, as you described it. There will always be rogues in any industry, and in that area the only way we can ultimately crack down is to institute legal proceedings to prevent them conducting their illegal conduct. In the case of franchising, particularly in the context of misleading and deceptive conduct, we have been taking an increasingly aggressive view that we may well proceed with criminal proceedings against parties for misleading and deceptive conduct.

The other thing that the article attempted to point out was this: franchising is ultimately a business decision. It is a business investment by a franchisee in a product, in a service and in arrangements with the franchisor. The primary advice that we give to franchisees is: get external, independent advice from a lawyer and/or an accountant or business advisor, understand the business that you are investing in, understand that it is potentially a very significant investment and understand how to manage the business that you are investing in. Often we find, regrettably, that franchisees do not take that advice, so they fail at the fundamental starting point, at the fundamental principles of investing in a business, in terms of obtaining external advice and understanding the business that they are about to manage. Then, unfortunately, in some cases they fail to be able to manage the business in a proper sense.

That is not to indicate that every case or a majority of cases of franchising disputes are the result of mismanagement by franchisees, but it is to indicate that franchising is a business decision and that business decisions normally require external advice, assistance, proper business decisions and commercial judgements. We urge franchisees to do it, and to come to us where disputes occur—either from the point of view of proceeding to mediation or, in the alternative, where there has been harsh and oppressive conduct or breaches of the franchising code, particularly in the context of nondisclosure of information or misleading disclosure of information—and we will then deal with the matter under either the franchising code or part IVA or part V of the Trade Practices Act.

**Senator LUDWIG**—Would it be fair to say that the point you were making in the article headed ‘Resolving franchise squabbles over rents’ is that you do not see a need to change the franchise code of conduct under the TPA to assist in resolving those squabbles?

**Mr Samuel**—The example provided in the *Daily Telegraph* article was but one of several examples of potential sources of dispute between franchisees and franchisors. To the extent that those disputes amount to unconscionable conduct or misleading or deceptive conduct, the law is there to be able to deal with them. The franchising code, as you know, is currently under review. If you want more information on that, Mr Ridgeway could assist you on the extent of that review.

**Senator LUDWIG**—I am happy for you to take that on notice. A short summary of those issues would be helpful.

**Mr Samuel**—Yes.

**Senator LUDWIG**—In the Senate debate on the government bill, I understand that it was indicated that there would be a draft bill that included section 46 changes to the TPA. Have you been consulted in respect of that draft bill?

**Mr Cassidy**—No.

**Mr Samuel**—We have no information on that at this point in time.

**Senator LUDWIG**—Have you been advised of what it is likely to contain?

**Mr Samuel**—Not at this point in time. We do not have the draft report. We have not seen it.

**Mr Cassidy**—The government announced a response to the Senate committee report. We assume the bill reflects that announced government response. We have not seen the bill, so that is just assumption on our part.

**Senator LUDWIG**—It might be too early at this point in time to ask you about issues such as recoupment and your view on that. Do you have a view?

**Mr Samuel**—It goes back to the answer we gave a couple of times earlier today. Our views on section 46 were set out after much deliberation in the submission we put to the inquiry conducted by the Senate into the application of the Trade Practices Act to small business. We stand by that submission. Ultimately, this is a matter of policy for government. It is for government to determine what, if anything, it wishes to do with section 46. That would cover issues such as recoupment and otherwise.

**Senator LUDWIG**—I might put a couple of those matters on notice and see if I can encourage you to answer them. If you do not, then I understand that as well. Thank you.

**CHAIR**—Thank you, Mr Samuel; thank you, gentlemen. That concludes the examination of the ACCC in this estimates round, subject to the deferred examination, if it be required, of the ACCC concerning Telstra on a date after 20 November. The secretariat will liaise with you, Mr Samuel, as to the determination of that date.

**Proceedings suspended from 4.27 pm to 4.48 pm**

**Department of the Treasury**

**Australian Taxation Office**

**CHAIR**—Order! The hearing is resumed. I welcome to the table officers of the Revenue Group of Treasury and the Australian Taxation Office.

**Senator LUDWIG**—I spoke to Treasury last time on a matter and question on notice No. 167 was taken on notice at that time. I had asked for an explanation of how Treasury derived its \$89 million costing of the original accredited client program from Customs. The response that was provided was effectively a one-liner, but if you look at question on notice No. 167 then you see that the question was ‘could you provide the modelling?’ not ‘could you point to the figure itself’. So is it a question you need a second go at or is there a problem or do I ask about the issues individually so we can expand upon it? I do not particularly want to take too much of the committee’s time on this.

**Mr Ray**—The question goes to advice that we would have provided to cabinet on an option that cabinet did not adopt. So it is causing us difficulties to answer that question in detail.

**Senator LUDWIG**—Did Customs bring the original full duty deferral proposal to Treasury for costing?

**Mr Ray**—That is correct. It is standard practice that, where possible measures involve revenue, costings are agreed with Treasury—just as where possible measures involve expenses then costings have to be agreed with the Department of Finance and Administration.

**Senator LUDWIG**—Did Treasury cost that proposal?

**Mr Ray**—Treasury would have costed a number of options around that.

**Senator LUDWIG**—Was the cost estimated to be approximately \$89 million over four years?

**Mr Ray**—I would need to take that on notice.

**Senator LUDWIG**—Am I going to get the same response back?

**Mr Ray**—I just need to take the question on notice because I do not know the answer.

**Senator LUDWIG**—If it was not \$89 million, in taking that on notice can you look at what value was attached to the costing?

**Mr Ray**—Certainly.

**Senator LUDWIG**—And, if it was not \$89 million, then how did Customs end up with \$89 million? In other words, was it a matter that you recommended? Or if the \$89 million was not from you then can you indicate that. Obviously, you cannot speak on behalf of Customs.

**Mr Ray**—I cannot speak on behalf of Customs, but I can say that the costing that would have gone to cabinet would have been agreed with us.

**Senator LUDWIG**—There were two cost recovery schemes: there was the original and then there was the alternate. There was the one which related to the \$89 million, which was part of the accredited client program but which did not get implemented. Did the alternate cost recovery scheme go to Treasury for consideration for costing?

**Mr Ray**—All options that involve costings would have come to the Treasury.

**Senator LUDWIG**—Then, similar to the first question, can you indicate what costing Treasury assigned to that?

**Mr Ray**—The costing—this is the option that the government took, Senator?

**Senator LUDWIG**—Yes.

**Mr Ray**—That was announced in the 2005-06 budget?

**Senator LUDWIG**—Yes.

**Mr Ray**—I think the costing for that was zero.

**Senator LUDWIG**—Are you able to say how that was calculated? Was that the modelling that you used to calculate zero in that?

**Mr Ray**—Yes. Mr Brown can help you with that.

**Mr Brown**—The proposal that was finally agreed was a proposal which involved no duty deferral; therefore, there is no cost to revenue.

**Senator LUDWIG**—My problem is how we then look at the modelling for the \$89 million, but, as you have said, it was a matter that went to cabinet.

**Mr Brown**—That is right. It is getting very close to our policy advising function.

**Senator LUDWIG**—You have take a couple of questions on notice; can you look again at the answer to question on notice 167 as well, in the light of the exchange we have just had, and see what you can do. I do understand that if it is a matter that has gone to cabinet—that is, a cabinet document—then it would not be available.

**Mr Ray**—Okay. Thank you.

**CHAIR**—Senator Sherry.

**Senator SHERRY**—I want to go to a couple of issues from the IGoT annual report relating to legislative preparation of tax issues—not with the tax office yet but to the Treasury area. Have the IGoT views in the annual report been read and examined?

**Mr Ray**—Yes.

**Senator SHERRY**—There were criticisms of deficiencies in taxation legislation expressed in that annual report. Is it accepted that there are substantial numbers of errors in respect of legislation?

**Mr Ray**—I think it is accepted that from time to time we need to look at amendments to legislation. Tax legislation is very complex, and that happens.

**Senator SHERRY**—The concern, without overstating it, in the IGoT annual report went to a concern that was strongly expressed—and that happens.

**Mr Ray**—I guess my comments were that the need for amendments to tax law has been with us for a long time—as long as the tax law. Since, I think, 2002 we have been consulting on all major draft pieces of legislation in an effort to reduce the need for subsequent amendments. As you can imagine, even with the best will in the world, it is not possible for us to cover off every potential circumstance in all cases. Therefore there are times when there is a need for further amendments.

**Senator SHERRY**—Are you also aware of recent comments in a speech by Justice Edmonds. I am not sure how it is pronounced.

**Mr Ray**—This might not be in my area of expertise, but I am aware of a press report.

**Senator SHERRY**—Yes, I am aware of the press report and the speech, because I have it here. Again, there was a general critique made of the preparation of tax legislation in that speech.

**Mr Ray**—My understanding is that it was in the context of generally positive remarks about the preparation of tax legislation.

**Senator SHERRY**—It also contains a critique about some aspects of the preparation of tax legislation. Is there anyone here who is more familiar with the comments? Have you read them, Mr Ray?

**Mr Ray**—I have not read them, no.

**Senator SHERRY**—Let us move back to the observations of the Inspector-General of Taxation. Is it correct that Treasury has sought advice in respect of the investigative powers of the Inspector-General of Taxation?

**Mr Ray**—I would need to take that on notice.

**Senator SHERRY**—Why do you need to take that on notice?

**Mr Ray**—Because I am not sure of the answer.

**Senator SHERRY**—It is my understanding that you—not necessarily you personally—have taken advice about the investigative powers of the Inspector-General to peruse these matters.

**Mr Ray**—I am aware that advice has been sought. The reason I am taking it on notice is that I am not quite sure who sought the advice.

**Senator SHERRY**—That seems to be a little different from earlier when you were not sure. So there is advice being taken on his powers in this investigative area?

**Mr Ray**—That is my understanding, yes.

**Senator SHERRY**—Okay, so that is occurring. On this matter, has there been any contact from either the minister or staff of the minister's office on this particular matter of the investigation into powers?

**Mr Ray**—Not that I am aware of, but we could check.

**Senator SHERRY**—Again, I normally would not, despite my—

**Mr Ray**—I would not normally expect there to be, but we can check.

**Senator SHERRY**—Despite my regard for your extensive knowledge, I would not expect you to know everything. Is there anyone here who can assist us on this matter?

**Mr Ray**—We do not have the relevant part of the department here because you do not normally ask us these sorts of questions.

**Senator SHERRY**—It has been put to me, Mr Ray, that there is a concerted attempt at the moment to try and nobble—if I could use that expression—some of the activities of the Inspector-General of Taxation and that there is a growing concern within some areas of Treasury about his activities.

**Mr Ray**—I do not know who has put that to you, but that is not the case.

**Senator SHERRY**—You can assure me that is not the case?

**Mr Ray**—I can assure you that that is not the case.

**Senator SHERRY**—With respect to the comments by the Inspector-General, the observations of Treasury with respect to the commented-on ATO culture and the critiques of

the ATO specifically—you are aware that there are critiques of the ATO within that IGOT annual report?

**Mr Ray**—I think that is a matter for the ATO.

**Senator SHERRY**—I am certainly going to get to the ATO, but you are aware that there is a—

**Mr Ray**—I do not want to pass the buck, but—

**Senator SHERRY**—I will shift the buck when I finish with your particular area on this matter. You are aware that there are criticisms of the ATO in that report?

**Mr Ray**—It is not really for me to comment on that.

**Senator SHERRY**—It is just a matter of fact. There are criticisms, aren't there?

**Mr Ray**—That is my understanding.

**Senator SHERRY**—That is your understanding, yes. We are making progress; you are aware of those criticisms. Is there any examination within Treasury as to whether there is any need for legislative change with respect to the ATO and its operation as a consequence of the observations and criticisms made by the Inspector-General in the annual report?

**Mr Ray**—None that I am aware of, but I am happy to check with the relevant—

**Senator SHERRY**—If you could check.

**Mr Ray**—I could take that on notice and check.

**Senator SHERRY**—You check, because we have received information that the Inspector-General is to be nobbled to make it more restrictive and difficult for him to carry out his important tasks, and that there is an examination of the best ways to do that under way at the present time.

**Mr Ray**—We would not do that.

**Senator SHERRY**—You can assure me you would not do that?

**Mr Ray**—The Inspector-General has statutory powers.

**Senator SHERRY**—At the moment he has statutory powers; it is how they are about to be nobbled that we are interested in knowing.

**Mr Ray**—They are statutory powers that are given to him by parliament, not by us.

**Senator SHERRY**—You have no examination of ways in which the legislative base of the Inspector-General's powers can be changed or varied?

**Mr Ray**—That is a policy question, as you know, so it is going towards policy advice, but I am not aware of any examination.

**Senator SHERRY**—I am just examining the issue. I am not going to go to the individual policy advice about how you are going to attempt to nobble him, but I am interested in whether it is being examined.

**Mr Ray**—I have assured you that we are not attempting to nobble him, that the Inspector-General has statutory powers and that that is a matter for the parliament, not for us.

**Senator SHERRY**—Yes, of course, but it is a matter of what powers are going to be left after he has been restricted in his activities.

**Mr Ray**—That is a policy question.

**Senator Minchin**—There is a presumption in your question which the officer is denying the existence of.

**Senator SHERRY**—I think he is going to check on certain aspects.

**Senator Minchin**—No, he is denying the existence of the assumption upon which your question is based.

**Senator SHERRY**—At the moment there is no examination of the legislative basis in Treasury within which the inspector-general carries out his activities.

**Mr Ray**—As I said, that is a policy question and therefore is a bit difficult for me to answer. My answers were that Treasury certainly is not trying to nobble, to use your term, the inspector-general.

**Senator WONG**—I have one area of questioning—certain tax offsets which are discussed at Budget Paper No 1 in relation to Australia's tax offsets and various tax offsets for recipients of social security benefits. I refer to table G2, which appears at 548 of Budget Paper No 1. I may also refer to the tax expenditure statement 2005. As a matter of interest, when is the 2006 tax expenditure statement published?

**Mr Ray**—It is due by the end of January.

**Senator WONG**—Can I go to table G2. I presume that the tax expenditure of \$1.84 million for senior Australian tax offset relates only to that particular tax offset? Is that correct?

**Mr Ray**—Yes.

**Senator WONG**—Can you tell me what tax offsets are included in the next line item?

**Mr Gallagher**—In order to ensure that full rate allowees do not pay tax there is a beneficiary tax offset. There is also a pensioner tax offset which is available largely now to sole parents. Disability support pensioners do not need an offset because their pension is not taxable. They are the major ones: the beneficiary tax offset and the pensioner tax offset.

**Senator WONG**—Is the mature age workers tax offset included in that line item or is that separately accounted for?

**Mr Gallagher**—That line item is for recipients of social security.

**Senator WONG**—Are you able, on notice, to provide me with a disaggregation of that costing as between the different tax offsets which it comprises?

**Mr Gallagher**—I expect that the disaggregation is in the tax expenditure statement. We are finding exactly where.

**Senator WONG**—They commence at A28 but they seem to be aggregated there—that is at page 59, I think. I have a PDF copy so I am not sure if that correlates in terms of the pagination. For example, that line item there, which is 1.3 for the 05-06 year which correlates. That includes both the BTO and the PTO?



**Mr Gallagher**—We can look back to the underlying work. I will take the question on notice.

**Senator WONG**—I would appreciate that. Just to clarify: it is only pensioner tax offset and beneficiary offset that are included in the \$1.3 million costing; is that right?

**Mr Ray**—If you look at the description of the tax expenditure at page 55, it includes—

**Senator WONG**—Is this table A28?

**Mr Ray**—This is the entry for A28. It includes various income support payments, including Newstart and sickness allowance, various pensions and Australian education and training payments.

**Senator WONG**—So it is all those dot points. Can I have the disaggregation in terms of cost in relation to all of those components?

**Mr Ray**—We will take that on notice.

**Senator WONG**—Thank you. Are you able to do that for the forward estimate period that is set out in A28?

**Mr Ray**—Yes, we can take it on notice across the whole of the eight years.

**Senator WONG**—Are you able to tell me—and I assume this goes into your projections in relation to each particular number of individuals for each of the offsets—what the actual assumptions are regarding how many people will be claiming in each category?

**Mr Gallagher**—That would be a feature of the calculation, so we will take it on notice.

**Senator WONG**—Thank you. Do you analyse it—and I assume you would because the entitlement would relate to your social security recipient status—in terms of the number of people on DSP, sole parent payment, Newstart et cetera?

**Mr Gallagher**—For the tax extensions we do not do disability support pension because it is not taxable.

**Senator WONG**—Because it is not taxable—so sole parent pension or Newstart, which are the two, and sickness allowance.

**Mr Gallagher**—I would have to check. The numbers are compiled by the Australian Taxation Office. I am not directly responsible for the compilation of the numbers. We do run checks on the size of the estimate, but because I do not produce it I am not sure how extensively it is disaggregated.

**Senator WONG**—Is there anyone from the ATO who could just let me know what the data set is so I can clarify the questions I can put on notice?

**Mr D'Ascenzo**—We do not have anybody here at the moment that covers that information. If you put it on notice we will certainly work with Treasury to provide a response.

**Senator WONG**—I would appreciate that. I am interested also in numbers of particular claimant categories which are comprised in those estimates and the tax expenditure statement.

**Mr Gallagher**—Those numbers are obviously contingent on the income distribution—the taxable income distribution of those pensioners and beneficiaries—as well.

**Senator WONG**—I think on a previous occasion—and I cannot recall who answered this—I was asking some questions about the projected effects of the Welfare to Work policies in terms of the estimated numbers to move into work. I assume that those assessments underpin some of these projections?

**Mr Gallagher**—I am not sure to what extent that would be the case, given that I do not know that the Australian Taxation Office would have any particular expertise in the effect of Welfare to Work measures on beneficiary numbers or on pensioner numbers.

**Senator WONG**—No, but Treasury previously provided advice through estimates about the assumed number, or the estimated number, of people who would move into work from each of the benefit recipient categories arising out of the Welfare to Work changes. I have to say I cannot recall off the top of my head what it was; I think it was 109,000. I am not sure if that has been changed in terms of the revision.

**Mr Ray**—That is a different outcome. That analysis would have been done in our fiscal group.

**Senator WONG**—Yes, I understand that, but my point is that, if you are assuming more people are moving to work, you are assuming more people gain income and, therefore, it has an impact on your costing of a tax offset over the forward estimate period. No?

**Mr Gallagher**—That would have been desirable. I do not guarantee that is actually what has occurred.

**Senator WONG**—Fair enough. Has there been any change to that assumption in terms of what is in the 2005 tax expenditure statement about the numbers?

**Mr Gallagher**—The other thing, of course, that is important is that the number of sole parent pensioners and allowees who are in a taxable situation is quite a lot smaller than the total number of people on payment. Whatever number is in there is a very small proportion of those populations. In that sense the numbers do not correspond because there is a very small subset that actually are in a position to make use of the offsets.

**Senator WONG**—Are you able to tell me whether there is an assumption about entry into the benefit group which underpin the figures in the tax expenditure statement?

**Mr Gallagher**—As I said, I am not responsible for compiling these numbers, so I am not sure of the assumptions.

**Senator WONG**—Perhaps if you could take it on notice?

**Mr Gallagher**—I will take it on notice.

**Senator WONG**—I am seeking the assumptions on the inflow—that is, the number of people coming on to the relevant benefit—which underpin the tax expenditure statement estimates for each of the benefit recipient groups. Do you assume for the purposes of calculating expenditure a benefit level?

**Mr Gallagher**—I think the important thing is the nature of the assumption about taxable income. Taxable income will have included in it benefits. I doubt very much that it has been disaggregated separately in terms of the benefit component and the private income component.

**Senator WONG**—Could you provide me then with the assumptions as to taxable income which underpin those forward estimates?

**Mr Gallagher**—I will take that on notice.

**Senator WONG**—If it is available as a component of that, can I also have the assumption as to benefit level inbuilt into that? If I have questions about the movement into work, Mr Ray, I should put them on notice for your fiscal group. Is that right?

**Mr Ray**—That is correct.

**Senator SHERRY**—I want to go to some issues, and it probably will not concern you at this stage, Mr Gallagher, although your name is on some correspondence I have here. I want to go to some issues surrounding the preparation of the superannuation changes announced in the May budget and then a little later probably some detailed questioning about the contents therein. I will deal with the arrangements first. I will hand you a document from Treasury. You need not get too worried, Mr Ray, because this has come under freedom of information—there have been no leaks. Maybe I should have kept you a bit nervous. I will give a copy to Mr D'Ascenzo, because two of my questions might relate to the document. This is a schedule of documents—

**Mr Ray**—This is a document I am familiar with.

**Senator SHERRY**—You are familiar with it?

**Mr Ray**—Yes.

**Senator SHERRY**—Are you familiar with it, Mr D'Ascenzo? There is a reference to the Tax Office on the second page—author.

**Mr D'Ascenzo**—I am not familiar with this particular document, but I am sure we will assist as best we can.

**Senator WONG**—Sorry, could I just interrupt. Before I leave, I am just wondering, Mr Ray, what sort of time frame you believe it might take Mr Gallagher et al to compile that information?

**Mr Ray**—You asked them a lot of very detailed questions. If Mr Gallagher does not know the answers, they are going to take a while.

**Senator WONG**—I place on notice we would really appreciate them—

**Mr Ray**—Sooner rather than later.

**Senator WONG**—Sooner rather than later, thank you.

**Senator SHERRY**—This is a schedule of documents which I am sure you are familiar with. It relates to preparation of work carried out in respect of the government's superannuation reforms. That is a broad description of the projects listed, isn't it?

**Mr Ray**—Not all of these documents are.

**Senator SHERRY**—Could you indicate to me the documents that are not within that broad categorisation?

**Mr Ray**—Documents 12 and 13 are not. They are to do with tax expenditures. My recollection is that document 14 is a spreadsheet underlying the 2005-06 budget forecast for superannuation fund tax receipts.

**Senator SHERRY**—On the issue of whether they are relevant or not, if it is 2005-06, did it go past that year? If it did, it possibly would be relevant, given the impact of the changes starting from 1 July next year.

**Mr Ray**—Yes, but the changes were not announced until the 2006-07 budget.

**Senator SHERRY**—Okay. There is one issue I want to ask you about before I get into some detail on this. I understand that the changes announced in the budget—and certainly the Treasurer has stated this—will be presented to parliament by the end of this year and, presumably, passed at the end of this year. Have the impacts on income tax expenditures and long-term superannuation tax forecasts already been included in the longer term estimates?

**Mr Ray**—At the time of the budget, the government announced that an allowance of \$6.2 billion, I think it was, over the forward estimates had been included in the budget figuring. That figuring did not include departmental or agency expenses. That was express. As you are aware, since then the government has announced changes and a revised set of estimates, which I think is \$7.2 billion over the forwards. So the \$6.2 billion was in the 2006-07 budget numbers.

**Senator SHERRY**—So the impact of it is in all the relevant forecasts contained within the budget. Is there any exception?

**Mr Ray**—An allowance was included in the contingency reserve for the expense components. On the revenue side, an allowance was taken as an ‘other variation’.

**Senator SHERRY**—That relates to the \$6.2 billion but it obviously has not been updated. Would it be updated in the mid-year economic forecasts in terms of the new cost of \$7.2 billion?

**Mr Ray**—What is going to happen at MYEFO is that the amount that was included in the contingency reserve will be backed out and the expense component will be included as a measure. The amount taken as an ‘other variation’ to revenue will be backed out and the revenue components will be taken as a measure. So the net effect on the budget bottom line will be the extra \$1 billion.

**Senator SHERRY**—I accept that.

**Mr Ray**—Over the forwards, I am sorry.

**Senator SHERRY**—Yes. Some of the changes announced in the final package have an impact from 1 July budget night, don’t they, particularly the changes around undeducted contributions?

**Mr Ray**—I just need to get that.

**Senator SHERRY**—I am not getting into the detail of that but, presumably, they would have to be updated?

**Mr Ray**—The policy changes affect the 2006-07 by \$0.1 billion, and that is a difference from the budget announcement.

**Senator SHERRY**—The package has been finalised, you have indicated the measures are—was the expression ‘backed out’, ‘drawn out’?

**Mr Ray**—The allowance that was made in the 2006-07 numbers will be netted out.

**Senator SHERRY**—Will details be provided of the individual measures in the mid-year economic forecast?

**Mr Ray**—That is slightly hypothetical.

**Senator SHERRY**—Why?

**Mr Ray**—Because I do not think the Treasurer or the minister for finance have decided what they are going to publish in MYEFO yet.

**Senator SHERRY**—Minister, are the individual measures that have now been finalised going to be provided, the detailed costings in MYEFO?

**Senator Minchin**—I cannot answer that at this stage.

**Senator SHERRY**—Are the individual costings of the measures ever going to be provided? I did ask this on the last occasion and you indicated you were not sure at that time, but the package has now been finalised; it has been announced.

**Senator Minchin**—I do not have any subsequent advice to hand or in my head that would enable me to answer your question, but I will endeavour to get you an answer, perhaps, for tomorrow morning.

**Senator SHERRY**—Thank you. Coming back to the document, Mr Ray, we are considering, I understand that a round of work was carried out on the package. Are you familiar with the freedom of information request lodged by Mr McKinnon from the *Australian*?

**Mr Ray**—I am familiar with it, yes.

**Senator SHERRY**—You provided some documents in response to that freedom of information request, didn't you?

**Mr Ray**—We provided Mr McKinnon with redacted documents.

**Senator SHERRY**—With what?

**Mr Ray**—With copies of the documents excluding the parts which I decided were exempt in the initial case.

**Senator SHERRY**—You decided—I am aware that it was you who coordinated the response. There are a few other names here, including Mr Gallagher's, but I do not think he is relevant to this set of questions. I have a copy of these ‘responses’, if I could use that word somewhat sarcastically. The documents I have here contain no information, other than a couple of sentences of personal comment between officers. Not a skerrick of information on the package is released, other than the columns—and all the figures are blanked out. That is true, isn't it?

**Mr Ray**—We did not release material which is exempt under the act.

**Senator SHERRY**—I am going to get to that, but isn't it true that you provided documents to the *Australian* which have absolutely no factual information, calculations or commentary in any way, shape or form? There is absolutely nothing here.

**Mr Ray**—I do not think that is quite correct. My recollection is that some material was released.

**Senator SHERRY**—It has the dates and the years down the left-hand column, if that is your idea of information. That is there.

**Mr Ray**—In the case of at least one of the documents, most of the document was released.

**Senator SHERRY**—On what basis are you covering up and keeping secret this information that was requested? What is the big secret about this package?

**Mr Ray**—This is an FOI matter. It is also a matter which is on appeal to the AAT, I understand, so I have to be rather careful what I say. We just applied the FOI Act. It is just an application of the FOI Act.

**Senator SHERRY**—Your view of the FOI Act. Presumably you checked this off with someone?

**Mr Ray**—We take legal advice on the application of the FOI Act.

**Senator SHERRY**—So it was your view of the FOI Act, on advice. You did take advice on this one?

**Mr Ray**—We did take advice.

**Senator SHERRY**—Was it you who made the decision with respect to the documents that were authored by the ATO?

**Mr Ray**—Yes.

**Senator SHERRY**—Why was that? Because the request was made to you?

**Mr Ray**—Because the way the act operates is that it applies to documents within an agency's possession.

**Senator SHERRY**—It is open to the journalist concerned to go direct to the ATO in respect of the two documents that are identified as having originated from the ATO? It is open to take that approach?

**Mr Ray**—It is open for the applicant to apply to whomever he likes.

**Senator SHERRY**—Why the big secret about the costings, the measures—which we have not seen—and the general material around the preparation, the projections and estimates? What is the big secret?

**Mr Ray**—As you know, the detail of what gets published is a matter for the Treasurer.

**Senator SHERRY**—But in this case it was your decision, apparently. Did you reference this FOI to the Treasurer?

**Mr Ray**—No, this is a decision that was taken under the FOI Act. It is just an application of the act.

**Senator SHERRY**—In your considered view.

**Mr Ray**—I took a decision and it has been appealed. Someone else has taken another decision and now that is being appealed.

**Senator SHERRY**—In this case the Treasurer or his office were not involved?

**Mr Ray**—The Treasurer and his office were not involved in this decision.

**Senator SHERRY**—Did you inform the Treasurer's office about the request?

**Mr Ray**—The Treasurer's office is informed of all FOI requests as a matter of course.

**Senator SHERRY**—They were made aware of it?

**Mr Ray**—I do not inform them but they are informed.

**Senator SHERRY**—Was there any response from the Treasurer's office on this matter?

**Mr Ray**—I did not have a conversation with the Treasurer's office about it, but it is possible that there was some communication. I did not, and I am the decision maker.

**Senator SHERRY**—For what I would term the development phases and the documents we are considering, is it correct to make the general observation that, given the dates, a significant amount of the work was done in April 2005 prior to the '05 budget?

**Mr Ray**—These documents relate to a specific request, so it is a bit difficult to draw broad conclusions. It is clear from the dates on these documents that work was being done in April 2005.

**Senator SHERRY**—There are 11 areas in April 2005 and a couple in May 2005.

**Mr Ray**—You should not be surprised that work was being done because the Treasurer has said publicly he was thinking about this for a long time.

**Senator SHERRY**—I am not expressing surprise, I am just trying to get a clearer picture of the preparatory work that was undertaken and the time frame. I know it would be futile for me to ask for this material now and for you to take it on notice, given your position and the position of the Treasurer. We have touched on Budget Paper No. 2, revenue measures. There is no item included in respect to these measures in the tables in Budget Paper No. 2.

**Mr Ray**—We discussed last time that there had not been a decision at the time of the budget. The government released a plan for consultation, so there was no decision taken and there was no measure.

**Senator SHERRY**—But there is now to be a package of measures.

**Mr Ray**—A decision has been taken and, in the normal course, I think, under the Charter of Budget Honesty, measures will be included in MYEFO.

**Senator SHERRY**—That is the first bit of good news I have had today; that we will be seeing the measures and their costings, apparently.

**Senator Minchin**—That really goes to the question you asked me.

**Senator SHERRY**—It just seemed to me to indicate that we are going to get them.

**Mr Ray**—There will be something in MYEFO, I expect.

**Senator SHERRY**—Also, the Treasurer has indicated the legislation will be introduced this year.

**Mr Ray**—That is correct.

**Senator SHERRY**—Presumably, you are preparing, or have already prepared, the legislation as necessary.

**Mr Ray**—Yes, we have a large team working on it.

**Senator SHERRY**—I can imagine it would be a fairly extensive piece of work given the number of measures. Perhaps you could indicate the areas of legislation that will require amendment. Which particular laws will require amendment at this stage?

**Mr Ray**—I know the SI(S) Act will. I can get an expert to answer that question for you.

**Senator SHERRY**—That would be appreciated, thanks.

**Mr Lonsdale**—As you point out, the amendments to the law are extensive. It is a very big piece of work that is being undertaken. There are a number of amendments required to different areas of the Income Tax Assessment Act, and we are in the process of doing that.

**Senator SHERRY**—Are there other acts? SI(S) has been mentioned.

**Mr Lonsdale**—Yes, the SI(S) Act, and I would expect there would be a range of consequential changes flowing from the changes as well that we are still working through now.

**Senator SHERRY**—Are there any other particular acts that would need variation?

**Mr Lonsdale**—They are the main two, but, as I said, there will be consequential changes to other acts, I would expect, in the normal course.

**Senator SHERRY**—The Treasurer indicated this was to be introduced this year.

**Mr Lonsdale**—Correct.

**Senator SHERRY**—There was no date. Are you confident that the legislative package will be ready this year to meet that deadline imposed by the Treasurer?

**Mr Lonsdale**—We are on track.

**Senator SHERRY**—You are track?

**Mr Lonsdale**—We are on track.

**Senator SHERRY**—You are on track for what date?

**Mr Lonsdale**—That will be an issue for the Treasurer. What the Treasurer has indicated in his press release of 5 September is that legislation will be introduced into the parliament this year.

**Senator SHERRY**—We do not have too many more weeks of sitting, do we?

**Mr Lonsdale**—Correct.

**Senator SHERRY**—You are aware of that.

**Senator Minchin**—There are only two more weeks of the House of Representatives, so presumably it will be introduced in that fortnight.



**Senator SHERRY**—Yes, that is right. There is not long to go. So you are confident that we will see the legislation. In relation to the final budget outcome, is the impact of the proposed superannuation tax changes in those estimates? I think we touched on this earlier, Mr Ray.

**Mr Ray**—The final budget outcome is only for 2005-06.

**Senator SHERRY**—But in future budget outcomes?

**Mr Ray**—In future budget outcomes, certainly.

**Senator SHERRY**—Will the impact of the measures be separately identified or will they be aggregated with other measures?

**Mr Ray**—In the final budget outcome?

**Senator SHERRY**—Yes.

**Mr Ray**—I will leave the expenses side to someone who is an expert on expenses. On the revenue side, they will be included in the relevant revenue heads.

**Senator SHERRY**—Perhaps you could clarify this for me. We had some discussion about this last time and on previous occasions: where is the revenue from exit tax classified at the present time?

**Mr Ray**—In personal income tax.

**Senator SHERRY**—Did you check? Because I raised the issue of where it had been included previously—I had asked. I thought I had been told on a previous occasion that it had been included in superannuation tax revenue.

**Mr Ray**—I do not think we went back through every *Hansard* we could find, but it is included in personal income tax.

**Senator SHERRY**—Yes—and it has been for the last X number of years? Has there been any change in that status?

**Mr Ray**—As far as I am aware there has not been, because it is not a tax paid by a super fund or an insurance company.

**Senator SHERRY**—I have some other, more specific questions on the package but I will get to those later. Going back to general revenue issues, in today's *Sydney Morning Herald* the Treasurer states that the mining boom and the increase in commodity prices is over. I note that the final budget outcome for company tax in 2005-06 fell short by about \$1.493 billion.

**Mr Ray**—That is revenue.

**Senator SHERRY**—Yes. Are you examining the implications of the tapering-off of commodity prices—the slowing down or end of the boom, however we want to express it?

**Mr Ray**—I do not know that you should link the final budget outcome on companies with the Treasurer's remarks on commodity prices. As we explained in the final budget outcome for June, that was about balancing companies—and the companies are not, with one exception. It was across a range of industries where we saw a little less revenue than we had been expecting. As you are aware, we have a prudent projection assumption on commodity prices built into the forward estimates. So in our forward estimates we have been winding

back the prices of coal and iron ore over two years since, I think, the 2005-06 budget. In general, clearly our macroeconomic group colleagues are keeping a very close eye on what is happening in commodity markets.

**Senator SHERRY**—It has not yet reached the point where there would need to be a revision of those budget forward estimates?

**Mr Ray**—We will be providing the government with new advice for the mid-year economic outlook, and they will publish it.

**Senator Minchin**—Senator Sherry, if you read the budget statement from 2005-06—or from this budget, I am sorry; May—it makes clear the presumption in the budget, quite specifically, of a return to long-run average pricing. As the officer said, we have been quite prudent in assuming that, for the sake of the budget, there would be a gradual return to normality in pricing.

**Senator SHERRY**—We discussed it as a question of timing and whether it is happening more rapidly than was included in the forecast, or the assumptions on the forecast. But as you say, you will update us in the mid-year economic forecast if there is any change, Mr Ray?

**Mr Ray**—That is right.

**Senator SHERRY**—The fringe benefits tax for the final outcome in 2005-06 exceeded the budget estimate by about \$424 million, or 12 per cent, which is a fair variation. What was the cause of that?

**Mr Ray**—In the course of the year, fringe benefits tax was reclassified by the Australian Bureau of Statistics.

**Senator SHERRY**—Perhaps we should have kept them here.

**Mr Ray**—This was explained in the 2006-07 budget. It was reclassified to be a tax on the remuneration of individuals. That meant that fringe benefits tax paid on behalf of Commonwealth employees is now included in tax revenue. It is just a reclassification issue. That is about \$400 million.

**Senator SHERRY**—The other \$24 million is certainly within acceptable limits.

**Mr Ray**—It is a bit more than \$400 million, but it is what is driving that. It is just a reclassification.

**Senator SHERRY**—Yes. That is the reason.

**Mr Ray**—That is the major reason.

**Senator SHERRY**—The forecast for passenger motor vehicles customs duty of \$1.3 billion in 2006-07 and the final budget outcome for 2005-06 fell short by \$129 million from the 2005-06 estimate. What was the cause of that variation?

**Mr Ray**—I think the short answer is that it would have had something to do with clearances of passenger motor vehicles. I am not aware of the detailed reason; it is not something we have looked at closely, but I am aware—

**Senator SHERRY**—A 10 per cent variance—

**Mr Ray**—I am aware that there has been a change in the structure of sales of passenger motor vehicles, which may well have affected it during the course of the year.

**Senator SHERRY**—Would you take that on notice and just provide us with a bit more information as to the issue there?

**Mr Ray**—I can take it on notice to see if we can find you a bit more information.

**Senator SHERRY**—To turn to the impact of the superannuation package and the impact of that on income tax revenue, as we have discussed, included in the forward estimates over the next three years: was there any estimate done of the impact through to 2042?

**Mr Ray**—I think you discussed this at length with Dr Henry last time. We have not got a definitive estimate through to 2042 because it raises very complex issues about how you would go about calculating it.

**Senator SHERRY**—Just to be clear, no work is being done on that issue beyond the forward estimates area to date?

**Mr Ray**—We have done some general work, looking at the longer term implications of the package and some general thinking around its fiscal sustainability—which I think is the point you are getting to—and thinking around implications perhaps for participation and saving, but we have not done definitive modelling of those effects for various reasons. In the case of the long-term costs, it is because there are very complicated questions about the benchmark.

**Senator SHERRY**—I appreciate that. You say you have done some thinking—and it is a bit hard to FOI thinking—what do you mean by thinking?

**Mr Ray**—We have considered how over the long run the super package will impact, but we have not—

**Senator SHERRY**—You have not crunched numbers into a model?

**Mr Ray**—We have not crunched definitive numbers through a you-beaut model, because we do not have one that would do it for us.

**Senator SHERRY**—The fact that Treasury does not have one does not surprise me, but is there a model in this country that can crunch numbers in this area?

**Mr Ray**—We have got models that can crunch numbers, as you know. The question is how meaningful those numbers would be.

**Senator SHERRY**—You are crunching numbers in respect to the expenditures and the *Intergenerational report*, aren't you?

**Mr Ray**—Yes, but in the *Intergenerational report* it is basically looking at the expenses side.

**Senator SHERRY**—I agree. We discussed that on the last occasion.

**Mr Ray**—On the revenue side, for reasons which we discussed last time, or you discussed with Dr Henry, we have an assumption of a constant proportion of tax to GDP.

**Senator SHERRY**—It will have a long-term impact, won't it? It must have a long-term impact because there is no income tax being collected from a growing group of people over time.

**Mr Ray**—Whether it has a long-term impact on tax to GDP is a different question because governments—

**Senator SHERRY**—Hang on, that is not the question I asked, Mr Ray, so could we concentrate on the question I asked? Then if you want me to ask another question which you want to answer, fine, we will get to that point in a moment.

**CHAIR**—Senator Sherry, in fairness, he is entitled to respond as he chooses.

**Senator SHERRY**—Chair, to be fair, he is supposed to respond to my questions not questions he would want me to ask.

**Senator Minchin**—Senator Sherry, you did ask about the IGR and the calculations and projections based on the IGR. The answer was given in the context of the IGR, and quite properly. The IGR is based on a tax to GDP assumption.

**Senator SHERRY**—Let me go back to my question. The question was there will be a long-term impact on income tax collected as a consequence of the changes, won't there?

**Mr Ray**—Yes.

**Senator SHERRY**—There is thinking about this—

**Mr Ray**—I think that is quite clear because I think at the last estimates Dr Henry said that it is our view that it is sustainable. So we have clearly thought about it.

**Senator SHERRY**—You have thought about it. You have not crunched the numbers; and you have, I think rightly, touched on some of the difficulties about crunching the numbers. How do you come to a conclusion if you have thought about it, there is difficulty crunching the numbers and you do not have a model? How have you come to the conclusion that it is sustainable?

**Mr Ray**—Because on a strict no policy change basis tax to GDP will rise. Therefore it is just a question of what future decisions governments take.

**Senator SHERRY**—But the policy itself reduces revenue collected over time—income tax. That is the very basis of the policy: that people at age 60 will pay no income tax from their super.

**Mr Ray**—The basis for the assumption in the IGR, when you are looking at a very long run, is that successive governments have kept tax to GDP broadly constant. Therefore, over the long term we are expecting that.

**Senator SHERRY**—But the claim, rightly made—and it is correct—is that, at least in respect to the withdrawal phase, there will be no income tax. That does affect revenue. We know that as a matter of fact.

**Mr Ray**—For people over the age of 60.

**Senator SHERRY**—Yes, for people over the age of 60 that does affect revenue. What you are saying is that despite that future governments will ensure that revenue to GDP remains a constant.

**Mr Ray**—What we are saying is that future governments will have plenty of room on the tax to GDP side.

**Senator SHERRY**—So future governments will have plenty of room on tax to GDP. We do know that the package will result in a reduction in income tax revenue that would otherwise be collected—we do know that, do we not? That is the point of it for these people.

**Mr Ray**—The issue here is that the tax to GDP ratio in 2042, or whenever, we do not think is going to be affected by the package.

**Senator SHERRY**—Why not?

**Mr Ray**—Because we think that it will affect choices for future governments but not significantly.

**Senator SHERRY**—So future governments will make choices, policy decisions, that will keep the percentage of revenue as a percentage of GDP.

**Mr Ray**—No, I did not say that. What I said was that future governments would make choices. One of the obvious choices that future governments have is how big a government sector to have. That is a public choice question; it is not a question we can—

**Senator SHERRY**—I accept that. So future governments can make policy changes that they determine fit.

**Mr Ray**—That is right. The other thing is that this package is smaller than the personal tax cut package that was in the last budget, for example.

**Senator SHERRY**—As of today, yes, that is true. Are you aware that approximately 18 per cent of the population are currently over the age of 60?

**Mr Ray**—I am not aware of the precise number, but I will take your word for it.

**Senator SHERRY**—Are you aware that by the year 2042 40 per cent of the population will be over the age of 60?

**Mr Ray**—Is that the ABS's latest projection?

**Senator SHERRY**—Yes, I think it is.

**Mr Ray**—We are certainly aware of the ABS's latest projections.

**Senator SHERRY**—I would not hold you to the precise figures. We are not talking about raw numbers here; we are talking about the percentage of population. So you are generally aware that the percentage of the population over the age of 60 will more than double over the next 40 years? You are aware of that general change that is going to occur?

**Mr Ray**—Yes, we are aware of that general change that is going to occur. It underpins the IGR.

**Senator SHERRY**—I would be surprised if you were not aware of that. I just wanted to get it out on the record. So Treasury's assumption is that tax as a percentage of GDP will remain the same. We know that.

**Mr Ray**—That is the assumption that underpins the IGR; it is not our assumption about what will—

**Senator SHERRY**—It is not your assumption?

**Mr Ray**—That is the only sensible assumption that we think we can make in the context of the IGR. We are not trying to forecast what future governments would do.

**Senator SHERRY**—So that is the assumption in the IGR. That is the assumption with which you have approached this issue.

**Mr Ray**—It is one of the factors in the way we have approached this issue.

**Senator SHERRY**—We do know that the measures announced will lead to a long-term reduction in income tax that would otherwise be collected. That is an obvious outcome, isn't it?

**Mr Ray**—Yes. But we do not necessarily know that that means the tax to GDP ratio in 2042 will be lower than it otherwise would be.

**Senator SHERRY**—Yes, I agree with you. Logically, it is open to future governments to make changes in respect of tax—

**Mr Ray**—That is right.

**Senator SHERRY**—to ensure that the tax to GDP ratio remains where it is, which is your basic assumption going through to 2042.

**Mr Ray**—Or wherever they want to put it.

**Senator SHERRY**—So it is open to government, and within that assumption of tax to GDP remaining constant, future governments may make some change to keep it constant.

**Mr Ray**—They may.

**Senator SHERRY**—Yes. There has been no specific modelling on the participation impact of this package?

**Mr Ray**—As I think we have discussed on several occasions, we are trying to build capacity to model participation impacts of not just this package but all sorts of options. We do not have that capacity developed to a stage where we could do the work.

**Senator SHERRY**—Yes, I accept that.

**Mr Ray**—We do not have that capacity.

**Senator SHERRY**—Yes, okay. I am just trying to identify what work is being done on the impacts of the package. We know no specific long-term work has been done on the effect on income. You have a general assumption about tax to GDP, but no specific work has been done on that. Has any work been done to date on the participation in the labour market?

**Mr Ray**—We have done some analysis of potential, of how it might effect participation.

**Senator SHERRY**—You have done some.

**Mr Ray**—But it is, if you like, conceptual analysis—

**Senator SHERRY**—Conceptual analysis.

**Mr Ray**—rather than quantitative modelling.

**Senator SHERRY**—Yes. So there has been no quantitative modelling on that particular aspect. What about workforce participation?

**Mr Ray**—That is what we have been talking about.

**Senator SHERRY**—That would include both pre 60 and after 60?

**Mr Ray**—That is correct.

**Senator SHERRY**—So there has been no specific modelling on that aspect of the package. Has there been any specific modelling on private savings outcomes?

**Mr Ray**—No. I think Dr Henry said he has little doubt that it will increase private saving because the tax treatment of private saving has been made that much more concessional.

**Senator SHERRY**—But you have done no modelling on it.

**Mr Ray**—I do not think you should pin everything on modelling, Senator.

**Senator SHERRY**—So we are relying on the expertise of you and Dr Henry in this regard?

**Mr Ray**—And on rather a lot of economics. I do not think it is a question of relying on an expert opinion; it is a question of thinking that if you substantially increase the concessionality of private saving you would expect that you would get more private saving.

**Senator SHERRY**—There is a question that concerns the United Nations standard product and services code, which is a question for OPS, who are now not coming. I want to go to another area of revenue—that is, tax losses. This is not an issue for tax officers; it is an issue for Treasury revenue. In January of this year a review was commenced in the division for tax loss recoupment. The government proposed a cap on the same business test for claiming tax losses for companies who have restructured; where is that review up to?

**Mr Flavel**—Submissions were received earlier this year, and the matter is still under consideration by government.

**Senator SHERRY**—When approximately did submissions close?

**Mr Flavel**—My recollection is that they were requested by the former minister for revenue by 31 January.

**Senator SHERRY**—Who did they go to? Who is coordinating this submission work in Treasury?

**Mr Flavel**—My recollection is that the submissions were addressed to the business tax division in Treasury.

**Senator SHERRY**—Is that you?

**Mr Flavel**—It is the division I work in, yes.

**Senator SHERRY**—What has happened to them? There is obviously a working group on this project, isn't there?

**Mr Flavel**—I think it is important to note that changes in legislation were passed late last year to the company loss recoupment arrangements. They continue on. The government will get to the point of considering those submissions and any relevant policy changes that emanate from them.

**Senator SHERRY**—I know there were changes last year. Is there an officer responsible for coordinating this work in your area? There must be someone who has got these things somewhere.

**Mr Flavel**—Yes.

**Senator SHERRY**—Well, who is it?

**Mr Ray**—The general manager for the division is responsible.

**Senator SHERRY**—Do you know, then, who is coordinating this work? You must know who has got it.

**Mr Ray**—It is being coordinated in our business tax division.

**Senator SHERRY**—Who by?

**Mr Ray**—I do not know.

**Senator SHERRY**—It is a matter of fact. Is there an officer here who can give us a bit more detail?

**Mr Flavel**—I am happy to give you some detail, if you like.

**Senator SHERRY**—Oh good! Can we start with who is coordinating this work? Do you have a unit set up to do it? What is so hard about that question? Yes or no.

**Mr Flavel**—There is a unit. There is a large business unit, and that would form part of their work.

**Senator SHERRY**—How many officers are working on this at the present time?

**Mr Flavel**—I am not sure I could go to the point of allocating a particular percentage of time.

**Senator SHERRY**—How many officers? Is there one person responsible for coordinating it? Presumably there would have to be. It may or may not be taking up any of their time, or all of their time.

**Mr Flavel**—For instance, I have been involved in that process.

**Senator SHERRY**—You have been involved in this process. We are slowly and gradually getting somewhere. How many other officers have been involved in the process?

**Mr Flavel**—There will probably be one or two other officers involved in a part-time or as-required capacity, looking at those submissions and providing advice.

**Senator SHERRY**—I am not going to go to the detail of advice, but has a document gone to the Treasurer's office on this matter yet?

**Mr Ray**—That gets a bit close, as you know.

**Senator SHERRY**—Yes, but it is not over the line. I am not asking about what is in it; I am just asking whether a document has gone to the Treasurer's office on this matter.

**Mr Ray**—We are happy to take it on notice.

**Senator SHERRY**—You must know. I just do not see what the difficulty is with this.



**Senator Minchin**—It goes to the internal workings of government. I think it is better that they take it on notice.

**CHAIR**—He said he would take it on notice. He can do that.

**Senator SHERRY**—The point is that I do not think he should take something like that on notice. It is a matter of fact. Either it has gone or it has not.

**Senator Minchin**—There are lots of asserted facts that may or may not occur that do go to the internal workings of government and policy advice that officers have to be careful about. They will take it on notice and see if they can give you an answer.

**CHAIR**—Senator Sherry, I think an officer is at liberty to take any question on notice if he feels that he wants a more considered response than he is able to give extemporaneously. If that includes considering whether or not it is a question he can properly answer, I think that is a perfectly proper thing to say.

**Senator SHERRY**—Do you think he can answer that?

**CHAIR**—I do not have an opinion on the matter.

**Senator SHERRY**—On previous occasions you have had an opinion—

**CHAIR**—No. I do not have an opinion—

**Senator SHERRY**—and have made rulings indeed about what is proper.

**CHAIR**—except on the question of whether or not your questions are proper questions. He has said he will take it on notice, and I think he is entitled to do that.

**Senator SHERRY**—What is the stock of tax losses potentially claimable as deductions by business, approximately?

**Mr Ray**—The latest data on that will be in the 2003-04 tax statistics.

**Senator SHERRY**—Has there been any updating of that?

**Mr Ray**—The tax office will be working on the next edition early in the new year I would think. There are considerable lags in information, particularly in company tax. I should say we would prefer to get more up-to-date information ourselves. That is not a question of being difficult.

**Senator SHERRY**—Are you primarily dependent on the tax office for that information?

**Mr Ray**—For detailed information on taxation statistics we are primarily reliant on the tax office.

**Senator SHERRY**—Has any date been set for the completion of the review?

**Mr Flavel**—Not that I know of.

**Senator SHERRY**—None at all. Was any date set for when the report may or may not be issued publicly?

**Mr Flavel**—No.

**Senator SHERRY**—I want to turn to some issues on GST implementation review. What is the normal process for the consideration of post-implementation tax reviews?

**Mr Ray**—These are reviews conducted by the Board of Taxation; is that what you mean?

**Senator SHERRY**—No. I understand there is a review of GST implementation being undertaken at the moment.

**Mr Colmer**—I am not sure what you are referring to. There is no post-implementation review of the GST in the broad, if that is what you are referring to.

**Senator SHERRY**—There appears to have been uncertainty created by some ATO rulings on GST matters, question mark. Is Treasury examining any aspects of ATO rulings on GST matters at the present time?

**Mr Colmer**—We are always in contact with ATO over details of rulings. It is a fairly routine matter for us to work with the ATO on rulings. The ATO often seeks our advice. Whilst the ATO has the primary role for interpreting the law, they often seek our clarification as to what the policy intent behind particular provisions might be. But, in a broad sense, whether there is a review of the ruling process itself, the answer to that is—

**Senator SHERRY**—No, not the ruling process itself, I mean for GST rulings.

**Mr Colmer**—You will recall, I suspect, that the review of self-assessment made some suggestions about extending the rulings process more broadly to other taxes apart from income tax, and that is still under consideration, but there has not been any formal decision as to where that is going to go.

**Senator SHERRY**—Are there any particular rulings on GST being examined by your section at the present time?

**Mr Colmer**—I would have to take on notice exactly what we have in front of us at the moment. I am not sure, and the ATO would probably have these figures more at hand, but there is probably something in the order of a dozen significant GST rulings every year, or something of that order. We would be working with the ATO on some or all of the current ones, depending on what the exact—

**Senator SHERRY**—Do any particular rulings come to mind that you are working on with the ATO?

**Mr Colmer**—We have been working, for example, on a ruling around the meaning of the appropriations provisions under the GST. That is something that has been in development for some time and is an example of one of the things that we have done. There are other rulings where the ATO has sought our advice around policy intent.

**Senator SHERRY**—Any other areas?

**Mr Colmer**—There is a ruling around cancellation fees and the GST treatment of them, which we are working on at the moment. I could get you a list of ones that are proposed. The ATO does publish a detailed list of its rulings program on the website.

**Senator SHERRY**—I am aware of that. It is whether there is any examination from a legislative perspective about the rulings. I can go to the ATO about the rulings themselves, but it is the interface with the legislative area that I am going to here.

**Mr Colmer**—As I said, as a fairly routine part of preparing a ruling the ATO will often seek our advice on what the policy intention of a particular piece of legislation was. That is

nothing at all unusual. I am not sure whether there is something in particular you are looking for.

**Senator SHERRY**—Is any work being done on any legislative change with respect to the GST?

**Mr Colmer**—Are you asking whether we proposing any legislative change in response to specific ATO rulings?

**Senator SHERRY**—Yes.

**Mr Colmer**—At the present time, no, not that I am aware of.

**Senator SHERRY**—Some areas of the business community have raised issues around aspects of GST rulings.

**Mr Colmer**—That is right.

**Senator SHERRY**—And some areas of the business community have requested a general review of the implementation of the GST. Are you aware of that?

**Mr Colmer**—Yes, that has been raised from time to time.

**Senator SHERRY**—Has there been any examination of the costs and benefits of a general implementation review of the GST?

**Mr Colmer**—There has been no detailed consideration of an overarching postimplementation review of the GST. We have had that raised. I cannot remember exactly who it was; it was one of the professional bodies—I would not like to name them because I would have to check exactly who it was. But somebody suggested a five-year review in 2005. We did give it some consideration, but it is not under active consideration at the moment.

**CHAIR**—Because Senator Fifield has a short bracket of questions to the Australian Bureau of Statistics, I thought we would get them on before dinner so they can be excused. If you were about to move on to a new topic, Senator Sherry, you might do that now.

**Senator SHERRY**—Yes—imputation credit to foreign shares revenue issues.

**Mr Ray**—Could I clarify an answer I gave earlier?

**CHAIR**—Yes, of course.

**Mr Ray**—Senator Sherry asked me about FBT in the final budget outcome. Were you talking about the difference between the final budget outcome and the 05-06 budget estimate or the difference between the 05-06 budget outcome and the 06-07 estimate of it?

**Senator SHERRY**—It was that 05-06 exceeded the budget time estimate by \$424 million.

**Mr Ray**—The \$424 million helps me. I was confused. I thought you were comparing the 05-06 outcome with the 05-06 budget estimate, which is \$400 and something million, which is basically because of the classification issue we discussed. The difference between the 06-07 estimate and the final budget outcome for 05-06 is \$424 million. Those are on the same base; they have the same classification. What was driving that is that we received fewer receipts than we were expecting and there was stronger growth in FBT receivables than we were expecting.

**Senator SHERRY**—Why did you receive fewer receipts than you were expecting?

**Mr Ray**—There were fewer fringe benefits tax receipts than we had expected.

**Senator SHERRY**—But why? It is a fair variation. There must have been some analysis of why that happened. Maybe you can ponder on that over the break.

**Mr Ray**—Clearly, there were fewer fringe benefits.

**Senator SHERRY**—I accept that; that is obvious. But there has to be some underlying reasons as to why there were fewer fringe benefits. Maybe you could just give it some consideration over the break.

**Mr Ray**—Yes, I will reflect on it over the break. I was confused about which comparison.

**CHAIR**—We might return to that when we resume at eight o'clock.

[6.18 pm]

#### **Australian Bureau of Statistics**

**CHAIR**—I welcome to the table officers from the Australian Bureau of Statistics.

**Senator FIFIELD**—Mr Harper, did you have a happy census?

**Mr Harper**—We did have a very happy census, and we would like to thank the people of Australia for their cooperation.

**Senator FIFIELD**—Very good. Are you in a position to give us an indication of compliance with the census at this stage, or is too early?

**Dr Tam**—Yes, I can give you an indication of compliance. We had a very high degree of cooperation. I think at this stage there are roughly 15,000 people who have not yet complied with filling in a census form, and we are still working with the non-respondents to get their cooperation and to get them to fill in a census form.

**Senator FIFIELD**—That is 15,000 out of how—

**Dr Tam**—20.5 million.

**Senator FIFIELD**—That is not too shabby at all. Congratulations.

**CHAIR**—Better than the AEC does.

**Senator FIFIELD**—Better than the AEC. I guess the census is one of the few things that the government compulsorily requires, along with filling out your tax returns and voting. Would you agree, Mr Harper, that the success of the census depends on the ABS maintaining not only the trust of the public but also their goodwill?

**Mr Harper**—Certainly. We rely on the goodwill of the population.

**Senator FIFIELD**—Perhaps that goodwill is even more important than the ABS's powers of compulsion or fining?

**Mr Harper**—Yes, that is the case. In fact, we collect the census form without necessarily resorting to our powers of compulsion. It is only in the residual cases that Dr Tam mentioned that we invoke those powers of compulsion.

**Senator FIFIELD**—So you are pretty happy with the goodwill you have on the whole?

**Mr Harper**—It is very good.

**Senator FIFIELD**—I would like to put a scenario to you which I think might inadvertently be undermining the goodwill that the ABS has with the census. As you well know, the census occurred not that long ago—on 8 August. Less than a month after that a member of the public—I am sure they were not the only one—received a letter headed, ‘Dear Resident,’ about the ‘census post-enumeration survey’. The first thought of the person who received this letter was, ‘Hang on a tick. I’ve already filled out the census. Why am I being asked to do this again?’ The letter states the survey will provide information ‘to assist the ABS to produce better quality estimates’ of the Australian population et cetera. When you read the purpose of the post-enumeration survey given in the letter received by the member of the public, you note it sounds very similar to that of the census itself, so there was some confusion in the case of the particular individual who received it. I think that the title ‘census post-enumeration survey’ is not necessarily the most punter friendly or most illuminating phrase.

The person who received this letter had a fairly busy week. Within a number of days they received—literally shoved under their door—a flyer which, unlike the original letter, was not personally addressed. It was again headed ‘census post-enumeration survey’ and in bold were the words: ‘Is the survey compulsory?’ It refers to the act. It says this act ‘authorises the ABS to ask the questions included in’ the census post-enumeration survey. At this time ‘you are being requested to answer the questions’ but if the Australian Statistician ‘directs you in writing to provide the information you are legally obliged to do so’. Within a month of the census, within days of receiving the request for the census post-enumeration survey, someone who had a fairly cooperative point of view received what seemed a fairly heavy-handed sort of letter, so the recipient was further taken aback.

The final part of this particular story is that an ABS official turned up unannounced—without an appointment—at 8.30 pm on a Friday. As a politician, I know people are not exactly thrilled when I am door-knocking, as I do sometimes, and I knock on their doors in the middle of the day. I can imagine how well an ABS official on a Friday night at 8.30 was received. I would be interested in your comments on that particular scenario and how it unfolded.

**Mr Harper**—I will make a few general comments and then hand over to my colleagues, who might be able to provide some more details. The first comment I would make is that the census is a very expensive exercise. We want to get the highest quality result out of the census as a result of the taxpayers’ funds that go into it. The post-enumeration survey, which approaches a very small proportion of the population, is an essential element for quality-assuring those census results.

It may be that we could improve the communication we have with the people who are selected in that survey. We will certainly look into that. But it is important that we run a high-quality PES in order to quality-assure the census itself. We need to do that very quickly after the census because the PES asks questions about the census and obviously the longer we leave it the more the chances are that people will forget what they happened to do with regard to the census form.

In terms of the statement about the compulsion of the survey, that is a fairly standard ABS statement where we request cooperation, but we have power to direct, if the Statistician chooses to do so. That is because we always get the question, 'Is this compulsory?' We have come up with that form of words in order to let people know where we stand legally. As far as the particular operations of the PES is concerned, Ms Dunlop, do you want add anything further to that?

**Ms Dunlop**—It is usual practice for us to have a primary approach letter, something that lets the person who has been selected in the survey know about the survey and that in this case we would be calling to interview them and the purpose and the importance of what we are about. That would be normal. I guess the time at which the interviewer calls—I cannot comment on the specific case but usually do try and call at a time when we can find people at home. I do not know whether they made earlier calls or not and were not able to make contact. We basically try to get a time which is suitable to respondent to conduct the interview. If we come at an inappropriate time for the respondent we would normally try to set a more appropriate time.

**Senator FIFIELD**—Could I perhaps ask that the ABS does have a look at seeing if there is a more friendly sensitive way of conducting the post enumeration survey. I am not being critical of the substance of the exercise, it is more the form and the style. I only raise it to help the ABS maintain the good will of the public and to assist in voluntary compliance. If I could leave that with you. Congratulations on conducting a fantastic census, that is a great compliance result that you have. This might be an opportunity where it could be a little more sensitive, a little less heavy-handed, but still get the same result.

**Mr Harper**—Thank you for your comments. We take those comments very seriously. While I think we run very good both household and business surveys in the ABS, certainly as well as any other country in the world does, there are always areas in which we can improve and we are always looking to make improvements. Thank you for that feedback.

**CHAIR**—Thank you Senator Fifield, thank you gentlemen and Ms Dunlop, you are excused. The committee stands adjourned until 8 pm this evening.

**Proceedings suspended from 6.27 pm to 8.01 pm**

**ACTING CHAIR (Senator Berdardi)**—I call this meeting of the Economics Committee to order. This is a continuation of the Treasury portfolio, outcome 3, and the Australian Taxation Office.

**Mr Ray**—Mr Chairman, I took a question from Senator Sherry on notice before the break and I would like to provide an answer, if I could.

**ACTING CHAIR**—Please do.

**Mr Ray**—The question I took related to who sought the opinion in relation to the inspector-general's powers, and I am advised that it was the inspector-general who sought the opinion. Under the legal services direction, standard procedures are that the portfolio agency is involved. In this case, the inspector-general sought that opinion in consultation with us, the Treasury and the tax office, so all three of us were involved.

The other matter that you asked me to look at over the dinner break, Senator, was the reason for the difference between the 2006-07 estimate for 2005-06 FBT and the outcome, which difference is \$420 million in revenue. I said before the break that there was an underestimation of receipts of over \$200 million and there were higher than expected receivables. This is a matter that we have been looking at for some time, and in the dinner break we still did not add anything further to our knowledge on that, so we would need to take it on notice because at this stage we do not have a clear answer as to what drove it.

**Senator SHERRY**—Thank you.

**Senator Ellison**—Mr Chairman, before we continue I will point out that I am filling in for Senator Minchin for the evening shift.

**ACTING CHAIR**—Thank you very much. I will point out that I am filling in for Senator Brandis. Senator Sherry?

**Senator SHERRY**—I'm not filling in for anyone! I want to deal with the revenue areas of Treasury, so they can go when completed, rather than swinging back and forth between Treasury and the tax office. Coming back to the issue of revenue forecasts, I note that in the budget papers this year, the forecast total cash taxation receipts for 2006-07 were \$213.2 billion and company tax receipts were \$56.1 billion. Have there been any developments since then that would affect these forecasts?

**Mr Ray**—Since the 2006-07 budget forecast?

**Senator SHERRY**—Yes.

**Mr Ray**—In broad terms, we now have the final budget outcome for 2005-06, whereas at budget time we just had an estimate. We now have the June quarter national accounts. We also have other economic indicators that have come out since then, particularly on the labour market, and we have some more collections information that will be available to us as we put together another forecast, which we will do in the lead-up to MYEFO. So there have been developments that will affect the forecast, but I cannot say how.

**Senator SHERRY**—You have identified possible issues but no detailed estimate of how it will impact?

**Mr Ray**—No. As I think we discussed earlier, the government will release a new forecast with the mid-year outlook.

**Senator SHERRY**—The final budget outcome suggests company tax revenues in 2005-06 fell short by about \$840 million.

**Mr Ray**—In cash terms?

**Senator SHERRY**—Yes.

**Mr Ray**—That is correct.

**Senator SHERRY**—What were the reasons for this? Are there any consequences for company tax revenues in the current year and subsequent years of the forward estimates?

**Mr Ray**—In the final budget outcome we explain that we had weaker than expected growth in the wash-up payments of small June balancing companies across a number of

sectors. As I said earlier, it is not a particular sector of the economy—it is across manufacturing, construction, retail and wholesale services. We are still examining what the implications of that slightly weaker outcome in 2005-06 will be for 2006-07, but in cash terms we still saw very strong growth—over 21 per cent—in company tax receipts in 2005-06.

**Senator SHERRY**—But you are examining that wash-up, as you expressed it, for its potential impact going forward.

**Mr Ray**—Certainly, but it is not a particularly large difference.

**Senator SHERRY**—We touched earlier on the consequences of a downturn in commodity prices. Is profitability expected to be maintained as a consequence of increased volumes in respect of mining?

**Mr Ray**—In the 2006-07 budget estimates there are expectations of increased volumes.

**Senator SHERRY**—But the question was: would profitability be expected to be maintained, given increased volumes?

**Mr Ray**—The budget forecast for 2006-07 had company tax receipts growing by a shade under 13 per cent, and that has not all been driven by mining.

**Senator SHERRY**—No, I understand that, but a large part of it is driven by mining, isn't it?

**Mr Ray**—Yes. The question would be: what has happened to commodity prices since the budget and what is happening to expectations on volumes? They are questions that our macroeconomic colleagues are examining as they put together their input for the next forecasting round.

**Senator SHERRY**—Again, we touched on this earlier. The budget was formulated on the assumption that commodity prices would return to the long-run trends in two steps. I think in the previous estimates we discussed this in some detail—the two steps over the two- to three-year period. That is the approach, isn't it?

**Mr Ray**—Yes. That is certain commodity prices—the high-volume ones, such as coal and iron ore prices.

**Senator SHERRY**—Mineral commodities, not agricultural commodities, of course.

**Mr Ray**—Not all mineral either—coal and iron ore.

**Senator SHERRY**—Whilst we are on the issue of commodities, what about agricultural commodities? Surely there must be a close examination now of the agricultural volumes and production as a consequence of the drought.

**Mr Ray**—Clearly. Again, the details of that are more for our macroeconomic colleagues, but clearly we would be looking at the implications of the drought.

**Senator SHERRY**—Can you update the committee on what work has been done on the quantum of increased revenues that can be considered cyclical as opposed to structural?

**Mr Ray**—Over the years I think you have had long discussions with various of my colleagues on this question.

**Senator SHERRY**—Yes.



**Mr Ray**—As you know, it raises very complicated questions. Again, my colleagues in the macroeconomic policy division look at that sort of question, but I think their answer to you is always that that is not the way we think about it. On the revenue side, again it is not the way we think about it. Our job is to forecast revenues from a top-down approach, so we are looking at how much revenue we are getting in aggregate and we do not go into what is cyclical and what is structural.

**Senator SHERRY**—I certainly recall the previous conversations over 10 long years about this matter from time to time. What I was leading up to is that it has never been quantified as a cyclical component.

**Mr Ray**—Of revenues? No, Senator. As I said, we do not look at it in that way. We do not think it has much meaning.

**Senator SHERRY**—Isn't it the case that the OECD has been working with Treasury on estimating the structural and cyclical components of revenue?

**Mr Ray**—Of revenue?

**Senator SHERRY**—Increasing revenue.

**Mr Ray**—The OECD has done some work on the possible impact of terms of trade changes, but I do not know that that goes to cyclical and structural in the full sense in which you are talking about.

**Senator SHERRY**—Are you aware of this fellow Mr David Turner of the Organisation for Economic Cooperation and Development? I understand he has been working with Treasury on this issue.

**Mr Ray**—I am not aware of Mr Turner. He has not been working with the revenue forecasters.

**Senator SHERRY**—I was going to say I would go to it, but half of it is in French and the fourth page is blank. It must have been obtained under freedom of information. So if Mr Turner has been working with Treasury, which area would it be with?

**Mr Ray**—If you are talking about this question of cyclical and structural components, it is our macroeconomic group.

**Senator SHERRY**—I might quiz them on Mr Turner's activities.

**Mr Ray**—I will let them know.

**Senator SHERRY**—I know they are down there at Treasury watching all of this, keeping an eye on things. We learnt that, I think, at the estimates round eight years ago. I will leave that for them. There was recently released an AMP-NATSEM report on effective marginal tax rates. Are you aware of that, Mr Ray?

**Mr Ray**—Yes, Senator.

**Senator SHERRY**—It was titled *Trends in effective marginal tax rates 1996-97 to 2006-07*. Are you the appropriate officer to go to this document?

**Mr Ray**—I am one of them but Mr Gallagher will come and help me, no doubt.

**Senator SHERRY**—Do you have a copy of the document there?

**Mr Gallagher**—I do have a copy of the document here.

**Senator SHERRY**—Thanks, Mr Gallagher. You have come well prepared. I notice on pages 16 and 17 the report found that for several types of families there are more people facing very high effective marginal tax rates—and NATSEM defines that as above 50 per cent—in 2006-07 than in 1996-07. That is correct, isn't it?

**Mr Gallagher**—The main finding of this report is that the focus of the incidence of higher EMTRs has moved away from low-income groups in poverty traps and away from part-time workers more to groups who have a full-time worker in the family, because the higher EMTRs in this report are associated with the extension of the family payment system and the eventual withdrawal of the family payments. What they are finding in this analysis is that, because the amount of family tax benefit has been increased substantially, thresholds for family tax benefits have been increased and there has also been a taper reduction, there are higher income families who are subject to EMTRs than there were when they looked at this previously.

**Senator SHERRY**—When you say 'higher income families', you are not referring to high-income families?

**Mr Gallagher**—No, I am not saying 'high'.

**Senator SHERRY**—Further up the income scale?

**Mr Gallagher**—This report has moved from talking about the effective marginal tax rates on very low income families to those approaching more income. They have also shifted their benchmark of high from 60 per cent down to 50 per cent. That corresponded to the fact that overall they had found that effective marginal tax rates had dropped in the population.

**Senator SHERRY**—It does show that the proportion of couples with children who face EMTRs above 50 per cent rose from 4.5 per cent in 1996-97 to 13.8 per cent.

**Mr Gallagher**—There are important reasons for this.

**Senator SHERRY**—You are really jumping in here, Mr Gallagher. That is great.

**Mr Gallagher**—Back in 1996-97 we still had what was essentially the family allowance supplement system and a family allowance system. Family allowance supplement had a comparatively low threshold and was tapered off at 50 per cent, so it went out of existence fairly quickly. Beyond that, family allowance was a flat rate, then there was a sudden-death cut-off. Now you have a 20 per cent taper, so the group affected by the taper is longer than it was before.

**Senator SHERRY**—And larger.

**Mr Gallagher**—And the sudden-death cut-off that was at the end—so if you had \$1 more you lost all of your family allowance—has been replaced by a taper itself. It is not surprising, in that situation where you have lowered a taper so it covers a broader range of family and have changed the sudden-death taper, that more families have a withdrawal of payment. The point about this is, as was confirmed by the NATSEM piece published in last week's paper, that the disposable incomes of the families are appreciably higher.

**Senator SHERRY**—Would the same reasoning be behind the increase in sole parent families who face very high EMTRs which increased from 7.9 to 19.6?

**Mr Gallagher**—Certainly the family tax benefit changes and, in particular, the changes to the minimum family tax benefit are likely to affect those families. What has actually happened with those people on sole parent pension is that the withdrawal of the pension has dropped from 50 per cent in 1996-97 and now the taper on the pension is 40 per cent, so the taper has been reduced. I expect that it is the family payments again which are driving that particular result.

**Senator SHERRY**—I note also that, on page 7, it says about 910,000 Australians keep less than half of their next dollar of private income and, of those, 460,000 would keep less than 40 cents of their next dollar of income. Are there any other factors, other than those we have just touched on, that would explain why so many Australians are facing these high effective marginal tax rates?

**Mr Gallagher**—In terms of where the incidence comes from, their withdrawal rates in the allowance system, which contribute to this result; in particular the one that has come to attention is the withdrawal on parenting payment partnered. Parenting payment partnered is an allowance paid to a wife normally of a Newstart allowee but you can have the situation that, just as Newstart allowance is tapered at zero, then 50 then 60, it is also the case that parenting payment partnered is tapered off at 60 cents in the dollar. That contributes to the higher EMTRs. That taper used to be 70 cents in the dollar in 1996-97. So it has come down but it is still catching some people in terms of the effective marginal tax rate.

**Senator SHERRY**—This is probably more a question for you, Mr Ray: do very high EMTRs discourage people from entering the workforce or working a greater number of hours?

**Mr Ray**—That is an extremely complicated question.

**Senator SHERRY**—It is an easy question. I suspect the answer is extremely complicated.

**Mr Ray**—No, it is an extremely complicated question, so there is going to be an extremely complicated answer. It is the case, other things being equal, that EMTRs will affect labour supply decisions. But other things are not equal and it will depend a lot on the circumstances of the individual household. There are a number of factors here. One is whether or not the workers are full or part time. Literature around the world suggests that full-time particularly prime age males but also prime age females without children under a certain age tend to have very low elasticities of labour supply.

It is probably the case that in those cases the effect of high MTRs on labour supply decisions is relatively muted. On the other hand, the effect of the marginal tax rate on those with less strong attachments to the labour force, such as people who are working part time and older Australians, is likely to have more influence on their labour supply decision.

The other thing is that these effective marginal tax rate calculations are done from what we call 'cameo analysis'. We take a hypothetical household situation and model the complexities of the tax and transfer system to see what happens when you change their private income by \$1: for any given income change, different from \$1, the decisions are not going to be related

to an extra \$1; secondly, the observed effective marginal tax rate: what the household sees may be different from what is modelled because a number of these benefits or effects take effect with time lags—for example, the low-income tax offset, as was discussed at previous estimates, is done on assessment and therefore you do not see the withdrawal of that immediately. The shade-in on the Medicare levy: again, you do not see that until assessment. The change in transfer payments arrangements does not take effect immediately. So what the household sees may be very different from the hypothetical calculation.

There are broader things which affect people's decisions to re-enter the labour force or work longer hours—for example, their preferences, which do not go to their effective marginal tax rate. As I said, it is a complicated answer. But one of the things that we are doing, and have been doing for the past 12 months, is building capacity within the department to understand these forces better.

**Senator SHERRY**—You say that you are building the capacity of the department. Is there a group working on this issue?

**Mr Ray**—Yes. We have a group called the participation modelling team, which is in the Tax Analysis Division of Treasury. There was a measure in the 2005-06 budget which provided us with additional money to analyse exactly these sorts of points.

**Senator SHERRY**—I think we may have discussed this last year. What is the approximate number of staff that you have there?

**Mr Ray**—Seven.

**Senator SHERRY**—Has that remained constant over this period?

**Mr Ray**—No, it has not. It commenced in the middle of last year and it has been built up, and currently has a complement of seven.

**Senator SHERRY**—Is it planned to take that higher?

**Mr Ray**—There is funding for seven positions.

**Senator SHERRY**—Is part of the work that is being carried out identifying the particular groups with high MTRs and the issues and reasons behind that?

**Mr Ray**—Part of that, although we also do that sort of work in Mr Gallagher's team, which you can understand from his answers.

**Senator SHERRY**—Yes.

**Mr Ray**—That group is looking at categories of households or people where policy may have potentially relatively large effects on participation decisions, and giving priority to modelling in those areas.

**Senator SHERRY**—If there is an existing policy, or a proposed policy to consider, you would model that to examine what its impact would be in this area?

**Mr Ray**—When we get ourselves to the position that we are confident in the results, then we would do that.

**Senator SHERRY**—Mr Gallagher, I assume from the reference of Mr Ray, that this is a large part, a significant part, of the ongoing work in your area.

**Mr Gallagher**—We have four elements of work in my area: we have an area that does demography and labour force projections that we use for the intergenerational report. We have another area that does retirement incomes, costings and modelling; another area does personal tax, and the personal tax team also does work on household incomes and looks at the interaction between the tax and social security system. My area is largely concerned with looking at the interaction between the tax, social security and superannuation systems.

**Senator SHERRY**—The Melbourne Institute tax and transfer simulation model—we have touched on this on previous occasions at estimates, to some degree—Treasury uses a version of that.

**Mr Ray**—That is correct, Senator.

**Senator SHERRY**—What does your use of the version allow you to do that you were not previously able to do?

**Mr Ray**—The model that NATSEM uses to look at this sort of work in this report is the model called STINMOD. The difference between STINMOD and the Melbourne Institute is that, as well as having a STINMOD like component in the MITTS model, a static microsimulation model, it has a behavioural module, so it takes the results from a static microsimulation model and has a look at the potential for households to vary their behaviour and response to a policy change. At this stage, though, as we have discussed in the past, we are quite cautious about how we use that model.

**Senator SHERRY**—That caution is?

**Mr Ray**—It is based on a number of things. The model does not have a complete coverage of the population. It does not have as detailed a breakdown of the existing tax and transfer system as STINMOD does.

**Senator SHERRY**—Nevertheless, it is still used for that?

**Mr Ray**—It is broadly similar. It effectively assumes that, if someone's preferences have changed, those preferences are realised, so it does not model what we might call a general equilibrium outcome. So it does not model whether, if person A decides to participate more, they displace person B. It does not model whether, if person A decides to participate more, they actually get a job or get to work more hours, and it is a discrete hours model so people move from—their choice set is limited and that may not match what actually happens in the labour market. So we are cautious.

That said, we think it is certainly a useful base tool for this sort of work, and we think it is a useful tool potentially for not so much looking at saying that if you do policy A then 27,326 people will do it but if you compare policy A to policy B, then policy A's participation response—using these model results—is likely to be larger than policy B's, for example. There would be other factors that you would need to take into account in weighing up policy A against policy B.

**Senator SHERRY**—Have there been any recent modifications to the version that Treasury has?

**Mr Ray**—When we discussed this at budget estimates, we advised you that the version that we have used more up to date data. That situation has now changed, in that the Melbourne Institute is now using the same data that we are using.

**Senator SHERRY**—So you are level pegging on data?

**Mr Ray**—Indeed. Neither of us is using the most recent data because the Melbourne Institute is in the process of re-estimating the underlying equations in the model, so we are waiting for that process to be completed.

**Senator SHERRY**—They will complete that and then you will use that update?

**Mr Ray**—Yes. We have made some adjustments to the coding in the model which will allow it to run faster, because our needs are somewhat different from an academic's. We are also looking at making the coverage of the model more comprehensive in terms of the tax transfer system.

**Senator SHERRY**—Now, the tax and transfer changes announced in the budget, I assume that they have been run through the model?

**Mr Ray**—They were run through the model by the Melbourne Institute and they published results in the beginning of July.

**Senator SHERRY**—Yes. But why weren't they run through the Treasury's version?

**Mr Ray**—We did run them through the Treasury's version of the model. As I explained before, the Melbourne Institute gave us a look at their results and we checked that we were getting similar results, so we used it as a natural experiment.

**Senator SHERRY**—And the impacts on workforce participation of those budget announcements?

**Mr Ray**—The Melbourne Institute's results?

**Senator SHERRY**—Does your analysis broadly compare with the Melbourne Institute?

**Mr Ray**—They do. The Melbourne Institute estimated that the combined effect of the budget measures, and some measures that have been announced in the 2005-06 budget that took effect from the beginning July, were that as many as 48,000 more people would move into the workforce and that there would be—I just need to check.

**Senator SHERRY**—Was that similar to—

**Mr Ray**—That is similar to the results that we got from the model, and that there would be an increase in average hours worked. So that is taking into account the effect on people already in the workforce of about 0.12.

**Senator SHERRY**—When you say 0.12, will that mainly be people who are working increased hours on a casual or part-time basis, or is there a significant component of overtime in those increased hours? Are you able to identify that?

**Mr Ray**—I do not think it breaks it down, but the big increases in hours worked were for single parents and couple women, so I suspect that they were perhaps driven by part-time effects.

**Senator SHERRY**—That would be a reasonable assumption. Turning to a set of revenue issues, with regard to foreign tax credits, in the 2005-06 budget the government announced it would remove foreign loss and foreign tax credit quarantining. This measure has not been implemented to date. Where is it up to?

**Mr Rawstron**—That particular measure is currently in consultation and development.

**Senator SHERRY**—When was the proposed operative date? Was there one announced? I cannot recall.

**Mr Rawstron**—Royal assent.

**Senator SHERRY**—Royal assent. Can you give any indication of when that will be finalised, ready for introduction?

**Mr Rawstron**—I think we are proposing to have the bill introduced as soon as there is a legislative vehicle to introduce it, but we are still in the process of going through the legislative development consultation. As you know, it is basically finding a particular bill that we can put it in. We may be, in that case, targeting next year.

**Senator SHERRY**—Yes. I was just going to say that it looks like it will be a TLAB bill, so it is probably unlikely this year with two weeks to go.

**Mr Rawstron**—Yes, I think you would be correct in that assessment.

**Senator SHERRY**—Thanks for that. So over to depreciation on software. The tax expenditure statement of 2005 indicated tax expenditures for accelerated depreciation for software declined from \$270 million in 2003-04 to \$15 million in 2005-06, and then increasing to \$90 million in 2008-09. What is driving the change in the estimate of the profile in this area?

**Mr Ray**—I will just wait for Mr Brown.

**Senator SHERRY**—Sure.

**Mr Brown**—Because it is a depreciation measure, the estimates for that will tend to start out at a high level and then decline as you reach a point where you have new software being purchased that is actually subject to the same depreciation regime as the old software. You reach a point where the figures are basically driven by growth in the estimates, in the underlying numbers. So it starts out high because all new software gets accelerated depreciation so it costs you a fair bit. But as the stock turns over, the cost of that drops. Basically accelerated depreciation mainly affects the timing of deductions. The actual variation in the numbers that you see there in the estimate will most likely reflect the underlying growth in the assets stock of software. So there are two factors. One is that it was a new measure initially, in the early years.

**Senator SHERRY**—Yes. So a high take-up.

**Mr Brown**—Well, you had a high cost because all new software got the acceleration that replaced software which had less depreciation. As all software is subject to the same regime the estimates will mainly reflect growth in the underlying stock of software as the economy grows.

**Senator SHERRY**—So you would expect that growth to continue beyond 2008-09. A steady growth, would you describe it? I am not going for the figures.

**Mr Brown**—You should end up with a fairly steady growth pattern.

**Senator SHERRY**—Beyond that year?

**Mr Brown**—Beyond that year, yes. That would be my expectation.

**Senator SHERRY**—Tobacco excise and customs duty: an ANAO report indicated 347,000 kilograms of tobacco was illegally diverted in 2004-05. It sounds like a significant amount of illegal tobacco. What is the approximate cost to revenue of this illegal activity?

**Mr Colmer**—I do not have the exact figure but the excise is around \$270 a kilo on tobacco from memory. I do not have an exact figure to hand.

**Senator SHERRY**—So whatever the figure is, it is quite a lot of money?

**Mr Colmer**—It is quite a lot of money.

**Senator SHERRY**—Based on that level of illegal diversion. Have you assumed that this will continue on in the forward estimates, this loss to revenue?

**Mr Colmer**—Senator, there are a couple of things that need to be brought to your attention on that. The first is that the major source of the illegal tobacco is twofold. There is some that is smuggled through Customs. There have been in the past significant amounts diverted from the domestic tobacco industry. The domestic tobacco industry is in the process of closing down. I do not know whether the tax office can provide more detail on exactly what has happened, but the cigarette manufacturers have withdrawn from purchasing domestic tobacco.

There are three main tobacco-growing areas: one in North Queensland, a small one in southern Queensland and one in Victoria. The North Queensland industry was effectively closed down in 2004 when the cigarette manufacturers ceased buying and the ATO withdrew their licences. There was an announcement last week around a buy-out package. The minister for agriculture made an announcement on, I think, 26 October—I am not sure of the exact date but that is close enough—of a federal government compensation package to the industry, which is combined with commercial compensation packages from British American Tobacco and Philip Morris. The net effect is that there will be no domestic tobacco production, and that will have a significant impact on the illegal tobacco market.

**Senator SHERRY**—Are detailed questions on this best put to the tax office?

**Mr Colmer**—It depends what the nature of the questions is.

**Senator SHERRY**—Capturing the lost revenue, compliance and—

**Mr Colmer**—That really is a tax office function.

**Senator SHERRY**—Looking through the rest of the questions, I think that is right. Approximately how many taxpayers are in the simplified tax system?

**Mr Ray**—I think we gave you an estimate, in answer to a question on notice, of about 620,000.

**Senator SHERRY**—Did you? Do you know when that came through, Mr Ray?



**Mr Ray**—That might be harder to answer.

**Senator SHERRY**—Don't worry about that! I will take your word for it. I just could not recall seeing it. If it is about 620,000, unless there is some significant inaccuracy—

**Mr Ray**—I will see if I can find it.

**Senator SHERRY**—While you are looking, again I cannot recall whether I requested the number of individual taxpayers with a gross income under \$75,000 who are in the STS business partnerships.

**Mr Ray**—Is that to do with the entrepreneur tax offset, Senator? Your question on the STS was question No. BET55. It was a written question, and we answered saying that there are approximately 620,000 businesses currently who have adopted the STS.

**Senator SHERRY**—I do not recall asking about the number of taxpayers with a gross income under \$75,000.

**Mr Ray**—You did not in this question.

**Senator SHERRY**—Do you have an answer to that?

**Mr Ray**—I am happy to take it on notice.

**Senator SHERRY**—Does the entrepreneur tax offset provide a greater concession to taxpayers with lower turnover ratios?

**Mr Ray**—The short answer to your question is, yes, it does.

**Senator SHERRY**—Is there an estimate of the mean gross income, as distinct from the turnover, at which the ETO phases out completely?

**Mr Ray**—You are stretching my knowledge, but it is a turnover test and it phases down from \$55,000 to \$75,000 of turnover. As you know, the link between turnover and gross income is all over the place.

**Senator SHERRY**—Could you take on notice if there is any by-industry data on this.

**Mr Ray**—Yes.

**Senator SHERRY**—The mature Australians tax offset—

**Mr Ray**—The working tax offset?

**Senator SHERRY**—Yes. I cannot recall the operative dates. Last year, wasn't it? Anyway, that is not the issue that I am going to. What is the estimated cost of it over the forward estimates?

**Mr Ray**—That would have been published, but Mr Gallagher can help me with that.

**Senator SHERRY**—I think the last time we discussed this, Mr Gallagher, you were doing some work on updating the cost of it over the forward estimates.

**Mr Gallagher**—The mature age worker tax offset is on page 57 of the 2005 tax expenditure statement. I cannot recall anything being published subsequent to that.

**Senator SHERRY**—No. I think that is why I asked you whether you were doing work on this, and I think you said you were.

**Mr Gallagher**—Yes. The tax office keeps the numbers claiming and the amount under review for estimation purposes so that we can update the forward estimates, because it is not regarded as a mature measure at this stage. I presume it will be looking at it in the context of preparing MYEFO.

**Mr Ray**—We would also look at it in the context of the 2006 tax expenditure statement.

**Senator SHERRY**—What is the estimated revenue from the passenger movement charge over the forward estimates?

**Mr Ray**—I think I will need to take that question on notice, because I expect we do not have a breakdown of that.

**Senator SHERRY**—I have a number of other short sets of questions in various areas and I might put those on notice. Before I leave this section, how many claimants are there per annum for the First Home Owners Scheme grant?

**Mr Ray**—That is not this outcome. That would be my fiscal group colleagues.

**ACTING CHAIR**—Senator Sherry, if you have finished, I think Senator Joyce has some questions.

**Senator JOYCE**—In relation to farm management deposits, how much do we currently have on deposit?

**Mr Flavel**—As at 30 June 2006, the total deposits were \$2.8 billion.

**Senator JOYCE**—Let us say that you have a drought, you sell your cattle, you put your money into the farm management deposit and you get a deduction. When you take the money back out to buy cattle, it becomes assessable. In your transfer from like asset to like asset, you are losing the taxation consequences of taking your money out of the farm management deposit. Would that be a fair statement?

**Mr Ray**—The way the farm management deposit works is that when you deposit you get a deduction and then when you bring it back out it is assessable. I do not think there is any question about the purpose for which you bring the money out.

**Senator JOYCE**—Are there any other sections of the tax act where, if you take the money out for a like purpose, it can be deemed to be of no tax consequence?

**Mr Ray**—In the income tax area?

**Senator JOYCE**—Yes.

**Mr Ray**—I cannot think of one off the top of my head. That does not mean there is not one, because there are a lot of provisions. But in the capital gains tax provisions there is rollover relief for certain types of transactions.

**Senator JOYCE**—The next question is on the zone allowance or the zone tax rebate. How many people have we currently got in the remote areas?

**Mr Ray**—Zone A and zone B?

**Senator JOYCE**—Zone A, zone B, remote zone—whatever it is. What do they call it now? Y. What is the actual number of taxpayers we have got in those areas now?

**Mr Ray**—I suspect that is published in the tax stats. We might need to take it on notice.

**Senator JOYCE**—That is all right. I am not trying to be sneaky; I am actually trying to work something out. What I would like to have on notice is: of the people, the taxpayers, in those zones now, what portion of them were there in, let us say, 1970? I am just trying to get a trend. And how many people currently in those zones live in the towns of Townsville, Mackay, Darwin, Cairns—areas that would really be deemed now to not be remote? What I am alluding to is the possible reallocation of the rebate into areas that are more applicable, that are truly remote, as in the Centre, to try and get people out west. Can I put those on notice and get you to get back to us on those? You might have some of the answers here at your fingertips.

**Mr Ray**—I do not have how many people lived in Townsville in 1970 at my fingertips. I am happy to take the question on notice, but I suspect that it is not going to be easy to answer that.

**Senator JOYCE**—Is there any change in those zonal rebates? I know special zone B in 1947 was £20. That is \$40, and today it is \$57. Is there any possible scaling-up of that to catch up with inflation?

**Mr Ray**—Certainly in the past, Senator, the value of the zone rebates has been changed.

**Senator JOYCE**—Have there been any studies done in the taxation department about a reappropriation of the zonal rebate system so that we take out areas first considered in 1947 that have moved on into the 21st century and apply it more appropriately to areas that truly are remote?

**Mr Ray**—That is really going to that policy question, so it is a bit hard to answer, but I think the short answer is that we have not been looking at changing the lines on the map in recent times.

**Mr Gallagher**—The zone rebate data is collected with the overseas forces rebate data, and in the 2003-04 income year there were 503,197 recipients. The taxation statistics that I have do not run to the particular areas they were in. One issue here which will affect the estimates that you are seeking is where defence forces are actually allocated in the country, and also the number of defence forces we have overseas; so the data, when we look at your question on notice, may not be pure.

**Senator JOYCE**—As regards the allocation of ABNs, what portion of them are actually trading businesses, buying and selling products, as opposed to contract basis ABNs? As you know, I am an accountant. I seem to have an inordinate number of people come in asking for ABNs who were formerly just employees. There are, what, 1.6 million ABNs out there at the moment, aren't there?

**Mr D'Ascenzo**—We will take it on notice and see if we can find something out for you, Senator.

**Senator JOYCE**—Can we find out what portion of those are actually trading entities—that is, buying and selling products?

**Mr Ray**—If we have data broken down that way, but I am not sure that we would.

**Mr D'Ascenzo**—There is a 'tick the box' on the application that will provide a rough-and-ready measure. That is the best we can do.

**ACTING CHAIR**—Anything further, Senator Joyce?

**Senator JOYCE**—No.

**ACTING CHAIR**—Senator Fifield.

**Senator FIFIELD**—Thank you, Chair. Mr D'Ascenzo, you have responsibility for the Australian Valuation Office?

**Mr D'Ascenzo**—That is right.

**Senator FIFIELD**—What is the relationship of the AVO to you? Is it a bit like the Child Support Agency, where you are registrar but it is a separate organisation, or is it actually part of the tax office itself?

**Mr D'Ascenzo**—It has run very much as a separate organisation but, technically, in our structure it is just part of the ATO lockup, but that part of the ATO has to operate on competitive mutuality terms, which means it sort of competes for the market. Its income is in terms of fee for service. It is not budget allocated.

**Senator FIFIELD**—I want to check with you the accuracy of a report which was in the *Financial Review* on 2 October this year. I will quote it:

Former property industry high-flyer David Parker has been shifted from his Commonwealth government job following a recent view of the Australian Valuation Office. Dr Parker, who has held high-profile property investment management roles at ANZ Banking Group and Suncorp, has been replaced as general manager of the AVO.

Is the position of general manager the senior position at the AVO?

**Mr D'Ascenzo**—It is the most senior position in the AVO. It reports to a second commissioner in the ATO but is the senior position in the AVO.

**Senator FIFIELD**—And is that report correct that Dr Parker has been replaced as general manager of the AVO?

**Mr D'Ascenzo**—Yes, he has. Dr Parker is in the course of resigning from the tax office and he has been replaced by a senior officer from the ATO.

**Senator FIFIELD**—And that will be a substantive and permanent replacement?

**Mr D'Ascenzo**—That is right.

**Senator FIFIELD**—Was his removal as general manager a consequence of the work by Cooney Consultants and Associates?

**Mr D'Ascenzo**—I do not think that is the situation. We have had Dr Parker leading the AVO in a very major transformational change and you get to a point where you have the change agent and the question is whether or not you have the ongoing support of the staff to bed down changes going forward, and we had a consultant look into the level of buy-in by the staff under the current management arrangements.

**Senator FIFIELD**—But the review by Cooney Consultants and Associates predated the departure of Dr Parker.

**Mr D'Ascenzo**—It did, in that sense. There were discussions prior to engaging Cooney and co. in terms of the future of one of my senior officers.

**Senator FIFIELD**—But it was a factor in consideration, even though it may not have—

**Mr D'Ascenzo**—Yes.

**Senator FIFIELD**—What was it that prompted the commissioning of that review in the first place?

**Mr D'Ascenzo**—It was a question of the buy-in of staff. There were some concerns about whether or not Dr Parker had the support of staff going forward.

**Senator FIFIELD**—How many staff are employed by the AVO? What is the usual complement?

**Mr D'Ascenzo**—In the order of 150. It is a national practice and operates a valuation service, primarily to government, across Australia.

**Senator FIFIELD**—The *Financial Review* article alleged that 40 of the AVO's 150-odd staff had left in the previous financial year.

**Mr D'Ascenzo**—Our number is still around 150, so there is a sort of churn factor, and I am not sure whether 40 is the right number.

**Senator FIFIELD**—But would it be something of that order?

**Mr D'Ascenzo**—I think it would be something of that order in a major change program. That is what is involved.

**Senator FIFIELD**—You would agree that that is an extraordinarily high proportion of the workforce of 150 to turn over in a 12-month period?

**Mr D'Ascenzo**—If you realise the age profile of the AVO, it was a significantly aged profile. That was a high number, but whether or not that is, relatively, a large number in the circumstances is speculation.

**Senator FIFIELD**—Was that turnover a function of the lack of buy-in by the staff?

**Mr D'Ascenzo**—We did have some exit interviews and the responses were mixed. Quite a large proportion were of that nature but there were a lot of other people. Some wanted to retire, some went on to other avenues of employment. It was a mixture of reasons.

**Senator FIFIELD**—But would it be fair to say that they essentially were not a happy crew?

**Mr D'Ascenzo**—I think some part of that 40 were of that ilk and when you have major transformational change, sometimes that is what happens.

**Senator FIFIELD**—The survey by Cooney Consultants: was the staff dissatisfaction as a result of the change process itself or were there other factors which led to them not feeling they had to buy in?

**Mr D'Ascenzo**—I think it was a major transformational change and that we needed to make change in that area. Some part of the concerns were in relation to Dr Parker's style and, whether or not that is a fair assessment by people, the reality for me was that, as the CEO of

the ATO, I had concerns about being able to embed change and go forward in relation to staff reactions to David's style.

**Senator FIFIELD**—Of the 40-odd—that ballpark figure—who did the transition in the previous financial year, roughly how many of those would have been senior staff?

**Mr D'Ascenzo**—This is a gut reaction rather than a detailed estimate: I would have thought quite a number would have been senior staff, from the perspective that the age profile that was a very significant factor on this did suggest that people could retire and retire at a time when they could take on their super benefits.

**Senator FIFIELD**—Has that turnover of staff all essentially been replaced now?

**Mr D'Ascenzo**—We still have around 150-odd, so there is obviously a churn. I am not saying that everyone has been replaced in the same areas. That is one of the tasks of the new general manager.

**Senator FIFIELD**—Did that high level of churn affect the operation of the AVO at all, in terms of churn?

**Mr D'Ascenzo**—I think there are pluses and minuses. Some of the churn was not necessarily a bad outcome for the AVO going forward. When you have churn of that order and you have significant change, that puts on pressure in terms of being able to achieve business objectives; so there are pluses and minuses there. I am sure it had some effect.

**Senator FIFIELD**—Most of the key objectives were still being met?

**Mr D'Ascenzo**—Yes. In fact, our rate of return this year is lower than last year but higher than the previous two years.

**Senator FIFIELD**—Do you expect that the bitching will be less with Dr Parker's departure?

**Mr D'Ascenzo**—I think so. We have got to a point of having shaken the tree and produced that transformation or change and now we have a new general manager that hopefully can work on those advances, bed down those sorts of issues and go forward.

**Senator FIFIELD**—The newspaper report said that Dr Parker was going to be with the AVO but working on some particular projects. Is that the case?

**Mr D'Ascenzo**—What is happening is that I have received a resignation from Dr Parker. I would like to have Dr Parker continuing to do some modest work on some projects like our smart valuation system and a number of initiatives of that type that he has some expertise in; but it would be very much on a normal procurement type consultancy.

**Senator FIFIELD**—So he would not be doing those projects on what was his previous salary? He would be engaged as a consultant.

**Mr D'Ascenzo**—We would have to engage him as a consultant under normal procurement processes. Again, the type of arrangement that I have in mind is not a significant one in terms of consultancy. If there is a consultancy, I would be thinking in the order of half a day a week.

**Senator FIFIELD**—Sure, but there is a skills set there which the AVO would be wise to avail itself of.

**Mr D'Ascenzo**—From a capability and technical perspective, Dr Parker is a very well credentialled person.

**Senator FIFIELD**—Thank you, Mr D'Ascenzo.

**ACTING CHAIR**—There are no further questions, thank you. We are waiting for the return of Senator Sherry, so we will take a short break.

**Proceedings suspended from 9.07 pm to 9.14 pm**

**ACTING CHAIR**—I would like to reconvene this meeting of the committee. After some discussion it has been determined that we continue with the questioning of the Australian Taxation Office through until 10.15, and then we will move on to the Inspector-General of Taxation, which will take us through until the close of business.

The indications are that the tax office will be required to reappear tomorrow. We will come up with a suitable time, but it will be after the interstate agencies, being the ASIC, the Australian Prudential Regulation Authority, and the Productivity Commission as well. So it would be closer to lunchtime, I imagine, tomorrow. I have asked whether we are in a position to release any executives for tonight, and I have been advised that it is probably not appropriate because of the line of questioning that may arise.

**Senator Ellison**—And 10.15 would be the end of tax tonight?

**ACTING CHAIR**—For tonight, yes.

**Senator Ellison**—And then the inspector-general can be dealt with between 10.15 and 11 o'clock?

**ACTING CHAIR**—10.15 and 11.00.

**Senator Ellison**—That is to do with the—

**Senator SHERRY**—That is it for the inspector-general.

**Senator Ellison**—Thank you.

**ACTING CHAIR**—Senator Sherry.

**Senator SHERRY**—Thanks, Chair. I think I should be able to finish the revenue retirement income. I have some issues relating to retirement incomes. I want to pursue the package. I want to finish that so that, Mr Ray, your people are then not needed tomorrow.

**Mr Ray**—Thank you, Senator.

**Senator SHERRY**—I want to go to the budget superannuation package and the finalisation of the announcement of that package. There are some issues on that. On a superannuation related matter on which someone may be able to inform me, the co-contribution maximum contribution is currently \$28,000. Now, I am advised that that is indexed, but I cannot find anywhere as to what it is indexed to and when it will increase. Can someone tell me, please?

**Mr Lonsdale**—I think we can check that quickly, Senator, and come back.

**Senator SHERRY**—Yes. While that is being checked I will go onto the other areas of the superannuation package. Firstly, coming to the outcome of the consultations of 5 September

2006, and going to the costings which are updated on page 27—we touched on this earlier—there is a \$7.2 billion total cost, new costing. I want to go to the areas where there have been variations since the original budget announcement. On that page 27 it refers to parameter changes since 2006-07, and then it has a series of figures, negative and positive. What were the areas of change that impacted in this area that led to a parameter change costing?

**Mr Ray**—We have got new data, both in terms of income tax data and the household expenditure survey.

**Senator SHERRY**—How did that impact on the parameters?

**Mr Ray**—From the household expenditure survey we get how much income and how much people are putting into superannuation. With the income tax data we get the ETPs.

**Senator SHERRY**—This is how much people are currently contributing?

**Mr Ray**—That is right, yes.

**Mr Gallagher**—One of the major variations was in the estimates of the age pension taper change, and that is because we had updated data on the asset distribution of age pensioners. As you know, there have been very significant rises in the stock market over recent years, and that means that there are more pensioners in the asset test taper range than was previously considered. So that was an important thing.

The data that we got from the household expenditure survey was the new data that has been collected in relation to assets. That allowed us to do estimates of people who are currently outside the age pension system who may, with the revised assets test, move into the age pension system.

**Senator SHERRY**—You mentioned the new data on asset growth. Does that include the increasing value of assets of, say, holiday homes—you know, second homes, investment properties?

**Mr Gallagher**—Yes, it would because they are asset tested. So we are looking at the FaCSIA data that originates from Centrelink.

**Senator SHERRY**—And that was the major parameter change since the budget?

**Mr Gallagher**—Yes, certainly on the expense side.

**Senator SHERRY**—Then on the next line, we have got policy changes since 2006-07. What were the policy changes that had the major impact in the costing?

**Mr Lonsdale**—There is a range of them, Senator, and they are outlined in the press release by the Treasurer and the minister for revenue of 5 September. There were new transitional arrangements that were put in place, including the \$1 million transitional arrangement that started from budget night until 1 July.

**Senator SHERRY**—It is the undeducted contribution?

**Mr Lonsdale**—For undeducted contributions.

**Senator SHERRY**—And that is the issue we discussed at the last estimates as I recall, or one of the issues anyway.



**Mr Lonsdale**—That is correct, Senator. That is a key policy change. Another change with the transitional arrangements for employer ETPs was announced in that press release. Sorry, to go back to the undeducted contribution cap, there were exemptions from the cap that were announced as well for the sale of a small business and for the permanent disablement of an individual who would like to put in large post-tax contributions. There was the indexation of the thresholds that impacted on the costings, and there was a slight change to the TFN arrangements. There was concessional tax treatment that was extended to self-employed people who were made invalid. There was a change to the thresholds for lump sum benefits taken from an untaxed source, from \$700,000 to \$1 million, and there was also a change to the regulatory arrangements governing SMSFs—self-managed super funds—that impacted on that costing on that line.

**Senator SHERRY**—How did that impact on that costing?

**Mr Lonsdale**—Let me step back because that comes into the next line.

**Senator SHERRY**—Yes.

**Mr Lonsdale**—As part of the self-managed super fund changes the government announced an increase in the supervisory levy from \$45 to \$150 per year. The revenue from that levy will feed into that line, Senator.

**Senator SHERRY**—Presumably that goes to the ATO?

**Mr Lonsdale**—There is an offset there, Senator, which I think you are getting to, in terms of the administration costs which is the next line.

**Senator SHERRY**—Okay.

**Mr Lonsdale**—But I think between those sets of measures they would represent the bulk of the policy changes that were announced since the budget.

**Senator SHERRY**—Obviously each of those changes has been costed to give us a cumulative total?

**Mr Lonsdale**—Correct.

**Senator SHERRY**—And each of the individual costings of those measures in the original announcement would have been costed as well, and then updated?

**Mr Ray**—All the ones in the package were costed.

**Senator SHERRY**—Yes, in their component parts. Can you give me the costings of the component parts?

**Mr Ray**—You would understand that I would need to take that on notice, Senator.

**Senator SHERRY**—That surprises me. Let us go to the next line, the administration costs. What were the issues there that impacted?

**Mr Ray**—The original budget costing did not include any administration costs.

**Senator SHERRY**—I am surprised that it did not.

**Mr Ray**—It was quite explicit at the time that it did not.

**Senator SHERRY**—How would we know when we did not get the explicit breakdown of the costs? I certainly did not pick it up. I did not know what was costing what, but you still have not provided the costings.

**Mr Lonsdale**—It was set out in the glossy publication. The costing table on page 26 outlines the fiscal balance costing of the plan as at budget. Straight underneath that table it indicates that it does not include administrative costs, and the main reason for that is that what was announced was a plan, and the policy details were under consultation, including some of the admin arrangements.

**Senator SHERRY**—Did the changes to the package that was announced alter the administration costs?

**Mr Ray**—The package that was announced did not have any administration costs attached to it, not because there were not going to be any but because we had not finalised the details.

**Senator SHERRY**—So that cost was not included? Was there any estimate made at that time of the likely cost? There must have been some consideration given to that, surely, even though it was not included.

**Mr Ray**—No, there was no estimate.

**Senator SHERRY**—None at all?

**Mr Ray**—No. Therefore, the administration costs line in the table to the Treasurer and minister for revenue's announcement is the whole lot; so the original package plus anything coming out of the changes.

**Senator SHERRY**—What are the major components of the administration costs?

**Mr Lonsdale**—You can see from that line that there is \$0.5 billion over the forward estimates. The majority of that figure will go to the tax office for a range of administrative items. The rest will go to other agencies, such as FaCS, DEWR and DVA, largely centring on the asset test changes.

**Senator SHERRY**—I notice that of the half a billion dollars—and I appreciate it is a rounding—for 2006-07 it is 0.1 and for 2007-08 it doubles to 0.2. There is a big jump there and then it drops back. What is the reason for that?

**Mr Lonsdale**—Without having the breakdown in front of me, I think it is largely a system issue. It is getting things up and ready, particularly the IT part, for the implementation of the package.

**Senator SHERRY**—Perhaps the tax office can help us here, because I assume that a great deal of this will be in the tax office's area.

**Mr Ray**—Before they do, Senator, that is not an unusual profile.

**Senator SHERRY**—No, I am not expressing surprise at it; I am just wanting to know all the detail and where it is going to occur.

**Ms Vivian**—Was your question just about what was the difference between the years and the costs—

**Senator SHERRY**—It was, but before we go back to that, what are the administrative issues that the ATO faces which are obviously going to result in increased costs?

**Ms Vivian**—Our increased costs would relate to, first of all, building the IT systems. That would be one of the considerable costs. We are also changing all of our products. We have over 200 products that we need to change to support this.

**Senator SHERRY**—What do you mean by ‘products’?

**Ms Vivian**—A range of things, from educational products to technical products that we have out in the market. The other key costs will be in education, some of the basic implementation costs and also the compliance costs. The package allows for an increase in the number of our compliance staff, particularly in the self-managed super fund area.

**Senator SHERRY**—Is that to handle, for example, the TFN collection issue, which I do not think will be easy.

**Ms Vivian**—That would be included in the operational costs.

**Senator SHERRY**—Would that be an example?

**Ms Vivian**—Yes. There is a cost allowance for contacting taxpayers to try and maximise the number of tax file numbers.

**Senator SHERRY**—But my understanding is that you have been doing that, to at least a fairly significant extent, already, even before these changes were put on the table.

**Ms Vivian**—I think you may be referring to the mail-out that we do for the lost members register.

**Senator SHERRY**—Yes. You have certainly been a lot more active in following through on lost member accounts in the last couple of years compared to five to eight years ago.

**Ms Vivian**—Yes. Certainly we have been doing that. Particularly as part of this measure, we have included some costings to contact people where we can tell from the member’s contribution statement that there is not a tax file number with their super fund and yet we can identify a tax file number for them. So it was particularly about chasing up those sorts of people.

**Senator SHERRY**—On this issue of the tax file numbers, my understanding from reading the final document is that at the present time there is no legal requirement for the employee or the employer to provide the TFN to their fund. When a new employee starts with an employer, obviously the employer provides the TFN to the ATO for income tax purposes. Is it envisaged that the employer will then have to provide the tax file number to the default fund or the nominated superannuation fund?

**Mr Lonsdale**—Under the planned changes, if an employee quotes their TFN for employment purposes, they are also quoting it for superannuation purposes. I do not know whether you are familiar with the form, but there is a separate question that asks an employee whether they would like to quote for super—

**Senator SHERRY**—Sorry, I am just organising things. Go on.

**Mr Lonsdale**—As I said, if an employee quotes their TFN for employment purposes, they will quote it for super purposes.

**Senator SHERRY**—Yes, but what will that mean in practice? Will the employer have to then provide it to the superannuation fund?

**Mr Lonsdale**—Yes.

**Senator SHERRY**—What if they do not?

**Mr Lonsdale**—They are required to under law. The current responsibility for checking that that happens will move from APRA to the tax office.

**Senator SHERRY**—This is supposed to be done in the first two weeks.

**Mr Lonsdale**—Within 14 days, yes.

**Senator SHERRY**—The employer has the individual's tax file number. They are then responsible for providing that to the superannuation fund. Are they required to do that within 14 days, or is there a longer time period?

**Mr Lonsdale**—I think it is 14 days.

**Senator SHERRY**—Isn't there a practical issue here? I think there is a practical issue with the default superannuation fund. A lot of employers would only be forwarding the superannuation contributions to the fund quarterly. Would they then be having to provide the TFN to the fund outside that regular quarterly remittance to the super fund? It seems to me that that is what would have to happen.

**Mr Lonsdale**—I will check the details, but my understanding is that what we are doing here is established practice. At the moment, where an employee quotes their TFN for super purposes, the employer is required to pass it on.

**Senator SHERRY**—Yes, where they do that, but a lot of employees do not provide their TFNs for super purposes.

**Mr Lonsdale**—Correct.

**Senator SHERRY**—I am getting to the practical issue here. The employer can use the TFN for super purposes. It seems to me that the logical time, particularly for new employees, to forward on the TFN would be when the contribution is first made, which may be quite a time afterwards, at the end of the quarter or after the quarter. Is that allowable? Would they be allowed to pass on the TFN later to the super fund?

**Mr Lonsdale**—I would have to check that but I am advised that under current law the employer is required to pass on the TFN within 14 days of receiving it.

**Senator SHERRY**—To the super fund?

**Mr Lonsdale**—To the super fund.

**Senator SHERRY**—If that is the case, there are a lot of employers breaching. There are a lot of funds that are not receiving TFNs. Coming back to you, Ms Vivian, I understand there is—it depends on the fund—a high proportion of funds that do not have TFNs at the present time.

**Ms Vivian**—When we have been talking to industry, some industry funds will say that up to a third of the accounts that they have do not have a tax file number. On the other hand, I would say that, when I look at the members' contribution statements that are coming in to us each year, the proportion that are coming in with a tax file number is substantially increasing. At the moment, about 76 per cent of those members' contribution statements come in with a TFN.

**Senator SHERRY**—I accept it has increased, and increased significantly, over my looking at this in the last five or 10 years, but we nevertheless still have a significant proportion where there is no tax file number, albeit it is increasing. Let us take your 76 per cent figure. Let us assume we can get it to 80 per cent quickly. That is still 20 per cent without tax file numbers.

**Ms Vivian**—That is one of the things where government have funded us to contact people, because from the members' contribution statements that come in, about 75 per cent come in with a valid tax file number. From our records, we match up to bring that to about 83 per cent or 85 per cent.

**Senator SHERRY**—What concerns me with this new approach is that there is a penalty, isn't there, on contributions over \$1,000 if there is no TFN? There is a tax penalty. That is what is proposed, isn't it?

**Mr Lonsdale**—Tax will be withheld.

**Senator SHERRY**—Yes, that is right. The tax is withheld from the member's contribution, but what if it is the employer who has failed to provide the number to the fund? Why is the employee being penalised when the employee has actually done what is required?

**Mr Lonsdale**—Part of the initiative being put forward by the government is that the responsibility for checking will move from APRA to the tax office. The idea would be that that would result in better quotation. That is one of the elements. As Ms Vivian said, the information campaign to educate people about the importance of quoting TFNs is another important initiative, as is the requirement to provide your TFN if you are making undeducted contributions or deductible contributions under a new account.

**Senator SHERRY**—I accept that all of that would increase the provision of TFNs but, nevertheless, it seems to me we are going to have X number—it might be five per cent, it might be 10 per cent, it might be lower, it might be higher—who will not have their TFN passed on to the super fund. Either it is the fault of the employee or, if the employee has provided it, it will be the fault of the employer for not sending it on. In that case, there will be X number of people who will have a tax taken out of their contribution at the top marginal tax rate, isn't it?

**Mr Lonsdale**—That is correct.

**Senator SHERRY**—If the employee has done everything right, provided the TFN, and the employer has not done the right thing and provided it, why should the employee be penalised?

**Mr Lonsdale**—I go back to what I mentioned before, Senator. That is something that is explicitly recognised in the policy and part of the initiative to handle that is to move responsibility for checking to the tax office, which better fits with the withholding arrangements.

**Senator SHERRY**—I can understand why you would do that administratively. That seems perfectly sensible. But what I cannot understand is that if the employee does everything right and provides their tax file number to the employer but the employer fails to pass it on, it is the employee who is going to be penalised financially by the withholding of effectively a significant tax element of their super contribution. I do not understand the logic of that approach.

**Mr Lonsdale**—That would be the effect until the TFN was quoted, in which case the tax withheld would be refunded to the member.

**Senator SHERRY**—Yes, I understand it is to be refunded but, as I say, I do not understand the principle: if the individual does the right thing and provides it, the employer does the wrong thing and does not provide it, the employee gets the penalty. Is there to be any special penalty in respect to employers who fail to pass the information on to the fund, where it is provided?

**Mr Lonsdale**—I think there is a penalty arrangement already.

**Senator SHERRY**—I know there is. But the fact of life is that a significant number of employers are not passing on at the present time. That is the current situation. There is a penalty and I accept you would get the provision rate up; but it still seems to me that there are going to be a significant number of people who are going to be penalised through no fault of their own.

**Mr Lonsdale**—There is, as I think you pointed out at the beginning, a significant pool of people who are at the moment not quoting their TFN or quoting it and that number is not being passed on, for whatever reason. We estimate that that pool will shrink considerably.

**Senator SHERRY**—What is your estimate of the shrinkage?

**Mr Lonsdale**—We do not have a public estimate for that, but it is built into the costings. We think that that pool will reduce significantly.

**Senator SHERRY**—I accept that it will reduce. You have just said you do not have a public estimate. Can you provide the estimate to me of what you think the shrinkage will be of non-provision.

**Mr Lonsdale**—The estimate is built into the total aggregate costings.

**Senator SHERRY**—Sure, I know that. But that is why I am asking for the figure.

**Mr Lonsdale**—And for the same reason, it is difficult for us to provide a breakdown of measure by measure. But if you would like us to go back and take that on notice, we are happy to do that.

**Senator SHERRY**—Yes, I would like you to take it on notice; not with any great expectation I will get the information, frankly. But on this issue, obviously there will be an increase in revenue collection from a person who does not have a tax file number identification. Have you built into the costings of this an estimate of the increase in revenue collection as a consequence?

**Mr Gallagher**—Yes, we have.

**Senator SHERRY**—Where is that? There is a revenue gain.

**Mr Lonsdale**—The revenue element is somewhere in the costings. It is in the aggregate figure of the package, Senator.

**Senator SHERRY**—It is interesting to know that it is there.

**Mr Lonsdale**—As we said, the pool will shrink considerably.

**Senator SHERRY**—Yes, I accept that.

**Mr Lonsdale**—While there will be people we would expect who will still not provide their TFN in the first year, in subsequent years quotation will occur, we think, and tax will be refunded. So in that regard there is a time issue.

**Senator SHERRY**—But it will not be 100 per cent. You are surely not working on the basis that it will be 100 per cent within a year or two, are you?

**Mr Lonsdale**—We have estimates.

**Senator SHERRY**—What is your estimate of percentage?

**Mr Lonsdale**—I do not have those figures in front of me.

**Senator SHERRY**—Let us assume you can get it to 95 per cent of 10 million—to use that round figure—that means there will still be 500,000 people who are effectively paying a penalty tax. Sure, some of them might get it back. Even with five per cent, that is half a million people. That is still a large number, isn't it?

**Mr Lonsdale**—In terms of revenue flow?

**Senator SHERRY**—Yes.

**Mr Lonsdale**—Again, it depends on what you assume. The costings are very sensitive to the pool of people who do not quote their TFNs and those who subsequently quote their TFNs. We think that, although there is a sizeable pool of people at the moment who do not quote TFNs, the initiatives that have been outlined in the plan will significantly reduce that pool.

**Senator SHERRY**—Yes, and I accept that. But if it is 76 per cent at the moment and if it moves to 95 per cent, five per cent is still 400,000 or 500,000 people who are going to be effectively paying a tax penalty for a period. Some of them may never claim it back, for a whole lot of reasons and, in some cases, it is not their fault. The individual has followed the provisions, but the employer has not, and then the employee gets penalised. I do not agree with the principle, but anyway. In the case where the money is refunded, will interest be paid?

**Mr Lonsdale**—That is an issue that has been worked out as part of the legislative process, Senator. It is not something that we have outlined in the final details.

**Senator SHERRY**—Could I suggest, certainly in the case where the tax penalty applies, through no fault of the individual who has provided their tax file number and it is the fault of the employer, that it would seem to me to be reasonable to provide interest on the moneys when they are refunded. That would seem to me to be reasonable. Will you take that on board?

**Mr Lonsdale**—I am happy to note it, Senator.

**Senator SHERRY**—Good. On what I am sure will be an extensive education campaign at public expense, which we are so used to in this country now, is a public information campaign planned for this?

**Mr Lonsdale**—Provision has been built into the estimates for it. The tax office has received some funding for a public education campaign. The final details of the plan indicated that part of that will revolve around the tax file number issue.

**Senator SHERRY**—And that has been built into the admin costs?

**Mr Lonsdale**—That is part of that estimate. That is correct.

**Senator SHERRY**—What is the estimated cost of the public education campaign?

**Mr Lonsdale**—I do not have those figures in front of me.

**Senator SHERRY**—Does the ATO have that?

**Ms Vivian**—In terms of the estimated costs of the public education campaign, Senator, that is still being worked out with government. In terms of the provision that we put in, it was based very much on past campaigns that have been run in terms of co-contributions and choice with regard to the provision for any media mail-outs and those kinds of things. The sort of provision that we have made for the next year is about \$23 million.

**Senator SHERRY**—For this coming financial year?

**Ms Vivian**—This coming financial year.

**Senator SHERRY**—At this stage, is there going to be any market research?

**Ms Vivian**—This is all currently being worked out with government in terms of the right sort of approach.

**Senator SHERRY**—So at a point in time beyond there is a pool of money and things like market research, direct mail, public relations, TV—all those sorts of things—are to come?

**Ms Vivian**—We are still working out with government about what the approach will be.

**Senator SHERRY**—Right, \$23 million. I suppose we are used to it. If we are not by now, we should learn. Coming back to the package itself, NATSEM released a report last week. It got some coverage in the media. NATSEM released publicly some research on baby boomers. Are you aware of that, Mr Gallagher?

**Mr Gallagher**—I am, yes.

**Senator SHERRY**—There is a lot of interesting material in it. What I found interesting, in terms of average superannuation balances—this was 2004 of course, obviously not right up to date—was for males \$87,100, median \$30,700, females \$35,000, median \$8,000: a big difference between the median and the average. Perhaps if we just start there. Is that because you have two groups in super: the people for whom it became compulsory in 1987, and then you have the pre-existing group?

**Mr Gallagher**—That is actually better thought of as three groups because what Simon Kelly has done is include the people in those age brackets who have no superannuation.

**Senator SHERRY**—Okay.



**Mr Gallagher**—So including, as far as I can see, the retired people, because when we just run the average across the entire people in the age groups we get numbers that are very similar to these.

**Senator SHERRY**—Yes.

**Mr Gallagher**—So essentially he has taken the assets data, which I have described before which was collected with the HES, and he has included that. Now, it is not entirely appropriate to look at people who have no superannuation and people who are already retired when you are talking about superannuation. As you know, when people retire they convert their superannuation into other asset holdings.

**Senator SHERRY**—Yes.

**Mr Gallagher**—It will be far more profitable—

**Senator SHERRY**—Well, some do.

**Mr Gallagher**—Some do.

**Senator SHERRY**—It is a mixture?

**Mr Gallagher**—It is a mixture. For many people it makes more sense to fix up their house and their fridge and their car as an investment in their retirement than to keep the money in a bank account.

**Senator SHERRY**—Yes.

**Mr Gallagher**—But, given the way it was done, they do not equate to the way you would normally view an average or a median superannuation balance because normally you do that with the people who have such a balance.

**Senator SHERRY**—Yes. Do you have a figure? Let us take baby boomers. Make it 50-plus, and I think, as you rightly pointed out—I have not had a briefing on this yet, I am actually going to get one next week—people who are already retired: do you have a median and an average figure for people 50-plus who are still in the workforce, approximately?

**Mr Gallagher**—I do not think that we have extracted that number as yet.

**Senator SHERRY**—Yes. You see, whatever that figure is, what it does indicate is that the majority of people who are 50-plus, at the moment anyway, have less than \$135,000 in super which is where the exit tax—

**Mr Gallagher**—No, well, we can see that from the revenue collected on the post-1983 component.

**Senator SHERRY**—Yes.

**Mr Gallagher**—And the distribution of people paying the post-1983 component on retirement.

**Senator SHERRY**—Yes. So you agree that the majority of people who are 50-plus—

**Mr Gallagher**—We always expected it to be the case; the people with superannuation guarantee coverage would take a significant number of years before they would be exceeding what is now \$140,000 threshold going forward.

**Senator SHERRY**—Is it \$140,000?

**Mr Gallagher**—I think the package makes it \$140,000, doesn't it, going forward? So they just sort of stepped that in the fee for simplification—made it simpler.

**Senator SHERRY**—That would be the reason, wouldn't it—let us take individuals. In the cameo on page 61, table A1, there are lump sum levels and income levels which show no net gain for groups of people.

**Mr Gallagher**—For the lower income people there is more, in effect, from the age pension asset taper than from the taxation.

**Senator SHERRY**—Take the 25-year-old which is used as an example of age there. The number of people who do not make a gain declines over time because they are in the superannuation system longer. Is that broadly right?

**Mr Gallagher**—Yes. You would expect that over time. Similarly, the long-term effect of this superannuation guarantee will be to convert full-rate pensioners into part-rate pensioners in the future.

**Senator SHERRY**—Yes. Looking at that distributional outcome in terms of income outcome and lump sum outcome, that would explain why people who have higher levels of superannuation saving obtain a greater money and percentage outcome. As you go up the income scale there is greater flat money and percentage gain.

**Mr Gallagher**—In the tax system, in the age pension system, there will be a point at which a person who was not a pensioner before is still not a pensioner, and therefore they do not get a benefit from the asset test reduction.

**Senator SHERRY**—Yes. Do you have page 61 there?

**Mr Gallagher**—I do.

**Senator SHERRY**—Let us go to page 61, the individual lump sum payment. Let us take the 45-year-old. The person on \$2,000 a week income, their gain is \$51,389 or 11.07 per cent, whereas the person on \$800 a week, their gain is \$2,400, 1.3 per cent. That is a function of level of super savings, their lump sum accrual, as matched against the tax-free exit tax threshold.

**Mr Gallagher**—The amounts of the ETP tax increase as the size of the benefit increases.

**Senator SHERRY**—Yes. If you do not make—I thought it was \$135,000 before 1 July, whatever the new figure is now—\$140,000? Under that system, the more money you had over \$140,000 then the greater advantage you gained, because you are effectively not taxed on that any more, going forward from 1 July.

**Mr Gallagher**—If you had a lump sum of \$400,000, \$490,000, I think many people would look at ways of taking that as an income stream rather than as a lump sum.

**Senator SHERRY**—Yes, and that is an interesting point in itself, isn't it? If you convert it to a compliant pension annuity, the exit tax is rebated back under the current system.

**Mr Gallagher**—There is a 15 per cent rebate.

**Senator SHERRY**—Yes. The 15 per cent rebate is an incentive to actually put it into a compliant pension annuity, isn't it?

**Mr Gallagher**—Yes.

**Senator SHERRY**—Have you taken that into account in any of these cameos? I could not find where you had done that.

**Mr Gallagher**—I do not think we have switched over, in the cameos, the form in which benefit is taken in a behavioural sense in terms of what would be optimal.

**Senator SHERRY**—Yes, but given that some people do that? I mean, there is clearly behavioural evidence that some people convert to a pension annuity and get the 15 per cent rebate back.

**Mr Gallagher**—Yes. We have the superannuation pension cameos later in appendix A, so we have got both pension cameos and lump sum cameos.

**Senator SHERRY**—It is not in a table form.

**Mr Ray**—It is table A2, Senator.

**Senator SHERRY**—What page is that?

**Mr Ray**—Page 63.

**Mr Gallagher**—But it is, I think, based on an allocated pension.

**Mr Lonsdale**—Yes.

**Senator SHERRY**—An allocated pension?

**Mr Gallagher**—Yes.

**Senator SHERRY**—One other question: why age 65 as the hypothetical point of claim?

**Mr Gallagher**—The reason for this, in terms of constructing cameos, is that in the average retirement expenditure calculation we like to include any effect on age pension, and it is because we have done that retirement expenditure calculation, and it is much cleaner if you do it at age 65 when you are looking at the age pension, rather than—

**Senator SHERRY**—Pension interaction.

**Mr Gallagher**—The age pension assets test is part of the calculation of average retirement expenditure and it is just cleaner to do it if you take age 65.

**Senator SHERRY**—I understand why it is cleaner, but superannuation access age is 55 to 60, so 60 is the uppermost early limit, and what is the average retirement age in this country at the moment? I thought it was just under 60.

**Mr Lonsdale**—Around 60, I think.

**Mr Gallagher**—Yes, it is around that.

**Senator SHERRY**—So wouldn't it be valid to show an illustration on age 60 as well?

**Mr Ray**—But the point that Mr Gallagher is making is that it wouldn't show all of the effects of the package.

**Senator SHERRY**—No, but it would show the effect in real life of what happens when someone retires at 60. The point I am getting at is that you are showing a projection through to 65 in terms of superannuation accrual, and I understand the logic of the interface with the age pension. I accept that that is a valid example. But the reality is, when you have an average retirement age of 60, then a lot of people are accessing it prior to 65 and therefore do not accrue through to age 65. They have left the workforce. Do you accept that that is a valid behaviour, a real-life behaviour?

**Mr Ray**—I accept that that is a valid behaviour, but the cameos are attempting to have a look at the effect of the total package and the change in the taper on the pension assets test is an important component of the package.

**Senator SHERRY**—Sure, and I accept the validity of showing that, but isn't it also valid to show what happens in real life? We know at the moment that a person gets to 60, not 65. That is the average retirement age. Millions of Australians get to 60 or thereabouts and then access their super. They do not work through to 65. Whether we like it or not, that is what happens.

**Mr Ray**—But in that case it would be a complicated cameo. I am not saying it could not be done, but it would be a complicated cameo because you would then have an effect at 60 and then whenever the person reached pension age.

**Senator SHERRY**—Sure, but I still think that, given what is happening in reality, it is valid to show that, because they are not working through to 65 to have that level of accrual and super. Do you accept that?

**Mr Gallagher**—Yes, we do.

**Senator SHERRY**—We discussed earlier that there are a number of people who do not benefit. If we look at this group of the baby boomers, the majority, because they have not been in the super system long enough, do not have a sufficient accrual, Mr Gallagher. There are currently 664,000 people between the ages of 50 and 54, there are 596,000 people between the ages of 55 and 59, and, if we go to 65, there are 448,000. They are the approximate numbers. There are going to be a lot of people who will not be picking up a benefit through these changes, aren't there? These are substantial numbers.

**Mr Gallagher**—There will be people who will not gain financial benefit. The package does provide significant certainty and removes significant complexity for people receiving superannuation benefits.

**Senator SHERRY**—Yes, accept that. We have debated it; that is a constant theme. Accept that. But I am correct: there are significant numbers of people, a proportion of those people, who do not pick up a gain.

**Mr Lonsdale**—I am not sure that it is that straightforward, Senator, because I do not think you can strictly look at the \$140,000 threshold or the post-component and conclude that if you are, say, above 50 or 55 then the only super that you would have is a post-component. It could well be that people have been employed with an employer before the SG came into effect, and they would have a pre-1983 component as well because that is based on eligible service period, not necessarily the period in which they are making contributions. It could well be that

some of those people have not only a post-1983 component but also a pre, and there would be a financial benefit for those people.

**Senator SHERRY**—There would be some people in that category. However, compulsory superannuation came in in 1987 at three per cent.

**Mr Lonsdale**—Award super. Correct, Senator.

**Senator SHERRY**—Award super. That covered approximately 60 per cent of people who had nothing.

**Mr Gallagher**—In 1986, just before the introduction of award super, we had 39.6 per cent of employees covered by superannuation. That had expanded to 80 per cent by about 1992, when the SG was introduced, and the SG has taken it up to about 92 per cent of employees.

**Mr Ray**—The point that Mr Lonsdale is making, Senator, is a point that I think we have discussed with you before: that the pre and post components are not determined by when someone started in the super system. It is when they started employment with their employer.

**Senator Ellison**—Mr Chairman, I wonder, for this line of questioning, whether there will be any questioning of ATO before a quarter past 10 or whether we could perhaps have that demarcation now for ATO so that they can go and come back tomorrow.

**ACTING CHAIR**—I will ask Senator Sherry. Have you got any questions for the ATO?

**Senator SHERRY**—Because we are going on to 10.15, I think I will probably go through until 10.15 just on the package and finish it there.

**ACTING CHAIR**—Thank you.

**Senator Ellison**—ATO can go, because that is the policy side of it?

**ACTING CHAIR**—Senator Joyce, any questions of the ATO?

**Senator JOYCE**—No.

**ACTING CHAIR**—Senator Watson?

**Senator WATSON**—No.

**ACTING CHAIR**—Thank you. It is a fine idea.

**Senator Ellison**—Thank you for that.

**Senator JOYCE**—You will get those questions on notice.

**Senator SHERRY**—Just before I go on, would the issue of the 30 per cent income paid overseas for managed funds in Australia be taken up with your group, Mr Ray—the revenue—or would that be better taken up with the ATO?

**Mr Ray**—This is the withholding tax?

**Senator SHERRY**—Yes, withholding tax.

**Mr Ray**—Yes, that is our group.

**Senator SHERRY**—It is your group. We will try and knock that off before we finish, too. Coming back to the package, I know the final package dealt with a range of issues, but I would like to ask about overseas transfers, people who want to shift money into the system. I

have had a number of people raise this with me, particularly UK residents who have come to live in Australia, and I just want to understand. If they have left the UK and, let us say, they have £500,000 or £1 million in pension—which is probably not unheard of, given the UK pension design—what is their ability to transfer that money in above the new limits that are proposed, the \$100,000 per year, depending on their age, and then the \$50,000 and then the undeducted contribution limit? Are they able to transfer in above those yearly limits?

**Mr Lonsdale**—It would typically be an undeducted contribution, so you look at the transitional arrangements between 9 May and 1 July 2007. An amount of up to \$1 million could be contributed. Beyond that, the cap is \$150,000 per annum. However, an individual can bring forward two years into one, so that makes it \$450,000 per annum.

**Senator SHERRY**—In UK money terms—say they had £1 million, which is about \$2.4 million—they would have those constraints on the transfer of moneys into the Australian system.

**Mr Lonsdale**—Correct. They would have the same constraints as any other contribution from a domestic source.

**Senator SHERRY**—Dealing with the UK—I do not know what happens in other jurisdictions—my understanding is that it is all in or all out. You are required by UK law to transfer superannuation to a country like Australia and you have to transfer the lot. You cannot do it in bits. Have you had a look at that issue?

**Mr Lonsdale**—During the consultation period, this issue was raised and was looked at closely by government. I think different countries will have different rules governing the release of superannuation. In the case of the UK, that could well be correct.

**Senator SHERRY**—Effectively, the limits will prevail even in those sorts of circumstances.

**Mr Lonsdale**—Those contributions will be treated the same as any other contribution, except for the exemptions that I mentioned before.

**Senator SHERRY**—In the UK, for example, there is no contributions tax. They pay pension income tax when they retire. In the case of a person in the UK who has paid no contributions tax and who transfers money into the Australian system, let us say at age 60, they presumably will not pay any income tax on that money now in the Australian system but they will draw it out as income.

**Mr Lonsdale**—I am not sure. I suspect the UK would have a view on the ability to transfer that money and pay, effectively, no tax to jurisdictions.

**Senator SHERRY**—Yes, that is what I am getting at, because in the UK there is no contributions tax. It is collected after retirement. Most jurisdictions are non-contributions-tax and the tax is at the end in a variety of forms.

**Mr Lonsdale**—Yes.

**Senator SHERRY**—That individual would effectively end up paying no tax at all.

**Mr Ray**—But that is a matter for the UK.

**Senator SHERRY**—It is not just a matter for the UK. In terms of treatment in Australia, if they have paid no contributions tax in another jurisdiction, why in theory would they pay no tax in the Australian jurisdiction on drawdown in those circumstances? They are using our services and facilities but paying no tax towards them and, in fact, may have paid no tax towards the provision of services in the general Australian community at all and are not paying any income tax. That is the reason I raise the issue.

**Mr Lonsdale**—Yes, we understand the issue. The short answer is that it is very early to tell. We have had this measure announced now for just a couple of months. It is very early, I think, to gauge the reaction of the UK on these sorts of things or, indeed, any other country.

**Senator SHERRY**—Yes, except that, because of our relationship with the UK and our background, there are more of these people coming to Australia from the UK than from anywhere else. I do not have the stats, but I understand that that is right.

**Mr Lonsdale**—I think that is right.

**Senator SHERRY**—Because of the nature of the UK private pension system, albeit in rapid change, there are substantial numbers of people with substantial defined benefit lump sums—about 40 per cent of the population—so there is going to be a high number of these people coming into the country, raising these sorts of issues—more than any other jurisdiction. So you are aware of the issues?

**Mr Lonsdale**—We are.

**Senator SHERRY**—Have you had any discussions with UK authorities about this matter?

**Mr Lonsdale**—Not directly, but we have had discussions during the consultation process with a number of organisations who deal with the transfer of overseas superannuation, including the UK.

**Senator SHERRY**—Were you able to get an answer on that co-contribution, the \$28,000 indexation?

**Mr Lonsdale**—I will have to check. I do not have it with me.

**Mr Gallagher**—I cannot remember specifically, but virtually every threshold in the superannuation system is indexed to AWOTE—every one that I can think of, in fact.

**Senator SHERRY**—If you find out that it is not, I will take it on notice.

**Mr Gallagher**—Yes, but I think that is the most likely answer.

**Senator SHERRY**—I assume it will be when the \$28,000 goes up, when the index kicks in.

**Mr Gallagher**—We will come back to you on that.

**Senator SHERRY**—It should not be hard to find, but my office has not been able to find it on the website, other than that there is an indexation provision. While I have you here, Mr Ray, in relation to the withholding tax collected from specific types of investment, Australia levies it at the rate of 30 per cent. What is the approximate revenue that is derived from this source?

**Mr Ray**—This is for managed investments?

**Senator SHERRY**—Yes.

**Mr Ray**—I would need to take that on notice. I think it is in the ITW head, but it is not broken down.

**Senator SHERRY**—Perhaps you could let us know tomorrow. I am not anticipating you coming back, by the way.

**Mr Ray**—That's good news!

**Senator SHERRY**—I'll make it even better for you! You can come back tomorrow and give me the information.

**Mr Ray**—It depends on whether I have the information, but I will take it on notice.

**Senator SHERRY**—Could you have a look at the particular types of investment and whether that information is available.

**Mr Ray**—What do you mean? Whether it is on dividends interest or—

**Senator SHERRY**—Yes. Could you also have a look at whether there is any information on the withholding tax arrangements, say, for Hong Kong, Singapore, the US and Japan. You're sighing, Mr Ray!

**Mr Ray**—On their withholding tax arrangements?

**Senator SHERRY**—Yes. I am sure that will take a little longer than the Australia data.

**Mr Ray**—I am happy to take it on notice.

**Senator SHERRY**—I also understand that it is possible to reduce withholding tax to 15 per cent through the income tax system. Is that an option for people?

**Mr Ray**—I am not quite sure what you are getting at, Senator.

**Senator SHERRY**—I will check this overnight and I will come back to you. It may not be to you personally.

**Mr Ray**—Certainly, there are reduced rates of dividend withholding tax under some of our treaty arrangements, but that is a different question.

**Senator SHERRY**—I will come back to you with a more refined question tomorrow. Finally, at the last estimates we got an answer to question No. BET31 on the cost of tax deductibility of political donations. Is that your area?

**Mr Ray**—Yes, it is.

**Senator SHERRY**—My assumption is that they are the most up to date figures, but I wanted to confirm that.

**Mr Gallagher**—I cannot recall the exact numbers that we have provided in response to that question. I will check whether they are the most up to date.

**Senator SHERRY**—I am happy with that. I do not have any more questions for you or your section, Mr Ray, so it is only the ATO I want to continue with tomorrow.

**Mr Ray**—Does that include the Board of Taxation? We discussed that earlier.

**Senator SHERRY**—I have only a couple of questions.



**Mr Ray**—Are you happy to put them on notice?

**Senator SHERRY**—Yes, I will put them on notice in the circumstances.

**Mr Ray**—Thank you.

**ACTING CHAIR**—Thank you very much, Mr Ray, and your colleagues, for your attendance. We will move on to the Inspector-General of Taxation. Mr Vos and Mr Pengilley.

[10.15 pm]

### **Inspector-General of Taxation**

**Senator WATSON**—Mr Vos, congratulations on your achievements during the year, especially your prodigious productivity; but when I observe your report, I believe it has overtones of a great parliamentary speech rather than a measured document containing information for the parliament. I will give you my reasons. I have in mind your reference to the tax office as being ‘extremely adept in managing issues in the media and protecting its public image’. You go on further to say that the ATO—and I use your words again—has ‘habitual use of spin’. By ‘spin’ do you really infer that the tax office is not giving account of all the relevant facts and the circumstances? That is a very serious charge.

**Mr Vos**—The difficulty in preparing an annual report is to account to parliament what I have been doing in the year and to make some observations. When you look at an organisation like the tax office, which is very efficient in comparison to other similar organisations around the world, I see that my role still is to suggest areas for improvement or areas to be wary of, and that was an example of an area I would preferably have described as: ‘Be careful that you don’t put too much of a public spin on something when there is a counterposition.’ I have a number of examples to identify my point, but it is important to just put that into a context. Is it worth giving one example, at least, to make the point, or not?

**Senator WATSON**—‘Spin’ in a political sense has a lot of undesirable overtones. I really must say I took exception to that word, because to me it really implies not giving account of all the relevant facts and circumstances.

**Mr Vos**—I will take sole responsibility—

**Senator WATSON**—I would have to disagree with that, unless you have some particular examples.

**ACTING CHAIR**—Senator Watson, I think Mr Vos has offered a particular example.

**Mr Vos**—I was just going to give an example that I drew my comment from. Coming out of the private sector after many years, I am inclined to use a vernacular that might overplay my hand at making a point, and I take on board what you say. I am in an office with six staff. I do not have the support of editorial staff and public relations people and the like. I wrote it and I have to live with my words, but I do not disagree with the proposition that you put to me. I have absolutely no doubt that it needs to be merely read in the context that from time to time there are examples where the tax office might go public on something and merely reflect a positive position and not identify that there is a downside. That was the context in which I expressed those comments.

**Senator WATSON**—Thank you, because words such as ‘habitual’ do indicate an ongoing and regular sort of use of spin.

**Mr Vos**—Okay, but it would have been nicer to have had the discussion with you before I took it to print.

**Senator WATSON**—Feel free at any time! I am always available.

**Mr Vos**—There is, in small offices, a lack of resources to get these things tested, as you would in bigger offices, which most agencies that report to parliament usually are.

**Senator WATSON**—In public life we all have to be very careful in our choice of words. Does your forward work program include reviews of the tax office’s dealing with research and development syndication arrangements?

**Mr Vos**—We have a review almost complete on that particular topic. We started that review in February 2006 and we are getting close to the final discussions with the tax office to bring that one to a conclusion, hopefully, by Christmas.

**Senator WATSON**—You are reported as saying that the tax office has been inconsistent in its treatment of taxpayers who invested in mass-marketed investment schemes compared with those who invested in R&D syndicates. From your statement, you have almost completed but not really completed your review of the R&D syndicate arrangements. Is that right?

**Mr Vos**—That is correct.

**Senator WATSON**—So it does worry me that you make a comment such as this in advance of finalising reporting on your review of R&D syndicates.

**Mr Vos**—The comment that I make is in respect to an announcement by the previous commissioner in around October 2004 about the decision on which cases he would pursue in the R&D syndication area as against the total that were in the base to pursue.

**Senator WATSON**—The point that I am making is that those observations would generally come after the completion of a report rather than as part of work in progress.

**Mr Vos**—We are actually looking at the conduct of the cases within those that he is reviewing. I think that I need to present to you the words that are at the beginning of the paragraph:

Even where the Tax Office seeks to differentiate, I have noted a need for more explanation to help the community understand how Tax Office decisions on differing compliance treatments for different entities are relevant in the circumstances ...

It is to give an explanation for why the previous commissioner chose to target only some 20 per cent of the cases out of a base of 245, whereas where there were other examples of review of cases—as in the mass-marketed tax-effective investments and the employee benefit arrangements—he chose to review all cases. That is something that has been raised to my office as being—‘Why was that so?’—and I am saying the tax office needs to explain more fully to the community why he has done a thing in a particular way. That is all I am saying. I am not expressing a view in this document on R&D syndication just that there is a need. The point that I am making is that I believe that there is a need for the commissioner or for the tax

office to explain why they do things in a particular way if they are going to be selective; the same thing with the service trusts.

**Senator WATSON**—I can understand that, but the point that I am making, Mr Vos, is that you are publicly commenting on work in progress before the review has been completed and presented to the parliament.

**Mr Vos**—I am commenting on a decision that was made in 2004. I am not commenting on the work in progress. It is a different issue, a significantly different issue. The same thing occurs with service trusts. We have talked about service trusts. I am also doing a review on service trusts but I am not talking about the conduct of how he has dealt with the service trusts, where he is taking a selective approach on that. I am only talking about the time taken to make a decision on the technical issues associated with the matter. The R&D syndication review is to understand why it has taken so long to make a decision on R&D syndication.

**Senator WATSON**—Do you consider that there are similarities, for example, between investment in mass-marketed investment schemes and R&D syndicates?

**Mr Vos**—No, I am not saying that at all.

**Senator WATSON**—You are not saying that at all?

**Mr Vos**—No. I am just making the point that when groups of taxpayers are dealt with in a particular way and the tax office deals with those groups of taxpayers differently to other groups of taxpayers, it would be appropriate to explain why he seeks to take the particular course of action that he does on the group of taxpayers dealt with in a particular way which is different to normal.

**Senator WATSON**—In your final report, you might like to clarify that, because I had some problems there. Your annual report also criticises the tax office for ‘propping up deficient tax law because it does not deliver’ what I call ‘policy intent’. Could you inform the committee as to your views about purposive interpretation of tax law as you perceive it to be?

**Mr Vos**—Almost always, the tax office applies a purposive approach to his interpretation of the tax law, as you would expect that he would. In the case of the decision in *Essenbourne* that was subsequently decided in *Walstern* and then two other cases, the Federal Court had continually said that the FBT law did not apply to a particular transaction. Despite that, one third of the cases affected by the employee benefit arrangement issues still had multiple assessments imposed on them until they agreed to settle and forgo all legal rights and, upon that settlement, the multiple assessments were withdrawn.

In February of this year, I think it was, following a fair bit of pressure that I believe I and others had put on them, the tax office unilaterally decided, on the remaining 500-odd cases left in the loop that had not settled, that they would remove the multiple assessments. It was in some of those letters that the commissioner acknowledged that they would have suffered financial injury as a result of those multiple assessments. That is an example, probably the principal one that has been given to me, of where I suggest that it is a risk for the tax office to take policy over law to get an outcome that suits the situation that he has. I have made the observation that I believe that the tax office has the responsibility to administer the law as enacted by parliament without fear or favour, full stop. Where there is a need for policy

change, there is a protocol in place for him to go through Treasury or, if necessary, direct to government.

**Senator WATSON**—You referred the committee a few moments ago to several Federal Court decisions. Could I put before you a High Court statement in the CIC Insurance case that would assist administrators called to put into effect tax laws dealing with complex commercial transactions. You would be aware that the High Court said:

The modern approach to statutory interpretation (a) insists that the context be considered in the first instance, not merely at some later stage when ambiguity might be thought to arise, and (b) uses 'context' in its widest sense to include such things as the existing state of the law and the mischief which, by legitimate means such as those just mentioned, one may discern the statute was intended to remedy.

Could you comment on that? It is from the High Court.

**Mr Vos**—I am not in a position to express opinions about the decisions arrived at by the commissioner, because that is a matter for the courts. My job is merely to look at the process by which the commissioner arrives at decisions and how he communicates those decisions to taxpayers. I think that there is much written on statutory interpretation and the rules of law. I am not saying that the tax office does not live by the rules of law. I am merely expressing a concern that there is a need for him and his staff to remember that they cannot prop up deficient law by applying what they think is a reasonable outcome to keep the policy intact.

**Senator WATSON**—The High Court has given him that framework within which to make his interpretive decisions.

**Mr Vos**—There is a Solicitor-General's opinion that was attached to my report to government that was released a month or two ago, on the litigation review that we did of the tax office conduct. That Solicitor-General opinion with the chief legal counsel—it is a joint opinion—makes it abundantly clear when the tax office is able to contemplate putting policy over law, but he has to make it very clear to the community that he is doing it and seek to find a relevant test case to get the matter tested in the courts as soon as possible.

**Senator WATSON**—Thank you, Mr Vos. Thank you, Mr Chairman.

**Senator SHERRY**—My colleague Senator Watson may have traversed some of the issues whilst I was out of the room. I just want to go to the issue of the small business debt collection. You released in April 2005 a review and you made two recommendations. You have publicly expressed doubts, if I could put it that way, about whether or not the ATO has been implementing your two recommendations. Why don't you believe the ATO have been implementing your recommendations in this area?

**Mr Vos**—From the best of my recollection, the first one was that the commissioner needs to discern and distinguish between those cases that are what I will call genuine, that need an extension of time to pay because they are genuinely trying to do so but at the time temporarily cannot, against those who were just really rorting the system, those building up debt and then potentially walking away from their businesses and starting the next day down the road.

The second recommendation was to work with the community to implement education of taxpayers to better manage their cash flows so that they did not get into debt in the first place. I do not think that has necessarily happened. I believe that all that has happened in the first

case is that they have got tougher across the board, but I have no evidence to show that there have been unreasonable approaches to legitimate businesses. What I do know from looking at the numbers overall, as I have read in their annual report, is that small business debt—I say ‘small business debt’ but it is mainly at the microbusiness level, under \$2 million turnover—has not blown out this year as it did a couple of years ago.

**Senator SHERRY**—We are now just into November 2006, so almost a year and a half after you made those recommendations. Surely you must have some internal dialogue with tax office officials and the tax commissioner about the progress of these recommendations.

**Mr Vos**—Yes. We commenced a review on 28 June to look at all of the recommendations for all of the reviews done to date and to get a stocktake of where the tax office is at. One of my staff has been working full time on that since June, and it is advancing quite well and we have been getting quite a lot of information from the tax office.

I am not over the detail of what has been happening on the debt issue, but the comments were made before we started that review and were generally in response to a certain level of concern that existed in my mind that there were a number of people engaging in response to the tax office’s pleas for either immediate payment or entering into a scheme to pay, but I had no evidence of what was happening to the remainder. If I want to look at the numbers, as I believe that they have been portrayed by the tax office in some of their material on their website and elsewhere, there was something like 800,000 cases, who owed \$6.5 billion.

**Senator SHERRY**—Are they overwhelmingly microbusinesses?

**Mr Vos**—All micro, \$6.5 billion. They have had 160,000 who have engaged with them and they have \$810 million. I had the view that focusing on the good news, the \$810 million, still left the question of where the other \$4 billion to \$5 billion was.

**Senator SHERRY**—And the hundreds of thousands of other microbusinesses—

**Mr Vos**—Who had not engaged with the tax office.

**Senator SHERRY**—who were not engaging.

**Mr Vos**—Yes.

**Senator SHERRY**—What observations do you make? Is the tax office not approaching them or not communicating with them? What is at the guts of the problem here?

**Mr Vos**—I simply do not know. That is one of the things we are looking to find out in the course of doing this review, because it is important to systematically go through these reviews and do a stocktake, after a reasonable period of time, to see whether there are signs of improvement.

**Senator SHERRY**—I notice that the press comment I referred to was 11 July this year. That would have been at the beginning of this stocktaking process.

**Mr Vos**—You would have to draw my attention to the 11 July press comment.

**Senator SHERRY**—It was an article headed, ‘Vos to audit tax office,’ by Elizabeth Kazi. It is quite a sizeable article, that carried on over the rest of *Financial Review*. When will you conclude this analysis that is currently being conducted?

**Mr Vos**—I cannot say. If it is based on the principle of average time to complete that I have had in seven reviews completed to date, it would be about eight months from the time that we release the terms of reference to the time we report to the minister. But I have had some reviews that have gone up to 12 and 14 months.

**Senator SHERRY**—Yes, but this is a stocktake of reviews you have already done.

**Mr Vos**—It will depend entirely on the availability of the information from within the tax office and how quickly we can get around to reviewing that information.

**Senator SHERRY**—Are they making the information available?

**Mr Vos**—Yes, they are.

**Senator SHERRY**—Are you getting ready access?

**Mr Vos**—Yes. There is no issue on access. It is a question of whether the information is fully there or whether we need to go back and do some field work to test the validity of the numbers that are being given to us, because numbers alone will not be an answer here.

**Senator SHERRY**—What do you mean by ‘field work to test the validity of the numbers’?

**Mr Vos**—I will go and look at the tax office files, maybe go and meet with some of the taxpayers engaged in the process, to see if there are any issues that have come out of that that might demonstrate that they were muscled into agreeing to settle or pay or whether they were given a reasonable chance to move towards a progress payment arrangement or whatever it might be.

**Senator Sherry**—So you may do some field analysis of a number of cases to examine those who have settled? What about cases that are still outstanding? Will a field analysis be included in that area as well?

**Mr Vos**—I need to understand what the tax office process is in dealing with those other cases.

**Senator SHERRY**—Yes, and there are a lot of them.

**Mr Vos**—On the original numbers, there are a lot of them, yes. There was a note from the commissioner that went on the tax office’s website on 15 February and, at 31 December 2005, there were over 800,000 debt cases in the microbusiness market, with a value of approximately \$6.5 billion.

**Senator SHERRY**—I get the sense, Mr Vos, that you are a little frustrated at the progress to date in this area.

**Mr Vos**—I put most of the pressure on myself. I want to get these things finished. I do not like waiting, only to find that it is three to six months before you might have enough intelligence, enough information, to make an informed decision. When so many different staff within the tax office are dealing with so many different cases in so many different places in Australia, they cannot be decided yesterday. I have to learn to be a little bit more patient in waiting for this thing to happen. I only have six staff—five technical staff and one administration staff member—available to do the work.

**Senator SHERRY**—Is part of your frustration the lack of staff?

**Mr Vos**—Yes. If I had more staff, I could do more field work. I could do more of the work myself rather than waiting on the tax office to do the work for me and hand their own outcome to me in a minute, which I then have to verify as whether the work done is as I would have expected it to be and whether we need to revisit some of the areas and get clarification. It is not that I am being fed rubbish and it is not that I am being fed wrong information. Sometimes we have so much material given to us that we have to go through and—

**Senator SHERRY**—Information overload?

**Mr Vos**—Yes, and we have to isolate the important material that is relevant to the cases that we are looking at.

**Senator SHERRY**—Senator Watson, I know, touched on this. You criticise what was termed the ‘win-at-all-cost’ mentality that exists within the ATO. Is that correct?

**Mr Vos**—In some quarters I believe that it is. I think that if you look at the employee benefit arrangement cases, as I referred to before, they kept the multiple assessments opened until the point of time at which the taxpayer signed the deed of settlement. The penalties were remitted to five or 10 per cent, the interest was halved, and the multiple assessments were withdrawn. Get the settlement: back off on all the leverage. I am just raising the point: is that fair? We must get the outcome. The outcome is the most important thing in a compliance strategy.

**Senator SHERRY**—In terms of this issue of fairness you have raised, and getting the outcome, have you talked to or listened to specific individual taxpayers who have felt this pressure?

**Mr Vos**—I would say it would be hundreds. I have read their letters. I have spoken to them on the phone. I have met many of them in person; hundreds over the three years that I have had this job—the people involved in mass-marketed schemes, EBAs, the companies at the top end of town who have been waiting four or five years for an audit to be finalised. It would be hundreds. It is one of the reasons why I guess at times I put so much passion into how I say things, because I believe that, even though I am only dealing with a very small proportion of taxpayers engaged with the tax office—I do not know what the number might be; let us say 99.9 are engaged in a self-assessing environment—they are complying with lodging their returns, paying their tax. They do not have a problem with the tax office. It is only those who are either being looked at as being aggressive planning, maybe cheating, maybe doing things that the tax office believes is wrong. Now, maybe some of those are chronic cheaters who do wrong. Many have got caught based on advice that they were given based on lack of direction from the tax office, and maybe if things had been done a little bit differently earlier in the piece these people would not have landed in situations where their business is at risk, their marriage is at risk, there are suicides in the family and sickness.

**Senator SHERRY**—So in your approach you draw a clear distinction—coming back to some of your comments earlier—between those who were innocently caught up in an arrangement, who had no knowledge and did not set out to minimise or avoid tax, a group of people who were innocently caught up through either poor or deliberately poor or bad advice,

and a group of taxpayers who deliberately set out, knowing full well that they were trying to avoid tax. You draw that distinction?

**Mr Vos**—Absolutely. I believe that when you have a continuum of people in a group you will have some at one extremity who have legitimate arrangements that would pass muster in a court, and probably if looked at closely by the tax office would get a private binding ruling that they are okay. At the other extreme you have people who are on the edge, or have probably moved over the edge of fraud or evasion but are brought back down into the same group as the people at the other extreme. Where you have a one-size-fits-all for that total group you finish up with the individual circumstances not being examined as they should.

**Senator SHERRY**—And you do not believe there is as significant, as you would believe should occur, shift in culture in this area in the tax office as yet?

**Mr Vos**—It is moving slowly, but culture is a hard issue in which to see change quickly. I think there are overarching and competing issues about uniform and regular decision-making and risk management where, say, in the case of the EBAs there were originally about 9,000 taxpayers who were said to have gone into this area, but there were actually only I think about 5,000 actual economic businesses involved in them but they were all pursued in a homogenous way because there were 5,000 decisions to make in a very short space of time.

**Senator SHERRY**—Well, I would appreciate your input into this, Mr Vos. Did you hear my earlier conversation about the proposed penalty provisions for non-provision of tax file number and the penalty tax that will apply?

**Mr Vos**—No, I did not.

**Senator SHERRY**—Okay. I just mention the issue under these proposed new changes to superannuation where the employee provides their tax file number to their employer—they comply with the law—and where the employer fails to provide the tax file number to the superannuation fund. So the employee has met the requirement. The employer has not done that. The employee is to be penalised at a top marginal tax rate on their superannuation contribution. I just alert you to that issue and express my concern about that approach. You might care to examine the issue and hopefully we can nip this in the bud before it starts. But for another day. Regarding your annual report, was a draft copy of that provided to the tax office prior to its release?

**Mr Vos**—It was.

**Senator SHERRY**—Is that a requirement?

**Mr Vos**—Yes, it is a requirement under my statute, where I am critical or impliedly critical of the commissioner, to give him an opportunity to make his comments.

**Senator SHERRY**—Did the commissioner respond in writing?

**Mr Vos**—He did.

**Senator SHERRY**—And did you change the draft annual report as a consequence of his response?

**Mr Vos**—Entirely, to address all of the issues that he raised.

**Senator SHERRY**—But despite that—



**Mr Vos**—And met with him.

**Senator SHERRY**—Yes.

**Mr Vos**—And canvassed the issues, and recognised that where ambiguity exists or we did not have a position to sustain the point that we were making, I just withdrew that from the final draft.

**Senator SHERRY**—I am not going to go to questions about the toing, the froing and the letters and things.

**Mr Vos**—But I took on board all that he said.

**Senator SHERRY**—Sure. But nevertheless I would have to say I have read a lot of Audit Office reports, for example, in my years here that are critical of departments. Your report would have to rate as one of the most critical of any I have read, not just of the ATO.

**Mr Vos**—It was not intended to be, Senator. It was meant to—

**Senator SHERRY**—Well, it certainly read that way.

**Mr Vos**—Yes, well, I made the point to Senator Watson that I wished to raise issues that I felt were of moment that had surfaced in this year, and were repetitive of things that had been observed in prior years. Some of the issues in this report will come out in some of the reviews I am yet to finalise, so it is inappropriate for me to canvass those at this stage.

**Senator SHERRY**—Yes. But, nevertheless, many of the issues in the annual report went to reviews you have completed and made recommendations about.

**Mr Vos**—Correct. So a lot of these have been points that I have made in other reports. But as I said to Senator Watson, my intention was to put a proposition to the commissioner and to his office. They are seeking to improve themselves as an ongoing exercise. I am working in conjunction with them to do that in an independent way. I saw this as an effective way of communicating my issues. What else do I say in an annual report? I have been busy, full stop. It would not have seemed to me to have been an adequate exposure of my year's work to the parliament, but I take on board the comments that have been put to me. I guess I can report to this committee that I have, in a very clear and unambiguous way, learnt my lesson from it and will be very significantly chaste as to what I do or say in the future.

**Senator SHERRY**—So you do not stand by the comments in your annual report anymore?

**Mr Vos**—I stand by all my comments, Senator.

**Senator SHERRY**—Right.

**Mr Vos**—I stand by my comments.

**Senator SHERRY**—So what do you mean by you are 'chaste'?

**Mr Vos**—I guess I will seek to be a little bit more careful in saying things without attaching a full explanation as to why I have said it. I felt that I had four, five or six pages to make some comments on what were my achievements in the year. My achievements in the year were dealing with specific issues which I believe needed to be addressed by the tax office over time; they were issues to work towards regarding the overall improvement of the delivery of tax administration to the community.

**Senator SHERRY**—Yes. Have you examined the average length of time taken by the ATO to adopt the various recommendations that you have made since you have held the position?

**Mr Vos**—No. That is one of the things that this review, started in June, will determine. But I can say that some of the recommendations are adopted in the course of us undertaking the review. Some of them are perceived to be such ‘no-brainers’, if I can put it that way, that the tax office will unilaterally implement the change.

**Senator SHERRY**—What, things that are not particularly controversial, that are sort of an absolute cert of being implemented?

**Mr Vos**—Correct. But some of the changes do need development of systems and process, and those systems and process need to be worked on over a period of time. I recognise that some things just cannot happen overnight. I am led to believe that most of the recommendations have in fact been implemented.

**Senator SHERRY**—So the stocktake—which I think was your initial description of your recommendations and their implementations—will include analysis of where they have been adopted and implemented, where they have not or maybe some part of it and not all of it, and then the ongoing issues of, for example, administration?

**Mr Vos**—Yes. I want to actually go back and not just look at the recommendation and the outcome of the recommendation—that is, that the commissioner agreed with the change recommended—but also, if we have got the time and the ability, to look at the basis upon which the recommendation was based and revisit the finding, the issues that gave rise to the recommendation and see if, two or three years later, the recommendation needs to be added to or another review conducted of that area.

**Senator SHERRY**—I had a conversation earlier with the department about them seeking legal advice on your investigative powers, and then after the break I was informed—I think by Mr Ray—that in fact you had sought clarification of your legal investigative powers. What is the situation here? Who is investigating what powers?

**Mr Vos**—Let me just give you an account, as I recall it. We made a request of the tax office for information during one of our reviews. It was the perception of bias on private binding rulings. The tax office was concerned that their staff may not be protected from the safeguards in the IGT legislation. Under the IGT legislation the tax office are not liable for breach of the secrecy provisions in the tax act if they supply information to me in good faith. They had the view in some of the requests that we asked for that I had no right to ask for that information, so they believed that if they supplied it, it would not be supplied in good faith and therefore there would not be any protection. The issue was whether they were satisfied that I had the right to ask but, having asked for it, they just had to accept in good faith that I had that right.

**ACTING CHAIR**—Mr Vos, sorry. We will just allow Senator Sherry one more question.

**Mr Vos**—Thirty seconds, Chair. We agreed to do a joint legal advice to allay their concerns and to get it cleared up. Under the legal services direction of the Attorney-General’s Department as Treasury put to you, the administrative agency coordinates advice where there are joint portfolio agencies involved in seeking advice.

**Senator SHERRY**—Has this issue been resolved?

**Mr Vos**—Yes, we got an opinion in July 06 and that has confirmed the rights that we have and has allayed their fears and all are now happy.

**Senator SHERRY**—Okay.

**ACTING CHAIR**—Thank you very much. This committee will be adjourned until 9 am tomorrow. Thank you for your attendance, Mr Vos.

**Committee adjourned at 11.02 pm**