



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

STANDING COMMITTEE ON ENVIRONMENT,  
COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE  
ARTS

ESTIMATES

**(Additional Budget Estimates)**

MONDAY, 12 FEBRUARY 2007

CANBERRA

BY AUTHORITY OF THE SENATE



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**SENATE STANDING COMMITTEE ON  
ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND  
THE ARTS**

**Monday, 12 February 2007**

**Members:** Senator Eggleston (*Chair*), Senator Bartlett (*Deputy Chair*), Senators Lundy, Ian Macdonald, Parry, Ronaldson, Webber and Wortley

**Senators in attendance:** Senators Carol Brown, Conroy, Eggleston, Fielding, Fifield, Fierravanti-Wells, Kemp, Lundy, Ian Macdonald, Nettle, Ronaldson, Webber and Wortley

**Committee met at 9.08 am**

**COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS  
PORTFOLIO**

**In Attendance**

Senator Coonan, Minister for Communications, Information Technology and the Arts

**Executive**

Ms Helen Williams AO, Secretary  
Ms Fay Holthuyzen, Deputy Secretary, Infrastructure and Access  
Dr Rod Badger, Deputy Secretary, Strategy and Content  
Ms Lynn Bean, Acting Deputy Secretary, Arts and Sport

**Legal**

Mr Don Markus, General Counsel

**Corporate and Business**

Mr Frank Nicholas, Chief Operating Officer and Acting Chief General Manager, Corporate and Business Division  
Mr Mike Hutchings, Chief Information Officer and General Manager, Information Technology and Facilities Branch  
Ms Cheryl Watson, Acting General Manager, Human Resources and Communications  
Mr Tim Cornforth, Manager, Regional Network Management Unit

**Finance and budgets**

Ms Jennifer Gale, Chief Financial Officer

**Infrastructure and Security**

Mr Col Lyons, Chief General Manager, Infrastructure and Security Division  
Mr Philip Mason, Acting General Manager, Networks Competition Branch  
Mr Simon Bryant, General Manager, Broadband Infrastructure Branch  
Mr Andrew Maurer, Acting General Manager, Security Branch  
Ms Caroline Greenway, International Branch

**Access and Consumer**

Mr Brenton Thomas, Acting Chief General Manager, Access and Consumer Division  
Mr James McCormack, General Manager, Broadband Development Branch

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Mr Rohan Buettel, General Manager, Consumer and Shareholder Branch  
Ms Nikki Vajrabukka, Acting General Manager, Networks Operations and Spectrum Branch

**Content and Media**

Dr Simon Pelling, Acting Chief General Manager, Content and Media  
Mr Gordon Neil, General Manager, Media Industries  
Mr Simon Cordina, General Manager, Digital Content  
Ms Trish Barnes, Acting General Manager, Digital Broadcasting

**Strategic, development and regional**

Dr Beverly Hart, Chief General Manager  
Mr Philip Allnutt, General Manager, Indigenous Communications  
Mr Lindsay Barton, General Manager, ICT Development  
Mr Tom Dale, General Manager, Strategy Branch  
Ms Liz Forman, General Manager, Regional Branch

**Arts and Sport Division**

Mr James Cameron, Chief General Manager, Arts and Sport Division  
Mr Peter Young, General Manager, Film and Digital Content Branch  
Mr Mark Taylor, General Manager, Arts, Regional and Governance Branch  
Ms Lyn Allan, General Manager, Indigenous Arts and Training  
Mr Paul McInnes, General Manager, Collections  
Mr Bill Rowe, General Manager, Sport  
Ms Jenny Anderson, Chief General Manager, Old Parliament House and National Portrait Gallery  
Mr Sandy Clugston, Acting General Manager, Contents and Programs, Old Parliament House and National Portrait Gallery  
Mr Andrew Sayers, Director, National Portrait Gallery

**Australia Post**

Mr Michael McCloskey, Corporate Secretary  
Mr Rod McDonald, Group Manager, Human Resources  
Mr Don Newman, Manager, Network Infrastructure  
Mr Michael Tenace, Group Financial Controller  
Ms Elizabeth Button, Group Manager, Retail Channels and Infrastructure  
Mr John Sharp, Group Manager, Corporate Security  
Mr Stephen Walter, Group Manager, Corporate Public Affairs  
Ms Catherine Walsh, Manager, Employee Relations

**Australian Communications and Media Authority (ACMA)**

Mr Chris Chapman, Chairman  
Ms Lyn Maddock, Deputy Chair  
Mr Chris Cheah, Member  
Ms Nerida O'Loughlin, General Manager, Industry Outputs  
Ms Andree Wright, Executive Manager, Codes, Content and Education  
Mr James Shaw, General Manager, Strategy, Analysis and Coordination  
Mr Giles Tanner, General Manager, Inputs to Industry  
Mr John Neil, Executive Manager, Strategy, Analysis and Coordination

Mr Marcus Bezzi, General Manager, Legal Services  
Ms Dianne Carlos, General Manager, Corporate Services  
Mr Paul White, Executive Manager, Industry Performance

**Australian Broadcasting Corporation (ABC)**

Mr Mark Scott, Managing Director  
Mr David Pendleton, Chief Operating Officer  
Mr Murray Green, Director, Corporate Strategy and Communication

**Special Broadcasting Service Corporation (SBS)**

Mr Shaun Brown, Managing Director  
Mr Jonathon Torpy, Chief Financial Officer  
Mr Bruce Meagher, Director, Strategy and Communications  
Mr Paul Broderick, Director, Technology and Distribution  
Ms Paula Masselos, Director, Radio

**CHAIR (Senator Eggleston)**—I declare open this meeting of the Senate Standing Committee on the Environment, Communications, Information Technology and the Arts. The Senate has referred to the committee the particulars of proposed additional expenditure for 2006-07 for the portfolios of Communications, Information Technology and the Arts, the Environment and Water Resources and certain other documents. I add that sport is included in that. The committee may also examine the annual reports of the departments and agencies appearing before it. The committee has fixed Thursday, 4 April 2007 as the date for the return of answers to questions taken on notice. Senators are reminded that written questions on notice should be provided to the secretariat by the close of business this Friday. I understand that all but a very few, and perhaps all, questions on notice from the last lot of estimates have now been provided to the secretariat.

The committee's proceedings will begin with its examination of the Communications, Information Technology and the Arts portfolio, commencing with Australia Post. Agencies will be called in accordance with the agenda. Under standing order 26, the committee must take all evidence in public session. This includes 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 a 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 Senate, by its resolution in 1999, endorsed the following test of 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 are relevant questions for the purposes 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 any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. The Senate has resolved also that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister.

This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground on which it is claimed. Any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for the claim.

I welcome Senator Helen Coonan, the Minister for Communications, Information Technology and the Arts, and portfolio officers. I also welcome to the committee Senator the Hon. Roderick Kemp, who is now a member of this committee. Minister, do you wish to make an opening statement?

**Senator Coonan**—No. I have no opening statement. I am very pleased that Senator Kemp is a member of the committee.

**Senator KEMP**—Thank you very much, Minister.

[9.12 am]

#### **Australia Post**

**CHAIR**—I call the officers from Australia Post and invite questions.

**Mr McCloskey**—Chair, with your indulgence, perhaps I could make a very brief opening statement. Given the interest the committee has shown over the last couple of estimates hearings in the issue of the prohibition on the carriage of firearms that Australia Post has had in place for the last 12 months or so, I thought I should update the committee on some recent developments.

Based on detailed legal opinion obtained by the Australian Government Solicitor, the board of Australia Post, at its meeting last Thursday, decided to lift the prohibition on accepting firearms and firearm parts in the international mail. As the committee would recall, Post had always said that, were the legislative situation to be modified, we would look again at the scope of the prohibition.

**Senator RONALDSON**—I am sorry; I missed that. Post has always said what?

**Mr McCloskey**—That if the legislative situation were to be modified, we would look again at the scope of the prohibition.

**Senator RONALDSON**—When did you say that?

**Mr McCloskey**—At previous estimates hearings.

**CHAIR**—Just continue what you were saying.

**Mr McCloskey**—Equally, we had indicated that, were an authoritative alternative legal view to our own to be received, that would be given consideration. That is what has now happened; and the prohibition has been lifted.

**CHAIR**—Thank you very much for that. There will be people who will be very interested in that. Senator Ronaldson?

**Senator CONROY**—That is an outrageous—



**CHAIR**—He asked for it.

**Senator RONALDSON**—Mr McCloskey, this has been going on for 12 months. The decision was made by the board on the basis of legal advice.

**Mr McCloskey**—Of an alternative legal view that was received—obtained by the Australian Government Solicitor.

**Senator RONALDSON**—Mr McCloskey, are you prepared to apologise publicly to those people who have been severely impacted upon by Post's appalling mismanagement of this situation?

**Mr McCloskey**—I do not agree that we have mismanaged it appallingly. The legal advice that was received in many cases confirmed our own legal view but in some ways it went further. For example, it confirmed that if Post were to carry and deliver firearms and firearm parts in New South Wales and the ACT we would be criminally liable as an accessory to breaches of New South Wales and ACT legislation. However, it did say—and it was a detailed and comprehensive opinion that went to 35 pages, with a supplementary opinion of another 10 or 11 pages—that it would be open to Australia Post to make alternative arrangements for the delivery of firearms and firearm parts in those jurisdictions.

**Senator RONALDSON**—Mr McCloskey, we are now upping the language to justify the position. It is the first time that you have ever mentioned 'criminal liability' in Senate estimates. You made a unilateral decision based on a false premise and attempted to cover it up by bringing in the states. I asked in estimates last time for a copy of correspondence. You sent me a letter dated February 2006. What about the initial advice that you gave to people in January which prompted the response that you gave them? Did that initial advice in January 2006 mention the states?

**Mr McCloskey**—The letter that was tabled in answer to a question on notice was part of the first wave of responses that went out in answering representations that were made on this particular issue.

**Senator RONALDSON**—Why didn't you give me the initial advice from Post in relation to why this decision was made?

**Mr McCloskey**—I am not sure which advice you are referring to.

**Senator RONALDSON**—You have sent me a copy of a letter dated 23 February 2006. Quite correctly, it is blanked out. It starts off with 'Dear [blank]' and says:

I refer to your letter of 19 January 2006 on behalf of [blank] concerning Australia Post's decision to prohibit the carriage of firearms ...

Why didn't you send me the initial advice, correspondence or reasons that went out for the decision initially?

**Mr McCloskey**—That letter is the initial—

**Senator RONALDSON**—So there is nothing in writing. When Post made the decision in January 2006 to do this, what advice was sent out? Or did you just put out a press release saying, 'As of such-and-such date we're going to prohibit it'?

**Mr McCloskey**—From memory, there was a media release posted on our website and distributed to a number of media outlets as well.

**Senator RONALDSON**—Did that make any mention of the states and territories and legislation?

**Mr McCloskey**—I don't have a copy of it with me.

**Senator RONALDSON**—Would you like to take that on notice?

**Mr McCloskey**—Certainly.

**Senator RONALDSON**—I think you will find that it did not. You are obviously not going to apologise, which I find very disappointing, and others will judge post on that. Quite frankly, you should be damned by your inactivity in relation to this matter. I think it has been appallingly handled, but that is commentary. Can I ask you another question. Given that the initial premise of this was 81 incidents—and we know from previous Senate estimates that this was a complete and utter furphy and that none of these 81 related to firearms or firearm parts, so your basic premise was damned before you started—did Post receive correspondence from any external groups that drove this decision?

**Mr McCloskey**—No, we did not receive any correspondence of that sort. By way of clarification regarding the 81 incidents, it was operational circumstances in the broad; it was both outgoing and incoming issues that concerned us. In outgoing, as I have explained to the committee previously, we had a number of incidents where transiting consignments of mail, particularly through Heathrow airport, had been delayed.

**Senator RONALDSON**—Mr McCloskey, I am sorry to interrupt, but with the greatest respect: on 30 October I asked you how many of these 81 incidents, these stoppages, involved firearms or firearm parts. You then responded, saying that in the 81 instances they were different forms of weaponry; that you had since been informed by your friends in Customs, I think since the last hearing, that none of them actually involved firearms or firearm parts.

**Mr McCloskey**—That is correct. Of course it was also between May and as late as, I think, July or August that that information was conveyed to us by Customs. Prior to that, we had been acting absolutely in good faith, on the basis of both outgoing experiences and general incoming experiences.

**Senator RONALDSON**—Mr McCloskey, I do not want to go through this whole thing again. I have done it for two estimates hearings in a row, and I acknowledge that Senator Conroy has also asked you questions on this. The premise for your doing this—and I would like to see this press release—was these 81 incidents that had stopped the system, that firearms and firearm parts had stopped the system, and it was not, was it?

**Mr McCloskey**—We got that wrong, yes.

**Senator RONALDSON**—Why don't you apologise to these people, then?

**Mr McCloskey**—It was part of wider operational circumstances that were prevailing. Equally, it was at that stage that we became aware of the legislative situation. What caused us to look at it in the first instance were the operational circumstances, but what ultimately left us with no option, in our view, but to maintain it was the legislative situation.

**Senator RONALDSON**—So you made a decision based on a false premise and you had not even bothered to inquire as to whether the 81 incidents were firearms or firearm parts related, had you?

**Mr McCloskey**—We had kept Customs very carefully briefed along the way as to what was happening and what our thinking was, and we had not been advised to the contrary by Customs.

**Senator RONALDSON**—Had you asked them?

**Mr McCloskey**—I would have to check on that specifically.

**Senator RONALDSON**—You had not asked Customs whether they were firearms or firearm parts related?

**Mr McCloskey**—I am not sure what exact questions would have been asked by Customs in a tripartite context.

**Senator RONALDSON**—It was for you to be asking the questions that justified your decision in the first place to ban this. You are telling the committee now that you had not even inquired as to whether those 81 instances were firearms or firearm parts based.

**Mr McCloskey**—I am not saying that we had not inquired; I am saying that I personally am not aware of exactly what would have transpired between our people and Customs on that particular issue in the lead-up to the imposition of the ban.

**Senator RONALDSON**—Mr McCloskey, with the greatest respect, you made a decision based on these 81 incidents—and you know as well as I do that the state legislation was something that came after the event and it certainly was not part of the initial decision making—that you now acknowledge were not firearms or firearm parts based and you had not made those inquiries of Customs before you made the decision.

**Mr McCloskey**—The decision was made on both incoming disruptions and outgoing interceptions of mail consignments. Certainly the outgoing ones all involved firearms that were intercepted at Heathrow during different periods of time, and incoming, with 100 per cent screening, we were experiencing increased interruption to processing due to weaponry and the like, and firearms were part of it. Yes, as we have subsequently found out from Customs, in fact none of those 81 incidents was firearm related, but at the time we were not aware of that.

**Senator RONALDSON**—But you assumed they were. Why would you think these 81 incidents were related to firearms or firearm parts when you had not made those inquiries?

**Mr McCloskey**—They were part of a wider category of weaponry.

**Senator RONALDSON**—Mr McCloskey, you have gone from the 81 incidents to the state legislation and now you have gone to Heathrow. Why don't you just apologise for the inconvenience that you have caused these people; why can't Australia Post do that?

**Mr McCloskey**—Australia Post has acted in good faith at every step of the way.

**Senator RONALDSON**—Australia Post has not acted in good faith in relation to this, and I think it is deplorable that you are not prepared to apologise to these people.

**Senator CONROY**—You can still make a good faith mistake—

**Mr McCloskey**—Yes. As I said, we have acted in good faith. As we have indicated, right along the way we have also shared the concern at the impact that it has had on people, and of course we are sorry for that. But in that context we have also indicated all along that, were the state legislative situation to be modified, harmonised or whatever, or if we were to receive an authoritative alternative legal view, we would be happy to take that into consideration, and that is what we have done.

**Senator RONALDSON**—When did you say that?

**Mr McCloskey**—We have said that in meetings with the department and with the minister's office on issues like this. I cannot recall us saying it here at estimates, but we certainly have said it.

**Senator RONALDSON**—So you are now saying that if you had alternative legal advice you might have changed your mind earlier on?

**Mr McCloskey**—That is correct.

**Senator RONALDSON**—If you thought that there might be alternative legal advice that would change it, why didn't you seek a second opinion?

**Mr McCloskey**—We had our own legal view reviewed externally and it confirmed our legal view. Then in the middle of the year or thereabouts we had another section of our legal people who had not looked at it previously look at it with fresh eyes, and they confirmed our earlier view. As I think I said earlier, the alternative view that has now come through the Australian Government Solicitor does not contradict our particular view, but it goes further than our view in what it says may be permissible.

**Senator CONROY**—You have grandstanded enough, mate. You have your press release open.

**Senator RONALDSON**—No. It is not actually a press release. I will finish up on this. I look forward to receiving a copy of that initial press release.

**Mr McCloskey**—I am happy to provide that.

**Senator RONALDSON**—I again express my great sorrow that you are not prepared to accept any responsibility nor to apologise to these people, who you have severely inconvenienced based on an absolutely false premise. Australia Post has attempted to cover up its actions with further information and further furrphies to justify a position. Now, 13 months later, you have reversed a decision based on a false premise. I have no further questions.

**Mr McCloskey**—I would repeat that we have acted in good faith at all times and that we are sorry for the inconvenience that has been caused on the way through. It certainly was not our intention to cause people such inconvenience.

**Senator CONROY**—There you are: he just said he was sorry. I congratulate you on that. It is possible to make a good faith mistake. You have just said the magic word that Senator Ronaldson, I and many others were hoping to hear. At least Senator Ronaldson might acknowledge that, although I have shared his frustrations over the course of the last couple of estimates rounds. Thanks. Before I start with my Australia Post questions, can I note for the record that as at the close of business on 2 February 2007 we had received answers to less

than a third of the questions that had been placed on notice during the 2006-07 supplementary budget estimates held in November 2006. That is only 112 out of 355.

**CHAIR**—I commented on that in the introduction.

**Senator CONROY**—I want to go through it at some length.

**CHAIR**—I see. All right.

**Senator CONROY**—I understand that a whole range of answers were supplied over the weekend, so I am glad to see that somebody was working on the weekend. I was unaware that they were going to be coming through on the weekend and the secretariat does not work on the weekend. I am hoping that those answers were the remainder—over 200. We have not yet received them. Was the delay in returning these answers your fault?

**Ms Williams**—The questions, as you will understand, have to be discussed by the portfolio agencies, and we have, as you know, 20 of them. It is iterative between the agencies and the department, and the minister's office has to be satisfied that they are correctly answered. We obviously have not done as well this time as we did last time by quite a way, and I apologise for that. We are obviously also going to have to get better coordination mechanisms. It has been hard this time because there were a large number of questions. We also had one change in minister, and obviously a new minister wants to look at things.

**Senator CONROY**—I would have thought that that would have helped speed the process.

**Ms Williams**—It also came over the Christmas period. But obviously we are going to have to get together and get a better process for the future. We did pretty well last time, but I am afraid that we have not coordinated as well this time.

**Senator CONROY**—I will accept your apology and hope that we will have a much speedier process in place next time so that we get the answers. When is our cut-off date for the next round of questions? I think that we set that the other day.

**CHAIR**—5 April, I believe.

**Senator CONROY**—5 April, just to give you an early heads-up, Ms Williams.

**Ms Williams**—Thank you.

**Senator CONROY**—We are hoping to be able to have a look at them. You will understand that it is very hard for me to follow up questions at additional estimates if the answers have not arrived. At this point, we still have not received in my office or on my computer those 200-odd questions that are germane to the process of additional estimates. In fact, I am not sure we are allowed to ask any questions that do not relate to previous answers. As you can understand, that makes it a little hard to proceed today. I appreciate that you have thrown yourself on the sword and said you will try harder. Thank you for that.

**CHAIR**—I think we have to make that point to all the agencies.

**Senator CONROY**—Shame on you, Australia Post! I am sure that Australia Post got their answers in promptly.

**Senator IAN MACDONALD**—The reporting date must surely depend on how many questions are asked. If there are only 10 questions asked, we should get the answers

tomorrow. But if we are going to get thousands of questions asked, as we usually do, you cannot expect the departments to handle them all.

**CHAIR**—They have got plenty of time. April is a fair way away.

**Senator CONROY**—When was the last round of estimates?

**CHAIR**—In November.

**Senator CONROY**—Are you sure? I think it was actually in October because I was not around. It might have been October and November. We have had a few months. Anyway, I will move on. I wanted to start with the beautiful town of Healesville. I understand that Australia Post closed its shop in Healesville last Friday. Could you explain why you did that?

**Mr McCloskey**—Yes. The shop has not yet closed but it will be closing, probably by the end of March. Healesville is a rather anomalous situation in that, for particular reasons that arose about seven years ago, we actually have two outlets within 300 metres of each other—one on the main street and one in a shopping centre called Healesville Walk. The office on the main street is a licensed post office. The post shop in the Healesville Walk is a corporate outlet.

**Senator CONROY**—Which one are you proposing to close?

**Mr McCloskey**—It is the corporate outlet that will be closing. Essentially, it is not sustainable to have two outlets as close to each other as that. The post shop, in the six-odd years that this arrangement has been in place, has been losing on average around \$60,000 a year. At the same time, there has been a 13 per cent decline in daily customers through the outlet and the licensed post office in the main street is actually handling about 20 per cent more customers. That is the background to it.

**Senator CONROY**—What was the anomalous situation that occurred seven years ago?

**Mr McCloskey**—At that stage there was just a single outlet in the town, a corporate outlet in the main street. We were proposing to move to this new shopping centre just around the corner—the move at the time was about 200 metres—but there was a significant reaction from some elements within the Healesville community that sought for Post to maintain a presence in the main street, which was what we ultimately agreed to do. In fact, while we were proposing to move and thought that was in everyone's best interests at the time, as it has turned out we actually got it wrong and the people of Healesville have voted with their feet. They have patronised the licensed post office to a greater extent than the corporate office. The corporate office has been losing money. It is an unsustainable situation and we have had no choice but to make a decision to close the corporate outlet.

**Senator CONROY**—Have you explained your methodology regarding what was behind your decision to move?

**Mr McCloskey**—The original decision in 1999?

**Senator CONROY**—The original decision.

**Mr McCloskey**—It was that we were moving into a newly developed shopping centre that offered opportunities. It had a major supermarket as its anchor tenant and it had other shops around it. It looked like that was going to become the commercial centre of Healesville, so it

was a reasonably sensible thing for us to do. We had done it elsewhere and it had worked very well when we have moved into shopping centres. In this case we did not fully understand the local dynamics within the community. They have shown in the meantime that their preference is very much for the outlet that remained on the main street rather than the one that we moved to in the shopping centre.

**Senator CONROY**—So you freely acknowledge that you did not understand the local dynamics seven years ago. Do you think you are any more across them at the moment?

**Mr McCloskey**—We have been to a number of public meetings and discussions with people in the local community as to what is the desired and best outcome, but at the end of the day it would be quite irresponsible of us to maintain a loss-making outlet that is within 300 metres of another outlet. Also, I would think that it would be unreasonable for a community of that size to expect to have two outlets if they are not viable on an ongoing basis. There would not be another community in Australia, I would venture to guess, either in a town situation or even in a metropolitan situation, where there would be two outlets within such close proximity to each other.

**Senator CONROY**—Has there been any community reaction to your announcement of the closure?

**Mr McCloskey**—Yes, people have opposed it. Naturally, no community likes losing part of what it already has. There have been public meetings, and we have attended those public meetings. We have taken into account some of the community feedback in terms of enhancements that need to be made around the licensed office to make it more accessible to elderly and disabled people, to provide greater lighting for the private box area and the like. At the end of the day, what is actually happening is that we are reverting, in a sense, to the situation that applied in 1999 or before 1999 but, because it is a licensed outlet, the community are also getting quite extended opening hours. This particular licensed office is open for business from 7.30 am to 6 pm six days a week and on a Sunday from 9 o'clock to 12 o'clock.

**Senator CONROY**—Anything stopping you from opening your corporate outlet at those hours?

**Mr McCloskey**—It is already losing significant amounts of money, so it just would not be commercially viable.

**Senator CONROY**—What do you say to those who accuse you of just letting the corporate outlet run down and not trying to actually enhance its profile?

**Mr McCloskey**—Nothing could be further from the truth. We have opened and operated that corporate outlet fully right through the period but, as I said earlier, the local community have voted with their feet.

**Senator CONROY**—They seem to be voting with their feet quite a bit at the moment as well. They are arguing very strongly and passionately, I understand. There have been large public gatherings, there has been a large amount of community outrage and a petition has been collected with many hundreds, if not thousands, of signatures. Is Australia Post stuffing it up again? Sorry, I will repeat the question: Australia Post, are you stuffing it up again; are you misreading the mood in Healesville yet again?

**Mr McCloskey**—No, I do not believe so. Really, we are in a situation where we have a corporate outlet and we have a responsibility to behave commercially. That corporate outlet is not viable. We are closing that outlet. There is another outlet within 300 metres that is meeting all the needs of the community.

**Senator CONROY**—Can you explain when the decision was made to close the shop?

**Mr McCloskey**—The decision would have been made some time late last year—in 2006.

**Senator CONROY**—What was the process of consultation that you went through before the decision was made to close the office?

**Mr McCloskey**—There was a full information campaign in the post-Christmas period. I think we wrote to every residential address within the town, giving them details of what was happening and why it was happening. We also communicated with the private box owners and we put out media releases and the like.

**Senator CONROY**—I am happy for you to take this one on notice: will Australia Post provide the dates of publication and copies of the advertisements publicised in the decision in calling for consultation from stakeholders?

**Mr McCloskey**—From memory, I think it was on the first working day after the new year, so it might have been 3 January.

**Senator CONROY**—I have a media release dated 3 January.

**Mr McCloskey**—Then it would have been 3 January.

**Senator CONROY**—Who does Australia Post regard as the stakeholder for the purpose of the consultation exercise?

**Mr McCloskey**—The local community.

**Senator CONROY**—Can you provide the dates on which you notified some of the other principal stakeholders, including the federal member, Fran Bailey, the Shire of Yarra Ranges and ward councillors, the state member, Ben Hardman, as well as the community?

**Mr McCloskey**—I would need to take that on notice.

**Senator CONROY**—Is the consultation process about explaining the decision or just making sure that the decision was the right one in the first place?

**Mr McCloskey**—It is about explaining the decision in the first instance. Obviously, if certain points are made back, they are taken into consideration. In this case we have taken some of those points back into consideration, so the proposed date for closure has been put back by around two months while certain other works are undertaken.

**Senator CONROY**—You mentioned other works and upgrading some of the facilities. There is clearly an issue of accessibility for some of the people in the community in Healesville—disabled members, for instance. Are you aware of these concerns?

**Mr McCloskey**—Yes. Basically, the works that are being undertaken are to see whether there can be improvements to the public thoroughfare that runs beside the licensed post office to make it more accessible, some additional lighting, as I said earlier, to the post office box area and improvements to accessibility generally for the disabled and the elderly.



**Senator CONROY**—Are you aware that the gradients of the access ramps are too steep at the moment?

**Mr McCloskey**—All of that is being looked into at this stage, and until all of those issues have been properly dealt with, there will be no change to the current arrangements. The corporate outlet will remain open until all of those issues have been properly dealt with and at that stage it will close.

**Senator CONROY**—How much are all of those changes going to cost? Presumably you are paying to improve the accessibility.

**Mr McCloskey**—We are looking at it, even though some of it is not our direct responsibility. We will certainly be contributing to the cost but I do not know what that cost will be. I am happy to take that on notice.

**Senator CONROY**—I would like to discuss Post's plans for franchised post shops. In response to a question on notice last time—one that I did receive—Post said that it wants to establish 150 franchised post shops in the next four years. You said that in the initial phase only 20 would be underperforming corporate outlets. Does Post think that it can realistically reach its four-year target without converting more corporate post shops?

**Ms Button**—At the moment we have got 31 sites; 20 are corporates and the others are a mixture of licensed and greenfield sites that we are looking to convert fully to the franchised model. At this stage our focus is on getting that done. Certainly, we have made the statement about the 155 franchised post shops within the next four years, but I believe we need to get the 31 on the ground first and then take another look at the mix of the network and how we might move that forward.

**Senator CONROY**—So you think you will be able to reach that without closing more corporate shops?

**Ms Button**—I am not sure that I can comment on that until we have done further work.

**Senator CONROY**—You said you want to establish 150 in four years. You are only phasing out 20 underperforming shops.

**Ms Button**—Correct.

**Senator CONROY**—So my question is: can you reach the remaining, presumably 130, without closing more shops?

**Ms Button**—We have not done the analysis. The figure of 20 was what we had agreed with the CEPU in our previous enterprise bargaining agreement, and that is where the figure of 20 came from. We would like to get those done before we—

**Senator CONROY**—It is not a function of necessity; it is a function of what you can negotiate?

**Ms Button**—No, we had to start somewhere and that is what we negotiated with them at the time. We really do need to get these on the ground and functioning and then take another look at the network before we can make, I believe, the next assessment about what type of outlet would convert to a franchised format.

**Senator CONROY**—I turn to Mr McCloskey for a moment. I want him to confirm and make sure I have got this commitment absolutely clear from Australia Post: according to equal opportunity regulations, the gradient for access for disabled people should be one to 10, as opposed to the one to 14 which it currently is. So your commitment is to ensure that the gradient matches the equal opportunity regulations for accessibility before you close the shop.

**Mr McCloskey**—I am not actually in a position to comment on that. What we are talking about there, as I understand it—and I have not been out to Healesville to look at this—is that this is a public thoroughfare. There is access from the main street straight into the outlet and also access from the back—a public thoroughfare that runs along the side of the premises. I am not sure exactly what is planned there but there was an outcome—

**Senator CONROY**—Are you planning to comply with the equal opportunity regulations?

**Mr McCloskey**—I would imagine that those equal opportunity regulations would apply in terms of access into the premises. With respect to the public thoroughfare, it is if you are coming from a particular point, as I understand it—it is not access into the premises. It is actually a public thoroughfare that runs alongside the premises. I would need to take that on notice.

**Senator CONROY**—It is a fairly important commitment. If you are closing a corporate office and you are shifting it somewhere else, I would have thought the accessibility to the alternative site is of some importance in order to continue providing access to all Australians.

**Mr McCloskey**—As I understand it, with respect to access to the licensed post office premises, there are no issues in terms of that at the moment under the equal opportunity legislation, but I would need to check.

**Senator CONROY**—That is because they have got an alternative—they can go around the corner, where they do not have to be Paralympians in order to push their wheelchair up the hill, having regard to the gradient. The question I am asking you is: are you going to comply regarding accessibility so that disabled Australians can get access to Australia Post services?

**Mr McCloskey**—We will certainly comply with all legal obligations.

**Senator CONROY**—What we are talking about here is a side alley, not a public thoroughfare.

**Mr McCloskey**—I have had it described to me as a public thoroughfare.

**Senator CONROY**—Perhaps you should get some pictures so that you can actually see that there is more than one issue. I think you are just being sold short by the people who are telling you what is going on. I would advise you to either go and visit it or get some photos taken so that you can understand what I am talking about in terms of accessibility.

**Mr McCloskey**—I will certainly do that, but I can assure you that all legal requirements will be complied with.

**Senator CONROY**—Ms Button, when will the initial phase of implementing the program be complete?

**Ms Button**—We are hoping by the end of this financial year, and we have got 31 that we would like to do. We currently have six formal under the new model and the four pilots

operating under pilot conditions until we transfer them to the new model, so essentially we have 10 operating under that model. Our plan is to have those done by the end of this financial year.

**Senator CONROY**—Under EBA 6 which you mentioned earlier, Post and the CEPU agreed that, subject to conditions, up to 20 corporate offices could be converted. Is it true that Post is not willing to continue with these conditions in EBA 7?

**Mr McDonald**—We are currently negotiating EBA 7. There are issues in relation to what are allowable matters that can be included in the EBA; that includes franchising. We have been negotiating for a number of months now and we have five further meetings scheduled for the remainder of this month, and that will include discussions on franchising.

**Senator CONROY**—I am not an industrial relations expert. I am sure you are, Mr McDonald, in your role. You mentioned that there are matters around Work Choices and what is an allowable matter. Is a franchise discussion an allowable matter in an EBA?

**Ms Walsh**—It is our view, and it has certainly been our legal advice as well, that there are two aspects to the franchising arrangements which make it prohibited under Work Choices—that is, firstly, it does not pertain to the employment relationship, which is one of the factors; and, secondly, it relates to contracting out. They are two elements that are prohibited under Work Choices. On that basis, we see some problem with having that dealt with in the agreement itself.

**Senator CONROY**—That seems to make sense to me as well, from my limited knowledge in this area. You are saying, as part of your discussions: ‘They can’t be in it. It’s not our fault; there’s nothing we can do. This is the federal government’s laws.’

**Ms Walsh**—We are saying that we are obliged to comply with the law and that is the position we have taken.

**Senator CONROY**—Under the new EBA, if that position holds, and I cannot see any reason why it would not, there will be no limit on how many corporate post shops can be converted.

**Ms Walsh**—Under the EBA itself there will not be any limitation. What we have said to the union, by way of a letter that we have provided to them through this process, is that we do not see any significant change to the mix of retail outlets that we have. We believe that should give them some commitment that there is not going to be rampant franchising, as they may see it.

**Senator CONROY**—What are your plans, then? How many corporate outlets are there going to be—

**Ms Walsh**—I might leave that to Ms Button.

**Senator CONROY**—from converted post offices? You must have some idea.

**Ms Button**—No, we have not actually done that analysis. I think I said to you I really do want to get the 31 on the ground first, before we stand back and say, ‘What do we want the network to look like?’ in order to make sure that it is viable and accessible moving forward.

**Senator CONROY**—Clause 9.8 of EBA 6 states that the parties to the agreement commit to work cooperatively to improve the viability of underperforming corporately operated outlets, with the primary preferred objective of them remaining corporately operated. Can you outline what steps Post is taking in meeting this requirement?

**Ms Button**—We have had some discussions with the union on the sorts of initiatives that we might jointly undertake. Certainly, we as an organisation are keen to improve the profitability of our corporately owned outlets, so we have been looking at ways in which we can streamline processes, take some cost out of it and bring more revenue through the front door so that it does improve profitability—not just of the corporates, clearly, but of the entire network.

**Senator CONROY**—What has that meant in concrete terms? What have you done? What initiatives, what programs, what new products—what have you done to improve the profitability of these outlets?

**Ms Button**—I can give you details of specific initiatives but I will need to take that on notice.

**Senator CONROY**—Clause 9.9 of EBA 6 states that the parties to the EBA would jointly evaluate the effectiveness of these initiatives to promote the Post retail network six months prior to the expiry of EBA 6. When does it expire?

**Ms Walsh**—It has expired, on 31 December 2006. My understanding is that there was a meeting between the CEPU and members of our retail human resources area to discuss those issues.

**Senator CONROY**—It refers to ‘jointly evaluating the effectiveness of the initiatives’. Ms Button says she is going to have to take on notice letting me know what the initiatives are. Are you familiar with what the initiatives are?

**Ms Walsh**—I am not familiar with what the initiatives are. I was not part of that meeting but I do understand that the meeting did take place.

**Senator CONROY**—Do you know what the outcome was?

**Ms Walsh**—I am not entirely sure of the outcome. I would have to take that on notice.

**Senator CONROY**—Ms Button, were you at the meeting?

**Ms Button**—I have been in some meetings, yes.

**Senator CONROY**—This is the meeting that Ms Walsh is talking about specifically to jointly evaluate the effectiveness of the initiatives to promote the Post retail network, six months prior to the expiry of EBA 6. Were you in attendance at the meeting that took place six months prior to December—in June last year, I guess?

**Ms Button**—July, as I understand it

**Senator CONROY**—July, sorry.

**Ms Button**—No, I do not believe I was.

**Senator CONROY**—Were you in charge of this area then?

**Ms Button**—I do have national accountability for it, yes, but some of my people would attend those meetings where they require a lot more detail than I have at my fingertips.

**Senator CONROY**—Who has carriage of this?

**Ms Button**—It would be our state retail managers who work from a state perspective, and certainly people who work for me at the national office. We look at national initiatives.

**Senator CONROY**—Do they report to you? As you said, it is a national initiative, so do they report to you?

**Ms Button**—The state retail managers do not. We work together collegiately, but certainly there are people in the national office who would report to me. I said I will get back to you with the initiatives and I can give you some detail around those meetings and what the outcomes were.

**Senator CONROY**—That would be great. Are you aware of what the outcome of the discussions was?

**Ms Button**—No.

**Senator CONROY**—I am a little perplexed about that. It is an important meeting that is set down in your EBA and the person in charge of the campaign hasn't got a clue what happened at it.

**Ms Button**—At the same time we were talking to the CEPU about franchising and that was where I was getting involved, so that was my focus at the time.

**Senator CONROY**—But this meeting was specifically set down and committed to by Post in writing to jointly evaluate the effectiveness of the initiatives that you were in charge of.

**Ms Button**—I understand.

**Senator CONROY**—And you were not there?

**Ms Button**—No, I was not.

**Senator CONROY**—This has got a high priority, from the sound of it—the person in charge does not attend.

**Ms Button**—I do attend a number of these meetings. Certainly, 12 months ago I participated in a meeting with the CEPU where we discussed a number of the initiatives that Australia Post had in mind to improve the profitability of the network. We basically said that we would get on and do it. That was 12 months ago. You are seeking advice about a meeting that was held six months ago and I was not there, so I will need to get back to you.

**Senator CONROY**—I look forward to the answers to the questions, and hopefully I will get them prior to the weekend before we meet next, Ms Button, which I know is not your responsibility.

In an article in the *Australian Financial Review* last year, Mr John stated that 'sooner or later he will ask the ACCC for an increase in the basic postal rate'. Does Post intend to apply for an increase in the basic postal rate in 2007 or 2008?

**Mr McCloskey**—No consideration has been given to that at this stage.

**Senator CONROY**—So you are not going to be applying for an increase in 2007 or 2008?

**Mr McCloskey**—I did not necessarily say that. Obviously we keep under review pricing issues and, if and when the time comes when we think it is appropriate to apply to the ACCC, obviously we will be doing that.

**Senator CONROY**—So Mr John is just talking through his hat and shooting the breeze—‘sooner or later he will ask the ACCC for an increase in the basic postal rate’.

**Mr McCloskey**—I think it is a fair statement of fact that at some stage—

**Senator CONROY**—I do not think it is a statement of fact at all.

**Mr McCloskey**—At some stage in the future, sooner or later, there will be a need to apply for an increase in the basic postage rate.

**Senator CONROY**—So when does Australia Post intend to seek an increase?

**Mr McCloskey**—No decision has been taken on that at this stage.

**Senator CONROY**—You have got an ongoing review. You have Mr John—what is his position?

**Mr McCloskey**—He is the managing director.

**Senator CONROY**—The managing director; I thought that is what he was. The managing director said ‘sooner or later’ and you are not prepared to give any indication whatsoever.

**Mr McCloskey**—I am not in a position to give any indication because no proposals have been put to our board and our board has not made any decision on them. At some stage presumably in the future and given the nature of things it will be necessary for us to apply to the ACCC.

**Senator CONROY**—What are the factors that lead Mr John and yourself to confirm that sooner or later this will be necessary?

**Mr McCloskey**—Obviously, when costs reach a stage where there is a justification to increase the basic postage rate, there would be a need to put an application in to the ACCC.

**Senator CONROY**—Have costs gone up over the last 12 months?

**Mr McCloskey**—Costs would have gone up over the last 12 months.

**Senator CONROY**—Are they projected to go up over the next 12 months?

**Mr McCloskey**—Costs will continue to rise, no doubt.

**Senator CONROY**—When do you think that these costs ‘will reach a stage’—to borrow your quote? Given that costs went up last year and they are going up this year, when are they going to reach this mythical stage?

**Mr McCloskey**—I am not sure but it would be sooner or later.

**Senator CONROY**—Essentially, I am asking—and this is a matter of fact—what the trigger point is.

**Mr McCloskey**—Obviously, there is a series of issues relating to the profitability of the letter service that will come together. When the situation is such that we meet the ACCC’s requirements so that they would accept an application and have no objection to an application,

when we believe that we are at that stage, I have no doubt that the board will take a decision to proceed with such an application. But no specific consideration has been given to it yet.

**Senator CONROY**—How much did you guys make last year?

**Mr McCloskey**—\$513 million pre-tax or thereabouts.

**Senator CONROY**—\$240 million after tax; some figure like that?

**Mr McCloskey**—Sorry, it is \$516.5 million pre-tax and \$367.9 million after tax.

**Senator CONROY**—I am way out; it is even better than I thought. What is the profitability of the basic letter service?

**Mr McCloskey**—According to our annual report, the profitability of the letters business, which is broader than just the basic letter service, last year was \$174.6 million.

**Senator CONROY**—\$174.6 million.

**Mr McCloskey**—That is correct.

**Senator CONROY**—In terms of the way you segregate your costs, the basic rate—the 50c rate—goes into that calculation?

**Mr McCloskey**—That would be correct.

**Senator CONROY**—Do you have to make a loss before you are going to apply for an increase? Is that the trigger point, or do you have to do it before you make a loss?

**Mr McCloskey**—I am not an expert in this area, but as a general rule, the ACCC will grant you a particular increase at a point in time that it judges will be necessary for you to maintain a satisfactory level of return on that business over a five-year period.

**Senator CONROY**—You are being a little disingenuous. The ACCC are not sitting on your board and they are not sitting in your management team, so they have no idea on a daily basis of whether you are making money or not on your basic letter business, do they?

**Mr McCloskey**—On a daily basis probably not, but we do have a requirement under the legislation to submit regulatory accounts to the ACCC, record-keeping rules—

**Senator CONROY**—Once a year.

**Mr McCloskey**—once a year which do segment these things out in some detail.

**Senator CONROY**—Sure. But as a rule, have they ever come to you and ask you to put in an increase before you have asked for one yourself?

**Mr McCloskey**—No, they have not.

**Senator CONROY**—No, I did not think so. In essence, you really draw it to their attention?

**Mr McCloskey**—We would proceed with a formal application.

**Senator CONROY**—Prior to that, you did make some comment about having to convince the ACCC of the case.

**Mr McCloskey**—We have to put a formal case to the ACCC. They hold public hearings and the like and come to a decision on the validity or otherwise—

**Senator CONROY**—They are not sitting there with their finger on the button. You have to say, 'Guys, have a look at the figures; we are starting to need a review or an increase'?

**Mr McCloskey**—When the time comes, that is correct.

**Senator CONROY**—I am just trying to understand the process. The way you have described it over the last few minutes, it sounded entirely like the ACCC were running Australia Post.

**Mr McCloskey**—I am sorry if I gave that impression. They are certainly not.

**Senator CONROY**—I am sure they are not. In fact, I am absolutely convinced they are not. I am sure that Australia Post will make the decision about when it wants to go forward with a postal increase. I come back to my question: you do not have to make a loss before you apply for an increase, do you? You are not going to sit back and wait until you are losing money before you make the application?

**Mr McCloskey**—No. We need to ensure that we are making a satisfactory rate of return on our letters business.

**Senator CONROY**—What is the process? Could you take me through the formal process to obtain an increase in the basic postal rate?

**Mr McCloskey**—Yes. I think all our reserved letter rates are declared under the legislation that requires us to make an application to the ACCC if we intend to vary those. Once we have been through that process, if the ACCC indicates that it has no objection to a proposed increase, the board would take a decision to propose an increase. What happened last time was that the basic postage rate rose by 5c. There were some other minor variations on the fringes as well, but essentially the basic postage rate went up from 45c to 50c. When the board makes such a decision to propose a variation to the basic postage rate, under the legislation it is required to give the minister formal notification of its intention to make a determination varying the basic postage rate, and the minister has 30 days within which he or she may disallow any proposed increase.

**Senator CONROY**—Are there any prospects of an application like that between now and October?

**Mr McCloskey**—No, it is most unlikely.

**Senator CONROY**—Most unlikely. I am willing to put money on it. In fact, I do not think Centrebet would take a bet. When you say you have to make sure you have an adequate rate of return, what are the sorts of rates of return in the basic letter service that you are targeting? Different parts of your business would have different rates of return. I just wonder in this area what your notional rate of return is. You do not have to reveal any corporate secrets to me—not that anyone competes with you in this area, so I am not sure that there is a single corporate secret that you could possibly reveal to anybody by answering that question. But what is the sort of rate of return?

**Mr Tenace**—The rate of return for the business is depending upon the level of assets that we have employed in that area. It does vary from year to year. As you are aware, we have not had an increase in the basic postage rate since 2003. The profitability of the letters business



over the course of that period has been decreasing in some way and the rate of return has been changing year on year.

**Senator CONROY**—Are we talking five per cent, 10 per cent, 15 per cent, 25 per cent? Are you the Macquarie Bank of postal services?

**Mr Tenace**—Certainly not in the order of 25 per cent. You are probably looking at 10 per cent and declining.

**Senator CONROY**—A couple of weeks ago my office raised with you the case of Mr Anthony Barnes, a Post employee. Tragically, Mr Barnes was driving an Australia Post vehicle when he was involved in an accident where three people were killed. He was charged with dangerous and negligent driving causing death. Can Post confirm that it conducted an internal investigation into the accident?

**Mr McDonald**—There was an internal investigation into the vehicle. There was an investigation, as there would be in any serious incident.

**Senator CONROY**—That would be standard, I presume.

**Mr McDonald**—Yes.

**Senator CONROY**—Who conducted the investigation and how long did it take to complete?

**Mr McDonald**—There were a number of elements to the investigation. The motor vehicle examination itself was done by us. It was also done by an external provider, who is experienced in these sorts of things. The police obviously did an investigation. The traffic authority also did an investigation. So it was quite a thorough situation. That took place over the period following the accident.

**Senator CONROY**—You said you brought someone in from the outside—a private accident investigation firm?

**Mr McDonald**—There was the investigation of the accident itself by an organisation called Peter Watson Investigations Pty Ltd. That was done in August, which was shortly after the accident. In addition to that, there was a crash vehicle examination done by a firm called John Piening and Associates. I should point out too that John Piening and Associates is an organisation that is expert in these sorts of investigations. In fact, Mr Piening was a constable attached to the vehicle examination unit of the New South Wales police originally and gives a lot of evidence in court proceedings in relation to investigation of this type. So what I am saying is that there were a number of levels of investigation.

**Senator CONROY**—Is that normal procedure in these circumstances?

**Mr McDonald**—Particularly in an accident of this severity.

**Senator CONROY**—Did Post conclude that Mr Barnes was at fault in the accident?

**Mr McDonald**—No, there was no judgement made in relation to that. In fact, we will not be proceeding with further investigation into the fault situation. It was subject, as you may be aware, to an investigation by the police. The DPP was involved. My understanding is that a coronial inquiry will take place. Mr Barnes himself is no longer driving, at his own wish. Obviously, we would normally do an assessment of the driver's capacity for future driving if

he wanted to drive. But, in view of the fact that understandably he does not wish to drive again, we have advised him that we will not be conducting any examination of that type.

**Senator CONROY**—So he was not disciplined in any way by Australia Post.

**Mr McDonald**—No, he was not. In fact, it is quite the opposite. We have put a lot of effort into assisting with a very difficult situation. We have referred him to our outplacement firm, Davidson Trahaire, who are experts in assisting—

**Senator CONROY**—You have not sent him off to one of your FMDs, have you, those caring people that—

**Mr McDonald**—No. He put in a workers compensation claim and he was assessed through that. Again, we have tried to assist him in shortcutting that exercise. We also assigned a senior staff counsellor from the human resources area in New South Wales to specifically provide him with assistance on an ongoing basis, and that has been continuing.

**Senator CONROY**—Was there any evidence that Mr Barnes was speeding?

**Mr McDonald**—Not to my knowledge. As I said, it was subject, understandably, to an immediate police investigation.

**Senator CONROY**—So there was no evidence that he was speeding.

**Mr McDonald**—Not to my knowledge.

**Senator CONROY**—In either your investigation or the DPP's investigation.

**Mr McDonald**—Not to my knowledge, no.

**Senator CONROY**—Any alcohol or drugs in his system?

**Mr McDonald**—There is nothing to suggest that in the papers I have. But, again, that was done by the police and I think it would need to be checked through there. I cannot really comment on that.

**Senator CONROY**—I think you indicated and it is my understanding as well that the DPP has dropped all charges against Mr Barnes.

**Mr McDonald**—As I understand it, the DPP—I think this was in March—indicated that they would not be proceeding with those charges that they had laid.

**Senator CONROY**—I think that is consistent with my understanding as well. Mr Barnes incurred costs of more than \$70,000 in defending the case. What is Post's policy in relation to legal costs incurred by your employees in such a situation?

**Mr McDonald**—We do not have a policy in respect of that. In this situation, those costs, as I understand it, have been incurred as a result of the police and DPP investigations and charges. Mr Barnes has written to the managing director about those costs. That issue is under consideration. But I would point out, as I said earlier, that we are advised by our legal people that there will be a coronial inquiry. I understand that that is not too far distant. The outcome of that would be a matter for the coroner.

**Senator CONROY**—I am asking about whether costs are incurred so far though, not about any future—

**Mr McDonald**—Yes, I am pointing out to you that we have a letter from him that has made some representation; that is under consideration. As I said, we do not have a policy in respect of this. We would need to look at the individual circumstance.

**Senator CONROY**—Are there any circumstances where Post would cover legal costs like this?

**Mr McDonald**—It is difficult for me to say. We would need to look at the individual case, as I said. I am not aware of any.

**Senator CONROY**—Is the board indemnified? Are board members and senior management indemnified in their working practices?

**Mr McDonald**—Yes, a number of people at board level have indemnity type insurance.

**Senator CONROY**—Who has indemnification? Presumably, it is there only for dealing with legal matters that arise in conduct of their own Australia Post duties. You do not pay for anything else.

**Mr McDonald**—No. As I understand the situation—and I understand this is typical with other companies—directors tend to have insurance because they are involved in making decision in relation to the value of shareholders' investments and so on. That, in our situation, applies to the board directors and to some of the senior managers.

**Senator CONROY**—Which senior managers have legal indemnity for their actions?

**Mr McDonald**—I would need to take that on notice.

**Senator CONROY**—Mr McCloskey, are you covered?

**Mr McCloskey**—I have never had to inquire, but it is directors and officers liability insurance. It is a fairly standard sort of cover and I think it would cover the board—directors principally—but could also extend to senior management.

**Senator CONROY**—But it does extend down beyond just the board of directors—

**Mr McCloskey**—Yes, it does.

**Senator CONROY**—bearing in mind there are non-executive directors and executive directors, which would include some senior management.

**Mr McCloskey**—The managing director is, in fact, the only executive director on the Post board.

**Senator CONROY**—So we have agreed he is covered.

**Mr McCloskey**—It does extend down to senior executive management. I am not sure personally how far it extends. I would need to check on the wording of the policy.

**Senator CONROY**—What is the level below Mr Johns. How many people are in the next level down—direct reports?

**Mr McDonald**—There would be I think around 12 people. They are at varying levels.

**Senator CONROY**—Mr McCloskey, are you in that 12?

**Mr McCloskey**—I report directly to the managing director, yes.

**Senator CONROY**—So you are in that 12.

**Mr McCloskey**—Yes.

**Senator CONROY**—You are in the direct report.

**Mr McCloskey**—Yes.

**Senator CONROY**—So there is a reasonable chance you are covered, Mr McCloskey? I am happy to take that on notice. I do not know the answer.

**Mr McCloskey**—I think there is a reasonable chance, but I am happy to take it on notice and get advice as to who exactly is covered by the directors and officers liability insurance and what the coverage includes.

**Senator CONROY**—Mr McDonald, are a direct report? Are you covered, do you know?

**Mr McDonald**—Yes, I am. I think I am covered, but I would prefer to take that on notice.

**Senator CONROY**—Ms Walsh?

**Ms Walsh**—I report to Mr McDonald. I do not know whether I am covered or not.

**Senator CONROY**—Ms Button?

**Ms Button**—I do not report directly to the managing director, so I am really not sure.

**Senator CONROY**—Mr Buettel, you are not with Australia Post, are you?

**Mr Buettel**—No, I am with the department.

**Senator CONROY**—Do you have any directors or any equivalent liability coverage?

**Mr Buettel**—No.

**Senator CONROY**—Ms Williams?

**Ms Williams**—I think it is rather different with a CAC agency rather than an FMA agency.

**Senator CONROY**—I am just asking whether the department has the indemnity coverage for—

**Ms Williams**—Not for this kind of thing.

*Senator Coonan interjecting—*

**Ms Williams**—Yes.

**Senator CONROY**—That was a yes to Senator Coonan's question and not to mine?

**Ms Williams**—My answer to your question is no, we do not.

**Senator CONROY**—Senator Coonan, does the cabinet have indemnity for various—

**Senator Coonan**—I do not think we need any, but the Commonwealth self-insures. That is really the answer, I think.

**Senator CONROY**—Has Post taken any legal advice on whether it is vicariously liable for Mr Barnes's legal defence costs?

**Mr McDonald**—Not to my knowledge. As I said, the request he has made is still under consideration.

**Senator CONROY**—Thank you for that. Do you want to add anything to your answer?

**Mr McDonald**—No. Mr McCloskey is just pointing out that it was a request that we received a few weeks ago. It is under consideration. It is a complex issue.

**Senator CONROY**—I do have some more questions, but I am happy to put them on notice. Thank you for that. I think in Senator Macdonald's absence, Senator Wortley has some questions.

**CHAIR**—Senator Wortley, please proceed.

**Senator WORTLEY**—Can Australia Post confirm that it is looking at redirecting all incoming international mail and parcels received at Adelaide Airport to Tullamarine? If the answer is yes, perhaps you could provide the rationale behind such a decision.

**Mr Newman**—That proposition is under consideration at the moment. I just missed the second part of your question. I think you said 'the rationale'.

**Senator WORTLEY**—Yes.

**Mr Newman**—The rationale is that very few flights come into Adelaide now. It is really a cost consideration, because we can move that mail to the facility at Tullamarine, which is a brand new facility, and process it there much more effectively.

**Senator WORTLEY**—Isn't there already a joint Post-AQIS-Customs facility in Adelaide?

**Mr Newman**—That is correct. There is a small unit there. Any changes there would be subject to normal consultation dealing with staff issues and making sure that people were correctly placed. At this stage, as far as I know, it is still only under consideration. I do not have a timetable for it to proceed with me today, but I could take that on notice.

**Senator WORTLEY**—Is a feasibility study being carried out at the moment?

**Mr Newman**—There certainly would be a business case around the ability for us to provide that service, the cost of relocating or redeploying staff, where necessary, and any cost offsets. So the short answer is yes, it will be going through feasibility like any other change we have in our network.

**Senator WORTLEY**—Do you have a time frame?

**Mr Newman**—I do not have the time frame. I know that it is under consideration, but it is obviously subject to discussions with AQIS, Customs and also our own staff. Clearly we would have to make sure we put those in place. But from an operational view it is quite achievable without affecting our customers' service standards.

**Senator WORTLEY**—Have you already consulted with South Australian business on this?

**Mr Newman**—I would have to take that on notice. It is a state based initiative and consulting with the customer base and the normal communications to stakeholders would normally occur. But keep in mind, as I said, that this would be subject to us having no impact on service performance.

**Senator WORTLEY**—No impact, did you say, on service performance?

**Mr Newman**—To our service obligations, yes.

**Senator WORTLEY**—I understand that there are hundreds of businesses that clear imported goods in the Adelaide centre. Would they be faced with delays if the goods had to be transported back to South Australia from Victoria?

**Mr Newman**—I will just restate what I said before: any change like that would be subject to us meeting our obligations for service performance. I do not have that level of detail with me today, but I am more than happy to provide that on notice.

**Senator WORTLEY**—So the service performance would also include a ‘no impact’ on the businesses in South Australia.

**Mr Newman**—I think the words I chose were that we would fulfil our service obligations, whatever they might be. They vary depending on the level of scrutiny that they undertake through the border protection agencies, but in the normal case we would release that stuff to the network and it would be delivered the next day in Adelaide.

**Senator WORTLEY**—Have you carried out any assessment on the economic impact of closing the Adelaide centre?

**Mr Newman**—That is what I was referring to before when I talked about the feasibility study. A satisfactory and positive outcome to the feasibility study would be required for this to proceed, yes.

**Senator WORTLEY**—Can you suggest perhaps the number of jobs that would be lost in relation to closing the centre?

**Mr Newman**—I would have to take that on notice. I know several people from our two partner agencies and some mail officers. From Australia Post’s point of view, we would be in a position to deal with that rather easily.

**Senator WORTLEY**—Are you aware whether there has been any consultation with the state government in relation to this?

**Mr Newman**—I am not aware of that. I am more than happy to include that in our briefing.

**Senator WORTLEY**—You do not know when the final decision will be made, and so you are still waiting on the outcome. Is it likely to be this year? Will the decision be made this year?

**Mr Newman**—I would expect so. I want to state again that I am making my comments on the basis of the knowledge that I have at this particular time. As far as I know, the decision has not been made, but it is certainly under consideration.

**Senator WORTLEY**—When will the results of the feasibility study be available?

**Mr Newman**—I will provide that with the other information in the briefing that we will give you.

**Senator WORTLEY**—Can you guarantee that there will be full consultation with all stakeholders, including business?

**Mr Newman**—We always like to think that we consult fully with our stakeholders, and we will be going through our normal process of operational change.

**Senator WORTLEY**—Will that include South Australian businesses?

**Mr Newman**—That is a little bit difficult for me to answer here today, because normally we contact people by way of press release or by writing to them—it all depends on who they are and how often they use it. The consultation process we choose is usually relevant to what we regard as the impact on our customers. I would just say that we will make it appropriate. I am not sure whether that answers your question—

**Senator WORTLEY**—A press release would not be regarded as consultation with the South Australian business community.

**Mr Newman**—That would be with other things. All I can say to you today is that I give you an assurance that it will be appropriate, as it always is. Given the level of interest here, I am more than happy to provide all of that detail to you.

**Senator WORTLEY**—Will the results of the feasibility study be made available to us? Will we be able to access those?

**Mr Newman**—In as much as it is usually a monetary outcome and a service performance outcome. Feasibility would be, ‘Can we achieve that at a satisfactory cost and maintain service performance?’ The short answer is yes.

**CHAIR**—We will take a break now for about 15 minutes.

**Proceedings suspended from 10.27 am to 10.44 am**

**CHAIR**—The hearing is resumed.

**Senator IAN MACDONALD**—Is Australia Post’s workforce a unionised workforce?

**Mr McDonald**—There are a number of members of the workforce who are union members—well over half, I would estimate.

**Senator IAN MACDONALD**—Do you know or do you just have an appreciation of that?

**Mr McDonald**—Just an appreciation. It is a matter for the union, obviously, as to who its individual members are.

**Senator IAN MACDONALD**—What union is involved?

**Mr McDonald**—The major ones are the CEPU and the CPSU. The CPSU is the white-collar union. The majority union by far is the CEPU—the Communications Electrical Plumbing Union.

**Senator IAN MACDONALD**—Have you had complaints about mail delivery arising out of the Queensland state election in September last year?

**Mr Walter**—I can answer this.

**Senator IAN MACDONALD**—Where are you based, Mr Walter?

**Mr Walter**—I am based in Melbourne, but I have had the pleasure of meeting with the Director of the Queensland State Liberal Party on several issues that he raised about the Queensland election.

**Senator IAN MACDONALD**—‘Many issues’ would be a better phrase, rather than ‘several issues’, wouldn’t it? There is a huge litany of complaints about non-delivery, delivery

a month after the election, delivery out of the electorate and mail returned to sender from people who have not changed their postal address for years.

**Mr Walter**—We tried to organise a meeting for late January to go through those issues. We believe—and until we have had that meeting it is hard to get to the point—from our investigations that there are very few outstanding issues and the vast majority of what outstanding issues there are relate to our unaddressed mail service. If you would like, I could explain that service and give you an understanding of the sorts of issues that have arisen.

**Senator IAN MACDONALD**—I have 25 pages of complaints. I was involved personally in a couple of them up in North Queensland, where mail for Liberal candidates was not being delivered. How do we know that? Through experience, we pick people right throughout the electorate to report on when they get them, and the mail clearly was not being delivered or, if it was delivered, in many instances it was delivered about a week after the election. What investigations have your Queensland office done?

**Mr Walter**—First of all, I should say that we virtually agree that well over 99 per cent of all unaddressed mail—and I should explain the unaddressed mail service—was delivered in line with its terms, so we are talking about the issue residing at the moment with less than one per cent. Unfortunately, we are still waiting for information on a number of issues from Mr Greene. We have investigated the issues. I do not have the report with me. We have been ready since mid-January to meet with Mr Greene but unfortunately he has not been able to see us in that time. But as recently as last week I was pursuing that. If I may, I will briefly talk about the unaddressed mail service. Our unaddressed mail service is a low-cost, non-priority service that is provided subject to prior booking and network capacity, with delivery completion potentially taking a full five-day week. We are talking about pamphlets, basically, that do not have a name and address on them. They are for delivery to a household.

The unaddressed mail service is based around postcodes, not electorates. As we know, between elections those electorate boundaries are subject to change. Nonetheless, in recognition of the importance of the democratic process, we adapt the service as far as we can to meet the requirements of all political parties. Of course, we treat all political parties on an impartial basis.

Given the nature of the network, the fact is that a postie is delivering to a round every day that they work, but during an election or when an election mail-out occurs, they have to adapt to meet electoral boundaries. We make no bones about it: there will be some crossover. In other words, there will be some delivery of material outside an electorate—very little. Ninety-nine per cent of all unaddressed mail was delivered correctly in the Queensland election. Of course, that still leaves some that is subject to some dispute with the Liberal Party in Queensland. A fruitful meeting of an hour or two would sort it out once and for all, I believe. That is the sort of meeting we are seeking with Mr Greene and his colleagues.

**Senator IAN MACDONALD**—Have you had complaints from the ALP about the conduct of your service during the election?

**Mr Walter**—We did have some crossover into other electorates there, too.

**Senator IAN MACDONALD**—So you have had complaints from the ALP?

**Mr Walter**—Yes, but on the unaddressed mail service, limited complaints.



**Senator IAN MACDONALD**—Could you find out for me how many complaints you have received from the ALP?

**Mr Walter**—Yes, certainly.

**Senator IAN MACDONALD**—What has your Queensland organisation done about investigating these complaints—or did they send them all straight on to you?

**Mr Walter**—No. As we have heard from other questions, it is very much something that happens in the state. I have had regular contact. I was contacted directly by Mr Greene, I think towards the end of last year. That is when I met Mr Greene.

**Senator IAN MACDONALD**—Do you know why he contacted you?

**Mr Walter**—He said that he had some issues he wanted to discuss with me about the Queensland election. Mr Greene had a period of ill health post the election; he was certainly away for a considerable period on leave, understandably over the Christmas period. I have not dealt with his deputy directly but a very senior executive in Queensland has been dealing with him to work through the issues. I have seen her substantive report. I do not have it with me, but it covers all the issues. The report basically relates to the unaddressed mail service. I am a little concerned, or a little worried, that we are still unaware of the nature of some of the issues. It becomes very hard, months after an election, to investigate those matters.

**Senator IAN MACDONALD**—I appreciate that. Could you get for me on notice what complaints were made to your Queensland office and what response they got? To give you a bit of a tip-off, my advice is that they got practically nil response from your Queensland organisation and that is why, in desperation, they eventually went to you.

**Mr Walter**—I will certainly take that on notice. I am aware that two quite substantial reports—and that will form the basis of what I provide—have been provided. I think some of the rub is around those outstanding issues that we do not as yet have any detail on. I am certainly happy to provide that.

**Senator IAN MACDONALD**—Candidates are always keen to find any excuse to pin their losses upon. I have been around long enough to know that human frailty. But even from my own experience in a couple that I was more closely involved in, different people, who I would call our people, received every piece of Labor mail the day after it was apparently sent—it all arrived at the same time—whereas the same people did not receive any Liberal Party mail, or in cases received it well after the election. As you know, there are reports of postmen being seen tipping out large amounts of political mail, although I understand that the person who saw that has not been prepared to put her name to it.

**Mr Walter**—That can be one of the issues in following these things through—to actually speak to the people involved.

**Senator IAN MACDONALD**—I understand this report that you talk about names people who indicate—the election, as I recall, was on 9 September—they received the piece of mail on 2 October. Another one who has given a name received it on 4 October. There are reports of a massive number of return to sender Australia Post stickers from addressees who have been and still are at those addresses.

**Mr Walter**—I will certainly provide the information that you requested there. As I say, one of the difficulties here has been the effluxion of time. It was at least six weeks after the election before a lot of those things came to our attention.

**Senator IAN MACDONALD**—Before you were told, but I understand that complaints were made to your Queensland organisation during the election and immediately post the election with absolutely a blank wall of silence in response. In fact, people are still waiting for responses from complaints—individual candidates lodged complaints with members of the Australia Post staff and they are still waiting for a response.

**Mr Walter**—I would have to check this, but my understanding is that in view of the fact that we could not arrange a meeting with Mr Greene, I am as sure as I can be that the report has been forwarded on under a covering letter. I do not want to mislead anybody here, so I would need to check that. As I say, the report is substantive.

You do raise several issues. We cannot canvass them all here, but with unaddressed mail, there seems to be a misunderstanding of the nature of this mail. I am not saying that the Queensland Liberal Party does not understand this mail, but if there are too many items received for a delivery, the conditions of the service state and the parties are aware that that material can be disposed of—and that means into a dumpster at times—so I think sometimes there is a lack of understanding of the conditions around it. I am not saying that this is the case here, but I do know that I would love to get around a table with Mr Greene and with our Queensland colleagues. I think they have done a very substantive job on responding to the claims and I think we can come to—

**Senator IAN MACDONALD**—My advice is that they have got no response, which is why they have come to you way down in little old Melbourne town.

**Mr Walter**—I will check for you.

**Senator IAN MACDONALD**—Why else would they come to you?

**Mr Walter**—They came to me prior to Christmas and I had a meeting, but I was—on my inquiry I received a copy of a report that had been provided to the Queensland Liberal Party. If there was a little frustration on our side—we are very customer orientated at Post—it was over getting the full list of issues out and having enough information to investigate them. For example, a claim of nondelivery is hard to prove one way or the other if you cannot speak to the person who says that they have not received it.

**Senator IAN MACDONALD**—This report you are talking about—which is the one I think I have got before me, and I do not want to argue with you over the details—has the residential addresses in the electorate of Burleigh, which is on the Gold Coast, where the Liberal candidate's mail was delivered, one on 2 October and one on 4 October. Those names are there. That is not terribly hard to follow up by your Queensland organisation, but I suspect that nothing has been done.

**Mr Walter**—I think we need to have that meeting with the Queensland Liberal Party to go through all of this. We have sought that meeting and I have personally undertaken to Mr Greene to attend that meeting to go through that. The senior executive—it is fair enough she came off leave and fully investigated these further matters—had the report ready prior to 22

January, expected to meet with Mr Greene and his colleagues on 22 January and has tried repeatedly since to—

**Senator IAN MACDONALD**—That is a senior executive in Melbourne, is it?

**Mr Walter**—No, in Queensland. And I have said to Mr Greene that if he wants—

**Senator IAN MACDONALD**—So you said she has come off leave.

**Mr Walter**—This was to provide the report. Mr Greene's colleague suggested that he would like to meet on 22 January with a full further report on the issues raised. My information, and I have seen the emails too, is that she has been endeavouring since that time to meet with Mr Greene. I undertook to Mr Greene last year that as soon as the further investigation had been taken into new, further claims and existing claims that I would be happy—

**Senator IAN MACDONALD**—Do you mean investigation by your Queensland organisation?

**Mr Walter**—by Australia Post in Queensland—to go through all the issues that have been raised previously that we thought or they thought had been responded to satisfactorily. I understand there were a number of new issues that were raised and that were subject to further investigation.

**Senator IAN MACDONALD**—This is not a new complaint. I am not sure how long you have been around, but three years ago there were the same sorts of complaints. Are your staff counselled before elections on the importance of being seen to be balanced in their delivery methods?

**Mr Walter**—Absolutely; it was on the tip of my tongue in answer to a previous question. It is reinforced very strongly with all staff the importance of impartiality with election material. Clearly it is effective for political parties because it is used very heavily time and time again. We know that addressed mail is more effective, but unaddressed mail also is an important aspect of the products that we have available for use during an election. So it is reinforced very, very strongly. We have no—

**Senator IAN MACDONALD**—Can you find out for me what counselling is given to your field staff on deliveries before an election?

**Mr Walter**—Certainly.

**Senator IAN MACDONALD**—Do you know if that includes a warning that nondelivery or defacing of mail is a criminal offence?

**Mr Walter**—I will check that for you, but I think it goes through chapter and verse of the requirements. It is basically around the service and the service standard—that is, not interfering in any way with the mail—but I will check that particular point for you.

**Senator IAN MACDONALD**—I am sorry, I did not catch what you said.

**Mr Walter**—I said the briefing I know relates to treating the mail with integrity and making sure that all election mail, no matter from which party, is delivered according to the standard required. But I will check the point that you raise.

**Senator IAN MACDONALD**—If by chance the case is made, what are the remedies? Perhaps it is a bit hypothetical, but one presumes that out of the 36 pages of complaints that one might be found to be correct. I think all 36 pages are correct, but surely there would be some that would be found correct. What are the remedies available?

**Mr Walter**—Without being specific about the number, some of the remedies have already been provided on the items you mentioned—that is, if there is a shortfall for example of election material in terms of the required number to be delivered to an electorate, that will be made up quickly. I cannot give you the exact details but I am aware of several cases where, if there has been a shortcoming in terms of the numbers available to us—it is quite difficult for posties who are used to delivering to their round going outside that round and using maps to make sure, as far as they can, they deliver quickly—if there is any evidence immediately that that is the case, we will make good and do another delivery. Quite often we go further than that and deliver further material into that electorate.

**Senator IAN MACDONALD**—There is not much point in delivering further material now.

**Mr Walter**—No, this is during the campaign.

**Senator IAN MACDONALD**—I have not heard of any case where Australia Post did more deliveries during a campaign. In fact, my experience has been that it is very difficult to get any response during a campaign.

**Mr Walter**—I would be happy to provide some examples.

**Senator IAN MACDONALD**—Okay, that would be good. Quite clearly your field staff are under pressure during an election campaign and I assume that you make allowances by engaging extra postmen. Is that correct?

**Mr Walter**—It is a detailed process. The unaddressed mail service works around the addressed mail, but there is a standard of—it can take up to five days to deliver, but we bend over backwards to make sure election mail gets out if it is booked to the required standard by the required time.

**Senator IAN MACDONALD**—I think all political parties understand about the date—you say five days, which I accept—and they feed that into their calculations. But the complaints we have are not just related to late delivery; they are related to nondelivery in many areas, and not boundary areas either. There are further complaints you will see in this report of non-election material simply never reaching the addressee. Are you aware of those complaints? This is post election. This is ordinary, Liberal Party mail.

**Mr Walter**—I am not specifically aware of that, but I will certainly check it for you.

**Senator IAN MACDONALD**—There is a report that there had been a consistent non-receipt of mail until the Queensland division took the step of sending mail in plain envelopes. It now has 100 per cent success in getting mail through.

**Mr Walter**—Is this addressed mail?

**Senator IAN MACDONALD**—Yes, this is sending out membership cards and things like that.

**Mr Walter**—If I can just reiterate: the integrity of the mail is fundamental to our service.

**Senator IAN MACDONALD**—Absolutely.

**Mr Walter**—We take that very, very seriously, and any evidence of any wrongdoing is immediately referred to the appropriate authorities. We have had no instances of that sort of activity being brought to our attention in Queensland. I am not saying that you do not have a claim there that we will be investigating, but the detail of that one I am not across.

**Senator IAN MACDONALD**—I could go through these, but I will not waste the time of the estimates committee on it. Suffice it to say, an enormous amount of money is spent in those many electorates who have complained and if they could find an alternative next time, they certainly would not be using Australia Post because (a) of the non or late delivery, and (b) the inability to get any response from your Queensland organisation in a timely fashion, or at all. I understand that since contact has been made with you there has been some movement, which you have related. Again that is of concern, because as each week goes by these things become lost in time. I would be interested to get the responses to those few questions I put on notice and hopefully your meetings on these important issues will resolve some of the business anxiety that there is over your organisation's service, and impartiality I have to say with respect.

**Mr Walter**—Thank you. I think the best course is that we do have that session as soon as we can get it and that we go through all of the issues. I am sure that we will reach a resolution on those issues. I suppose you are in a similar position to me—that is, I have seen communications post election before I became involved. It certainly needs to be sorted out and that is certainly what I intend to do with our person in Queensland and with Mr Greene and his colleagues.

**Senator IAN MACDONALD**—I am sure these sorts of complaints are not new and I am sure that every election you will get some. There are just so many here that, if you discard 50 per cent of them as anecdotal and disappointed candidates, there is still an enormous litany of complaint. I know you have had that in previous years. Have you any systems in place that might address this sort of issue upfront?

**Mr Walter**—With your indulgence—and I think I made this point earlier—we are talking about less than one per cent of all mail.

**Senator IAN MACDONALD**—Where do you get that figure from?

**Mr Walter**—That comes from my Queensland colleagues. I do not have the Queensland information with me, but I am happy to provide that.

**Senator IAN MACDONALD**—Where do they get that from?

**Mr Walter**—That is from the amount of mail under question. In other words, where there is still resolution to be made about whether there was delivery or nondelivery, taking all of that into account, more than 99 per cent of the election mail for the Liberal Party in Queensland was delivered according to requirements. The meeting really is about that one per cent or so. I cannot give you an exact figure.

**Senator IAN MACDONALD**—I cannot challenge you on the one per cent and it is not a debate in any case, but I would be surprised if it were as little as one per cent.

**Mr Walter**—Of course a few hundred items can be—you add that into a few electorates and it adds up, but it is nowhere near the total amount. As you say, let us look at it and—

**Senator IAN MACDONALD**—My question was: do you put in procedures anticipating that in every election, no matter what the outcome, you will have complaints? Do you have in place some sort of arrangement or some sort of system that will quality test that?

**Mr Walter**—Yes, there are a number of arrangements. We start discussions with all political parties well in advance of an election. We have a single liaison point. We ask that any queries about any mail-out be reported back to that liaison person. So we have arrangements of that sort in place. One of the big things is to work with each political party in order to work out what their program is. You were talking before about casual staff and other things, but to actually work out—without knowing what the contents of that material is—a program so that you can make sure that—

**Senator IAN MACDONALD**—I know that happens; the candidates are told when different mail-outs are going to occur and I know they speak to Australia Post about it. It does not seem to have helped with the delivery though, I have to say. But, anticipating that you will have these allegations of bias, of dumping of mail, of non-delivery, of late delivery, without making the point too much, more than 50 per cent of your workforce is unionised, in a union that is perhaps rightly or wrongly not backward in coming forward in political matters. Without making any allegations against the union or union members, do you have your own secret procedures put in place to make sure that, when you get complaints from people like me and Mr Greene, you can say, ‘Look, we’ve had these arrangements in place and our information is different from yours’?

**Mr Walter**—First of all—and I will address your question, of course—our workforce actually mirrors the Australian population. We have about 140 nationalities. Whatever their union affiliation might be, they are just normal Australians trying to do a very good job and they are highly regarded in the community. That is an important point. But we do have team briefings with those people. We do have them sign in and out on unaddressed mail deliveries. In Queensland we have had spot checks just to ensure that slippage and things like that are kept to a minimum.

**Senator IAN MACDONALD**—So you do have spot checks, you say?

**Mr Walter**—Yes, we had spot checks during the Queensland election, just to follow up. As I said, you have a postie out there on a round delivering to an area that he or she is not necessarily familiar with. We work very closely with the parties to have a map to cover it off.

**Senator IAN MACDONALD**—Yes, in that instance. But the complaints are more than in those boundary-related circumstances.

**Mr Walter**—Yes, but that is just an example of the—

**Senator IAN MACDONALD**—Can you provide on notice some more details of the spot checks that you have?

**Mr Walter**—Yes, certainly.

**Senator IAN MACDONALD**—And any other systems you put in place to be able to ensure the quality of your service. I would be interested in what you have there. Do you put on additional people at election time—additional deliverers?

**Mr Walter**—I am not sure of the situation in Queensland. We try to manage it within our existing resources. There are those five days, and although we try to do our best to get it out as early as we can, I would need to check that. But our job is to get the material out in accordance with the service standards. I would need to check the actual details.

**Senator IAN MACDONALD**—Do you put on extra people at Christmas-time?

**Mr Walter**—Yes, we do. I am not saying that we have not in the Queensland election, but I just need to check the details.

**Senator IAN MACDONALD**—Perhaps check that for Queensland, would you? If you do put on temporary deliverers, could you give me some details—how many, which towns the temporary ones are put in?

**Mr Walter**—My understanding is that it is pretty much done within the resources we have, but I will certainly do that for you.

**Senator IAN MACDONALD**—If you could confirm that, that would be good.

**Senator RONALDSON**—Mr Walter, it is nice to see someone from the financial and cultural hub of Australia here, as opposed to being from the small centre of Melbourne. Is Post still sponsoring the Stawell Easter Gift?

**Mr Walter**—Yes, we are. We have been involved for well over a decade now and it is certainly one of our most precious and fulfilling sponsorships, in terms of both what it does for the local community and regional sport generally, but also for our people. It is a sponsorship that is very close to our heart.

**Senator RONALDSON**—In my view, it is one of the most spectacular corporate sponsorships that I have seen for a long time, so congratulations on that. Can I take you to a comment you made earlier—and you talked about some of it with Senator Macdonald—in relation to the 99 per cent success rate for unaddressed mail. When I was the member for Ballarat in the early nineties, I had a lot of material that I believed was going missing. I spoke to the locals about it and I was assured that all the checks had been done. That was unravelled a bit when a horse fell into a mineshaft just out of Ballarat and, as they were rescuing the horse, they found a large number of my brochures. The horse had been there for about three hours and was clearly far better informed, having spent three hours with my brochures, but a number of my constituents unfortunately were not. I had been told that—

**Senator CONROY**—You will just have to stop trusting those Liberal Party people. Even they threw you away!

**Senator RONALDSON**—It is a distinct possibility, I suppose, but they were not delivering them. I was assured by the locals that it was being done but clearly it was not. So is this 99 per cent figure based on a perceived success rate because of lack of complaints? What mechanism do you determine to get to the 99 per cent?

**Mr Walter**—We work closely with the political parties. We work closely on having the right numbers of pamphlets. Sometimes if electoral boundaries change there can be unders or

overs, but we work closely with them. Our delivery staff sign for the required amount of brochures to cover an area and then they sign off again on return. In the Victorian election, there was some spotting. The point that Senator Macdonald raised is that we do have team briefings with our staff. They know we have a very strong security service in Australia Post. They are predominantly fine and honest Australians, but they are aware that we have zero tolerance for any wrongdoing in relation to any mail, let alone election mail. So that is the series of things we have. This is not your example, Senator, but when you deliver one unaddressed item to a household of six, like mine, some of those six people may not see that item. On several occasions that is what we have found in some of the cases put forward. But that clearly does not cover the case you are talking about.

**Senator RONALDSON**—But is the 99 per cent a complaint based success system or lack of complaint based system as opposed to any internal checking, predominantly?

**Mr Walter**—It works both ways. It is us being aware that we do not have enough items, for example, and reporting that to the party and rectifying that. But it can also be because people in an electorate say they did not get an item, and that will cause an investigation as well. You look at both sides of things. That is how it is worked through, plus the system that I said was in place with unaddressed mail. Of course, direct mail is used a lot too, and we all know that with direct addressed mail Australia enjoys probably the best performance standard in the world in terms of on-time delivery of direct mail.

**Senator RONALDSON**—How is the spot checking, which you say you do, carried out?

**Mr Walter**—It is carried out by people moving around the areas within which the items are being delivered to check to see that they have actually been delivered. That includes knocking on the door with several people. It is something that is done by our competitors in their services too. It is just an additional check.

**Senator RONALDSON**—In the last Queensland state election, for example, how many of those spot checks were done?

**Mr Walter**—I have undertaken to get that information for Senator Macdonald. I do not have that with me.

**Senator RONALDSON**—Do you know how many spot checks there were during the last federal election?

**Mr Walter**—I do not have that information.

**Senator RONALDSON**—Will you take that on notice?

**Mr Walter**—Certainly.

**Senator RONALDSON**—Also the electorates and numbers involved and the method of checking.

**Senator IAN MACDONALD**—Could you identify the type of person that does the spot checking—not by name.

**Mr Walter**—Certainly.

**Senator RONALDSON**—I would certainly like numbers, please, and electorates.

**Mr Walter**—Yes.



**Senator RONALDSON**—If you get complaints from one of the political parties that there seems to be some consistent level of complaint about a particular electorate, do you send extra resources in there to spot check?

**Mr Walter**—We certainly put a lot of focus on any situation like that that might occur. The important thing, as I was saying to Senator Macdonald, is that we know about that really quickly. If something goes on for a couple of weeks—‘We’ve had problems in that electorate and it started two weeks ago’—it becomes in itself a broader issue. That is why we have these liaison arrangements where we virtually have a person full time attached to each political party and certainly a central liaison point. I would need to check whether that applies in all states, but certainly we have a central liaison point so that, as soon as there is a problem, they pick up the phone and we will investigate it straightaway. We undertake to get back the next day, if at all possible, because we realise how important it is during a short election period to rectify these situations if there is a problem.

**Senator WORTLEY**—I understand that in 2006 you launched a new policy to eliminate workplace harassment, discrimination and bullying in the workplace. Who was involved in formulating that policy and was it contracted out?

**Ms Walsh**—No. Australia Post has a workplace diversity unit, which operates within corporate human resources. It also has liaison people to deal with those issues in each of the states. That new policy was developed internally through that diversity unit.

**Senator WORTLEY**—And the implementation and training that went along with that policy?

**Ms Walsh**—That is correct. I understand that a contractor provided some assistance with training, but largely it was run and overseen by an internal person.

**Senator WORTLEY**—Who was the contractor?

**Ms Walsh**—I would have to take that on notice.

**Senator WORTLEY**—Do you know what the cost was?

**Ms Walsh**—No, I would have to take that on notice.

**Senator WORTLEY**—What has been the cost of implementing the policy?

**Ms Walsh**—Again, I would have to take that on notice. We do take discrimination, diversity, harassment and bullying very seriously and we put in the resources that we feel are necessary for an organisation of our size and diversity—something we are very proud of—to ensure that that is best communicated to our staff.

**Mr McDonald**—Implementation is ongoing. We run ‘toolbox talks’, as we call them, where we talk to staff and we continually reinforce all our diversity policies, including bullying and harassment. We put out regular brochures in which we give examples of what might constitute bullying and harassment. As Ms Walsh said, we have continual reinforcement through the diversity units in each of the states. So it is an ongoing exercise. Underpinning that is a mechanism whereby, if people feel they have a complaint, that will be handled speedily and fully.

**Senator WORTLEY**—You said that by October 2006 all of your people would have received training in that area.

**Ms Walsh**—Yes.

**Senator WORTLEY**—Have you met that goal?

**Ms Walsh**—My understanding is that we will have gone a long way towards meeting that goal. I cannot say definitively that it has been 100 per cent, but I can take that on notice because there was a process of ensuring that that did occur to the best of our ability. But, given the size of our workforce and the comings and goings, I could not commit to the 100 per cent figure; we are certainly working towards it.

**Senator WORTLEY**—If you could take that on notice and just let me know, if you have not reached that goal, when you are likely to reach that goal, to ensure that all of your staff have been trained in those areas.

**Ms Walsh**—Yes, I will take that on notice.

**CHAIR**—That concludes questions for Australia Post. We thank you for appearing this morning.

[11.26 am]

#### **Australian Communications and Media Authority**

**CHAIR**—I welcome officers from ACMA. Mr Chapman, do you wish to make an opening statement?

**Mr Chapman**—Thank you, I do not. I am joined at the table, in addition to the minister and the secretary of the department, by the senior management team of the ACMA—the deputy chairman, the other full-time executive member of the authority and the five general managers of ACMA. Time has gone very quickly since the last time we were here. Thank you, Chairman, for that opportunity.

**Senator CONROY**—Can I congratulate you on taking the Senate estimates process so seriously and ensuring that your team is available. I want to put on record that some of the other agencies do not take it quite as seriously as you do, Mr Chapman, and we appreciate it.

**Mr Chapman**—Thank you.

**Senator CONROY**—I would like to ask a number of questions about ACMA's administration of the commercial television industry code of practice. What is ACMA's role in the administration of this code?

**Mr Chapman**—I will ask Ms O'Loughlin, who is the executive responsible for the day-to-day overseeing, implementation, monitoring, compliance, investigations and recommendations to the authority, to take that question.

**Ms O'Loughlin**—We have a number of roles. The codes of practice generally form the basis for the co-regulatory framework. With regard to that particular code, ACMA is required to register that code. That means that, once the code has been developed by the free-to-air broadcasters, they must come formally to ACMA; ACMA needs to consider the code to make sure it can satisfy itself that that code will actually address consumer issues and meet appropriate levels of consumer safeguards. If ACMA is so satisfied, it will register the code.

Following registration of the code, we of course are the escalated complaints handling body for the code. Where a complaint in the first instance goes to a broadcaster, the broadcaster has time to deal with that complaint itself. If a complainant is not satisfied with what the broadcaster has come back to them with, they can come to ACMA for us to investigate the complaint.

**Senator CONROY**—Is ACMA happy with the role it has under the code? Administering this code is not too burdensome, not too much of a drain on your resources?

**Ms O'Loughlin**—It is certainly an important part of what we do.

**Mr Chapman**—I would respond to your question by saying that no, it is not a drain; it is an important part of our role. We take it very seriously. We have redoubled our efforts in the last six months or so to be even more responsive. I have previously indicated at this table that, as part of our role as a converged communications regulator, we need to have some commonality of approach in learnings right across the various investigations we have across the ACMA, of which there are about 15. I have been putting a lot of time and energy into that.

We have of late redoubled our efforts and resources. We have instituted weekly review meetings. The deputy chair chairs the weekly meetings. We are about to issue a consultancy to assist us with an organisation-wide approach to investigations to try and expand those learnings and to get them into a framework that is consistent with a converged communications regulator. I am satisfied that we have the financial resources and the people who have been doing the job. I am nothing but optimistic that we will continue to do the job and in an enhanced way. I guess the short answer to that long-winded explanation is that I am satisfied that we have the resources to do that.

**Senator CONROY**—Does ACMA set benchmarks for the length of time it will take to resolve complaints under the code?

**Mr Chapman**—I am sorry; did you ask whether we have benchmarks?

**Senator CONROY**—Have you set benchmarks?

**Mr Chapman**—We have an internal KPI.

**Senator CONROY**—What is the average time it takes ACMA to respond to a complaint it receives?

**Mr Chapman**—In respect of a complaint or an investigation under the commercial TV code, I am advised that our response has been, since the inception of ACMA, until the end of calendar year 2006, in the order of 4.8 months.

**Senator CONROY**—I turn to a specific complaint around a *Today Tonight* program televised on 26 September 2005. I understand that it took more than a year to resolve that complaint made by Telstra to ACMA. Was that out of the ordinary?

**Mr Chapman**—By 'out of the ordinary' do you mean that it does not comply with our own internal KPI?

**Senator CONROY**—Well, that it took a year.

**Mr Chapman**—I think it took nearly a year.

**Senator CONROY**—My records show it is more than a year, but I am not going to quibble with you.

**Mr Chapman**—I indicated that the average is about 4.8 months. Seventy per cent of our investigations under this code are completed within six months, so clearly this is one of those in the 30 per cent bucket. That particular investigation was complex. It falls into that category that we would call a complex investigation. It involved, as I recall, four separate matters or programs that raised in the order of 10 to 12 separate complaints. It required considerable resource application and ultimately was successfully and satisfactorily resolved between the complainant and the broadcasting licensee in such a way that, as I understand it, parties were not unhappy with the outcome of that investigation.

**Senator CONROY**—You would agree, though, that a near-13-month inquiry is not a satisfactory length of time to take?

**Mr Chapman**—We are interested in the concept of continuous improvement. It was a complex investigation, and there is no glib response to a question as to whether something is satisfactory or otherwise. There is always opportunity to improve your performance. We are, as an authority, very conscious of the need to be seen to be responsive because perceptions of responsiveness are as important as our own internal assessments. I have said on the record that there are areas where the perception of our performance needs to be improved. We are working assiduously towards that. You can only deal with a case on its merits. As I said, this was a very complicated matter. It had a number of component parts to it. When we drilled down onto it, it had in the order of 10 or 11 separate aspects of complaint, and in that sense it was closed out satisfactorily and was not an unsatisfactory investigation.

**Senator CONROY**—I understand that you say while the parties are not unhappy with the outcome, they are fairly unhappy with the progress. Telstra, I understand, wrote to you 200 days after you had acknowledged receipt of the complaint to ask for a status report. The response was that the matter was under active consideration. Telstra wrote directly to you, Mr Chapman, about the issue 300 days after it made the complaint; is that correct?

**Mr Chapman**—I do recall that letter, yes.

**Senator CONROY**—What was your reply to that letter?

**Mr Chapman**—I have a blank as to whether I replied in writing or personally. I will take that on notice, if you don't mind.

**Senator CONROY**—According to the Telstra website, from which I have established a chronicle of their discussions with you, and while I would not always take everything on the Telstra website as absolutely gospel, they indicate you did not actually reply at all.

**Ms O'Loughlin**—Whilst the chair may not have replied, I think there were conversations that took place.

**Senator CONROY**—You were in contact with them after that letter sent after 300 days?

**Ms O'Loughlin**—Yes, to give them an update.

**Mr Chapman**—There were, at worst, several lines of oral communication about that.

**Ms O'Loughlin**—And at several levels across the organisation.

**Mr Chapman**—I am keen to emphasise that because I would not like it to be seen that we are in blatant disregard of written communication.

**Senator CONROY**—I am looking at a website called ‘now we are talking’, which is very familiar to members of this committee. Senator Ronaldson has specialised in scrutinising that particular website. One article is headed, ‘Unhappy birthday—Telstra marks one year of ACMA dithering’ by Andrew Maiden, one of their corporate legal officers. He goes on to quote from a *Seinfeld* episode. It might be familiar to you, Ms O’Loughlin. When you finally did resolve the complaint, did you provide any explanation for the delay in reaching a decision? Did you acknowledge the delay?

**Mr Chapman**—I did have a conversation with senior management at Telstra—several conversations. I indicated that the perceptions were that it had taken longer to resolve than we would like in terms of perceptions about performance. I indicated the complexity. I also indicated some of the more sensitive nature of the accommodation and the way in which the matter was resolved at the end of the investigation. It was my strong impression that Telstra appreciated that explanation and were satisfied with the outcome from that investigation.

**Senator CONROY**—What was the resolution? ACMA upheld most of Telstra’s complaints?

**Mr Chapman**—I stand to be corrected by Ms O’Loughlin, but I think we upheld about 50 per cent of the complaints.

**Senator CONROY**—How does the KPI work inside ACMA? If you do not meet your KPI, what happens? Are you forced to read Senator Ronaldson’s pamphlet?

**Mr Chapman**—I think it is called professional pride and peer pressure review. We are acutely aware of it within the organisation. I keep stressing the need for the perception of performance to match our own internal assessment of performance. There is no direct financial or performance review as a result of the failure to reach an internal KPI but there is active discussion within the team as to why we have not made a KPI.

**Senator CONROY**—Are the executives on a bonus system or is it just a flat salary—the executive team?

**Mr Chapman**—The senior executive team is on a bonus scheme, yes.

**Senator CONROY**—So the KPIs do not relate to the bonus scheme, at least?

**Mr Chapman**—They do.

**Senator CONROY**—It is just that you indicated there was not any financial penalty if you didn’t meet the KPI.

**Mr Chapman**—I was saying that a one-off failure to meet a KPI does not lead axiomatically to the failure to secure a bonus.

**Senator CONROY**—But the KPIs are linked to your bonuses?

**Mr Chapman**—Yes.

**Senator CONROY**—I want to talk about some of your tasks you have to perform in relation to the new media laws. I would like to explore where ACMA is up to with those matters. Has ACMA finished building the new register of media ownership?

**Mr Chapman**—We have not completed that task but we are working assiduously on it. We are charged with the responsibility to have that register up and running as soon as practicable after 1 February. I think we made very solid progress in the months of December and January, and even in this month.

**Senator CONROY**—The companies were to supply relevant details by 6 February; is that right?

**Mr Chapman**—Yes.

**Senator CONROY**—Did you get a last-minute rush? Were people as efficient as always and deluged you in the last 24 hours before then?

**Mr Chapman**—It was not a deluge at the end, having regard to the preparatory work that we had done in December and January, the mailings and the correspondence. I personally wrote to every licensee, all 325 of them. We supplemented that with a number of fact sheets. We supplemented that with making staff available specifically to answer queries. We revised, from first principles up, our documentation to try and make it as user friendly as possible. There was an acute awareness on the part of the licensees as to the importance of the information. If you roll all of that up, I think we found that the process went very smoothly. It certainly was back-ended, but it was not a deluge at the back end.

**Senator CONROY**—Has anybody not complied? Have you got every one returned?

**Mr Chapman**—When I was last advised on Friday, there were about half-a-dozen not returned. So that is half-a-dozen out of about 362.

**Senator CONROY**—You said 325 a little earlier.

**Mr Chapman**—The extra numbers represent the newspapers.

**Senator CONROY**—Half-a-dozen out of 362.

**Mr Chapman**—It was in the order of half-a-dozen.

**Senator CONROY**—Is there anyone of significance in the half-a-dozen?

**Mr Chapman**—No. I assume by ‘significance’ you mean the more profiled media places?

**Senator CONROY**—That is exactly what I mean.

**Mr Chapman**—We have to treat every licensee separately and—

**Senator CONROY**—I am not asking you to sign up to my language there. I appreciate the point you are making. When do you expect to be ready? When will you have finished it off, ticked it off?

**Mr Chapman**—We are charged with the responsibility of having the register up and running as soon as practicable after 1 February. We are obviously going to be and have been in dialogue with those people who have failed to issue returns. We are also charged with the obligation to go through all returns and satisfy ourselves as to the efficacy and accuracy of that information. So that is a task that is before us. We have put additional resources—it wouldn’t surprise you—into this area to make sure we do it as expeditiously as possible. I think we generally characterise our progress on the establishment of the register to this point as very sound. That is where we are sitting today.

**Senator CONROY**—You are examining all the documentation and establishing the bona fides. What does that involve?

**Mr Chapman**—Essentially we are looking at each return and doing an initial sanity check.

**Senator CONROY**—An initial—

**Mr Chapman**—‘Sanity check’. I think it is important to bear in mind that it is a new scheme with new forms; it is a new construct. We are going out of our way to make specific executives responsible for specific parts of the charter we have under the new media reforms because there is an anticipation that in this initial period there will be people who may not quite understand it or get forms incorrectly completed. We are, as a service, as a value-add, as an initial sanity check, looking at each of the returns with a view to making sure that they comply.

**Senator CONROY**—One of the advantages of your appointment, Mr Chapman, was that you bring a market expertise as well as an industry expertise to the job. Your time at Babcock & Brown, as well as many of your other times, shows a very broad depth of experience. I am interested in what is involved in your sanity test because some of the structures nowadays are a lot more complex than they used to be, and as we have even seen since the laws passed through the parliament—they have not been proclaimed—there have been further changes in the structure. I am interested in what exactly you mean when you say a ‘sanity test’. For instance, how do you determine ownership? Are we talking economic ownership? Are we talking beneficial ownership? Are we talking voting share? Are we talking non-voting share? How are you actually digging through the complexities of modern-day market structures to determine who actually owns something?

**Mr Chapman**—This may disappoint you but I personally am not working my way through those responses.

**Senator CONROY**—Can I say I am disappointed!

**Mr Chapman**—But I think I use that sanity check in a very narrow sense in terms of compliance with what the forms were asking and the details, so that it is a narrow construction against the construct of the legislation. I might see whether Ms O’Loughlin wants to add to that explanation.

**Ms O’Loughlin**—No, I think that is correct. What we are going through at the moment is to make sure that all the information that was required on the form that we need reported to us is reported to us; that it gives us the information in regard to the test around registrable media groups to identify what is a registrable media group, which is a new concept in the legislation. Of course we have also collected quite a bit of information historically—and have reported on it regularly—on controllers of commercial radio and commercial television broadcasting licensees previously. So there is a bit of crosschecking that we can already do from the existing registers that we have collected information on. It is going through that process to satisfy ourselves that the data is accurate.

**Senator CONROY**—I am just conscious of a phrase I think you have both used, that we have a ‘narrow construct’. I want to understand what you mean by ‘narrow construct’. If you receive a return that says, ‘Belgium dentists own this media outlet’, are you just going to accept that Belgium dentists own it, or will you dig around to find out who actually is the

genuine owner of the company? I think Mr Chapman may be more familiar with the phrase that I am using. There is a difference between a name on a piece of paper and who actually owns a company.

**Ms O'Loughlin**—There are quite a number of processes that we need to go through with the register. The legislation enables us to put entries up in an unconfirmed manner in the first instance so that those entries can be entered on the register quite quickly.

**Senator CONROY**—Is the register a public document yet?

**Ms O'Loughlin**—The register will be a public document, yes, available on the internet.

**Senator CONROY**—When will it go up in its unconfirmed state? I appreciate the point you make that it is unconfirmed.

**Ms O'Loughlin**—I think, as the chair has mentioned, we are working through the data at the moment and we are satisfied that we have—

**Senator CONROY**—If it is unconfirmed, surely you can just list it now.

**Ms O'Loughlin**—No. 'Unconfirmed' has a particular meaning under the legislation.

**Senator CONROY**—What does 'unconfirmed' mean?

**Ms O'Loughlin**—I do not actually have the legislation with me, but we can get that. It defines when ACMA first puts the information on to the register, and that kicks off some processes and some time frames which are laid out in the legislation as well. So we are under time pressures once things go up on an unconfirmed basis to look at the—

**Senator CONROY**—Does that mean you can wait six months after you receive the return in the mail before you can put it up on the unconfirmed?

**Ms O'Loughlin**—No. We have to move through this process very quickly, as soon as we possibly can, to have the register in its first form up and running. Once that is settled then with any changes after that we need to go through processes to move from an unconfirmed status to a confirmed status on the register in the time frames that are required under the legislation.

**Senator CONROY**—'Unconfirmed' does not mean you have actually done any checking to establish the bona fides; it is just that once it is on the unconfirmed list you are required to undertake a string of requirements?

**Ms O'Loughlin**—Yes. The legislation allows ACMA to rely on notifications for that first unconfirmed entry. So we will do some preliminary checking to make sure that there are not significant issues that we can identify quickly with the data, both from our own internal records—

**Senator CONROY**—What would be defined as a 'significant issue'? This is actually what I am trying to—

**Ms O'Loughlin**—If it was obvious from the material that we had held before, which was reasonably up to date, on controllers of television groupings or radio groups that there was a difference in the data; if in fact the form we felt had just been incorrectly filled in.



**Senator CONROY**—I appreciate the difference you have drawn between your unconfirmed register. Is there then a second confirmed register at some point later on? How will that work; what is your process?

**Ms O'Loughlin**—Just to clarify: the unconfirmed status and the confirmed status would all be in the same register. We have two days to update as an unconfirmed entry, and then we have 28 days to review that entry to see whether it should be confirmed.

**Senator CONROY**—I come back to wanting to gain an understanding of ACMA's determination, not whether they have just filled in and ticked all the boxes but what sanity test or other test you will apply to the information you receive. The Channel 9 deal has not gone through as yet, and I am not sure about the Channel 7 deal. But if one of these private equity companies owns 50 per cent, I am trying to understand whether you are going to seek to establish who the beneficial owners are as opposed to who the notional holding company is. Can someone clarify that for me? The private equity firm may be Macquarie Bank. I am not trying to pick on Macquarie Bank today, but Macquarie Bank's money is not involved; they are just the company that has organised the structure. I am trying to understand how we are going to determine the structure, and I hope we are going to have more success than we did on defining the internet. I am very keen to understand what the process is and what the sanity tests or other tests are going to be.

**Mr Chapman**—Joining us at the table is Mr Bezzi, who is our general manager for legal services. He has been working with Ms O'Loughlin on some of the aspects of detail. Mr Bezzi, would you like to assist?

**Mr Bezzi**—I will see what I can do. Under the legislation there is an initial registration of media groups. When we initially register, we essentially accept what people say about who their controllers are and who are the media operations within the group. We then have a process where we need to satisfy ourselves that the information that they have given to us is correct. That is a confirmation process. As Ms O'Loughlin says, we have 28 days in which to do that. How do we figure out whether the information that has been given to us is right or wrong? If there are people who we think are likely to be controllers and they are not on the list that is given to us then we can ask questions. We have powers to require information to be given to us. That is one of the processes that are going on. We are carefully reviewing the material that is given and we have discovered some gaps, for example, between the returns that we have received and some of the historical information that we already have, so we are going to be going out to people and saying to them, 'Explain this.' To use your example of the foreign equity funds, the test is who are the controllers of the groups. So if we have an issue about whether the entity that has the interest in Channel 9 or Channel 7 is not actually the controller then we would ask questions.

**Senator CONROY**—What is your definition of 'controller'?

**Mr Bezzi**—A controller is a person who is in a position to control a licence.

**Senator CONROY**—So Eddie McGuire controls Channel 9?

**Mr Bezzi**—Probably not.

**Senator CONROY**—But he is the controller—a thin controller, but he is the controller.

**Mr Bezzi**—No. It is the legislative test that is set out in schedule 1 to the BSA, and it is quite a complex test.

**Senator CONROY**—I am trying to understand what the test is, and I am hoping you can explain it to me. I know this might come as a surprise, but when I ask my questions I do not always know the answers.

**Mr Bezzi**—The simplest way to put it is that if you are in a position to control, you control.

**Senator CONROY**—So it is not Eddie. It could be Mr Packer?

**Mr Bezzi**—I suspect Mr Packer will be on the list of controllers.

**Senator CONROY**—This question is a hypothetical, because I do not think CVC control because it is a convertible note to take place later.

**Mr Bezzi**—If they do now, then we have a problem. We have put in place a series of enforceable undertakings. In fact, they provided to us our first enforceable undertakings under our new enforcement powers to ensure that they are not in control.

**Senator CONROY**—So they have already registered.

**Mr Bezzi**—They have given us enforceable undertakings which were accepted by the authority last week, and Channel 7 have done the same.

**Senator CONROY**—What are the enforceable undertakings from Channel 9 at this stage or CVC?

**Mr Bezzi**—Basically, they are enforceable undertakings that set out processes which mean that the foreign interests associated with both those deals are not in a position to control either of the sets of commercial television licences involved.

**Senator CONROY**—Let us say for instance the law changes and then I think the convertible note turns over and they become the 50 per cent. Will you seek to determine whether CVC is the controller or one of the two controllers or will you be passing through that corporate structure to determine the owners/controllers—and I am interested in your actual delineation between these two, so I will come back to it—Say, for instance, the Californian Pension Fund or the Belgium dentists that frequent the foreign capital markets sometimes. Are you going to be looking through that structure of CVC or will you say, ‘No, CVC are the controller even though they do not own any of the money that they are using’? I am trying to understand how you will apply the law.

**Mr Bezzi**—I am uncomfortable talking about particular cases.

**Senator CONROY**—That is why I was trying to stay generic. That is why I was trying to use Belgium dentists rather than CVC.

**Mr Bezzi**—If you are talking about Belgium dentists, what we will do is—we are already in the process of getting external advice on these issues—ensure that we have a firm understanding of how these funds work in practice. The early indication that we have had is that the people who have their money invested in the funds do not actually have control; it is the people who run the funds that have control of the funds, and there are management companies that run the funds. So they would be the people who would be the controllers of those funds. Presumably they would be the people reported to us as the people who are in

control of the licensee. If that is what is reported to us when the time comes, fine. If it is not and we think there is some issue there, we will go and investigate and make sure that the correct people are identified in the reports. That is something that we have done actively in the case of Channel 7 and Channel 9. If we have a problem, we have plenty of powers to deal with it and we might accept enforceable undertakings or we might take some other action if we need to.

**Senator CONROY**—Thank you for that. So a controller does not have to be the owner for the purposes of this legislation.

**Mr Bezzi**—That is correct.

**Senator CONROY**—So Eddie could actually be the controller of Channel 9.

**Mr Bezzi**—If he has a significant shareholding; I do not know what—

**Senator CONROY**—But the people in the private equity firms do not have a shareholding; let us be clear about this.

**Mr Bezzi**—At the moment they do not.

**Senator CONROY**—No, but they are not planning on having a share. They are buying with somebody else's money.

**Mr Bezzi**—They are.

**Senator CONROY**—So I come back to this shareholding issue.

**Mr Bezzi**—I understand that, after the law changes, they will be controllers.

**Senator CONROY**—Yes, but they are not necessarily owners, so the question of having a significant shareholding is not relevant.

**Mr Bezzi**—You can be a controller through a shareholding interest, but that is not the only way in which you can be a controller. Does that clarify it?

**Senator CONROY**—Yes, it does. That is exactly what I am trying to clarify. I am just trying to genuinely understand how the interpretation of the legislation will act. For instance, many pension funds, even though they part control on a day-to-day basis, when they entered into these other funds that then go on and make purchases, also have direction clauses within a mandate.

**Mr Bezzi**—Yes.

**Senator CONROY**—So here we have this money being put into your media fund, Mr Private Equity Company, but these are the directions on how you will behave in using our funds. The mandate is a restrictive mandate; it is not just a matter of saying, 'Go and do whatever you want.' Do you look into that? It is possible you may need to get to ask.

**Mr Bezzi**—Yes, it is possible. These are all issues that we will no doubt look at when we need to.

**Ms O'Loughlin**—Could I just clarify that the control tests are the existing tests that have been in the BSA for any number of years and they are not new tests, so they are things that we are very familiar with.

**Senator CONROY**—I am just trying to make sure there has not been any change; you are still interpreting it the same way.

**Ms O’Loughlin**—No. We are still interpreting it.

**Senator CONROY**—There are also now new players and new structures that are coming into play.

**Ms O’Loughlin**—That is right.

**Senator CONROY**—I want to understand how you take this into account with voting and non-voting shares.

**Ms O’Loughlin**—I think we do it, as we have done, in line with the tests that are laid out in the legislation.

**Senator CONROY**—I appreciate that.

**Ms O’Loughlin**—We had, as you mentioned, the PBL and Seven deal come to us and, within that existing construct, we have been able to understand those deals very well and, as Marc has said, come up with enforceable undertakings with the parties that satisfy the authority that they will not be in a position to control.

**Mr Bezzi**—Our predecessor agency, the ABA, has a long history of dealing with imaginative corporate structures. The CanWest deal introduced the economic—

**Senator CONROY**—What you are going to say about Channel 10 currently goes to the nub of whether you will be able to competently administer this. Who controls Channel 10? This is the problem: we have all created a fiction about who controls Channel 10 for the purposes of looking the other way. But I want to know whether you are actually going to apply the truth. Are you going to tell the truth about the control of Channel 10? There is actually a big difference between control and ownership. I know we have all previously looked the other way, but now the question is: are you actually going to tell the truth on the register about who controls Channel 10?

**Senator RONALDSON**—Rather than using the words ‘telling the truth’, will it actually reflect the ownership?

**Senator CONROY**—No, but that is the point. The problem is that accurately reflecting ownership and control are two different things. I just want to know what you are actually going to say about Channel 10.

**Mr Bezzi**—If I could say something in defence of the former agency, the ABA looked at various structures in relation to the Channel 10 arrangement seven or eight times and it was only on the seventh or eighth time—

**Senator CONROY**—That the fig leaf was bigger. I understand the game we all played around Channel 10.

**Mr Bezzi**—that they took the view that there was no breach of the Broadcasting Services Act. There was extensive litigation in relation to the issue, which went I think to the full court of the Federal Court. They were not a pushover on it. I was not with the agency at that time but there were a lot of very complex issues. CanWest structured their deal in a way that

ultimately was found to comply with the existing law. That is all that a regulatory agency can do.

**Senator CONROY**—No, there is a difference. No-one can argue that CanWest do not control Channel 10—let us be blunt.

**Mr Bezzi**—An opinion has been given, which I think is binding on us, by the Australian Broadcasting Authority that they are not in a position to control Channel 10.

**Senator CONROY**—We all agreed that we would all look the other way. We did not want Channel 10 to fall over. But the question now goes to the credibility of what you are doing. It is really important in the changing market. It did not matter so much previously. Everyone looked the other way and no-one actually said, 'Blah blah.' But if you are going to maintain the fiction that CanWest do not control Channel 10, frankly, it is going to call into question your ability to make judgements on the forthcoming changes.

**Mr Bezzi**—I used my words carefully, Senator.

**Senator CONROY**—I know you have been using them carefully and I appreciate that.

**Mr Bezzi**—I said that we were bound by an opinion that had been given by the previous agency.

**Senator CONROY**—I appreciate that. That is why I am going to this point. The issue is that there are all of these new, changing structures coming and, if you are prepared to accept one fiction because under the previous legislation we all had to accept the previous position, the question is: are you going to accept it again and therefore are you going to place yourself in a difficult position when applying the arguments around the new structures that are about to come into play? It is actually a really fundamental question. I am not being in any way critical of the previous situation. Everybody in the country understands what happened.

**Mr Chapman**—There is a criticality to that point. Mr Bezzi deliberately chose the words he did in the way he did. I think it reflects an acute awareness on our part that, whereas we were bound by that decision, we may or may not have come to that decision today. All I can say, and reaffirm, is that the authority discharges its responsibilities—because it goes to the core of the system—diligently, as fairly and as accurately, consistent with the legislation and our legal advice, as we can. That is exactly what we will be doing.

**Senator CONROY**—The irony for you is this: let us say you made a decision which said that the control is actually with CanWest. Until you actually put the list up, the minister cannot proclaim the new act, which abolishes the foreign ownership. So you are in a catch 22. For the purposes of making sure Channel 10 comply with the current legislation, you have to make a call. There is a period of grace allowed of up to two years for people to change their structure. Once you have made the call on Channel 10, the minister can proclaim the act. So you do not have to maintain the fiction, if you follow.

**Mr Chapman**—There will not be a question for the ACMA of maintaining any fiction. We will apply the law impartially and rigorously. The current Ten Network situation is that there are no foreign persons who are in a position to exercise control. That was a determination of the ABA. That is a determination that we abide by. But, on a prospective basis, because of the

reasons you highlight, Senator, we are acutely aware of the need to look at it in a rigorous way.

**Senator CONROY**—I appreciate that. You mentioned that you would be seeking advice on the private equity funds. I think it was Mr Bezzi who mentioned that. Who are you getting the advice from and how much is it costing?

**Mr Bezzi**—I cannot give you all those details. I can take that on notice. We have sought advice from AGS—this was in the process of dealing with Channel 7 and Channel 9—and also from counsel at the private bar, senior counsel and junior counsel. We are also seeking advice from another commercial law firm.

**Senator CONROY**—Could you identify those individuals?

**Mr Bezzi**—Yes, certainly. Johnson Winter and Slattery is the name of the firm. That firm has particular expertise in this area, particular expertise in media and acquisitions—a partner by the name of John Kench and his partner Damian Reichel.

**Senator CONROY**—In previous discussions at Senate estimates we have talked about Channel 10 and CanWest with Senator Coonan. Senator Coonan has made the comment, ‘I think a lot of the commentators have suggested that the CanWest situation is probably a one-off.’ There was some suggestion that CanWest were trying to sell their shares on to another foreign company—and the question is whether or not the same ‘fig leaf’ would apply if another foreign company bought the CanWest shareholding. This matter has been ongoing since estimates 2005. Mr Chapman probably was not in the chair—and, I suspect, most of you were not here.

**Ms Maddock**—I was, and I think I answered the question at the time that we would judge each situation on the facts at the time.

**Senator CONROY**—Absolutely, you did.

**Ms Maddock**—I think we said we will judge each on the facts, the situation at the time and context changes the chair has said over time, and previous undertakings—that is not the right word but previous—

**Mr Bezzi**—Opinions.

**Ms Maddock**—opinions that we have given applied to those situations are not necessarily what might happen.

**Senator CONROY**—As I said, I do not want you to feel I am being critical of the previous situation.

**Ms Maddock**—No, that is okay.

**Senator CONROY**—What I am keen to ensure is that we are going to have a genuinely rigorous application. The decision you make moves into about three other areas rather than one specific issue, so I am keen to understand how you are going to treat voting and non-voting shares when it comes to controllers—for instance, the Murdoch family have just split their family trust into voting and non-voting shares. How are you going to treat voting and non-voting shares when it comes to controlling? I am genuinely asking what are your thoughts.

**Mr Bezzi**—What you are doing is speculating. All I can do is assure you that—

**Senator CONROY**—That is not a speculation about what Mr Murdoch and his family just did—

**Mr Bezzi**—No, that is not speculation, but you are speculating about the circumstances that might come before us. I am not being critical of that, that is fine—

**Senator CONROY**—I presume they have put in a return, so it is not speculation.

**Mr Bezzi**—That is right. What I am saying is that we will follow the same process that we follow when dealing with Seven and Nine—that is, we will look at the detail of the transaction very carefully and satisfy ourselves that there is no possibility of any breach. If there is some issue we will talk to the parties about it and if there is some possible problem we will come up with some way of dealing with it. That might include an enforceable undertaking which we can later go to the federal court and ensure that people comply with if the case warrants it. We are not going to be sitting around just sort of batting these things through without looking at them. We are going to be looking at them very carefully, vigorously, taking advice—

**Senator CONROY**—I am not suggesting you are. I do not want you to feel that I am suggesting that.

**Mr Bezzi**—Good.

**Senator CONROY**—I am just trying to understand the underlying principles. You keep talking to me about the process, and I appreciate knowing about the process. I actually want to know about the substance of how you are determining these issues. You can keep talking to me about the process, but I am actually going to keep bringing you back to understanding the substance. I want to know how you are going to interpret the difference between a voting share and a non-voting share in terms of whether a person is a controller.

**Mr Chapman**—I think Mr Bezzi and Ms Maddock were indicating that we would treat it as and when it comes before us on a case-by-case basis.

**Senator CONROY**—Mr Bezzi has now explained to me that you have had to take legal advice on two matters to ensure that they do not breach. I would like you to explain—I mean I do not think they breach either, what the substance was that gave you comfort that they were not in breach rather than talk about hypotheticals.

**Senator RONALDSON**—I understand where Senator Conroy is coming from, but each corporate structure may be entirely different and will need to be dealt with on its merits. I do not know whether Mr Bezzi, with the greatest of respect to Senator Conroy, can actually give a blanket interpretation about how—

**Senator CONROY**—No, that is not right.

**Senator RONALDSON**—these things might operate in a global sense because each corporate structure might be totally different to the last one.

**Senator CONROY**—Each corporate structure might be different, but the underlying principles applying to the legislation are not. What I am trying to gain an understanding of is: what are the underlying principles and how is the legislation going to apply?

**Mr Bezzi**—There are a whole variety of ways in which a person can be in a position to control a licence. You can get it through ownership. You can get it through economic interests. You can get it through being accustomed to act in a particular way with others who are in control. We have to look at every case on a case-by-case basis. The test is very broad and it is not about actual control. It is about being in a position to control the capacity so that makes it even broader. It is hard to generalise, but what we do is we get the legislation, we get schedule 1 and we ask ourselves in relation to the transaction: do these people fit within one of these different categories; do they have voting interests; and are they accustomed to act in a particular way which may give them control?

**Senator CONROY**—Those are the key issues about your application. Say there are 10 categories. My question goes beyond that. You have identified the 10—you have not yet but you have given a few—and which of them are going to weigh more—

**Mr Bezzi**—Any one of them might cause a person to be in a position to control. It is not a matter of one being more important than the other. If a person has control because they are accustomed to act with someone who has control, then they are in control. If they have got control because they have got a shareholding above 15 per cent, then they are in control. If they have got voting interests that are above 15 per cent, then they are in control. So they just need—

**Senator CONROY**—You have indicated 15 per cent.

**Mr Bezzi**—That is in the legislation.

**Senator CONROY**—So Channel 7, for instance, would not therefore be in control of the Western Australian newspapers yet

**Mr Bezzi**—No.

**Senator CONROY**—Because they are under 14.9. In an open share registry, say like Fairfax, is 14 per cent going to exercise control when there is no other shareholder who has got more than two per cent? Don't hold me to these exact figures, but I am saying: an open share registry is different to one major shareholder and four people who have got 14 per cent.

**Mr Bezzi**—By itself probably not. What I mean by that is: if they have just got 14 per cent and there is no other factor that might put them in a position to control, then probably not. But if they go to 15 per cent, then they would be in control under the act.

**Ms Maddock**—And that is subject to them not falling foul of the other control sort of clauses.

**Mr Bezzi**—Yes.

**Senator CONROY**—You are familiar with the concept of beneficial ownership.

**Mr Bezzi**—Absolutely.

**Senator CONROY**—Does that fall within one of your tests?

**Mr Bezzi**—Certainly.

**Senator CONROY**—What is your concept of beneficial ownership—just so we make sure we are on the same page? Because if I ask you a string of questions about it and we have two different understandings, then—



**Mr Bezzi**—Essentially, if somebody has got an equitable interest—that is, a non-legal interest—in a company or in a licence, then they are regarded as the beneficial owner.

**Senator CONROY**—For instance, would you define CVC—and again I am just picking one because that is the one that happens to have been in the papers, not that I am trying to plunge into Channel 9—as having beneficial ownership or would you define the pension funds that supply the money as the beneficial owners?

**Mr Bezzi**—Now or after proclamation?

**Senator CONROY**—Either. Pick both; pick before and after.

**Mr Bezzi**—I would be uncomfortable talking about a particular example because I cannot remember the detail of that particular example and I would not want to mislead you.

**Senator CONROY**—I am trying to think of a different way to ask the question to help so that you can give a generic answer.

**Senator RONALDSON**—He cannot possibly answer that.

**Senator CONROY**—The underlying principle is what I am actually trying to get to. I am not trying to traverse into—

**CHAIR**—Let us ask them for the principles involved in a hypothetical.

**Mr Chapman**—The principles are that we will approach each matter vigorously on a case-by-case basis.

**Senator CONROY**—Yes, but you have to apply some principle.

**Mr Chapman**—We will be applying—

**Senator CONROY**—That is the substance.

**Mr Chapman**—the tests under schedule 1 of the Broadcasting Services Act. It would be my opinion that we have got to a point where we have hopefully demonstrated some recent bona fides and expertise in the way in which we go about it—

**Senator CONROY**—That is what I am trying to get a grasp of.

**Mr Chapman**—through the sort of enforceable undertakings that were secured in the PBL in the Seven deal—they were made public and you would have no doubt seen those on the website—and the sophistication that generally we are going to put into our enforceable undertakings. Without going into the details, it would be silly of me to avoid the observation that Elmie investigation, which is not yet complete, has helped sharpen the authority enormously in its understanding and application of fact to circumstance right across all the facets of the Broadcasting Services Act schedule 1. So I am saying they are the basic principles. It is case by case, it is application and I am feeling very confident about the enhanced capacity of this authority to apply it, given the sharp learnings and the fact that we are not resource constrained and we have been advised by the best legal advice, both counsel and legal firms.

**Senator CONROY**—I appreciate that.

**Mr Chapman**—I am not sure that we can do any more than restate those principles.

**Senator CONROY**—I am afraid you are not going to get away with that when it comes to being asked detailed questions about ownership structures and how you are applying the law. If they are existing ones that you have just dealt with, you are not going to get away with saying, ‘Oh well, we’ve made a decision about Channel 9. Now we’re in the future. I’m sorry but I am not prepared to discuss it with you.’ Their ownership structure is a matter of public record, so it is not like you conducted the case. Whether or not their ownership structure complies with the legislation is not a matter of private in confidence. It is not a matter of commercial-in-confidence. It is a matter of fact. You cannot hide behind commercial confidentiality when I ask these questions. These are matters of fact. I have not come with any deeply prepared questions, just so you understand, but I would make the point to you that you cannot just say: ‘Trust us. We’re going to apply them on the basis of the law.’ I am entitled to come here and ask you detailed questions about how you are applying the law in relation to individual cases. None of these are commercial-in-confidence issues.

**Senator RONALDSON**—Who was alleging that it was commercial-in-confidence?

**Senator CONROY**—Nobody. I am just making the point that—

**Senator RONALDSON**—That is the very point: there has been no allegation of that but it is being put on the basis that there is.

**Senator CONROY**—But Mr Bezzi said, ‘I’m uncomfortable talking about it.’ I do not mind if you are uncomfortable—

**Senator RONALDSON**—No, that is totally unrelated.

**Mr Chapman**—Not because of commercial—

**Senator CONROY**—Except that I said I had not given you notice that I was going to ask questions in this vain and I actually have not got a string of questions.

**Mr Chapman**—We are in the Senate’s hands, but the most obvious way to address your question is: if you are unsatisfied with my response, go through schedule 1 of the Broadcasting Services Act.

**Senator CONROY**—No. I can read the act as well. How you interpret it and what legal advice you get about how you interpret it is germane to the question. Do not try and fob me off by telling me to go and read the act.

**Mr Chapman**—I was not saying that; I was saying—

**Senator CONROY**—You were saying you were going to read it to me, which is just as condescending—

**Mr Chapman**—No. I said we could go through it and that may promote—

**Senator CONROY**—Reading the words to me—

**Mr Chapman**—specific examples of the sorts of matters you were trying to tease out of us. It is very hard to apply those tests against some generic background; you would need to apply it to the facts.

**Senator CONROY**—I appreciate that, but then when I started to ask you about the facts, firstly, Senator Ronaldson starts objecting—and I will accept Mr Bezzi’s statement before that

you could not remember it in detail and you do not want to get it wrong; I understand that aspect. When it comes to asking about the facts of individual cases, I am actually entitled to.

**Mr Bezzi**—It might help you—

**Senator CONROY**—I am happy to move on.

**Mr Bezzi**—Very briefly, I might be able to help you by telling you that my recollection is that we particularly focused in Seven and Nine on whether CVC were currently in a position to veto any action taken by the board of directors of any of the licensee companies or whether they were in a position, directly or indirectly, to direct or restrain over any substantial issue affecting the management or affairs of the licensee. So it was not through their shareholding, voting interests or anything like that, but because of the fairly complex arrangements between them that there was a way in which they could basically hold a gun to the heads of the directors of Nine or Seven and say, ‘You must do this’ or restrain them in some way. As I say, we got to an arrangement where we said that if there were changes made to the deals that had been proposed to us, we would be happy, and if enforceable undertakings which could be enforced in the federal court were given to us we would be happy, and that was done. They are published on the internet and they address those things—there may be one other issue that they address that I cannot remember today but, from recollection, they are the particular things that we were focusing on. It was a matter of getting into the fine detail of the very complex, I must say, agreements and figuring out how they were going to work in practice.

As I say, we had concerns in those areas. I should say, for fairness, that neither Nine or the parties associated with them, or Seven or the parties associated with them, agreed that we were right to have issues. Nevertheless, we identified issues in those areas and they then dealt with those issues to our satisfaction. They have dealt with them in a way that is enforceable. It is transparent and on our website. So that I do not mislead you, there is part of the undertaking—and this is standard practice for regulators—that is confidential and relates to an aspect of protecting an issue of their commercial affairs in both cases, but the substance of the undertaking is on our website and available for anyone to have a look at.

**Senator CONROY**—Thanks. Appreciating all the complexities, I think we have just gone through a lot of the problems around the complexity issues. Do you have any indication of when you will be able to post the register? Are we talking one month, two months, three months, six months?

**Mr Chapman**—I have indicated that our assessment is that we have made sound progress and we are talking weeks rather than months.

**Senator CONROY**—Okay. So that is weeks not one month or weeks not two months, because six weeks is still weeks?

**Mr Chapman**—I am not being cute about it and I am not seeking to mislead. When one talks about weeks and not months, it is designed to give an indication that it is going to be sooner rather than later.

**CHAIR**—Is that on the same line?

**Senator RONALDSON**—I am happy to come back—

**Senator CONROY**—If somebody else wants to ask a question—

**Senator RONALDSON**—Bendigo, what are we going to do? I should indicate, chair, that I have already slipped Mr Tanner a note suggesting I am going to talk about these things, which I thought was fair in the circumstances.

**Mr Tanner**—I think you are referring to the group known as Central Victorian Gospel Radio, which operates a temporary community broadcasting licence in Bendigo on a vacant frequency.

**Senator RONALDSON**—And Goldfields Community Radio.

**Mr Tanner**—Yes, it operates a Christian community radio broadcasting service on a temporary community broadcasting licence using a vacant frequency in the Bendigo area.

**Senator RONALDSON**—As you are acutely aware, I am patron senator for Bendigo and I have had a lot of correspondence, as has the Liberal candidate, Peter Kennedy, in relation to this. I will pick out a couple of things. This is from someone who is a presenter: ‘I myself need gospel radio. My own life is not easy as I care for an invalid husband and he supports the programs’—they were talking about how important gospel radio is. ‘My father, when he was dying from cancer, gained great comfort over a period of years from CVGR. He listened through the night when the pain kept him from sleep.’ I have numerous examples—another lady here: ‘I am near enough to 81, a widow with poor eyesight and I rely very much on gospel radio. We, my family, really value the spiritual integrity and the wonderful music and messages from the station. We need a Christian radio station.’ Another gentleman here; another letter, ‘There are many people who are isolated and cannot get out and about such as the elderly and those on farms in remote areas and need to be encouraged and helped as I have been.’ Another gentleman, who—and I will not go into great detail because it may well identify him—received significant injuries when he was acting as a sergeant of police in a grand final football match and then he was helping neighbours and again received quite horrific injuries, relies on gospel radio.

Maryborough, as you well know, and Goldfields Community Radio—perhaps I should have shared it with you, Mr Tanner—made me patron because of the work we have done there. Some might call you the co-patron because you were certainly of great assistance. We need to sort this out because clearly in regional and rural area, gospel radio is very important. I can be quite honest with you: I have not listened to it. But I have no reason to believe that those who have approached me about it do very much rely on it—and Goldfields are up and running. Where can we go to get some extra spectrum and where is the PNN service?

**Mr Tanner**—As I said, the gospel radio service is operating on a vacant frequency in Bendigo under a temporary community broadcasting licence. No final decision on the use of that frequency has been made. The minister has asked ACMA to look at the availability for an additional ABC Radio service of high- or medium-power frequencies that is suited to national broadcasting in a number of areas, including Bendigo. The consultants that ACMA has engaged have to date only been able to find two vacant frequencies that fit that description in the Bendigo region. When I say vacant, there is a qualification on that: one is the frequency that is used by the temporary community broadcasting licence; the other is a frequency which is planned and available in the Bendigo licence area plan for community broadcasting. It is a frequency which until late last year was occupied by 3CCC. However, 3CCC did not have its licence renewed. It is now operating on that frequency on a temporary community

broadcasting licence, and that temporary community broadcasting licence, from memory, runs through until May. There are a number of things—

**Senator RONALDSON**—Have we got three on TCBL—

**Mr Tanner**—The situation is that there are two frequencies in use in the Bendigo area by temporary community broadcasting licences: one is shown in the licence area plan as planned for community broadcasting; and the other is a vacant frequency that is not shown in any licence area plan. The minister has asked us to find a frequency for national broadcasting. We found only two in that area, which is extremely congested, that are suited and those are the two. There are a number of things ACMA could do. It has a community licence on the licence area plan. It could, in theory, move to allocate a community licence which would go to the most meritorious applicant under the criteria of the Broadcasting Services Act, but at this stage we are holding off pending a decision on PNN reservations.

The situation is that the minister has asked to us find spectrum; however, she has not reserved spectrum for a number. If the minister were to make a decision to reserve a channel, then ACMA has a statutory obligation to find that channel. So there are a number of issues ahead before we can sort out what spectrum, if any, may be available long-term, which is the real issue I think you are raising, in the Bendigo area for one or more additional community broadcasting services.

**Senator RONALDSON**—So we have got 89.5 and 101.5 and that is Goldfields and gospel radio, I think—is that correct?

**Mr Tanner**—Sorry, I do not actually have the frequencies committed to memory.

**Senator RONALDSON**—I think they are. Are you saying there is another unallocated frequency there that was the old 3CCC or is that tied up with gospel?

**Mr Tanner**—Have you brought in the Goldfields radio frequency?

**Senator RONALDSON**—I have because I think—

**Mr Tanner**—The high- and medium-power frequency situation in Bendigo, as I understand it, is that only two suited frequencies are the high-powered frequency that previously belonged to 3CCC, which they are now using as a temporary community broadcasting service, and the frequency that is used by Central Victorian Gospel Radio. Those are the two frequencies that I am advised are the only frequencies that our consultants are able to find that are suited to national broadcasting in Bendigo.

**Senator RONALDSON**—So 89.5—

**Mr Tanner**—So there are a list of issues about—some of them complicated by the PNN issue around Victoria—Bendigo alone here. Those are the two frequencies I am talking about: the former 3CCC frequency and the frequency which is being used by the Central Victorian Gospel Radio trial service.

**Senator RONALDSON**—Obviously, my advice is wrong because it was my understanding that 89.5, which is Goldfields—

**Mr Tanner**—My understanding is that the service that Goldfields is using—and this is the group that you did a lot of work with ACMA with in the course of last year—is a frequency

that we are pretty clear is not needed in connection with national broadcasting. I understand that testing of that frequency is proceeding. I am not absolutely certain of the current status.

**Senator RONALDSON**—They will make you the mayor of Maryborough after that comment, so I will get word through to them very quickly. So we are now back to the issue of Bendigo.

**Mr Tanner**—I actually have the frequencies listed here in my brief. Central Victorian Gospel Radio Incorporated is operating on 101.5 megahertz. Goldfields Community Radio Cooperative Limited—that is 3CCC—is operating on 89.5 megahertz. I understand that those are the only two frequencies suited for high- or medium-power national broadcasting services in the Bendigo area, according to our consultants' report.

**Senator RONALDSON**—I might have confused you—and, if I did so, I apologise—but I thought you told me that the Goldfields one was not one of the ones that—

**Mr Tanner**—I am sorry; I was referring to a different Goldfields group. I was referring to the Goldfields group—

**Senator RONALDSON**—I think you have just been disrobed as the mayor of Maryborough.

**Mr Tanner**—The Goldfields group I was referring to was the aspiring group that was not on air early last year when you asked a number of questions on their behalf. They are operating in a different part of central Victoria. They are the ones we found a frequency for. That frequency, as I understand it, is not in consideration in the Bendigo area. Shall I just set out the facts again as I understand them?

**Senator RONALDSON**—Yes, please.

**Mr Tanner**—I understand that your question relates to the group called Central Victorian Gospel Radio Incorporated.

**Senator RONALDSON**—Yes.

**Mr Tanner**—That group operates as a temporary community broadcasting licensee in Bendigo. I now know that it operates on 101.5 megahertz. The advice I am giving you is that we have been instructed to find frequencies, throughout parts of regional Australia and including Bendigo, for an additional national radio service. The two frequencies that our consultants have found that would be suited to that task in Bendigo are 101.5 megahertz, which is being used by Central Victorian Gospel Radio Incorporated, and 89.5 megahertz, which is being used by the group I have been calling 3CCC—but its full name is Goldfields Community Radio Cooperative Limited. It is that word 'goldfields' which has confused us I think.

Both those groups are operating temporary community broadcasting services on those two frequencies. What we do to regularise that will depend critically on a decision about reservations. Reservations is the process by which the minister directs ACMA to make certain amounts of spectrum available for national broadcasting. The way that planning works is that we have a wide discretion about the disposition of frequencies for licensed services such as commercial radio or community radio. But, because it is quite difficult to compare like with like when you are also considering how to bring the ABC or maybe the SBS into the mix, the

minister has the power to tell us how many national broadcasters an area gets. We then make our dispositions with the rest.

**Senator RONALDSON**—I am acutely aware of the government's policy in relation to this, but I am also acutely aware that these are seen to be very important locally based community organisations.

**Mr Tanner**—It is probably useful to mention then that just because one group is using one frequency and the other group is using the other does not mean that they have got first dibs on that. In any scenario where we were able to move to permanent allocation of a community licence, one or more, it would be done on merit. Were a decision to be taken to take a particular frequency out of contention for community broadcasting in Bendigo, that does not mean that the group on it would survive and the other would not. There is a whole lot of things that might happen that flow from decisions we have not been able to make. I suppose the long and the short of it is that we really need to see an outcome of the PNN process in terms of a number. Then we will know what remains and then ACMA has a range of options to move to long-term arrangements in Bendigo.

**Senator RONALDSON**—Clearly I am supportive of a PNN rollout, which obviously has considerable community support. But, equally, I am concerned about some of the locally-based radio stations that undoubtedly provide a very significant community service. I do not want to pre-empt what may or may not be decided, but I presume that merit-based decision making, in its fullest term, will take into account those sorts of community imperatives.

**Mr Tanner**—There are two messages I leave you with. One is that, obviously, we would like to come with clean hands to a merit process that we would take very seriously, as we always do when we have any number of worthy community-building groups operating. The other is that—and I hope you are aware of this from the work we did last year—the ABA bequeathed ACMA, for very good reasons at the time, an already very highly-congested FM band in most settled areas, including this whole area of Victoria. I think you would have to agree that, with the work you have seen us do with the other goldfields group, we really are prepared to put a lot of energy into planning at the margins to find additional capacity.

We are certainly not just sitting on our hands saying, 'Look, there is no more room.' ACMA have been very active in trying to squeeze the last out of the spectrum, but the fact is that we have inherited a situation where, in the 1990s, the previous regulator decided that it best promoted the objectives of the legislation to put all the remaining, easily available and obvious frequencies to work. This was very much with the expectation that that was what best promoted the legislation, but also that things like digital radio were coming on track and there was little real net benefit in hoarding frequencies against future contingencies.

We are the heirs of that situation. As there is still a wish to expand FM and there is still always some pressure from the vibrant community sector to expand different types of services into areas, we are going to have these kinds of issues going forward. We always come to them in the spirit that, if we can find frequencies—even frequencies we might not have looked at a few years ago—then we will.

**Senator RONALDSON**—I have sung your praises widely for your preparedness to sit down and talk about these things, and I have thanked you before, both publicly and privately.

I have no doubt that the lines of communication will remain open. I can only urge you to continue searching that very full spectrum to see if we can make sure that we keep these community groups going.

**Senator FIELDING**—There are some questions from the last estimates still outstanding. I was not here earlier this morning. Where are they?

**Mr Chapman**—I am advised that we have completed our responses to those questions and forwarded them to the department.

**Ms Williams**—As I said earlier today, there has been an iterative process between the agencies and the department and the office to make certain that they are correct. A lot went to the committee over the weekend when, understandably, the committee's staff were not there. But they are on their way now. We hope to get all of those responses back to the committee this week. I apologise, on our part, for any lateness in that.

**Senator FIELDING**—I appreciate the apology but it makes a mockery of the process of getting answers to questions. If they are in my in-tray today and I am here asking questions on some fairly important issues on behalf of Australian families and I do not have answers to the last lot, they are very hard to follow up. I appreciate the apology, but please—some of the questions that were there are pretty important. Some of the questions were: do all federal government-funded libraries have internet filters installed on their PCs to protect children from pornography content? Which libraries do and which libraries do not? If libraries do not have filters installed, what is the justification for this? I was going to follow up on some of these questions to find out where it is at. I do not know whether you have answered those questions, so I am missing an opportunity here to follow through a very important issue for most parents. Considering that there is library funding of some sort, I wonder if I can get an update now on that issue.

**Ms Williams**—I will pass that across. Chris, you say that you have provided that answer.

**Mr Chapman**—I am not sure if that was a question directed to the ACMA, but I am happy to take advice on that. Apparently it was a question directed to the ACMA. I understand that we have provided an answer, but I think it is caught up in the process.

**Senator FIELDING**—What does 'caught up in the process' mean?

**Mr Chapman**—I think it was submitted through the department, as these matters are. Maybe Mr Shaw can assist me.

**Mr Shaw**—I believe that was one of the questions caught up in the iterative process that the secretary alluded to. We provided a response, but there has been a request for clarification on a couple of points. We are in the process of doing that.

**Senator FIELDING**—Who has asked for the clarification?

**Mr Shaw**—It came back from the department to the authority with the request for a couple of points to be clarified.

**Senator FIELDING**—Was it the minister?

**Mr Shaw**—I cannot tell you off the top of my head, I am sorry.



**Senator FIELDING**—I know the issue of libraries having no filters installed has been on the front pages of quite a number of local papers within Victoria. The reason I asked the question was to hopefully progress this a bit further. It seems to me that zero, or very little, has happened, other than maybe wandering around about an answer. I asked the question specifically because this is a concern to Australian families. It is not a matter of whether it harms children or not; it does harm children. If there is funding to libraries from an Australian government at a federal level in any way, shape or form, it is more than reasonable to want to understand whether that funding should be tied to making sure that there are pornography filters on computers with the internet that kids can access with very little supervision, if any. It seems to me that you are paying lip service to this, and I am not happy.

**Mr Chapman**—We do take it seriously. Ms O’Loughlin would perhaps like to cross the table this morning to talk to that point.

**Ms O’Loughlin**—As you are aware, under the government’s PAFO initiatives, there was an announcement by the minister to include measures to provide Australian libraries with free filters. That process is part of the National Filter Scheme and is being handled by the department.

I know this issue has been discussed between NetAlert and the library association to try to get a better understanding of this. As you will know, libraries fall under local government in some areas, state government in some areas and have occasional Commonwealth funding; it is a quite complex matrix we are trying to work through. NetAlert is working very hard with the libraries to get a better understanding of that and to ensure that, under the PAFO scheme, libraries will be taking up those free filters and installing them.

**Senator FIELDING**—I notice that, quite rightly in some areas, the federal government has seen fit to look at the water issue and show initiative because there is this blame game between state and federal governments. Surely this very important issue is something that, at the federal level, we should be able to get the states together on. I think ACMA should take the lead role in making something happen on this issue. Families are sick and tired of waiting and hearing excuses. I am going to ask some questions in a moment about the \$93 million plan to offer every household in Australia free internet filtering software, which the department seems to be stalling on.

It seems to me that there is a lack of leadership on this issue. This is a security issue for our children’s minds. It is not something we can afford to go soft on. The next generation of kids is coming through. The harmful effects of exposure to internet pornography are clear. It is not debatable; it is clear. It needs leadership, not stalling on how to answer questions in a politically polite way. We need action.

**Senator Coonan**—In so far as this library issue that you have raised is an issue—and I agree it is—I have certainly written to state and territory counterparts and urged them to take advantage of the filter scheme. There is an opportunity at the next ministerial online council for us to have this matter discussed. I have certainly encouraged and will reiterate the need for all state and territory libraries to protect children by taking up the offer of free filters when they become available. They should be available in about May.

I note that libraries in the ACT and Tasmania already offer filtering on most of their computers. We will obviously follow that up. From the federal government's perspective, we have made it abundantly clear that our position on library filtering is that all libraries should do this. The National Library, which is the only one under our current jurisdiction, is of course compliant. It is an important issue and it will be pursued.

**Senator FIELDING**—I appreciate the minister sharing that. I understand that there is intent to make something happen. I suppose the real question is: if there is funding to libraries—there seems to be a lack of action from the libraries in either picking it up or moving forward with it—why would we not tie funding to making sure that filters are mandatory on their computers?

**Senator Coonan**—It is very important to appreciate that, unlike other state and federal issues, we do not directly provide funding to libraries. But the whole issue of how these filters are provided will see a very significant change in take-up when they are available. The department can explain in more detail what steps are being taken to ensure that we get this right, that parents, or indeed the library, do not end up being offered a filter that does not work. The tenders have now been let. As I understand it, the design of the system is pretty well advanced. My colleagues in ACMA can certainly fill you in on the various steps that will be taken.

We will also, as part of this funding, have a very significant education campaign. I will be writing to every Australian family alerting them to the availability of the filters. That is really an important part of pulling together the threads of bits of information around this. It will be a coordinated, clear campaign. I do not think any other country in the world will have tried what we are trying to do on this—the design of it and what we are trying to achieve right across everybody's home computer plus libraries, plus NetAlert initiatives, plus a big campaign to educate people. All these threads coming together will provide the kind of leadership you are advocating.

**Senator FIELDING**—Can someone go through the steps the minister was just referring to.

**Ms Williams**—I have not jumped in simply because we are in ACMA at the moment, rather than in 3.1. I might have to call on more detail if you want to go deeper. We have recently completed a tender process for the provision of expert advice on the operational requirements of the government's filter portal. This will include advice on security protocols and the development of a registration, tracking and payment system. We are also about to release tenders for the testing of content filter products and a tender to call for the submission of filter products for testing and inclusion in the scheme.

This selection criteria for the filters will include the requirement that filter manufacturers provide technical support, including reasonable telephone support, and that the provider's filter sites have been included on the ACMA black list. A separate tender will also be undertaken for the installation, operation and maintenance of the filter portal. It is quite a complicated series of tenders that we have to let for this. We are working closely with ACMA to get the scheme up overall.

**CHAIR**—I would like to take up the point Senator Fielding made about answering questions on time. It is very important for questions to be answered as expeditiously as possible and got back to the senators. We had a lot of questions outstanding under these portfolios in this group of estimates left over from last time. I am told it was the highest proportion of any group in estimates. I would appreciate it if the various agencies could get their questions back more quickly in these estimates.

**Proceedings suspended from 1.01 pm to 2.02 pm**

**Senator FIELDING**—Dr Pelling was going to go through the steps that someone referred to before.

**Dr Pelling**—I am wondering what exactly you want me to go through.

**Senator FIELDING**—The steps of where the filtering is at, at the moment.

**Dr Pelling**—Essentially there are a number of tenders which the department has to let in relation to establishing the portal. Broadly speaking, in two streams of activity, one is to establish a content portal, which is accessible through the internet where people can go to download filters, and the other is to establish or to select the filters that will be available on the portal and available to send out to people. They can either download them or get them on a CD. We are in the middle of that process at the moment.

**Senator FIELDING**—I was not aware of the time frames. Is there a set time frame that the department has got in place?

**Dr Pelling**—This is a very high priority for the department and for the government, so we are aiming to do it as quickly as possible and, as the minister said, we are hoping to get a product on air in around about the May time frame.

**Senator FIELDING**—What does ‘product on air’ mean?

**Dr Pelling**—A service from which people can obtain filters.

**Senator FIELDING**—I will just return back, Minister. You said that you had written to the states. When was that?

**Senator Coonan**—I do not have it in front of me. I can pick that up and even give you copies. I would think that it would have been some months ago. It was probably about the time that we announced this initiative. It could have been a little before that or a little after, I am just not sure.

**Senator FIELDING**—What was the intent of the communication with them?

**Senator Coonan**—The intent of the communication was to encourage filters to be made available—of course there are some available now, although we say that they can be improved—and to alert them to the fact that we are going to have this initiative.

**Senator FIELDING**—Can I get a copy of that?

**Senator Coonan**—I will see whether I have got copies of the letters that I can make available to you.

**Senator FIELDING**—Thank you. What has been the states’ response to that letter?

**Senator Coonan**—My understanding is that a couple of the states have implemented some of those library and indeed even school initiatives. I will have to take it on notice so that I can give you a proper response because I am really relying on my memory as to where they are up to.

**Senator FIELDING**—Will the government look at tying funding to mandatory filtering for libraries? This is all about a communication that you have had the intent in wishing the libraries to have filtering on their internet services to protect children from internet porn—those people using those library services. If the states do not get on with the job of protecting children, will the federal government be tying funding to the libraries in a way that ensures that they do put filtering on?

**Senator Coonan**—We do not fund libraries, apart from the National Library. What we will do is make filters available and encourage state authorities to take them up.

**Senator FIELDING**—Is it correct that the only library that the federal government funds is the National Library?

**Senator Coonan**—Yes, that is correct.

**Senator FIELDING**—No other funding at all?

**Senator Coonan**—They have agreed to do it. In fact they already have a fairly significant filtering arrangement. I have inspected it personally.

**Senator FIELDING**—I would like to go back to the budget for providing internet filtering. There have been reports in the press of \$94 million. Is that right?

**Dr Pelling**—\$93.3 million. That is the package over three years, which comprises an element for the filters and the information campaign as well.

**Senator FIELDING**—I now turn to the complaints system from ACMA. I get a lot of people coming to me—to Family First—saying that ACMA is a bit of a toothless tiger, that nothing happens when we complain to them. Can you walk me through the process of how people complain to ACMA regarding, for example, standards on television?

**Dr Pelling**—I will pass that to my colleague. I would like to correct what I just told you. It is \$93.3 million for the filter component and \$18.3 million for the community information campaign. They are both over three years and I told you that \$93.3 million was the total and in fact that is just the filter component.

**Senator FIELDING**—Thank you for that clarification.

**Ms O'Loughlin**—With regard to your question, in the first instance the process that we go through with internet complaints.

**Senator FIELDING**—Thank you.

**Ms Wright**—Over the last six years in relation to internet content we have had approximately 5,500 complaints to us relating to prohibited or potentially prohibited material. Those complaints are most usually lodged electronically. The complaint is immediately acknowledged electronically and, in the majority of cases, within 48 hours the investigation into that complaint is completed and the information relayed to the complainant. Where we need to obtain specific classification information from the Classification Board, we contact

them. I have a five-day turnaround time to come back with a decision. Where that material has been hosted in Australia, if we think there is cause for concern, we will have already issued an interim take-down notice and then referred the material to the Classification Board so that the material is no longer up there. When we receive the classification from the Classification Board, in the majority of instances our original view has been upheld, and then we issue a final take-down notice.

One of the good outcomes in the life of the scheme is that every year we have seen an incremental decrease in prohibited or potentially prohibited material that is hosted online in Australia; but we do not stop there. We also have a special pathway for material that is internationally hosted and we work in conjunction with 25 other countries and 27 hotlines to exchange complaints. Per quarter, those hotlines between them investigate 100,000 complaints, and this goes to material which is very often referred to law enforcement. In order to be a member of the scheme, each hotline must have direct contact with law enforcement agencies. For example, a lot of the material that we get complaints about that is internationally hosted comes from the USA. We forward the material complained about to the hotline in the United States of America, which is hosted by the National Centre for Missing Children. They have their own FBI officers seconded to them and we know that, within 48 hours of receiving our complaint, if they decide that it is illegal content in America, it is then dealt with by the police. We would consider that a fast and very comprehensive service. It is one that not only goes to removing the image, but dealing with the image as a crime scene if it involves children. With the material that we forward to the international hotlines or through the AFP, we also provide that material to the blacklist for filters, which was referred to earlier. If you have a filter then all that material is automatically barred for users. It is that multifaceted approach, given the fact that a lot of the material is hosted overseas, that we think is important. Therefore we value our participation within INHOPE, which grows every year with more hotlines. I think when it started in 1998, there were eight hotlines. There are now 27. Each year there are new applicants. We think that that has been a very effective mechanism for dealing with complaints in relation to internet content.

**Senator FIELDING**—The people complaining about the internet sort of sites go directly through yourselves for the complaint system. I think I heard you saying that over the last five years or seven years—I cannot remember—there were something like 5,000-plus complaints.

**Ms Wright**—Yes.

**Senator FIELDING**—Could I ask a question of the department. It may not be your area. How many complaints has ACMA had directly in that same period about content on television?

**Ms Wright**—For the 18 months of ACMA we have had 92 investigations into material hosted on commercial television stations. The difference is because we are the second port of call for free TV investigations.

**Ms O'Loughlin**—We do not have the detail with us on the number of complaints. What Andree is referring to is complaints which have resulted in us starting an investigation. In the commercial broadcasting code area, as Andree was saying, the first port of call is actually to go to the broadcasters. Complaints will go to the broadcaster. Where the complainant has not

been satisfied with the answer that they have received from a broadcaster, then they can refer that complaint to ACMA.

**Senator FIELDING**—Complaints through to ACMA from television, you need to take that on notice?

**Ms O’Loughlin**—We would have to take it on notice, particularly if you ask for a comparative figure over the five years.

**Senator FIELDING**—Yes.

**Ms O’Loughlin**—Yes, we can take that on notice.

**Senator FIELDING**—I have had many families come to me saying, ‘Why can’t people get access to ACMA rather than just to the provider for their complaints?’ You do it with internet, why not for free-to-air television?

**Ms O’Loughlin**—One of the comments I would make in that regard is that when the internet system was put in place, it was acknowledged that there were approximately 600 ISPs and, therefore, it was not always clear to people where they might complain. The numbers of licences for television is more finite, and people are more aware of that relationship.

**Senator FIELDING**—I have had many families come to me who find it very difficult to feel as if they are getting any response back. It seems to be cumbersome. Has the department ever looked at having a single point of contact for people to complain about content on television so ACMA can be at least aware of it at first hand rather than have it probably filtered through people that have got to go through television station, wait for a response to come back and then work out where to complain to if they do not like that response. How long does it take for a normal complaint to go through to the television and then to arrive at your desk for you to be aware of it?

**Ms O’Loughlin**—There are provisions which give the broadcaster 60 days to respond.

**Senator FIELDING**—Sixty days?

**Ms O’Loughlin**—Yes. However, the broadcasters voluntarily committed to a code which means that they must respond in 30 days.

**Senator FIELDING**—If something happens today realistically it could be 30 days before they can go somewhere else other than the person that is providing the information. That does not sound like you are going to make it easy for families at all to raise their complaint with someone other than just the provider that potentially can investigate it further. I know most of the free-to-air make sure they try and do the right thing, but I would think that it would be fair and reasonable for ACMA, which sets the standards, should be aware of complaints from individuals and be able to look at them. There may be a situation that arrives today and it could be 30 days later before someone can get to you.

**Ms O’Loughlin**—We are very aware of that. ACMA itself can initiate its own investigation at any time, if it so wishes. I think Andree will correct me if I am incorrect, but we do get a lot of people who call us direct. If there is a level of concern out there that the authority felt warranted it, they could launch an investigation immediately if they so wished. We think there is a balance between those two.

**Ms Maddock**—The other thing that we are most particular about is ensuring that, when the providers do respond, they make it very clear to the complainant that they can complain to ACMA, because the system falls down if that does not happen.

**Senator FIELDING**—Just repeat that.

**Ms Maddock**—One of the obligations on the providers, the broadcasters, is that in responding to complainants they make it very clear in their response that they do have the fallback to ACMA so that people are aware that, if they are unhappy, there is an escalated place to take it. We are very rigorous with ensuring that that happens.

**Senator FIELDING**—We need to make it easier for families. This is the feedback that I am getting, that the process seems long-winded to get through to somewhere. The general feeling in the community is that complaining to the television station falls on deaf ears. Surely you must have the same understanding or feeling of that in the general community. Would that be right or wrong? I am happy for you to disagree with it.

**Mr Chapman**—I think we are conscious of that level of frustration. There is a code in place. It is part of the self-regulatory approach. We anticipate a commencement of the review of that code, as we periodically do, in the middle of this year. As Ms O'Loughlin said, we try to strike a balance between responding only when the complainant is dissatisfied with the licensee's response to them and in certain circumstances launching our own investigation. The minister has on several occasions expressed to us her desire for us to review those processes to see if we can come up with a more streamlined approach. An example of that was with the *Big Brother* incident last year where we did fashion with the broadcaster a different and shorter approach. We took a microcosm of the issue and on a bilateral basis came up with a more streamlined approach. There is natural justice and certain time constraints built into the legislation which gives rise to the extended time period that you are referring to which is the cause of some frustration. We acknowledge that.

**Senator FIELDING**—I will make a suggestion here and you can take it or leave it. I would suggest that having a single point of call for people to go to to make a complaint and copied to ACMA—it can be sent to the television station but copied to you—would make sure that you are fully across any of the hot issues that come across. Because I can seriously tell you that Australian families are feeling very frustrated that they feel like they get nowhere when they complain. That is the sentiment and surely that is not a state that any government should be happy with, that people are feeling absolutely frustrated. I will come to the second point now. What penalties are there for breaching this voluntary code that you have?

**Ms Maddock**—There is a range of penalties and Andree will correct me when I do not get all of the detail right. It can be anything from putting in place remedial activities through to taking at the second most extreme action to refer it to the DPP and, subject to various processes having gone through, through to potential loss of licence. One of the things that has happened quite recently is that we have got enhancement to our powers which enable us now to amongst other things take enforceable undertakings from people if we consider it necessary for them in terms of their general approach to issues. So we have enhanced powers which we are starting to use which came through late last year. Sorry, it came into effect in early February and passed through the house and the Senate late last year.

**Senator FIELDING**—Can you give me an example of the last five times they have been used?

**Ms Maddock**—They only came into actual practice on 4 February.

**Ms O’Loughlin**—The example I can give to you is that in the case of the PBL and the Seven deals enforceable undertakings were offered to us for the broadcasters to take certain actions which were accepted by the authority. That is a very early indication that we can use those effectively to get results quickly.

**Senator FIELDING**—I am not convinced that there is enough penalty in place. First of all I am not convinced about the speed of even knowing what people are complaining about because you are so far removed from the process to start with. And then there are the penalties. I am talking on the street with people and they do not get the sense there are any penalties. They do not get the sense that there is anyone listening. I think you can make it a lot easier than you currently do. It is as if the system is designed to not have people complaining, and then when they finally get through not a lot of action seems to come out of it.

**Senator Coonan**—Senator Fielding, in all fairness we have just had the package come into effect that provides an entire suite of penalties. You must remember it, because I can remember going through it with you in some considerable detail. It provides a whole suite of things so that a proper, tailored response can be made to the gravity of the offence. In addition to that in relation to the time frames, I have been very concerned about that. It is one of the reasons why I have instigated, quite apart from all of the things that are in place, a review of reality TV, because that seems to be an issue that is quite rightly a concern to a lot of people. So we are onto this whole issue of time frames and severity of penalties and gradation of penalties, but in all fairness to the authority I have to say it has only just literally come into effect, so they could not have really been expected to implement something that has only just now at their disposal.

**Mr Chapman**—To add to that, those new enforcement powers that have just come into effect a week ago include powers to pursue civil penalty orders by the Federal Court; acceptable enforceable undertakings, which we have touched on a number of times; seek injunctions in circumstances where a person has failed to comply with requirements; seek injunctions to ensure there are no unacceptable media diversity situations, which is not relevant to your question; and finally issue infringement notices for certain contraventions. They are in addition to the existing—

**Senator Coonan**—Criminal sanctions.

**Mr Chapman**—range of powers that Ms Maddock alluded to.

**Ms O’Loughlin**—As the minister raised, we are undertaking a review of reality television at the moment. We are due to report to the minister at 31 March, and this issue I am sure will be raised and considered in that context.

**Senator Coonan**—The long and the short of it is the concern about time frames is quite an appropriate one, which is why we have taken this action and also why I did spend a lot of time last year in trying to get the enforcement suite of powers right.



**Senator FIELDING**—Family First has made a submission to that and I have raised the points here today for that particular inquiry as well, so I am certainly looking forward to seeing what the outcome of that particular inquiry or review is going to be. One other area I want to touch base—

**Senator RONALDSON**—Are you moving on to something else?

**Senator FIELDING**—No, it is the same area.

**Senator RONALDSON**—Minister, I was reading some other information. Did you make any mention about what the international experience is with this sort of program? Is there anywhere else in the world where it has been done?

**Senator Coonan**—I made that comment in relation to the filtering that the government is proposing to put in where every Australian family will have an opportunity to install a filter on their home computer to tailor make their child's experience of the internet. It will be a world first. It is a most ambitious program and we expect that the take-up will be very high because we are also going to have a national education campaign to assist parents to understand how their children can effectively use the internet and not be subjected to this sort of pernicious traffic on the internet. Because it is such an ambitious program, Senator Ronaldson, you are quite right, it is important that we get it right. This is taxpayers' money. We want to make sure that it works and that no parent who takes up this offer ends up being disappointed that we have not properly tested these filters and that the claims we make for them are not able to be borne out. But you are quite right, it will be a world first.

**Senator RONALDSON**—Was there a blueprint or did you have to start from scratch?

**Senator Coonan**—No, this is why we have had to build the system from scratch. It is a massive undertaking, which is why, as Dr Pelling was pointing out, it involves tenders and a couple of streams of inquiry to do the content and to test the efficacy of the filters. It is a very big undertaking. Whilst we are not magicians, we know clearly where we are going, we know what we think will be the best system in the world and we are determined to implement it in a way that actually provides an appropriate protection for Australian families.

**Senator RONALDSON**—All power to you, Minister.

**Senator FIELDING**—I appreciate those very helpful questions from Senator Ronaldson. On that point there is another view—

**Senator Coonan**—I thought you would be pleased to know that, Senator Fielding.

**Senator FIELDING**—There is another view around the world also that filtering at the ISP level is a better way of blocking some of the harshest sites, that gets 100 per cent of those sites for every Australian family rather than just those that actually can find their way through the system and still remaining to wait for this system that the government has put in place. I make it quite clear that Family First feels that there should have been mandatory filtering at the ISP level. This additional step is all well and good, but there is still the first step; the most serious and dangerous sites should be blocked at the ISP level. British Telecom are doing it. Telstra should be doing it.

**Senator Coonan**—I imagine that because you are so interested in this, Senator Fielding, you would have caught up with the Manchester report two days ago which showed something

like about 42 per cent was missed with ISP filtering. 42 per cent of what they purported to be able to block was missed. We do not really think that that is going to assist Australian families and it will provide a quite unfair assurance to parents. We want to make sure that we have the very best; not some second best, Senator Fielding, the best.

**Senator FIELDING**—We can debate that 58 per cent is being blocked and with time and technology—

**Senator Coonan**—The report has just said that that is wrong.

**Senator FIELDING**—Your own figures said there was 42—

**Senator CONROY**—That is the opposite of 42. It was 100 minus 42.

**Senator Coonan**—It is not 100 per cent of 100 per cent, is it? You have to actually know the site to be able to list it for the purpose of any ISP filtering. Even when you list it, that is the figure that was wrong, 42 per cent.

**Senator FIELDING**—There are sites known to this government that are not being blocked at the ISP level in Australia.

**Senator Coonan**—The sites will not be blocked, according to this report. This government will not be a party to some ineffective mechanism that provides a totally false assurance, and no government worth its salt would do that.

**Senator FIELDING**—It is a debating point and I suppose we can move on, but Family First believes that we should be something at the ISP level and also something at the PC level. Both can be done quite clearly and to walk away and not cover the worst sites is ridiculous.

**Senator Coonan**—No government does clean feed. It is done by a telecommunication company. It is not done by government. The government is putting up taxpayers' money to get the very best solution we can and we think that it is a proper use of taxpayers' money to ensure that we have the very best response, not some half-baked solution that will not do the job.

**Senator FIELDING**—I have a separate issue. Family First is interested in what I describe as raunchy ads on television at night designed to sell dating services, phone sex and mobile phone screen savers. What can you tell me about such ads?

**Senator Coonan**—I cannot tell you anything. I am sorry about that.

**Ms O'Loughlin**—That would be a matter for the Advertising Standards Board.

**Senator FIELDING**—Have you had many complaints?

**Ms O'Loughlin**—No. But I cannot speak on behalf of the board. The Advertising Standards Board is a separate body.

**Senator FIELDING**—ACMA themselves, you received—

**Ms O'Loughlin**—The complaints would not come to ACMA.

**Senator FIELDING**—They go to the television stations, don't they?

**Ms O'Loughlin**—No, the Advertising Standards Board.

**Mr Wright**—That is correct.

**Senator FIELDING**—What are the rules governing these ads?

**Ms O'Loughlin**—That is not an area of responsibility for ACMA.

**Senator FIELDING**—It is not?

**Ms O'Loughlin**—I would not have those at hand. No, it is for the Advertising Standards Board.

**Senator Coonan**—It is a classifications standard.

**Senator FIELDING**—Which government department looks after that?

**Senator Coonan**—Attorney-General.

**Senator FIELDING**—Thank you.

**Senator IAN MACDONALD**—Just before we get off that subject, has your department ever considered spending some of the money that they are spending on these programs that Senator Fielding has been talking about on an education program for parents who, I think you would agree, must ultimately have the principal responsibility for what their children watch on television or on the computer? Has there ever been any thought to that, or do you think there is a need for that?

**Senator Coonan**—There is a need and we have budgeted out of the \$116 million some \$18 million that is going to be spent very shortly on a nationwide education program for parents to educate them to the dangers lurking on the net and in respect of these matters and to assist them to understand how they can have some assistance with a free filter that will be available for them to tailor their family's experience of the net.

**Senator IAN MACDONALD**—You would accept that it is the principal responsibility for parents and not the government for looking at what children watch and do on their computer?

**Senator Coonan**—This government takes the view that it is not our role to be in every household in Australia.

**Senator IAN MACDONALD**—Absolutely.

**Senator Coonan**—I think most parents in Australia would not wish the government to be in their living rooms, but they do want to have assistance and information in providing an optional free filter, together with information and education. We think that is the best combination in the way in which we can help Australian families.

**Senator IAN MACDONALD**—It is good to hear that. If we are off that subject, I would like to move on to ACMA and if we can have an update on the A and B channels. I will start on that and I just want to talk about the position of the progress in relation to the review of digital radio, particularly as it relates to community broadcasting. I am mentioning that so that people can get themselves ready.

**Mr Chapman**—From the ACMA perspective, the allocation of the A and B channels is part of a number of initiatives that we have responsibility for. We touched on the register of controlled media groups this morning. We have a discussion paper out in the market place and, when you ask for an update on it, we are delighted to do that. Mr Tanner can provide details on that. Is there one area in particular that you wanted clarification or update on?

**Senator IAN MACDONALD**—I am wondering who is going to be operating the B channel? How far have we gone along the path in that? What is the present position?

**Mr Tanner**—The exact status of the allocation process is that in December we released a public discussion paper which canvasses our preliminary views about the two price-based allocation processes for A and B and it goes through a list of what we think the outstanding issues are and detail for our approach. The submissions closed, from memory, on the 5th, although we have granted some extensions. The last time I checked we had received about 24 submissions and we are expecting a handful of others. The intention is that we approach the authority on 22 February for some decisions on the design of the price-based allocation processes, which will allow us to adhere to our indicative time frame, which would see sales documentation released in mid-May for both licences. The short answer is that you will find an extensive account of where our thinking is up to in our December discussion paper. We should have the views of all serious participants in the market now and we are in the process of considering them for talking with the authority and, to the extent relevant, to the minister about the final design of the allocation process. As I said, 22 February is when we will be going to the authority. There are some potential ministerial roles in the final design as well, and we are on track at this stage to release sales documentation in mid-May, as we foreshadowed earlier.

**Senator IAN MACDONALD**—Do the submissions have any common theme?

**Mr Tanner**—I have not had the benefit of reading all the submissions. I am only aware of one or two of the issues, so I cannot comment in detail at this stage. As I said, we are in the process of considering them and also last time that I checked, which was late last week, there were two or three outstanding submissions that were quite important in that they came from people we knew would have important substantive views. We are moving very fast on this. The fact is that I have not had the opportunity to read precise of the submissions but I should have that opportunity in the next few days. As I said, the aim is to come to some synthesised final views to the authority on the 22nd on a range of issues. I am sorry that I cannot be more helpful, but it is a very fast moving picture.

**Senator IAN MACDONALD**—I am not sure whether this is a question for you or the minister.

**Mr Tanner**—I should also make the point that we will, in general, publish all the submissions that we receive. We do make exceptions for genuine commercial-in-confidence and of course we are subject to the FOI act.

**Senator IAN MACDONALD**—Of course.

**Mr Tanner**—What I expect is that a lot of the material which is not genuinely commercial-in-confidence will be released as quickly as we can make that evaluation and put it up on our website. It is going to be a transparent process, as it has been today, to the extent that that is proper. If you just bear with us, I would expect over the next few days, or perhaps that is a bit early, but certainly in the course of February we will be seeing whatever is not generally commercially-in-confidence made available.

**Senator IAN MACDONALD**—As I said, this may be a question either for the minister or perhaps the secretary, but will there be a green paper or a proposed way of doing this

published before the final decision is made so that industry players can have a final crack to convince the government that whatever way is thought about could be improved upon?

**Mr Tanner**—The December paper that I am referring to is a comprehensive canvassing of the issues and our thoughts to date on the appropriate process. In order for us to adhere to—

**Senator IAN MACDONALD**—Then you would know the answer to my question. I am afraid I did not read the document, so what is the answer? As the process goes through, you make a decision, recommend it to the department and the department recommends to the minister. Is the minister just going to announce it?

**Mr Tanner**—No. The price-based allocation process is within our remit. The decision on 22 February should allow the detailed design of the legal instruments that set up the price-based allocation scheme. That is an ACMA responsibility.

**Senator IAN MACDONALD**—It allows detailed design of what? I did not catch the word that you used.

**Mr Tanner**—The price-based allocation system.

**Senator Coonan**—The auction system.

**Mr Tanner**—The auction system, which I am calling the price-based allocation system, takes the form of a large legal instrument in a whole lot of associated documents that represent the description of the property. That is ACMA's responsibility. What I was referring to in my answer earlier is that the minister does have some roles. She can both legitimately direct us and also there are some aspects of the design of the process where the minister also has a role.

**Senator IAN MACDONALD**—This is all very interesting but, just for my very limited understanding of it, when you are at the end of this process you will have a clear auction process there so that people will know the criteria on which they are bidding, what they are bidding for, what access they have to allow to others if they happen to be successful and all that sort of stuff?

**Mr Tanner**—It will be absolutely comprehensive. Both the price-based allocation process in all its detail and also very detailed descriptions of the property and any ancillary information which would be important to allow people to ascertain the value—for example, what our stance might be on replanning those channels—will be contained in the sales documentation. That will be routine for any major auction of spectrum.

**Senator IAN MACDONALD**—And for what access that might be insisted upon for others besides the successful bidder?

**Mr Tanner**—In relation to licence B, there is a scheme that will be administered by the ACCC, which means that bidders for licence B will have to get an access—I may be using the wrong word from memory here—approved by the ACCC.

**Mr Cheah**—An access undertaking.

**Mr Tanner**—It is an access undertaking. Those access undertakings are vetted by the ACCC and obviously the two agencies are aligning their processes and timetables so that there is time for those two processes, our sale and their assessment of undertakings—

**Senator IAN MACDONALD**—Will your conclusions be in the way of a recommendation to the minister?

**Mr Tanner**—No. I think without an approved undertaking they would not be able to bid, so it is important they get that ACCC approval as part of the process. We will then conduct, let us say, an auction, but a price-based allocation, and we will then award the licence to the winner.

**Senator IAN MACDONALD**—You will?

**Mr Tanner**—Yes, we are the allocating body. We are running the price-based allocations.

**Senator IAN MACDONALD**—What if someone thinks that your price-based allocation system is not right?

**Mr Tanner**—We are designing that in a very transparent way. In December we have—

**Senator IAN MACDONALD**—That is good, so people will understand, but if there are people—

**Mr Tanner**—We are also designing it with full consultation, which was the purpose of the December discussion paper.

**Senator IAN MACDONALD**—Full consultation with the industry?

**Mr Tanner**—Yes, although you or anyone else, because it is a public document, are entitled to make submissions and to have views, except of course that the submissions period has now closed. This was released in December, comments closing by the 5th.

**Senator IAN MACDONALD**—Yes, but you make a final decision?

**Mr Tanner**—Yes, we do.

**Senator IAN MACDONALD**—I am just saying is there a right of appeal to anyone? From what you are telling me, if the minister does not like it, that is bad luck too.

**Mr Tanner**—No, the minister does have various powers to direct ACMA and whatever we do will be done in a way which is transparent to the minister and to her powers and prerogative.

**Senator IAN MACDONALD**—You have said it is transparent and I am saying that that is great so everyone who understands the area, which I do not, will then know what it is all about. But, if someone says you made a monumental flaw in your recommendation, there is still some power for the minister to say that she is not going to accept this.

**Mr Tanner**—Yes, there is.

**Mr Cheah**—I have just a point of clarification. Once we decide on the price-based allocation system we will then make that as a legal instrument. Once it is made as a legal instrument we, along with everyone else, have to follow the legal instrument. Any decisions we make will be made under the legal instrument we have actually made at that point. There will be a right of appeal if somebody thinks that we have not followed the process that was there or there was some other flaw with the process that is set out in the legal instrument that has been made. So, in a sense, there is a right of appeal but it will be as a matter of law, probably.

**Mr Tanner**—We have to take it on notice. Exactly what rights of appeal who would have is an issue which Marcus has just raised with me about whether or not this is a disallowable legislative instrument; I am speaking of the price-based allocation. I would need to check that point. There may be rights that certain parties would have under the Administrative Decisions Judicial Review Act or perhaps under the common law behind that. I would have to take that on notice. I suppose the point is that in general the design of a price-based allocation process does raise a lot of practical issues and problems. You do learn a lot from the market by canvassing those issues, and that is routine practice. Obviously, in canvassing those issues we strike a balance between expedition and reasonable management of risk. The way we have struck that balance in this case is to publish a comprehensive discussion paper about what we think our approach and options should be in December. We are considering those. We are not proposing to have another comprehensive round of consultation but, as I say, we have already built a fair bit in because we are striking that balance between expedition and risk management. There will be certain rights of appeal which I would have to take the details of on notice.

**Senator IAN MACDONALD**—No. You are getting into technicalities.

**Senator CONROY**—Are you surrendering yet?

**Senator IAN MACDONALD**—Yes. My concern was that in the last package of bills that came forward—and this was not ACMA's fault, and I am not necessarily across it—there was a lack of genuine consultation with the industry. All I am trying to extract from you is that the process—

**Senator CONROY**—He wants Italy and you are giving it to Amanda.

**Senator IAN MACDONALD**—Who wants Italy?

**Senator CONROY**—Keep asking your questions.

**Senator IAN MACDONALD**—I want to assure myself that whatever process you are involved in, which I do not fully understand and I do not need to fully understand, it is from an industry having a full input and that all views are being canvassed. Obviously, someone has to make a decision in the end result, but I think it is important that the industry knows where you are going and you are telling me—you are assuring me, as I understand the words that are coming out of your mouth—that has been done. That is what I see.

**Mr Tanner**—Absolutely. In fact, if this is worth while as an assurance, the issue of how quickly we could complete price allocation has been one which has been of central concern to the authority. We have at all stages represented that, without a fair level of consultation with potential bidders, you do run a significant risk in its design—

**Senator IAN MACDONALD**—Whose decision will it be if there is a particular children's network or a particular regional network or a particular Indigenous network running off the B channel? Whose decision is that? Where does that come through?

**Mr Tanner**—This process for B will be a price-based allocation process.

**Senator IAN MACDONALD**—No. Do you know the answer to my question?

**Mr Tanner**—I am not sure what your question is. If you could—

**Senator IAN MACDONALD**—As I understood it, and I am going back with a very, very poor memory, but when we were looking at the bill the B channel could be owned by one person doing lots of things or there could be several different, even competing, interests broadcasting, if that is the word, off the B channel. Who makes the decision on who is going to be—

**Mr Tanner**—We are auctioning it. We are proposing to allocate the B channel as a single seven megahertz block in each market, so there will be one successful bidder for the B channel in every market. That would mean that the decision as to what content goes on would be a decision for the successful bidder initially and our—

**Senator IAN MACDONALD**—There would be no requirement that—

**Mr Tanner**—Our point of regulatory interest would be confined to whether or not what they propose to do with the channel is a legal application of that channel.

**Senator IAN MACDONALD**—There were suggestions during the hearings on the broadcasting bill that community television might get one of the bits of the B channel. Did I say ‘commercial’ or ‘community’?

**Mr Tanner**—Yes. There was also discussion of whether the channel should be broken up and allocated to separate, narrower bandwidths. But those ideas did not—

**Senator Coonan**—I think what you, if I may say so, with respect, may be confusing is channel A, which is the in-home service. I think it was said there that, if one were to allow some must-carry provision for community television, that might be where you did it.

**Senator IAN MACDONALD**—In channel A?

**Senator Coonan**—In channel A, not channel—

**Senator IAN MACDONALD**—Is B the mobile?

**Senator Coonan**—Yes.

**Mr Tanner**—It could be the mobile.

**Senator IAN MACDONALD**—Yes. Okay, I have an impression that the B channel could also have—

**Mr Tanner**—Yes, the B channel could be used for fixed-to-home services just the same as the A, but the point is it is not limited to that. It can be used for a range of other applications, including mobile, which is not suited for in-home—

**Senator IAN MACDONALD**—Are you involved in the A channel?

**Mr Tanner**—Yes. We are allocating both. I have been referring to two allocations, and those are the allocations of the A and the B.

**Senator IAN MACDONALD**—What I am trying to find out is who is going to make the decision on whether community TV gets a leg-in, whether it is in the A channel or the B channel, and whether Indigenous TV gets a leg-in on the A or B, or the Flying Doctor TV.

**Senator Coonan**—About \$50 million has been allocated as part of the broadband package for Indigenous television. That is where that is all happening. As far as what happens on either of these two channels, the government has made a decision that basically channel A and



channel B, being the limited spectrum available on the broadcasting services band, would be available commercially. The decision about community that the government has taken has been that, because they already occupy Channel 31 and spectrum attached to Channel 31, they will be allowed to continue to use Channel 31. There have been some discussions about that because to convert to digital is the big issue for them and it is quite possible that, if they are not otherwise taken up in relation to Channel 1 by someone who will carry them, we would mandate it as a must-carry as we get a little further along the road to the conversion to digital and may well auction that spectrum or do something with that spectrum—Channel 31—on the basis that community television is accommodated in that space. One way or another community television will be looked after. The only issue is when and at whose cost.

**Senator IAN MACDONALD**—When you say the government has made a decision in relation to A and B, does that decision post-date the passing of the act?

**Senator Coonan**—It had policy approval to be developed for the passage of this legislation and the decision that the government has taken is that channel A and channel B would be disposed of according to a price based allocation. That decision has been taken. The decision has been taken that, in respect of that price based allocation, that community would not be carried as a ‘must carry’ on those channels. Because we have in reserve Channel 31, which they currently occupy, that will provide the suite of possibilities that community will need.

**Senator IAN MACDONALD**—Could you let me know when those decisions are made? I think what you are telling me is contrary to the impression I got during the Senate inquiry into the legislation and from debate in the chamber. I thought it was still a work in progress then. Perhaps there has been a decision since.

**Senator Coonan**—What is being worked up now is the implementation of the decision that the government had taken that underpinned the legislative package.

**Senator IAN MACDONALD**—I think Senator Conroy has questions on A and B.

**Senator CONROY**—Yes, I do.

**Senator IAN MACDONALD**—I have some other questions about radio, but I will perhaps pause there and allow this vein to continue.

**Senator CONROY**—Hopefully I can get a little bit further than you did, Senator Macdonald. As Senator Macdonald indicated, I do have some questions about A and B. The commencement of the new laws has also been linked to what the minister has called the opportunity for new services to emerge. When does ACMA think it will be ready to conduct the auction of channel A and B? I appreciate you have just been having some discussion. However, I was not sure Senator Macdonald got the fulsome answers that he was hoping for, so I am going to perhaps press a little harder.

**Senator Coonan**—No decision has been taken.

**Mr Tanner**—There is an indicative timetable in the December discussion paper. I have referred already to the first proposed deadline, which is that we would see the release of market information and the price based allocation systems in mid-May. The intention is that, following that, the two processes would bifurcate. The licence B process would take slightly

longer, for a number of reasons, the main one being that built into it is ACCC approval of those undertakings I referred to. The licence A process would be a bit shorter. But I have to make clear that that is the indicative plan put out for consultation in December, and detailed in the paper.

**Senator CONROY**—We are two to three months on from that. You said it was an indicative plan. Are you any firmer?

**Mr Tanner**—I have just made clear that we now have something like 24 to 25 submissions. We are expecting a handful more. I will be going to the authority on 22 February to make final decisions that would allow design of the price based allocation indication and the marketing documents. We are in the process of considering those submissions now. I do not have much I can tell you about them offhand, but they will be put on the website, to the extent they are not commercial-in-confidence, as quickly as we can. It is a transparent process.

**Senator CONROY**—Was that more or fewer submissions than you were expecting? I am trying to work out whether you think from the number of submissions you got you need more time or less time.

**Mr Tanner**—It is the quality rather than the number that we are concerned about. The primary targets of the process were potential market participants, so I would not expect a giant number. These are not issues where we expect huge write-ins. These are issues where we are really looking to engage with the market. Anybody who was serious about bidding would have been, I think, wise to have been paying attention to those preliminary views about allocation. We would like to hear from them if they are picking up problems or concerns.

**Mr Chapman**—It is hard for Mr Tanner to give you any better insight, because it is not a matter that is going to the authority until 22 February. Speaking as an authority member and from what I have seen and heard with Mr Tanner and his staff, I personally—without authority endorsement—believe that the program remains on track.

**Senator CONROY**—So mid-May; I think your paper said that you would conduct the option for channel A in the third quarter?

**Mr Tanner**—Yes, third quarter for channel A. We are thinking in the vicinity of mid-October for channel B, based on the assumptions that were published in our December allocation process.

**Senator CONROY**—That would be right in the middle of the election campaign. You do not really think you are going to conduct an auction in the middle of the election campaign, do you? I am not suggesting there is anything nefarious in that. I am just saying, ‘Fair dinkum, you are not serious?’

**Mr Chapman**—We have a timetable and we are working to that timetable.

**Senator CONROY**—I appreciate there could be an early election, and you have just got to plod on and do your job. But it would be unusual, would it not, to hold that in the middle of the election campaign?

**Mr Cheah**—We would worry about the caretaker conventions at the time, and we would assess the situation if and when that arose.

**Senator CONROY**—If you were halfway through, would you pause under those caretaker conventions?

**Mr Cheah**—We would have to look at the convention.

**Senator CONROY**—Take advice.

**Mr Cheah**—And take advice on that at the time.

**Mr Tanner**—We would be very mindful of that issue, it is fair to say. I think back in December we did not have any information that would allow us to speculate. But the caretaker convention would obviously be something as a statutory authority we would be looking at.

**Senator CONROY**—You seemed to qualify this when Senator Macdonald was asking about an auction. You wanted to very strictly stick to your formulation of words, a ‘price based allocation’. Is there a difference between a price based allocation and an auction?

**Mr Tanner**—A price based allocation is a somewhat broader term. If you look at our December draft, you will see that our preferred option in December was what is called an English open outcry auction. So, yes, a true auction, very similar to a house auction. That is certainly an issue we were putting up. I understand there may be at least one argument in submissions for a sealed tender bid approach, which is another way of conducting a price based allocation. I was just being cautious in using the more generic term. I would not read too much into it.

**Senator CONROY**—You said in ‘December’ and you used the word ‘was’. I appreciate you said ‘it was our view’.

**Mr Tanner**—Those are preliminary views that we put out for comment. I am keeping the authority’s powder dry to have regard to the submissions it receives and finetune this process in light of what it learns.

**Senator CONROY**—What work has ACMA done to set a reserve price on the channels?

**Mr Tanner**—I am not aware that we have at this stage done much work on that. That would be done during the finer design of the price based allocation process.

**Senator CONROY**—When would that be? Is that closer to October?

**Mr Tanner**—It would have to be done before mid-May. It would be done in that time frame. I think it would have to be done mid-May. I might have to just—

**Senator CONROY**—I will not hold you to 15 May exactly.

**Mr Tanner**—We may very well not release details of the reserve. That may not be a thing that we have to finalise at that time. I might have to take that question on notice, if that is all right.

**Senator CONROY**—I will not hold you to 15 May, Mr Tanner. If it is the 16th, I am sure we will all let it slide. How are you going to go about the task of setting that reserve price? What are the factors? What are the influences?

**Mr Tanner**—I would not like to speculate at this stage, if that is all right. That is not an issue that I have had the opportunity to turn my mind to with the staff yet. But it is an issue

that will be coming back to the authority, if not on 22 February then at another meeting before mid-May. There is a very large amount of work. It is perhaps counterintuitive, but there is a lot of work in doing these allocations, and there is an element of just-in-time in our working through of the particular intellectual challenges. Obviously, the setting of the reserve is a thing we will do at the appropriate time. It is not a thing I would really like to be drawn out on—

**Senator CONROY**—I was not asking you what the reserve was. I was just asking you what processes were involved in establishing a reserve.

**Mr Tanner**—I understand that.

**Senator CONROY**—I would not think that would be all that sensitive.

**Mr Tanner**—I would be happy to make some general comments on the setting of reserves, which we know a lot about and have ideas about. But if you do not mind, I would rather take those on notice as well.

**Senator CONROY**—As we are likely to be able to meet with you only once more between now and October, I am hoping you will be able to get them back to us fairly quickly.

**Mr Tanner**—I will take account of that.

**Senator CONROY**—Potential bidders for the channels will be looking for some certainty about the nature of the services that they will be able to provide. Last year ACMA said that it would release guidelines on the nature of the narrowcasting services that would be permitted on channel A. When is that advice expected to be released?

**Mr Chapman**—That is the release of the guidelines on the narrowcasting?

**Senator CONROY**—Yes.

**Mr Chapman**—That is going to be issued shortly.

**Senator CONROY**—Shortly? Tragically, we have had a lot of different definitions of ‘shortly’. Is that a couple of weeks? Is that—

**Mr Chapman**—More specifically, the matter has been before the authority. The draft has been signed off on. I as the chairman am delegated to complete some administrative aspects and, therefore, when I say ‘shortly’ I would expect within the next couple of days.

**Senator CONROY**—Thank you. I guess you are not able to talk about what the narrowcast services are, seeing as you have actually made a decision, or are you able to?

**Mr Chapman**—Until I have completed the aspects that I am charged to do from the authority, it is premature to do that, unfortunately.

**Senator CONROY**—In your consultation paper on the new digital channels there is a discussion of the design of the new channel A and channel B licences. ACMA notes that it is the government’s intention that two nationwide licences should be allocated. However, ACMA floats the option of issuing multiple sets of transmitter licences in aggregate to two nationwide lots. So channel A could involve three transmitter licences, one for the capital cities, one for large regional centres and one for the rest of Australia. I just want to talk about the implications of this proposal. Could each transmitter licence be subject to a different rollout obligation?

**Mr Tanner**—There would have to be an interplay between the design of the rollout conditions and whether or not there is more than one apparatus licence, yes. Clearly, any rollout conditions on any particular licence would have to take account of the overall intention, if you like.

**Senator CONROY**—What other licence conditions could be varied by area?

**Mr Tanner**—I cannot think of any other than the rollout condition, off the top of my head. I guess the primary benefit of disaggregation into multiple licences is that it may allow in some circumstances different dispositions to be made, for example, trading or something like that.

**Senator CONROY**—Just on that question: could the individual transmitter licences be traded?

**Mr Tanner**—Yes. They can be traded, anyway, but they could be traded separately if there were multiple ones rather than in aggregate. You can see the relationship there to the design of the rollout condition becomes plain. You seem aware of the discussion paper. Obviously, that is a key issue of design in the process that we have been canvassing.

**Senator CONROY**—Would this structure not allow new services to be rolled out in the major capitals well before the rest of Australia?

**Mr Tanner**—Either approach would potentially allow that.

**Senator CONROY**—How long could that delay be?

**Mr Tanner**—That is not to do with whether we have one or multiple apparatus licences, that is to do with what the market delivers and the content of any rollout condition. That is an issue on which we have sought submissions.

**Senator CONROY**—Would not any delay slow the take-up of digital TV in regional Australia?

**Mr Tanner**—Perhaps a ‘fail to speed’ the take-up of digital television would be more accurate.

**Senator CONROY**—‘Fail to speed’. Sir Humphrey would be proud!

**Mr Tanner**—We are certainly not talking about taking away any existing services. The issue is the content of any rollout condition that would mandate a minimum rollout.

**Senator CONROY**—Would it be acceptable for the government to allow regional Australia to wait for the new channel A services?

**Senator Coonan**—That is entirely hypothetical. I think you are a bit ahead of yourself there.

**Senator CONROY**—I will phrase it slightly differently. Minister, will you guarantee that regional Australia will receive the same services at the same time as the cities?

**Senator Coonan**—The same answer.

**Senator CONROY**—That is not a hypothetical question.

**Senator Coonan**—It is in the process of being designed. I am not going to be drawn on ruling things in, ruling things out and guessing as to time frames for rollouts. It is under design and it will happen as expeditiously as we can.

**Senator CONROY**—You are involved in the rollout discussions.

**Senator Coonan**—I am not involved in the rollout discussions. I am awaiting advice, and until I get advice I am not going to be drawn on these questions.

**Senator CONROY**—The question is whether the government will accept that the cities can receive these services before regional Australia.

**Senator Coonan**—That is a hypothetical. I am waiting for advice and then I will be in a position to give you an answer.

**Senator CONROY**—Will you direct them that they are to occur at the same time?

**Senator Coonan**—What I am waiting on is advice, and then I will be in a position to give you the answers that you are seeking. At the moment I do not have this advice and I think it is appropriate that I get it and then I will be in a position to answer these questions.

**Senator CONROY**—You have been listening to Mr Tanner's answers?

**Senator Coonan**—I have, intently.

**Senator CONROY**—Mr Tanner said that it is possible for there to be a delay, under either structure, I think he said, regarding whether it is three separate licences or one. The question is not a matter of needing any further advice on; it is a policy question.

**Senator Coonan**—I am very glad that you think I do not need any more advice on it. But I have not seen the basis upon which Mr Tanner or indeed anybody else in the authority might wish to advise me. As to timing of rollout, I wish to see that advice before I answer these questions.

**Senator CONROY**—This is a policy question, not an advice from the department question.

**Senator Coonan**—It is. It is a practical issue that underpins a policy objective. Get it in the right order, please.

**Senator CONROY**—I am trying to find out what the government's policy is. Is it government policy that everybody should receive the service at the same time?

**Senator Coonan**—It is the government's policy that everybody should receive the service. It is desirable that they receive it, given the technical and other limitations of rolling out across a country as vast and difficult as Australia is, as contemporaneously as possible. I wish to see the advice and then I will be in a position to give more precise answers.

**Senator CONROY**—You said it is desirable?

**Senator Coonan**—It is certainly not undesirable, is it?

**Senator CONROY**—I am just quoting back your own words.

**Senator Coonan**—I am not being cute here. I am just trying to be realistic about the fact that I have not yet got this advice. It is very technical and I want to receive it and consider it so that such qualifications as may be necessary can be put in context.

**Senator CONROY**—I think you have got it around the wrong way. You set the policy. If you say to ACMA, ‘Everyone is to get it at the same time,’ then ACMA will put up a proposal—

**Senator Coonan**—Just try to understand that, with technical matters involving technical specifications and issues to do with spectrum and very complex matters of rollout, I am not an engineering or a spectrum expert and I rely on advice. Whilst you have policy objectives, obviously as these matters get implemented there may be some very legitimate reason why it cannot all be on one day. I want to see the advice, and then I will be in a position to answer these questions more precisely.

**Senator CONROY**—Is it the policy objective for all the services to be rolled out at the same time?

**Senator Coonan**—It is desirable, but I think it is highly unrealistic to expect that, with technical matters, it would all happen on 1 September 2008 or whatever date might be set.

**Senator CONROY**—Thank you for that.

**Senator Coonan**—You certainly try.

**Senator CONROY**—That is a reasonable answer. Mr Tanner, what are the technical reasons why it may not be possible?

**Mr Tanner**—I guess the principal technical reason is that the model for licence A assumes that the funding for the rollout will come from the successful bidder. One of the factual constraints on getting new services is the ability of the market to sustain a particular scale of rollout and coverage. That is certainly an issue on which we are hoping more light will be shed by submissions.

**Senator CONROY**—How is that a technical issue? I understand that is a funding question, but how is that a technical issue?

**Mr Tanner**—I am just pointing to an issue. I do not know whether—

**Senator CONROY**—The minister indicated there were potentially technical issues and that she was not an engineer.

**Mr Tanner**—There is certainly a range of issues both around the acquisition of equipment and the installation of transmitters and also the negotiation of access to towers and other infrastructure to get the service out that have a pretty major effect on the actual capacity of people to roll out. I guess there is that family of issues as well that has to be taken account of.

**Senator CONROY**—But they are not electronic or IT, they are just about assets in terms of dollars and how much people are prepared to pay?

**Mr Tanner**—No, they are a combination of technical, town planning and market negotiation issues. But I think ‘technical’ is not an unfair description.

**Senator CONROY**—What are the technical ones? That is what I am asking: what are the technical ones?

**Mr Tanner**—I think I have given you what I regard as some good examples of practical constraints on rollout.

**Senator CONROY**—I am not talking about the market ones; I accept those. The minister has indicated—and I am taking her in good faith—that there are some technical issues that may actually preclude you—

**Senator Coonan**—Technical arrangements for the channels was what I was referring to.

**Senator CONROY**—I am just asking what those technical issues could be.

**Mr Tanner**—I think I have given you a flavour of the sorts of issues that I would anticipate. We will be looking at the submissions to see what others are raised. I do not have a view on whether they are technical or not.

**Senator CONROY**—I am afraid you have not given me the favour of any technical issues at all, Mr Tanner. If there are not any, just say there are not any; that it is a commercial market issue.

**Mr Tanner**—I do not agree with you. I think I have identified some issues that I describe as technical issues. Frankly, when I find an engineer gets involved, I call that a technical issue. I think I have described some issues that would be largely driven by engineers and where consideration of the engineering constraints is going to be a factor.

**Senator CONROY**—Access to towers is an engineering issue, not a commercial issue?

**Mr Tanner**—Access and installation and the setting up of the feeders to get in there involve a range of issues, including very important technical issues.

**Senator CONROY**—Which technical issues?

**Mr Tanner**—I think I have just named them.

**Senator CONROY**—No, you have just said ‘installation of feeders’. I am asking you: what is the technical issue?

**Mr Tanner**—That is a technical action. What would you describe it as?

**Senator CONROY**—I do not know. I am trying to get an understanding from you. You are the expert, I am not.

**Mr Tanner**—I am sorry, I really have nothing else to add on that subject. I do not know whether it is a technical issue or not by your definition of the word ‘technical’.

**Senator CONROY**—I have not defined ‘technical’. I have just said there is a difference between commercial, which is negotiations over access to the tower, and now you have suggested that there are—

**Mr Tanner**—I do not think I can help you any more. I am happy to talk about my general knowledge of what I believe may be the constraints on timing.

**Senator CONROY**—You are writing the paper, are you not?

**Mr Tanner**—I will not be personally writing it, but I will be all over it, I can assure you.

**Mr Chapman**—Mr Tanner is the general manager with responsibility for this particular initiative. He does not profess to have engineering knowledge. With respect, he is doing his best to give you a feel for the colour of the technical, as he terms, aspects. He has staff working to him who are much deeper schooled in the manifestations of what he is saying. I think in fairness to Mr Tanner the matter should lie there.



**Senator CONROY**—I may come back to question you, Mr Tanner, on that specific issue further. In January there were press reports of a document obtained under FOI where ACMA warned the government that using channel B to broadcast mobile TV services could cause interference with free-to-air broadcasts. I would call that a technical issue.

**Mr Tanner**—Yes.

**Senator CONROY**—You have not managed to mention it so far, but I would call that a technical issue. Perhaps I can help you there for once. ACMA stated—

**Senator RONALDSON**—Chair, I think that is going a bit too far. Let's have a sensible debate.

**CHAIR**—That sort of repartee, Senator Conroy, is really a very polite form of abuse, I think.

**Senator CONROY**—Thank you for your opinion. I will keep going with my questions, if that is okay?

**CHAIR**—If you would, we would be grateful.

**Senator CONROY**—In ACMA's preliminary analysis of the issue—this is ACMA's statement—using a case study based on Sydney, even the best case result showed that on average 1,000 people would be affected by interference from each additional mobile TV repeater; that it is highly unlikely that this level of interference will be tolerable in Australia. Firstly, could I ask: who wrote that?

**Mr Tanner**—It would have been the work of our planning and engineering team.

**Senator CONROY**—Who oversees that section?

**Mr Tanner**—One of my executive managers.

**Senator CONROY**—Do they report up the chain to you?

**Mr Tanner**—Yes, they do.

**Senator CONROY**—So you have seen this?

**Mr Tanner**—Yes.

**Senator CONROY**—Did it go out under your name?

**Mr Tanner**—No, it was ACMA advice.

**Senator CONROY**—So it went out under Mr Chapman's name?

**Mr Chapman**—Sorry, I did not hear what Mr Tanner said.

**Mr Tanner**—The advice that was the subject of the FOI release that gave rise to those media stories in January: I am saying that from my recollection it was ACMA advice that went out under ACMA's imprimatur rather than advice from me.

**Senator CONROY**—So that was—

**Mr Chapman**—It is an ACMA piece of advice.

**Senator CONROY**—It went out with your name on it or it went out with Mr Tanner's name on it or it went out with the name of the officer who described it? That is all I am trying to ascertain.

**Mr Chapman**—I cannot be specific as to whose name was on it. In any event, I am acknowledging that it is an ACMA piece of advice.

**Senator CONROY**—I am just trying to ascertain who wrote it.

**Mr Chapman**—I will need to take that on notice.

**Senator CONROY**—You are the boss.

**Mr Tanner**—It was written within my team. The particular analysis would have been written by engineers from my planning branch.

**Senator CONROY**—So you know all about it?

**Mr Tanner**—Yes. Not necessarily the same thing but, yes, I am well briefed on it as far as a non-engineer a few months later can be.

**Senator CONROY**—And I am a non-engineer, so the good news is that I will not be able to ask you any engineering type questions. But even I, with my lack of engineering expertise, can work out that it is a technical issue. Can these problems be fixed?

**Mr Tanner**—I think it is important to say at the outset that the reporting of that got the wrong end of the stick. The issue was not that the operation of those repeaters was going to cause this interference. The issue for us is that we would not permit those repeaters to operate if they were to cause such interference. The issue is not, 'Mobile television is going to cause all of this damage with interference.' The issue as we would put it to the market is: because the use of repeaters that are not co-sited with television translators would cause interference, we in general would not allow those repeaters. The issue for us is that where a channel is so affected there may be restrictions on the mobile coverage compared with a channel that is not so affected. That issue is extensively canvassed in a later paper than what was FOied, and that is the December paper on approaches to A and B allocation. You will see that that has a detailed discussion of the issue of restricted coverage of mobile television on some of the licence B channels. It has a detailed discussion of what we propose to do about it following the allocation, the things we can fix and the things we cannot.

The issue for us is not that we would ever countenance a situation where there was widespread interference to digital. The issue we were trying to canvass and raise—and we do in fact canvass and raise in that very transparent way in a later paper—is that these kinds of problems would restrict the use of what I am calling non-co-sited repeater stations. What I mean by that is that with mobile television there may be a wish by some mobile operators, we anticipate, to operate not just a main transmitter but a number perhaps more transmitters than you would use for fixed television. In areas affected by this issue of potential restricted coverage it would not be permitted under the rules that we are going to issue the licences under because it would cause that interference. What you have read in the excerpts, and which the *Australian* picked up, was an engineer's explanation of what the problems would be to explain why we have to restrict that. It certainly was not a warning that we are about to start wiping out thousands of people's reception. What it has become, as you will see from the

December draft, is a warning that there may be restrictions on the mobile coverage on some of the channels.

**Senator CONROY**—So the wrong end of the stick was that there would be a problem for people's reception of free-to-air broadcasts?

**Mr Tanner**—Yes. I think—

**Senator CONROY**—And the correct end of the stick is that there will be black spots potentially?

**Mr Tanner**—The correct end of the stick is that it would be the mobile operator's problem, not the free-to-air broadcasters' and the viewers' problem. That is the wrong end of the stick.

**Senator CONROY**—The right end of the stick is that there are going to be black spots? If I can just use that phrase in a non-technical sense, there are going to be some black spots for the mobile TV users?

**Mr Tanner**—Let's put it this way: many or most of the channels in licence B do not suffer from these problems because they have buffer channels on either side. They would have a much greater freedom to put in multiple extra repeaters to improve coverage than channels that would be affected if you put those in. We have referred to that in our December draft as potential restricted coverage of mobile television on some channels. As I say, there is a detailed discussion, and I would refer people to that, because it is our published presentation of this same technical issue, and it is a very complete one.

**Senator CONROY**—I am really lucky, I get to have the author in front of me so I get to ask him questions and not be told just to go and read it again.

**Mr Tanner**—I hope I am not sounding like I am saying that. I am happy to talk so far as I can.

**Senator CONROY**—Could you just help me with understanding which of the channels that will be on the mobile would be impacted. You have said that some channels would be and some channels would not be. What is the sort of channel that would potentially be affected?

**Mr Tanner**—There is a table of all markets, or all areas, across Australia that would be incorporated into licence B. It identifies quite a large number of channels. They can be usefully, I think, sorted into two groups. In many cases, our engineers' preliminary work indicates that there may be some relatively simple technical replanning that would permit the less restricted operation of mobile services on the channels. We have identified those channels where we believe that is possible, and I think it is the bulk of channels, looking across the country, that are so affected. We have also put out for consultation in December a proposed approach for dealing with that, which is basically to indicate to the market a disposition to replan on request, if that is the requirement of the successful bidder, any or all of those channels. That would require a transparent process, because other spectrum users and the public would be affected potentially.

We also indicate, though, that there are a number of channels where there is not on the basis of our preliminary scan an easy technical fix, so we are saying in those cases any restrictions on mobile coverage are a quality of the property which the market will just have to take into account. Obviously the largest or the most important example of channels that are

so confined is the Sydney main transmitter. That is to give you an example. As I said, all of this is there for anyone who wants to read it and, if there is a different technical view in the market—and there are certainly some players out there that have enormous technical resources of their own—I would expect that would be dealt with in the submissions which we are now in the process of considering and which we will release to the extent that they are not commercial-in-confidence. We will be transparent about that and we have been transparent. Unfortunately the information in that FOI release perhaps distracted attention from the fact that this issue has been publicly canvassed by us in a much more recent document and a set of proposals and solutions canvassed for comment. That is the only reason that I am drawing people to it, not to persuade you to read it.

**Senator CONROY**—To be fair, your updated December document just basically says ‘buyer beware’ and identifies the problem. You are saying that if you have technical know-how then you work it out.

**Mr Tanner**—In the case of the channels where there is not an easy fix, buyer beware for mobile would be our message. It has been all along. You will find that this issue was canvassed, quite frankly foreshadowed, in the call for submissions and discussion paper which gave rise to the FOI document. If you go back to March 2006 you will find an extensive discussion. I can give you pages on that as well of the potential problems of restricted coverage, but you will not find the work on solutions that you will find in the December draft. It is an issue that ACMA has been transparent about, but as it is a highly technical issue it is one that perhaps the press have had some difficulty following or perhaps we have been less successful than we could have been in really communicating that issue, except to the technical audience that I have referred to. There is a technical audience that well understands these issues in the market. I am looking with great interest to see what we learn from our submissions about this technical issue and our proposed way forward.

**Senator CONROY**—You have done an excellent job of explaining a quite complex technical issue.

**Mr Tanner**—Thanks, Senator.

**Senator CONROY**—In its submission to the minister’s *Meeting the digital challenge* paper, the ABC argued:

An allocated spectrum should first be used to address existing problems affecting digital television in Australia, before consideration is given to new services.

It also said:

... we need to eliminate existing shortfalls in coverage of digital terrestrial television.

It also said:

... in areas such as the central coast of New South Wales, the Gold Coast and the Sunshine Coast in Queensland the use of single frequency networks has caused digital television audiences in those areas to experience interference problems as a result.

What I am asking you is: how do you propose to deal with that, given the government is not allocating any spectrum to solving those interference problems?

**Mr Tanner**—The ABC has put a position that, rather than making a sixth and seventh digital channel available, all vacant spectrum should be utilised as needs be to ensure coverage of the existing five. That is a submission that we have not accepted, but we do acknowledge that there are issues in some of those markets with the achievement in same coverage. To some extent I make the point that those issues may have been exacerbated over time by the changes that have occurred in the amount of data that broadcasters are choosing to put over their transmitters. As you increase the amount of data that goes over a digital channel, you may have to trade off, to some extent, against the robustness of the coverage.

We are going to have to move to a position where it is possible for everybody who now has analog to receive digital so those issues will have to be resolved. All I can say is that we will be working closely with the national broadcasters and any other broadcasters that are experiencing difficulties with SFN performance to make sure that they are able to achieve same coverage and get things to everywhere as one of the preconditions that I would expect of analog switch-off. All that has happened is that, if we proceed to allocate licence A and licence B, the option of simply throwing those channels back into the pot and using them for additional frequencies for digital translators will cease to be an option for us; that is all. It just removes an option from the table for addressing those technical problems. In terms of the sorts of things that we might look at, I would have to defer to technical advice that I am not able to get here on the spot. I would have to begin taking that question on notice.

**Senator WORTLEY**—This question is to the minister and to the department. I wonder whether you are aware that thousands of Australian children, some as young as six, are in possession of popular hand-held game systems with embedded software, activated on a wireless device, which in effect serves as a type of mobile chat room, although with a limited range of between 30 to 35 metres and that, in many instances, parents are not aware that the program exists on the particular hand-held game and you do not have to purchase an additional program. It exists already on it. It operates in real time, enabling children to send typed and picture messages, that, if opened, allows up to 16 users in one of four chat rooms to send and receive written messages and pictures.

**Ms O'Loughlin**—I am not personally aware of the product that you are talking about. Regarding the classification elements around games, that is a matter for the Classification Board. If there is a product that is enabling chat rooms, I would like to get a little more detail of what the circumstance of that is. ACMA has in place a determination around mobile content and the industry itself also has a mobile premium services industry scheme in place, which may go to some of the issues that you have raised. I would probably need further detail on the product.

**Senator WORTLEY**—It would be simpler to take on board if I gave you an explanation of an incident that occurred on Saturday night in Adelaide at a public venue where children were playing these games when they were chatting and someone else came in on their chat room. They are the typical hand-held computer games that kids today play. The concern that was raised by the constituent was that although—and I have looked into this myself—the wireless range is only between 30 and 35 metres, the other person who comes into the chat room can view the children where they are, and there are a number of chat rooms available on these devices. You can apparently have up to 16 on them. It is a safety issue and I was

wondering whether or not the department has done anything to ensure the protection of children using these games, particularly in public places. There would be no problem with them using them in the privacy of their own homes or where they are under the supervision of adults, but there are potential dangers when they are using them in public places where there are a lot of people around.

**Ms Wright**—As Ms O’Loughlin said, while we are not aware of that specific incident we have contemplated the issue of chat rooms and child safety. Under the service provider determination Ms O’Loughlin referred to, one of the obligations there is for providers of chat rooms to do an assessment of risks and to match the risks with appropriate safeguards. If this fails, that would be a matter that ACMA could investigate. But the types of support we have given industry and chat room providers in those circumstances is that, if that material were to be classified and it was to be classified MA or above, it should be behind a restricted access system. For those chat rooms there should not be admittance for those under 18. Where there could be greyer areas and the provider had not contemplated material would be so strong, they need to have in place, if there is that type of risk, one of the strategies to match that risk, for example, electronic filtering or human monitoring and intervention. Our service provider determination does provide a mechanism to deal with that situation.

**Senator WORTLEY**—Can I just give some further explanation of that. We are talking about a hand-held game that children use that has no connection. There are no cords; there is no connection with it. It is a wireless device that enables someone to come in on a text style chat room if they are within the vicinity of 30 to 35 metres and have that hand-held game themselves. The concern that was raised by the constituent was that messages sent could lure the child away to another area where there was not parental supervision or if the child was, in fact, in a public place—a sporting venue or something—where someone could see the child on the game and easily send a message to meet them wherever and children being children might—

**Senator Coonan**—Perhaps I can give you some information that will get somewhere along the line of these ever emerging devices. I am not quite sure whether I am addressing the particular device you are talking about. The general comment I would make is that, as you would appreciate, existing content regulation in Australia has been traditionally specific to the platform over which it is conveyed, for example, television or the internet or phones. The reason why we have had to have a rethink about this is of course because of convergence with new capabilities of mobile devices to receive and display pictures and audiovisual content. Some of the platforms and the regulatory distinctions are being broken down by this convergence.

The challenge for government, and for all of us, I suppose more broadly as a community, is how we get a framework that is sensible with how you get content today and how it is likely to be accessed in the future, given that in two weeks time there could be something new. We will be putting in place new safeguards to protect consumers from this sort of material on emerging content services. At the moment what it is addressed to is 3G mobiles and subscription based internet portals where something is not stored but goes into the ether. These new regulations will deal with this kind of content delivered to convergent devices. There is a bill that is currently being developed and is with industry for discussion. It is called

the Communications Legislation Amendment (Content Services) Bill. It will be introduced very shortly and will provide for content safeguards comparable to those in place for traditional media platforms. It will extend the current safeguards that apply to content delivered over the net or television to be applied to content delivered over convergent devices. It will also include the prohibition of content rated X18-plus and above, as well as, with subscription services, the requirements for age restrictions on access to content suited only to adults. The usual sanctions will attach to it for non-compliance, including criminal penalties. That is very close.

As you can appreciate, it has been quite a difficult exercise to work with industry to get all of that properly working and bedded down, but we are almost ready to go on it. I only hope that once introduced there is not something new that no-one could possibly have even thought of now. I hope it will deal with the device you have spoken about.

**Senator WORTLEY**—I am not sure that it does. The games I am talking about are the typical games that kids are holding in their hands.

**Senator Coonan**—Well, if it is a game, that is an Attorney-General matter.

**Senator CONROY**—It was not the content of the message that came in. The message basically came in and said, ‘Come and meet me at X place.’ So it is not the content of the game or that an offensive image or message was sent. A predator basically was able to see these kids playing on their Nintendo or whatever it was and say, ‘Hey, come and meet me.’ This is at a crowded public event.

**Ms O’Loughlin**—The scenario is of considerable concern.

**Senator CONROY**—Yes.

**Ms O’Loughlin**—I think there are some elements under our safety mission notice that we have already released. If it was possible for somebody to contact us to provide us with the information then we would certainly look at it very seriously.

**Senator WORTLEY**—I will do that this afternoon.

**Mr Cheah**—There are some normal criminal laws that exist as well. If people are engaging in predatory behaviour, they could also talk to the police directly and complain. In some sense what you are describing is just like somebody ringing up and making a phone call. There is a limit to what the telecommunications carriers can do to stop that.

**Senator WORTLEY**—I am fully aware of that. The concern raised is that it is embedded in the game. Many parents—and since then I have spoken to a number of parents—are not aware that their children are actually able to use this game to chat to other people only 30 to 35 metres away. They are actually able to send them text messages as well.

**Senator Coonan**—You can do that on your phone.

**Senator WORTLEY**—Well, you could, except we are talking about children as young as six.

**Senator Coonan**—You can still do it on your phone. That is the thing. I am always willing to look at anything that may not have been covered but—

**Senator WORTLEY**—Senator, you can do it on your phone. You are right.

**Senator Coonan**—Yes.

**Senator WORTLEY**—But this is without a number. All they have to do is see someone playing on it within 30 to 35 metres away, and they can turn theirs on and then send a message. That was the concern.

**Senator CONROY**—It is because it is a wireless application. I just wanted to talk about ACMA's role in monitoring the 'use it or lose it' rules as well as issues arising from the AFL deal. I would like to turn to the issue of the antisiphoning list. ACMA has a direction to supply the minister with regular reports on the operation of the antisiphoning list. How many of those reports have been provided?

**Mr Chapman**—Four.

**Senator CONROY**—When were they given to the minister?

**Mr Chapman**—They were provided progressively over the course of 2006. I think we have referenced them before. Essentially, the first one dealt with the balance of the *Summer of Sport*, which was January and February 2006. That was the first report. I cannot remember the exact order, but the second and third reports dealt with the Commonwealth Games and the Winter Olympics. In fact, I think it was the Commonwealth Games and the Winter Olympics, which were Nine and Seven network specific. That represented the second and third report. The fourth report dealt with what is colloquially called 'The First Couple of Months of the Winter of Sport'. They are the four reports, and they are the four reports that were provided to the minister progressively. They were provided progressively in the second half of calendar 2006.

**Senator CONROY**—Have any of these reports been released to the public yet?

**Mr Chapman**—The first three of those four have been released to the public.

**Senator CONROY**—The fourth one?

**Mr Chapman**—The fourth report is with the minister and the minister has indicated that it will be released shortly.

**Senator CONROY**—Minister, when you announced the 'use it or lose it' rules last December, you stated:

ACMA has provided me with quarterly reports. Based on these reports, the government will consider whether there is a case for delisting or partial delisting of any events early next year.

Has the government made any decision on whether any events should be delisted at this stage?

**Senator Coonan**—No.

**Senator CONROY**—Is the matter still under consideration?

**Senator Coonan**—Yes.

**Senator CONROY**—Last week when the AFL deal was announced you stated that the antisiphoning list had worked as intended. What is your understanding of the intention of the antisiphoning list?



**Senator Coonan**—As we have said on many occasions in these discussions that we have about this subject, the objective of the list is to ensure, so far as is possible, that the free-to-air have first right to bid for events that are on the list. That is what it is designed to do and the whole idea behind the ‘use it or lose it’ scheme is to ensure that if events are required and otherwise not on-sold to pay or otherwise made available, sometimes to the national broadcasters, there is no basis to continue it on the list. That is basically how the scheme is currently working.

**Senator CONROY**—I asked you about the intent.

**Senator Coonan**—The intent is to give the free-to-air the right to bid for events on the list before they are offered to pay.

**Senator CONROY**—I disagree marginally with you. I think that is the mechanism to achieve the intent. The intent is actually about allowing consumers to be able to view these sporting iconic events without paying for them, and the best method that has been designed so far—and this was designed by a Labor government in the past—

**Senator Coonan**—Last time I looked you did not have any better idea.

**Senator CONROY**—No, I was coming to that issue of whether the intent is now being met, as opposed to the mechanism that Labor previously designed and you supported.

**Senator Coonan**—I would be very pleased to hear your ideas as to how you would suggest that these valuable rights must be acquired exclusively by free-to-air and every single event shown, consistent with their scheduling and other requirements. It is unrealistic to think that every single event, for instance on AFL, could be shown by those who acquired the rights. What I am pleased about with that arrangement is that people can see many of these events on free-to-air. To me, that is what the intent of the scheme is about. If you are going to require free-to-air to show all of them then that is a counsel of perfection and impacts on the commercial realities of the value of these rights and how they are acquired. I am anxious to ensure that people can see a large number of them on free-to-air. That is exactly what the scheme is designed to do.

**Senator CONROY**—I am happy to pause at that point.

**CHAIR**—We will have a scheduled break now and we will resume at about four o’clock.

#### **Proceedings suspended from 3.47 pm to 4.06 pm**

**CHAIR**—We will resume. We were talking about antisiphoning in our last subject.

**Senator RONALDSON**—I would like to clarify a matter from this morning. We got confused about the word ‘Goldfields’. One was Strengthening Goldfields, which is the Maryborough operation. That is 99.1. The other one is Goldfields FM, which is the Bendigo one.

**Mr Tanner**—3CCC?

**Senator RONALDSON**—Yes. That is where we got confused.

**Mr Tanner**—That is exactly right.

**Senator CONROY**—We were talking about the antisiphoning list and you were arguing that you believed it was working as intended. Is that right?

**Senator Coonan**—We are looking specifically at the AFL deal. Something that I would point to is that more people in more locations across the country than ever before will be able to watch AFL matches, either live or near live, than ever before and that shows that it is working the way that it was intended, given that the scheme was established to give first access to rights. It does not force anyone to buy the rights or to show them live if they do buy them. We all know that programming decisions have to be in the interests of all viewers, in the interest of business and in the interest of the rights holder, so I would say that whilst I can understand the disappointment of some and I have made that well and truly clear, I do not think that it shows that the scheme is not working in the way in which it was intended.

**Senator CONROY**—Given that last year five AFL matches were broadcast free to air and this year only four will be broadcast, can you understand why some people think the antisiphoning list is not working?

**Senator Coonan**—What I can understand is that people would be disappointed. The intricacies of the antisiphoning list might not be uppermost in people's mind, but you know and I know that, given the vagaries of how the scheme works, it is working in the way in which it was intended.

**Senator CONROY**—Would you agree that there is a difference between potential viewers and actual viewers?

**Senator Coonan**—For the purposes of the list or in what respect?

**Senator CONROY**—Just in a general sense. To say that there is more coverage means that there are more potential viewers. It does not mean that there are actually more viewers.

**Senator Coonan**—I do not know what to say to that, other than 'possibly'.

**Senator CONROY**—Under the deal, Victorians who support Hawthorn Football Club will only get to see their club play on free-to-air television eight times this year. Do you think that Hawthorn fans who live in Melbourne are winners out of this deal?

**Senator Coonan**—As opposed to what—not seeing any games?

**Senator CONROY**—No-one is suggesting that previously they were not seeing any but they were seeing more than eight.

**Senator Coonan**—That is the logical conclusion if you attack this scheme, that you may not see any free-to-air games. I have made it very clear that, without picking out any particular areas or any particular club, I can understand the disappointment of anyone who is seeing less than they otherwise thought they should be seeing on free to air, but what I am saying is that they are certainly going to be seeing eight. If you did not have this scheme they probably would not see any because it would all go to pay, and that is not what is intended by this scheme.

**Senator CONROY**—Traditional Hawthorn footy fans who live in Melbourne have been given some advice by Mr Demetriou, which is to go and buy Foxtel. Do you agree with Mr Demetriou's solution?

**Senator Coonan**—My former answer applies.

**Senator CONROY**—What does that mean?

**Senator Coonan**—My former answer is that the scheme is working the way it is intended. If people are seeing free-to-air games on television that have been bought by the free to airs and shown by the free to airs, that means that they are able to see a number of games. If this scheme was not in place, no doubt they would not be able to see any because they would go to pay.

**Senator CONROY**—You are saying to Victorian Hawthorn supporters that they are only going to get to see eight free-to-air games of their club.

**Senator Coonan**—Out of how many?

**Senator CONROY**—22.

**Senator Coonan**—How many did they see under the current round?

**Senator CONROY**—There were five matches—

**Senator Coonan**—It has gone from five to four.

**Senator CONROY**—No. There are 22 fewer matches a year.

**Senator Coonan**—That is right; I understand that.

**Senator CONROY**—Hawthorn matches are being shifted predominantly into the pay area, as opposed to previously.

**Senator Coonan**—Yes.

**Senator CONROY**—There are a lot fewer matches for Hawthorn being shown on free to air; they are winners.

**Senator Coonan**—I understand that, but there are still some for free to air, aren't there?

**Senator CONROY**—Yes, eight. They are getting eight.

**Senator Coonan**—There are still some free to air and they are getting free to air courtesy of the antisiphoning scheme, which to me suggests that, although not perfect and I understand people's disappointment, it is working the way it is intended. What else would you suggest?

**Senator CONROY**—Your advice to Hawthorn fans who live in Melbourne would be to accept Mr Demetriou's advice, to go and buy a Foxtel subscription?

**Senator Coonan**—That is not a question.

**Senator CONROY**—That is a question.

**Senator Coonan**—No, it is not.

**Senator RONALDSON**—It is good for a press release on the back page of the *Herald Sun* but, quite frankly, what relevance does it bear?

**Senator CONROY**—Can you stop interjecting. It is a question and the minister can choose to answer any way she likes.

**CHAIR**—Let's not get into combative mode. Let's just present questions and get answers and just try to make the questions reasonable and rational.

**Senator CONROY**—It was a reasonable and rational question. The minister can choose to answer it if she wants. I am not complaining about her answer, just about Senator Ronaldson's interjection. Minister, you were interrupted by Senator Ronaldson.

**Senator Coonan**—At the end of the day I think this is a very dry gully you are going up and down. These are commercial decisions that are taken by rights owners, free to air and pay, and the government is not going to be micromanaging.

**Senator CONROY**—Carlton supporters will only get to see nine games.

**Senator Coonan**—Are we going to go through the lot?

**Senator CONROY**—Yes.

**Senator Coonan**—Every single one of them?

**Senator CONROY**—Every single one of them.

**Senator Coonan**—I am going to make the same response to every one of them and I am going to say, 'Same response.'

**Senator CONROY**—You can answer as arrogantly as Mr Demetriou if you want. That is up to you.

**Senator Coonan**—I am not arrogant. I am simply explaining the government's antisiphoning scheme.

**CHAIR**—With respect, everybody knows that there is going to be—

**Senator CONROY**—Everybody does not; that is the point.

**CHAIR**—I read it in the papers and I am sure that everybody has. If you want to go on with this you can, but it is well-known information.

**Senator CONROY**—I want to ask my questions. You said that I can ask my questions and I am. Carlton fans will only get nine games. I can understand Carlton fans probably put in a request not to see their team on free to air this year, but there may have been some who actually wanted to, like Senator Kemp, who is not here with us now. But do you think that Carlton fans who are only getting to see their team nine times on free to air are getting the antisiphoning regime as it was intended?

**Senator Coonan**—I make the same response.

**Senator CONROY**—Kangaroos fans, just getting to watch 10 games. Should they just follow Mr Demetriou's advice and get a Foxtel subscription? I am being polite and waiting for your answer.

**Senator Coonan**—I am being polite and just letting you get on with your series of questions and I will make the same response at the end. Just tell me when you get to the end. I will count the clubs. I have a list.

**Senator CONROY**—Geelong supporters will get just 11 games. Should they follow Mr Demetriou's advice and just get a Foxtel subscription? I am just waiting for your answer. I am being polite.

**Senator Coonan**—I am waiting for you to finish your list and then I will make the same generic response.

**Senator CONROY**—Richmond fans—12 games only. Should they just follow Mr Demetriou's advice and get a Foxtel subscription? Do you think that the supporters of these clubs will think that the antisiphoning list has worked in their favour? That is a different question.

**Senator Coonan**—Yes. It is not a proper question to ask what I think. I am not going to respond until you rephrase your questions.

**Senator CONROY**—What is the government's opinion? You are the spokesperson on behalf of the government.

**Senator Coonan**—I am responsible for government policy, not opinions and not what I think.

**Senator CONROY**—Can you explain the government's position?

**Senator Coonan**—The government's position is that it has in place an antisiphoning scheme and the antisiphoning scheme operates in such a way that it gives free-to-air broadcasters first access to the rights that are listed. It does not force them to buy the rights or show them live if they do buy them. The government is not going to be micromanaging every commercial decision of Australian sporting bodies; that is the antisiphoning position. The scheme is working the way in which it is intended. Last time I looked you had no other idea.

**Senator CONROY**—South Australians and Western Australians have probably been hit the hardest. I think you have acknowledged that and the Prime Minister has acknowledged that. They now have to wait for up to three to four hours to see Dockers, Eagles, Crows and Power games. Do you think that they have been fairly treated by the outcome of the deal and the antisiphoning lists?

**Senator Coonan**—This is a commercial matter; it is a commercial decision of the Australian sporting bodies that are involved.

**Senator CONROY**—The government washes its hands?

**Senator Coonan**—We administer the antisiphoning scheme. Under the antisiphoning scheme, the list gives free-to-air broadcasters first access to the rights that are listed. It does not force them to buy the rights or to show them live if they do buy them. The government is not going to micromanage the decisions of every Australian commercial body.

**Senator RONALDSON**—I assume your response is the same when it is brought to your attention that Collingwood gets 19 games. I presume your answer is the same, is it?

**Senator Coonan**—Absolutely.

**Senator CONROY**—That goes to the nub of one of the problems about the outcome, because the rich and powerful clubs like Collingwood, of which, if anyone is not quite sure, I am a supporter, are able to get maximum exposure on free-to-air television whereas—

**Senator RONALDSON**—But Carlton is not.

**Senator CONROY**—Carlton is where it deserves to be, but it is traditionally a rich and powerful club. Teams like the Kangaroos and Hawthorn, which have got a smaller supporter base in general, are going to really struggle to hold on to their sponsors.

**Senator Coonan**—I am not sure whether this is an editorial or something. I do not know whether these are questions or whether you are trying to editorialise about this. I am not quite sure what you are suggesting.

**Senator CONROY**—What I am suggesting to you is that the AFL deal has two effects. The first is that a whole range of people who used to be able to watch their footy team on free to air will have to buy a Foxtel subscription. Secondly, that it is going to have a secondary effect, which is that the teams with the lesser supporter base who are not getting coverage on free to air will now struggle to maintain the existing level of support from their sponsors because they are not being shown on free to air. It is actually creating a system whereby it will be punishing those teams which have a smaller supporter base because they cannot drive ratings.

**Senator Coonan**—I am not quite sure what you are suggesting should happen. What is it that you are suggesting?

**Senator CONROY**—I am just seeing if you are aware of the consequences of the deal. There are two different effects.

**Senator Coonan**—There are commercial matters that happen in this country that often have uneven consequences, but they are commercial matters. Are you suggesting that somehow or other the government should be micromanaging these deals, because I really do not know if that is what you are coming at or whether you are just going to talk about a long list of uneven consequences of a commercial arrangement, because you are not getting any disagreement from me. I have every sympathy for those people who are frustrated by long waits or otherwise who may not be able to access games that they previously could see—every sympathy—so you do not have any argument from me about that. What I am saying is that the antisiphoning scheme, the way it was conceived, as I am sure you would agree, the way it operates, imperfect though it is, is working the way it was intended because the scheme does not micromanage decisions. It does not prohibit the way in which these games can be on-sold. In fact, it specifically says that if you are not going to show them you must let them go.

**Senator CONROY**—Do you think it is reasonable that kids who follow the Dockers, Eagles, Crows or Power games will have to stay up until 10 or 11 o'clock at night to see their teams play on free to air because they do not have the subscription?

**Senator Coonan**—I think that is an incredibly unfair question given my previous answer, and it has nothing to do with the policy.

**Senator CONROY**—It is a direct consequence of the application of the policy.

**Senator RONALDSON**—With the greatest respect, I think Senator Conroy has all the material he wants for a press release and, quite frankly, that question belittles this process about what young kids are going to be doing or not doing.

**CHAIR**—It really is not leading to anything productive, Senator Conroy, I do not think. We might go to Senator Macdonald and get him to ask some questions.

**Senator CONROY**—No, I am sorry, you cannot just decide you do not like my questions and you are going to cut me off.

**CHAIR**—I am not saying that.

**Senator CONROY**—That is not a fair use of being chair of this committee, Senator Eggleston; you know that.

**CHAIR**—I am just saying it is a line of questioning that is not productive.

**Senator CONROY**—You might not think it is productive but you do not get to decide that.

**CHAIR**—Can we move to something more productive?

**Senator CONROY**—Just because you do not think my questions are productive does not give you the right to suddenly take the call off me.

**CHAIR**—Senator Conroy, I do not think you are really listening to what I am saying. There is no point in having a confrontation with a minister. If you want to do that, you can.

**Senator CONROY**—I am not having a confrontation.

**CHAIR**—You will get another article in the paper and that will look fine and, as Senator Ronaldson has just suggested, brings the institution into disrepute.

**Senator CONROY**—We have had Senator Ronaldson grandstanding for 20 minutes with Australia Post to get a press release. So, please, that is surely a bit rich!

**CHAIR**—I am sure you have your press release.

**Senator RONALDSON**—You actually owe me an apology because I have not put out a press release, but what I was anxious to see was that small business people in this country were not abused by Australia Post and, unlike you, I actually do not feel the need to put out a press release every time I get an admission at estimates.

**Senator CONROY**—I thought you did not get an admission and you said you were looking forward to putting their non-admission out publicly.

**Senator RONALDSON**—As you and I discussed before Senate estimates, they had actually changed their mind which was, in my view, the win that we wanted, so I do not feel the need to put out a press release.

**CHAIR**—Let's drop that issue and let us just proceed in an orderly way.

**Senator CONROY**—If I can move on. It is not orderly because you will not stop interjecting.

**CHAIR**—I am just giving you an opportunity to proceed. So would you like to do that.

**Senator CONROY**—No. I have not finished with ACMA and I was about to say that my next question is to Mr Chapman.

**CHAIR**—You have been going for a while but if you have questions then I would ask you to ask them and then we will go to Senator Macdonald.

**Senator CONROY**—Mr Chapman, under the 'use it or lose it' guidelines, next January ACMA will have to provide the minister with a monitoring report outlining an assessment of whether events have been used satisfactorily and any recommendations for changes to the antisiphoning list, either partial or full delisting. In the recent AFL deal, the free-to-air

networks have on-sold four matches per round to Foxtel and in some cases the free-to-air networks will show a match three hours after it began. If a match is shown three hours after it began, will that comply with the 'use it or lose it' regulations?

**Mr Chapman**—I have not, nor has the authority or the staff of the ACMA, started to apply my mind with any detail to these 'use it or lose it' guidelines, so I am unable to help you with any specific applications.

**Senator CONROY**—Which part of 'one hour means it is acceptable and passes the test and after one hour does not' do you need help with, Mr Chapman?

**Mr Chapman**—We have not applied our mind to the application of guidelines to any factual situation and, until such time as we do, we are not in a position to give you any useful guidance.

**Senator CONROY**—That is a totally unsatisfactory response. It is a fairly clear guideline. It says one hour is using it, after one hour is not using it, for the definitions of 'use it or lose it'. My question to you is: when the footy starts in a couple of weeks, and matches are being broadcast on free-to-air television three hours after they are live, will that comply with the 'use it or lose it' provision of one hour? It is a mathematical equation. Is one hour greater than three or not?

**Mr Chapman**—I have not given any thought yet to the interpretation that ACMA places on the 'use it or lose it' guidelines, and in particular the one you are referring to, which is clause 4. I assume you are reading out of the fourth guideline.

**Senator CONROY**—I do not have which order they are in.

**Mr Chapman**—The words I heard you put to me were consistent with what I have read in the fourth guideline of the seven guidelines.

**Senator CONROY**—I did not think I had that wrong. I just did not know it was the fourth guideline, as they are not in front of me. My question is, now that you have read it, on the surface does broadcasting to air three hours after live comply with the one hour limit for having been defined as having used it? I am sure Mr Chapman can manage to answer the question without your help, Senator Coonan.

**Senator Coonan**—I had something very relevant to say and that is that it is not numerical in that sense. It is some guidelines.

**Senator CONROY**—I agree with you completely. Mr Chapman, I know it is a complicated issue: one hour; is it greater than three hours? Could you apply your mind to it?

**Mr Chapman**—One hour is less than three hours.

**Senator CONROY**—Good. So is three hours greater than one hour?

**Mr Chapman**—It is, yes.

**Senator CONROY**—In one case, as Senator Wortley has just explained to me, there is a four-hour delay. Is four hours greater than one hour?

**Mr Chapman**—It is, yes.

**Senator IAN MACDONALD**—Are we going to waste time on these sorts—



**Senator CONROY**—If Mr Chapman is going to refuse to answer questions on the basis of complete stupidity, we will proceed like this for a while.

**Senator IAN MACDONALD**—He would not answer any of your questions then, Senator Conroy.

**Senator Coonan**—I know that it is just a throwaway line, but that was very offensive.

**Senator CONROY**—I am sorry. Having the head of ACMA tell me he cannot be bothered thinking about a perfectly straight—

**Senator Coonan**—No, that is not the case.

**Senator CONROY**—I am sorry, that is what Mr Chapman is saying. He is not prepared to attempt to answer my questions.

**Senator Coonan**—Mr Chairman, in defence of Mr Chapman, it was not that he was not prepared to answer the question. He is entitled to consider the question. To then be told that he is completely stupid I think is—

**Senator CONROY**—I did not actually say that.

**CHAIR**—That really is quite unacceptable, Senator Conroy.

**Senator CONROY**—That is a verballing of what I said and I am happy for the *Hansard* to be read back to you, Senator Coonan.

**Senator Coonan**—It was pretty close.

**CHAIR**—You really cannot describe senior officers in that manner, and you know that it is unparliamentary to do so.

**Senator IAN MACDONALD**—I thought he said the officer would think Senator Conroy's questions were stupid, and I think we would all agree with that.

**CHAIR**—Let us just move on.

**Senator CONROY**—The guidelines say that events should be shown live or near live, within one hour being the definition of 'near live'.

**Mr Chapman**—The guideline also goes on conjunctively to say whether a delay in showing the event or events that make up the list and was intended to allow the events to be broadcast at a time of, or in a form that would provide greater audience access. That is why I hesitated earlier, by saying until I had applied my mind to think through the interpretive value that I would place on that clause, because there is more than the first part of it. I am not in a position to give you any better insight at this stage.

**Senator CONROY**—But you would agree these matches are not being shown within one hour, given they are being advertised in the newspaper as being shown three and four hours—

**CHAIR**—I think that has already been established and covered.

**Mr Chapman**—I accept the proposition.

**Senator CONROY**—Minister, you wrote these guidelines, so do you believe that showing these matches three or four hours later is being—

**Senator Coonan**—I am very interested in looking at the totality of ‘an event’. When there is a series of matches, of course, it is a complex matter. My objective will be to try and make the antisiphoning scheme work the way in which was intended. The whole idea behind these guidelines is to get some reasonably objective criteria into deciding when something should not be left on the list if it is simply being abused. Whether or not it is going to be one hour or three hours is something that we have to look in the totality of the multiround event when we come to have a look at it.

**Senator CONROY**—A multiround event? They play eight games each weekend.

**Senator Coonan**—That is right. It is a multiround.

**Senator CONROY**—Yes. By definition every round is a multiround. Could you name any single rounds for me in the AFL?

**Senator Coonan**—No, I cannot.

**Senator CONROY**—Funnily enough.

**Senator Coonan**—That is why I am talking about a multiround event.

**Senator WORTLEY**—The Adelaide Crows in round 1 will be shown four hours after the game.

**Senator Coonan**—Yes, so what is your question?

**Senator WORTLEY**—I am just alerting you to that fact.

**Senator Coonan**—I am aware of that fact. I have followed it pretty closely. I have already made a comment about that publicly.

**Senator CONROY**—Are you satisfied that everything is okay—matches being four hours late?

**Senator Coonan**—You cannot draw that conclusion. That is totally not the case that I think that it is appropriate for there to be a four-hour delay. I understand the reasons for it and I have, in my public comments, made it very plain that I understand the disappointment of those people and the frustration of those who see these games on a very delayed timetable. But that of itself is not the only factor that needs to be taken into account when looking at this vast event that is of enormous importance to Australians, and that is what we will do when we see how this pans out.

**Senator CONROY**—In the past you have talked about the list being arcane and that you wanted to prune it. Is that still your view?

**Senator Coonan**—I certainly think it is a very difficult scheme—and I think even you in your more generous moments would agree that it is an extremely difficult scheme—trying to continue to deliver free-to-air events that Australians have traditionally seen free to air when you have a deal, I think, that was worth something in the order of \$780 million, with all the consequent difficulties of how that would be carved up and shown and paid for. I am very committed to this scheme and I do think that it has a very important place but, if it is abused in any way, which is what the ‘use it or lose it’ scheme is all about, then there is no basis to allow free to airs to continue to do that. I am not making judgements about it. I am simply

saying that there is probably some low-lying fruit on the list with the very large number of events on there that could come off. That is as far as I am prepared to go.

**Senator CONROY**—In June, Senator Coonan announced a \$116 million scheme, Protecting Families Online. I have some questions about ACMA's role, not on the actual policy. Under the Protecting Families Online proposal that the government announced in June, it was stated that ACMA will undertake a further trial of ISP based filtering in Tasmania. Has that trial commenced?

**Mr Chapman**—The trial has not commenced but significant progress has been made in the program towards getting that. Ms O'Loughlin can provide some details as to why I am saying that.

**Ms O'Loughlin**—Under the initiatives we were to commence the trial by June this year, so we are on track to do that. We expect that we will be putting out a request for tender in the next month or so and looking at engaging a firm to run the trial and proceeding through to reporting on the trial later in the year.

**Senator CONROY**—What will the nature of the trial be? Who will be involved? Could you just explain the parameters that you are looking at?

**Ms O'Loughlin**—I do not have the details of the parameters with me, but I can certainly provide that on notice.

**Senator CONROY**—Thank you. If you can take that on notice and any of these others that you do not have the information on hand for, that would be great. How does this trial differ from earlier ISP filtering trials? What will be the differences?

**Ms O'Loughlin**—I think it is probably better to take it on notice. What we have been looking to do is to update from those previous trials based on what has been happening currently so we can see the progress of the ISP filtering over time.

**Senator CONROY**—When is the trial expected to be completed?

**Ms O'Loughlin**—Later this year.

**Senator CONROY**—You said it will be commenced by June?

**Ms O'Loughlin**—Commenced by June.

**Senator CONROY**—Presumably in a tender document you have to tell people whether it is a one-month, two-month or a three-month trial?

**Ms O'Loughlin**—Yes. I do not have the detail with me but I think it would be probably about six to eight months after that.

**Senator CONROY**—Can I say it is eight months since the minister announced the policy. No-one has a filter under the policy yet and we do not have an ISP trial at all. I do not expect you to answer that one.

**Ms Wright**—The last trial was completed early last year. Because we will be looking at updates in relation to filters, it is necessary to let some time go past so that filters can be further developed before we trial them.

**Senator CONROY**—That is why I was asking what the changes were. Will a report be publicly released?

**Ms Wright**—The report in the first instance, as I understand it, is to the minister.

**Senator CONROY**—Will the report be released, Minister?

**Senator Coonan**—I am sorry, I was thinking of something else.

**Senator CONROY**—I was asking if the report on the ISP filtering trials will be released publicly?

**Senator Coonan**—I have to see it first, I suppose, but in principle, of course, we usually do.

**Senator CONROY**—Just to go back for a moment, Mr Chapman and Minister, you mentioned earlier that the antisiphoning reports had been released. We have had a look on the website; we just could not see them. Can you just direct us to where they are available? You said three out of the four had been publicly released. We have had a look on the website. If we are just looking in the wrong place, if you could let us know. Do not do it right now. Just let us know when you have had a quick check. ACMA has also been directed to provide an annual report on international trends in ISP filtering. When is the first report on annual trends due to be released?

**Ms Wright**—At the end of this calendar year.

**Senator CONROY**—What work has been done to date on this matter?

**Ms Wright**—We have been scoping the report and the main areas internationally where there is a focus on this issue. There are constellations in the USA and Canada, in Europe particularly and Scandinavia, and also in some of the Asian areas. We are looking at the work that has been done in those countries and liaising with those countries to receive updates on their situation.

**Senator CONROY**—Under the government's scheme to give away PC based filters, ACMA is required to test and approve the filters for efficiency and minimum filter standards. The government's filter scheme is still not in place. Has ACMA completed its obligations under the scheme?

**Ms O'Loughlin**—That is actually a matter for the department.

**Senator CONROY**—Sorry?

**Ms O'Loughlin**—The department is undertaking that work. That is a matter for the department.

**Senator CONROY**—Not ACMA? Thank you. How are we going, Ms Williams?

**Ms Williams**—This I think was canvassed with Senator Fielding. Sorry, I was also looking at something else and I have forgotten which tender you were talking about. We have several of them, or a couple of them, anyway.

**Senator CONROY**—This is under the government's scheme to give away PC based filters. I thought it was ACMA, but ACMA has said that DCITA—

**Ms O'Loughlin**—No, we are running the tests.

**Senator CONROY**—is required to test and approve filters for efficiency and minimum filter standards. The government's filter scheme is not in place. Has DCITA completed its obligations under the scheme? Have you tested filters yet?

**Dr Pelling**—The process involves a number of tenders and we are in the middle of that tendering process. There are going to be tendering processes for setting up the portal and tendering processes for identifying and testing filters that will be available on the portal.

**Senator CONROY**—How many filters have been tested? I know you said it is a tender.

**Dr Pelling**—We are just about to let the tender for the testing.

**Senator CONROY**—You do not know yet how many people will apply?

**Dr Pelling**—No, we do not.

**Senator CONROY**—What are the minimum filter standards?

**Dr Pelling**—That is still being worked out in the context of the tender.

**Senator CONROY**—What sort of failure rate is acceptable?

**Dr Pelling**—I think rather than having a specific failure rate we will be more looking at meeting a certain set of criteria and relative performance against a set of things like internet addresses. But as I say, we are talking with industry people and working through the issues in terms of what we need to identify in terms of filter criteria. It is a bit difficult to be more specific at this stage.

**Senator CONROY**—I just assumed that with a filter it would be 100 per cent successful.

**Dr Pelling**—I am not aware that any filter available at any level is 100 per cent successful. It depends on how you set them up.

**Senator CONROY**—I am just looking at your media release on 25 June last year. It says that the scheme will be administered by the Department of Communications, Information Technology and the Arts with the support of NetAlert, and will accredit a panel of filters for distribution that have been tested and approved by the Australian Communications and Media Authority, ACMA, for efficiency and minimum filter standards. I am just reading from your press release, which says that you will be doing it.

**Dr Pelling**—No, in fact the actual situation is that the department is doing it.

**Senator CONROY**—The department is?

**Dr Pelling**—The department is letting the tender for the testing process.

**Senator CONROY**—But it says that DCITA will accredit a panel of filters for distribution—

**Dr Pelling**—Yes.

**Senator CONROY**—that have been tested and approved by ACMA?

**Dr Pelling**—That may refer to the fact a minimum requirement that the government has stipulated for filters is that they are able to filter out addresses that are on ACMA's black-list of addresses.

**Senator CONROY**—After you have selected them, you then pass them over to ACMA for them to—

**Dr Pelling**—No, the vendors of the filters will be required to demonstrate that they incorporate the list and that they update the list as ACMA updates it regularly.

**Ms Williams**—That is one of the selection criteria.

**Dr Pelling**—I believe that that is currently the situation for filters that are already approved by—

**Senator CONROY**—Have you hijacked ACMA's work? Have you just snuck in there when they were not looking and stolen their turf? It sounds like it from what I am reading in this press release, Dr Pelling. Everyone else seems happy. Again, on the failure rate issue, could you explain to me how the failure rate works? What happens? Are they not blocked?

**Dr Pelling**—Filters operate at a number of levels, as I understand it. For example, they can have black-lists of addresses. If they incorporate URLs of particular websites, like ACMA's black-list, then they can measure everything that comes through at that level. They can also have a degree of intelligence built into them in the sense that they assess things like key words. I believe some of them even can make fairly rudimentary judgements about things that are in pictures and that sort of stuff. Generally you will find a filter has a range of characteristics depending on the particular product that is available out there. They can generally be set at different levels so that people can, for example, have a parent as the administrator and set different levels for different ages of children and all sorts of different levels of material. At the end of the day, their success or failure will depend on the degree to which they are able to meet the particular filter parameters that the maker has intended for them to do.

**Senator CONROY**—Is it realistic to say that you can have a zero per cent failure rate?

**Dr Pelling**—I think that insofar as, for example, if they have a black-list or a white list of addresses, it may well be that they get quite close to that level. I would not know that until we have tested them.

**Senator CONROY**—I am like you; I am not familiar with filters. The only computer I have is the departmental one, which has the best filtering system going around; it is the parliamentary one. I have no experience directly with filters, only from what I have read. This talks about failure rates, but I just assumed that a filter had a 100 per cent success rate?

**Dr Pelling**—A piece of software will be designed, for example, to filter out a range of addresses. One would expect that, if it is made properly, it would filter out all or virtually all of those addresses. But I imagine if it is a more subjective kind of rating, for example, it is filtering out particular words or combinations of words, the degree of success may well depend on other factors such as the words around them or the particular context of the words. There may be degrees of success in filtering.

**Senator CONROY**—I have a better picture now. Is this filter being set on sites? I presume it is, because you said that ACMA has a list of names. So there would be specific sites?

**Dr Pelling**—Do you mean under the program?

**Senator CONROY**—Yes.

**Dr Pelling**—The intention is that there will be a website where people will be able to go to download the filters.

**Senator CONROY**—I am talking about what the filter actually filters. There will be specifically named sites that ACMA has, according to that discussion we had just now?

**Dr Pelling**—Yes.

**Senator CONROY**—They will all be filtered automatically?

**Dr Pelling**—Yes.

**Senator CONROY**—The software will say it is a requirement?

**Dr Pelling**—A requirement will be that it has the ACMA filter installed.

**Senator CONROY**—Does the filter that you are tendering out include words and phrases?

**Dr Pelling**—I understand some filters operate like that.

**Senator CONROY**—What are you tendering?

**Dr Pelling**—We are working through now the types of criteria that we will use to judge the filters. It will be things like their effectiveness and the support levels that people provide for them. The government is very keen that the experience be as easy as possible for families. They need to be well supported. There is a range of those sorts of things. What we will have to do in the context of developing the tender is come up with a series of basic criteria that we will inform the potential tester of filters that those are the criteria we want to use. These testers will have technical expertise, so they may well be able to come to us in the working out of their contract with them and refining the parameters based on what they know they can actually test. Ultimately we will have to release the tender for the filter providers and we will have to set the criteria in there. But at this stage, as I said earlier, we have not yet worked through the details of those criteria.

**Senator CONROY**—Thank you. That has been really helpful. I have a much better understanding of what you are tendering for and what you are attempting to achieve. What gets filtered out will depend on the words, phrases and the ACMA list, which is fairly black and white. That is the base you start from and then you try to build on as much as you can after that?

**Dr Pelling**—Different products will operate in slightly different ways and do things more or less effectively, and our job will be to try to make some relative judgements about those. Not everybody will want the same level of protection equally.

**Senator CONROY**—Do you have a target yet for the failure rate?

**Dr Pelling**—Not in terms of a numerical target, no.

**Senator CONROY**—But you would think that 100 per cent success is impractical?

**Dr Pelling**—As I said earlier, in terms of a pure list where the filter is checking everything that comes in through the Internet connection against that list and deciding whether or not it matches, one would expect that it would probably have a pretty high success rate. But in other areas where there is a more subjective element built into the software there are considerations in terms of the development and design of the software that will indicate how accurate it is.

**Senator CONROY**—Thank you very much. I appreciate that. I wish to return to an issue I have asked about a couple of times. Elmie purchased radio stations that Macquarie Media Group was required to divest under the two-stations per market rule. Macquarie Media helped finance the acquisition and is owed \$9 million by Elmie. Last week, Mark Day reported that Stuart Simson had sold the stations. He claimed that a draft ACMA report found that the Elmie-Macquarie deal breached the control provisions, and Simson claimed that it was not related to his decision to sell the company. In February 2006 it was reported by ACMA was investigating the control of five commercial licences owned by Elmie investments. Has that investigation concluded, as Mr Simson indicates?

**Mr Chapman**—That has not concluded yet, no.

**Senator CONROY**—It has not concluded? Was there a draft? He indicates there is a draft ACMA report?

**Mr Chapman**—The status is that the authority has sent to the parties involved in the investigation a draft document—I hesitate to call it a draft report—which seeks to articulate all of the issues, set out the law as the authority understands it, and seeks to apply facts against those legal principles in the context that that investigation represents. That is the status of the matter.

**Senator CONROY**—Could you briefly outline the background facts to the investigation?

**Mr Chapman**—I will ask Mr Bezzi to do that.

**Mr Bezzi**—The investigation relates to five regional AM radio licences, in Cairns, Bunbury, Mackay and in two Victorian markets. The issues in simple terms in the matter are whether Macquarie is in a position to control one or more of those licences. If it is in a position to control—back to that phrase—one of those licences, it is a breach of the Broadcasting Services Act, because they have already got two licences in each of those five markets. Essentially that is the question. There is no issue into the future, as far as we know. Although we have not seen—

**Mr Chapman**—I think the senator was only asking what are the facts.

**Senator CONROY**—Yes. You sent a draft document to Mr Simson. On his reading, he states publicly that the Elmie-Macquarie deal breached the control provisions. Is that factually correct?

**Mr Chapman**—Is what factually correct?

**Senator CONROY**—Mr Simson says that your draft document—he calls it a report—found that the Elmie-Macquarie deal breached the control provisions. Is that an accurate statement?

**Mr Chapman**—I do not know whether that report is factually correct. It is not our report. It is not information we have provided. I am very loath to comment on your question because in my assessment it would potentially prejudice the investigation and, secondly, prejudice the enforcement powers and actions that might sit behind any conclusions with respect to that investigation.

**Mr Bezzi**—The authority has not made any finding in the investigation and cannot make any finding until we have heard from interested parties.



**Senator CONROY**—It is not me making that statement. I am not alleging it. I am just saying that Mr Simson himself has publicly stated now that on his reading of it—

**Mr Bezzi**—There has been no finding. It should be publicly noted that there are no findings.

**Senator CONROY**—The investigation has not concluded?

**Mr Chapman**—That is correct.

**Senator CONROY**—Is it factually true that Mr Simson had sold his station?

**Mr Chapman**—That is our understanding, yes.

**Senator CONROY**—Does that mean that the investigation terminates due to the fact Mr Simson no longer owns them? What is the legal position now?

**Mr Chapman**—The legal position is that the investigation is still on foot.

**Senator CONROY**—How can that be? You are investigating somebody who does not own them any more.

**Mr Chapman**—It can be, because the sale remedies to the extent that anything required to be remedied—I just want to provide that caveat—on a prospective basis. But if there were issues, and if we were to find issues adversely, the sale would not necessarily remedy matters that have occurred in the past. The investigation is still on foot.

**Senator CONROY**—How long has this investigation been going on?

**Mr Chapman**—As I think you indicated, the investigation formally commenced in February.

**Senator CONROY**—Formally commenced?

**Mr Chapman**—The investigation commenced in February.

**Senator CONROY**—When did the transaction take place?

**Mr Chapman**—I stand to be corrected, but I think it was September 2005.

**Mr Bezzi**—Yes, it was.

**Senator CONROY**—You have to see the comical side of the entire transaction; 15, 16, 17 months have come and gone and ACMA still has not finished its report. You have to see some comical side in that.

**Mr Chapman**—I do not see the comical side in it. As I think I alluded to earlier in the day, the matters that we have been looking at within the investigation are complex. They are far-reaching. They deal with issues under schedule 1 of the Broadcasting Services Act. They have I think been very helpful to the authority and the staff. It is interesting that the PBL deal and the Seven Network deal, which occurred in November-December, which were on one view complex matters dealing with matters of large enterprise value, \$4 billion to \$8 billion depending on how you want to cut it, were dealt with very effectively by the authority using the new enforceable undertakings power. I think that is a very salutary insight for all of us.

**Senator CONROY**—I think you should take some credit for the fact that you appear to have caused some movement that probably brings them within the law. What are the

consequences of breaching the control provisions? I presume that the new provisions are not retrospective, so you could not necessarily have applied them, though I would be interested in your view on that, to an existing economic situation. What action can be taken against Mr Simson now that he has sold the station? Would you bother taking action? I am just interested in how you go forward from here. Are criminal and civil sanctions available?

**Mr Chapman**—Let me elevate the discussion, if you would not mind, out of Elmie and talk generically. Once an investigation is finalised, the next step the authority takes is to consider what sanctions the authority might take in those particular circumstances. We have a range of enforcement powers available to us, including in theory—I say ‘in theory’ because I am trying to elevate it out of the Elmie circumstances—that we can issue a notice under section 70 of the Broadcasting Services Act directing a person to take action so that they are no longer in breach. As a result of the new enforcement powers that we have spoken of, we can accept enforceable undertakings to very specifically strike at and address the issue that give rise to any breach that is found. In some circumstances whether there is a breach of the control rules and that breach has not been approved on a prior basis by the ACMA, it can refer the matter to the Commonwealth Director of Public Prosecutions for possible prosecution as an offence under section 66 of the act. I think they broadly canvass the range of powers we have. Clearly within the enforceable undertakings power we have a range of subset powers, if you know what I mean.

**Mr Bezzi**—The focus of the Elmie investigation has never been on whether or not Mr Simson may have committed any offence under the Broadcasting Services Act. That has never been an issue that has been looked at and has not been of concern to ACMA. You suggested earlier that it might have been an issue and I just want, for the sake of the record, to correct that. That has never been an issue—

**Senator CONROY**—So it is Macquarie Bank, then?

**Mr Bezzi**—that has been the focus of the terms of reference, yes.

**Senator CONROY**—Okay. Presumably under the sale, Macquarie Bank has not loaned the new buyers any money? I am guessing that. You may not be able to answer that question yet.

**Mr Bezzi**—No.

**Senator CONROY**—You said that to progress the investigation you need a response from Mr Simson but also from Macquarie?

**Mr Chapman**—That is correct.

**Senator CONROY**—Mr Simson has flown the coop, so to speak. One presumes that if he just chose not to reply any more you could not actually progress? I wanted you to assure me that that was not the case. Given that Macquarie is still in the frame, so to speak, and I use that in a colloquial—

**Mr Chapman**—That is a misplaced apprehension that you have.

**Senator CONROY**—That is fine. I am very pleased about that. Are you still actually awaiting a response from Macquarie Bank?

**Mr Chapman**—That is correct.

**Senator CONROY**—When did you send them—

**Mr Chapman**—In the middle of December.

**Senator CONROY**—How long do they get to respond?

**Mr Bezzi**—Until Valentine's Day.

**Mr Chapman**—Thank you, Mr Bezzi.

**Senator CONROY**—What happens after Valentine's Day? A massacre?

**Mr Chapman**—As a matter of process—and let's just deal with the matter of process—we would consider those submissions and we would have a look at our draft issues, the application of facts against the law as we see it, and see whether it is appropriate to make any amendments to the draft position we come to. That would be taken to the authority.

**Senator CONROY**—You are hopeful that Macquarie Bank will just throw themselves on your mercy, 'fess up and say, 'We were naughty, but it's all fixed'?

**Mr Chapman**—Sorry, I missed that.

**Senator CONROY**—Are you hopeful that Macquarie Bank will throw themselves at your mercy and say: 'Look, fair cop. It's all been fixed now, let's move on'?

**Mr Chapman**—I am not sure what you are suggesting. We have got a job to do. We are taking it seriously. It has been a long and complex investigation and we see the conclusion of that investigation not too far off.

**Senator CONROY**—What is complex about one company lending a bloke \$9 million to buy a radio station?

**Mr Chapman**—We have previously indicated that there were in excess of 6,000 documents to assess. Examinations were held. As I think we have also indicated, it deals with the two principal subsets of schedule 1 to the Broadcasting Services Act, dealing with financial arrangements and with a number of potential operational considerations of the definition of being in a position to exercise control. That is why it has been a complex matter and it has required a review. It has been a complex matter and I think I have said enough.

**Senator CONROY**—It would be tragic if a situation arose where person A loaned person B \$9 million to make a purchase and then someone tried to argue that there was no control from person A. That would be a tragic interpretation of the law, though, would it not, if that was how something ended up? I am talking generically.

**Mr Chapman**—Sorry, can you repeat your proposition?

**Senator CONROY**—I am just saying that if person A loaned person B \$9 million to fund a purchase of a particular asset, and the courts were to decide that person A had no control whatsoever over the asset, that would be a fairly tragic outcome?

**Mr Chapman**—That is a very general question. There are specific exemptions already in the legislation to deal with effectively authorised provision of finance. I cannot really help you much beyond that.

**Senator CONROY**—I appreciate that. I will move on. ACMA began a review of the children's television standards in December 2005. What progress has been made on that review?

**Ms O'Loughlin**—We have commenced the research program around that standard review. We hope to release the terms of reference in the next short period of time. We will be, as we originally intended, issuing a quite lengthy and comprehensive discussion paper in around April.

**Senator CONROY**—You said you expect to release the report. Is that before or after it goes to the minister or do you give it to the minister and release it at the same time?

**Ms O'Loughlin**—I think with the children's television standards it is a report to ACMA.

**Senator CONROY**—A report to the authority?

**Ms O'Loughlin**—It is the authority's standard.

**Senator CONROY**—Will it go to the minister? Will it be released publicly?

**Mr Chapman**—Are you alluding to the discussion paper?

**Ms O'Loughlin**—The discussion paper will certainly be issued publicly.

**Senator CONROY**—The report rather than the discussion paper; you are preparing a report and a discussion paper, I believe?

**Ms Maddock**—Following the discussion paper, when we have had the comments back in and considered them, a report will go to the authority for decision, because it is the authority's—

**Senator CONROY**—That cannot happen until much later in the year, then, if you are only going to produce that report in April?

**Ms O'Loughlin**—Yes.

**Senator CONROY**—So there is nothing going to the minister or to the authority before then?

**Ms Maddock**—The authority will get the terms of reference to sign off, and the discussion paper to sign off. Then the process will wend its way.

**Ms O'Loughlin**—Our time frame has always been to finalise it by the end of this calendar year.

**Senator CONROY**—What work has ACMA done in identifying digital TV black spots? Not too technical, Mr Tanner? It involves engineers, I am assuming.

**Mr Tanner**—It certainly does. ACMA is in the final stages of concluding planning for all digital transmitters and repeaters. It has already some time ago commenced a program of field strength measurements to test how those transmitters as they are installed—and they are not fully installed—are operating. That program will be very considerably beefed up as a side effect of the digital action plan. I think at this stage with the rollout still proceeding to talk about a focus on digital black spots is probably a little premature, because we are not yet seeing the performance of the digital network as it is being planned to replace the analogue. But as I say, we are already running an extensive program of field strength measurements. To

the extent that that were to turn up any deficiencies in the digital vis-à-vis the analogue, I guess you could describe that as a black spot. You see the point I am making, that obviously digital black spots may at some future date be an issue, but we have not completed the matching of the coverage of the analogue system. It may be inaccurate to describe a deficit in coverage at this stage as a black spot.

**Senator CONROY**—Can we identify the black spots before switching off analog?

**Mr Tanner**—You can certainly use a discrete issue about what happens about black spots which have an analog fix already but where there is no digital conversion scheme yet. That is another black spot issue. The issue there is obviously whether or not a digital signal is available. Often digital gives you options for fixing problems that are very hard to fix in an analog environment.

**Senator CONROY**—Is it possible to identify all the black spots before you switch off or not?

**Mr Tanner**—It will certainly be possible to identify before you switch off and there will be a very large program of field strength measurements and comparisons underway long before switch-off.

**Senator CONROY**—Free TV is suggesting that, because the digital broadcasts are not at full power until after we switch off, it is not going to be possible. That is a technical issue and I appreciate you may want to seek some assistance, but are they just running a scare campaign?

**Mr Tanner**—It is certainly hypothetically possible that, if there is a problem with a particular transmitter operating at full power, there may be a wish on the part of particular broadcasters to wait to switch off before they turn on to full power, but what would occur at switch-off has not been decided. The point that I am making is that there is a place for identifying digital black spots. It would have to be done well before turn-off and they would have to be resolved. That is one of the roles of the digital action plan to think through. The only point I am making is that, to attempt to identify black spots now, in advance of the completion of the rollout, in the advance of the full arrival of our very large work on field strength comparisons, is a bit tendentious. That is all I am saying. Clearly, there are going to be issues which will have to be resolved as part of the digital action plan and before we can switch over about how we resolve everybody's problems if, for whatever reason, they are unable to obtain digital but are able to obtain analog.

**Senator CONROY**—The minister has asked ACMA for advice on developing a firm timetable for switching off analog TV on a region by region basis. Has that advice been completed?

**Mr Shaw**—No.

**Senator CONROY**—When does ACMA expect to be in a position to give a report to the government?

**Mr Shaw**—In the middle of the year.

**Senator CONROY**—I would like to ask some questions about ACMA's decision to give Tasmanian University Broadcasters, TUB, a community radio licence. Can ACMA confirm that there were no public submissions in favour of allocating the licence to TUB?

**Mr Tanner**—I will have to take that question on notice.

**Ms Maddock**—I do not think that springs to mind as an issue.

**Senator CONROY**—I will put what flows from that on notice as well. I will not waste your time in reading them out.

**Senator IAN MACDONALD**—Can someone bring me up to date on where we are at with the inquiry or research into the radio local content arrangements that were part of the broadcasting package of bills?

**Mr Chapman**—The regional radio licence commissions local presence and local content?

**Senator IAN MACDONALD**—Yes.

**Ms O'Loughlin**—In terms of the local content task, we are to put in place a licence condition to have affect from 1 January 2008. We also have a review to provide to the minister by 30 June this year on those provisions. We have made good progress on that and we will be consulting in the next couple of months with the regional commercial radio licensees about appropriate local content levels to inform our advice to the minister by 30 June. The authority has made a decision to do some regional consultations, to go out to various parts of the country to inform their advice back to the minister by 30 June. Regarding the trigger event review, which we are also to provide to the minister by 31 March, in December last year we provided a questionnaire to the commercial radio licensees to seek their views on the definition of the trigger event. We are looking at those responses to those questionnaires at the moment, and taking on board that consultation with licensees to provide advice to the minister by 31 March.

**Senator IAN MACDONALD**—Can you remind me what the trigger event issue was?

**Ms O'Loughlin**—The trigger event is a change in ownership or structure whereby the licence condition would come into place requiring the maintenance of existing levels of local presence—both staffing and studios and facilities.

**Senator IAN MACDONALD**—There was some concern that share rearrangements within a local family company would have had unintended problems.

**Ms O'Loughlin**—That is what we have been consulting on.

**Senator IAN MACDONALD**—You have got to report on that within a month and a half. I gather that you have not physically started the other one, that is the first one that you were talking about?

**Ms O'Loughlin**—We will be consulting with the commercial radio licensees on the local content one.

**Senator IAN MACDONALD**—Have you started yet?

**Ms O'Loughlin**—We have done significant background work on it and we will be going out to licensees in the next few weeks.

**Senator IAN MACDONALD**—Have you approached them yet?

**Ms O’Loughlin**—Yes. We have had some informal discussions with them.

**Senator IAN MACDONALD**—What do you intend to do? Are you going to write to every licensee?

**Ms O’Loughlin**—As the Chair mentioned earlier today, he wrote to all the licensees in December last year to give a sense of the types of time frames that we would be looking at with all these tasks. We have also made sure that we have been in communication with those licensees about the trigger event, but also informing about where we are going to go with the local content issues as well. So, we will be keeping them up to date that way. Similarly, we have put notifications on our website through fact sheets to give people a sense of where things are at and we will certainly be communicating directly with the commercial broadcasting licensees about what we want them to think about in the time frame for the local content plans.

**Senator IAN MACDONALD**—Will you be communicating with each one individually?

**Ms O’Loughlin**—Yes.

**Mr Chapman**—To add to that and just to reinforce the point, the authority itself and staff members, over the course of the next three months, will be literally in every state and territory on the road, which is a deliberate initiative to obviously show the face of the new ACMA, but to allow licensees the opportunity at close quarters to have an exchange with the authority members and to exchange whatever opinions they have. It is a very deliberate policy to get the authority and the staff members out into every state and territory over the next few months.

**Senator IAN MACDONALD**—Is it ACMA’s role to police the rules and regulations regarding community radio?

**Mr Chapman**—Yes, it is part of our bailiwick.

**Senator IAN MACDONALD**—You are the ones who work out whether any radio station has overextended its five minute sponsorship announcements?

**Ms Maddock**—Subject to complaint.

**Senator IAN MACDONALD**—Is it all subject to complaint?

**Ms Maddock**—We have two processes with community radio. One is the usual complaints-based breach of codes and that one typically will fall in that. Every five years we have a licence renewal process, which has been given to us fairly recently, at which time we address the whole range of issues concerning the station and which would take into account their performance against codes during that time.

**Senator IAN MACDONALD**—Do you get many complaints?

**Ms Maddock**—I do not know the number. We can take that on notice. We do get a reasonable amount—sufficient to be continually aware of the problem of the five minute.

**Senator IAN MACDONALD**—What sort of general description would you describe the complainers as? Are they commercial radios?

**Ms Maddock**—They can be a bit of everything.

**Senator IAN MACDONALD**—I know that they can be, but are they principally competing commercial radio stations?

**Ms Maddock**—We get a bit of that. I would categorise more of them as people who may have been involved with the radio station who have some issues with the radio station now and are very conscious of ensuring that the radio station meets its statutory obligations. Was that English?

**Senator IAN MACDONALD**—I am not smiling at your answer; I am smiling at the situation. I can well appreciate it. Is there a requirement that the community radio stations are run by an organisation that is a community organisation, as opposed to a profit-making organisation?

**Ms Maddock**—I am not sure I understand. They have to be not-for-profit and they have to be not part of a profit-making enterprise, so there are two legs of that. They can be neither profit making nor part of the profit-making enterprise. In years past, we have had some complaints, which have gone quite solidly to that.

**Senator IAN MACDONALD**—How do you assess a situation—not that I have ever heard of this—where a community station is profitable and so pays its managing director or on-air announcer a million dollar fee? How do you deal with a situation like that?

**Ms Maddock**—Mr Tanner wants to draw upon his experience.

**Mr Tanner**—There are two tiers to that. There are some basic eligibility requirements, that is, that community broadcasting licensees are typically held by incorporated associations or companies limited by guarantee that are not designed to operate for profit or to distribute shares. Obviously there is a very generic rule that the licensee cannot operate for profit or as part of a profit-making enterprise. That is what the law actually says, from memory, and, as you can see, it is a wide, plain English test. The scenarios you are describing where, for example, an elaborate, unique and perhaps avoidance device has been developed such as salaries of particular officials that rise up and down depending on the revenue—I am not sure if that precise scenario has been looked at, but as Ms Maddock was starting to say, there have been several instances in the past where we have become aware of serious allegations that there is a lot of revenue coming into a station and the way that revenue is being distributed may cause the station to be either operating for profit or as part of a profit-making enterprise. What the ABA and ACMA have done when that arises is to conduct an investigation into whether or not those broad words are being complied with. Those investigations in the past have resulted in serious steps being taken. It is more likely they will found to be operating as part of a profit-making enterprise, because that second limb tends to catch these more elaborate devices that I think you are referring to. The answer basically is that, when we become aware of serious allegations and have reasonable grounds to suspect that there may be a problem, we conduct an investigation into the facts and then we form a view on whether or not the service is operated for profit or as part of a profit-making enterprise. Because of the breadth of those words, it does give us quite a wide discretion to look at creative and elaborate ways of doing that. I would be happy to take on notice a couple of examples where we have



made public announcements of the outcome of such investigations, if that will give you a flavour.

**Senator IAN MACDONALD**—What happens then if you find that someone has breached? Do you prosecute or do you just put a black mark on their record?

**Mr Tanner**—It depends on the situation. It has resulted in sanctions being taken against existing permanent or five-year renewal community broadcasting licences. In one example, it resulted in very elaborate licence conditions being imposed, which had the result of ensuring better governance, but the issue may also arise at the temporary community broadcasting licence stage. From memory, we have taken account of findings of such an investigation in a decision whether or not to permanently allocate a licence to a person. It depends a little bit on where we are at. As we were trying to indicate, we have a discretion at large to investigate breaches of conditions of the code at any time. We have a five-yearly renewal process where we get to consider whether or not a station should be renewed. Where no permanent licence has been allocated, we have another set of discretions around whether to even allocate one. What sanctions we would use would depend critically on where the station is placed and what powers or role we had in relation to it.

**Senator IAN MACDONALD**—With community radio stations, are the rules and regulations prescribed?

**Mr Tanner**—Yes, definitely. We are talking about clear, black letter law here.

**Senator IAN MACDONALD**—I would like to address this question to you, Minister. You mentioned in the debate that you were going to have a review of the whole issue of community radio and TV. Is that still your intention?

**Senator Coonan**—What I said was that the whole move to digital radio is really on a different track to television broadcasting. In that context we have made decisions about what can go on the broadcasting services band, what can be community radio, et cetera, and in that context, I think I said in the debate that I would be prepared to have a look at the whole advertising position of community radio, but it is extremely difficult because once you get into letting the community radios advertise more than they do—and it is very limited—you start to run into some real issues of what is the difference between commercial and community. There are difficult issues but the appropriate thing with all of these areas is that, instead of thinking that everything is just set and forget, we keep the settings under review and monitor them, so that an important sector like community radio does not disappear. It is within that thinking that we can have a look at it, rather than set out to—

**Senator IAN MACDONALD**—So you have not formalised your thinking on that at the moment?

**Senator Coonan**—No, that is a fair summation. I have not discarded any thinking about it. It is really just a matter of there being so much going on, and I want to make sure that we keep all these things under review.

**Senator IAN MACDONALD**—Mr Chairman, perhaps that is something that this committee could inquire into at some stage, just on the parameters of community radio, because there is a view around that, as the commercials become more networked, more corporate and less local, community radios are filling that local requirement happily, which

some of the commercials feel they cannot do, and it would seem to be a way of keeping everyone honest if the rules for community radio were broadened or liberalised a bit so that they could earn a bit more income and perhaps use the income to employ more attractive on-air people, thus keeping the local content that way. In the same way, by competition, that would keep the commercials competent too. That is commentary in a suggestion to the Chair that the committee could usefully do and it might obviate the necessity for you, Minister, having to look into that amongst your other busy schedules.

**CHAIR**—We certainly could take that on board. If there are no more questions for ACMA, we will declare the innings closed and thank you for appearing.

[5.29 pm]

**Senator CONROY**—The Telstra AGM has taken place since we last had an estimates. Did you note the vote that Mr Cousins received as the government's nominee?

**Senator Coonan**—I didn't actually, but I do not think that he was a popular choice.

**Senator CONROY**—I got that impression. It was quite an overwhelming vote. Eighty per cent of the non-government vote went against him. Does that figure sound about right?

**Senator Coonan**—It could be right. I do not have it in front of me.

**Senator CONROY**—Have you heard from Mr Cousins yet, about the hospital pass that you gave him?

**Senator Coonan**—Did you ask me a question because I just did not quite hear it.

**Senator CONROY**—I said, have you heard from Mr Cousins about the hospital pass that you gave him when you sent him on to a board where everyone hates him?

**Senator Coonan**—I have not heard from Mr Cousins.

**Senator CONROY**—Have you had a briefing at any stage?

**Senator Coonan**—I have not had a briefing from Mr Cousins.

**Senator CONROY**—I have a number of questions about the recently released broadband blueprint. Minister, you claimed that the blueprint outlines:

How the government is leading the way in developing a strategic national approach to infrastructure rollout and how we plan to meet future challenges.

What actions has the department taken to do this?

**Mr McCormack**—Since the release of the blueprint, the department has undertaken a number of initiatives. Most recently we tendered for a consultancy to look at local planning guidelines. The department has also undertaken initial consultations with the states to put in place arrangements for the Online and Communication Council meeting on 29 June, where there will be a session looking at the broadband blueprint. Work has been undertaken on a spectrum consultancy where tenders are currently under consideration and, in terms of other initiatives, we are also putting in place, as per pages 85 to 89 of the blueprint, measures to benchmark Australia's performance against other countries internationally. Of course, the blueprint will be reviewed again in 2008.

**Senator CONROY**—The government's strategic national approach in leading the way and developing it consists of a local planning guidelines tender, talking to the states about the agenda for 29 June and establishing some benchmark criteria.

**Mr McCormack**—That is some of them. There are also a range of other initiatives such as the Connect Australia program. As you would be aware, the four elements of that are already well underway.

**Senator CONROY**—To be fair that pre-existed the blueprint.

**Mr McCormack**—They were initiated prior to the blueprint, however, they are quite significant elements of the blueprint because they do involve major structure rollouts.

**Senator CONROY**—I accept that completely. If the government's intention is to develop a strategic national approach, has the department undertaken any assessment of future demands on broadband infrastructure in Australia and the capacity needed to meet those demands?

**Mr McCormack**—As part of the lead up to the Connect Australia process, the department undertook consultancy with Ovum in order to look at Australia's requirements in terms of infrastructure across the country. That consultancy was used to help inform the shape of the Connect Australia program and many of the elements of that have been incorporated into the program. Also as part of the lead into the Connect Australia program, the department undertook a series of consultations commencing in November 2005 where we spoke to all the states. We also went around to all the capital cities and some minor cities and spoke to all stakeholders who may have an interest and garnered from them their ideas on what things were required in order to put together a very effective program. We took the learnings and the feedback from those consultations and we used those to shape the program.

**Senator CONROY**—This Ovum consultancy—is that report available?

**Mr McCormack**—The report has not been released.

**Senator CONROY**—Is that the department's decision or the minister's decision?

**Mr McCormack**—We felt that some of the material used as part of that consultancy was commercial-in-confidence, so therefore could not necessarily be released. The document was one that was really there to assist us in shaping policy, rather than to be more of a general discussion document.

**Senator CONROY**—When you say commercial-in-confidence, I am presuming that the report did a summary. I am trying to understand what parts would be commercial-in-confidence?

**Mr McCormack**—In order to get a balanced approach to that whole question, the consultancy had to go out to commercial companies and talk to them about what sort of structure they had in place, in terms of their networks, et cetera. Some of that was obviously quite sensitive though they were happy to release it on a commercial-in-confidence basis.

**Senator CONROY**—The broadband blueprint also provides, and I am quoting:

Australian government estimates suggest that ADSL2+ technology is capable of delivering a minimum of 6 megabits services to at least 3.9 million premises and a minimum of 2 megabit services to at least five million premises, or 45 per cent nationally.

Does that ring a bell?

**Mr McCormack**—Yes.

**Senator CONROY**—Given that groups like the Internet Industry Association have suggested that 80 per cent of Australians need to have access to 10 megabits broadband by 2010 in order for Australia to be internationally competitive, is the department concerned that current and planned rollouts of fixed broadband in Australia will not meet Australia's future broadband capacity demands, as identified by some of the key advocates in the area?

**Mr McCormack**—I will not be able to find it in the blueprint at the moment but I think there is a very key phrase in that blueprint, which is that the government is focused on providing broadband to all Australians, not just select groups of Australians. A current focus for us is obviously getting broadband out into regional and remote areas.

**Senator CONROY**—They are not included in the 35 per cent or 45 per cent nationally of six megs or two megs that was being referred to in that earlier quote?

**Mr McCormack**—I do not have that quote in front of me.

**Senator CONROY**—This is probably more a question for the minister than yourself. Given the high cost of transmitting large volumes of data via wireless broadband, does the government concede that Australia will need a substantial investment in fixed broadband infrastructure, namely a fibre infrastructure, in the near to the medium term?

**Senator Coonan**—I think Australia needs a mix of technologies and I think that in populous areas the economic case for fibre is better obviously than in sparse populations. Australia will always need in really remote areas probably to have access to satellite and I think the rapid deployment of 3G shows there is also a significant place for wireless technologies in the mix.

**Senator CONROY**—The 3G is fairly expensive at the moment, though, that Telstra is offering.

**Senator Coonan**—All technologies, when they first come on stream, are usually more expensive. Certainly when you get a bit of competition, which now is foreshadowed with the Optus rollout, one would think that that would have some competitive pressure. I think costs are very important and that is why, in order to get it out to underserved areas, the government considers that it is appropriate to provide the incentive-based program that we have had up to date to be supplemented by an infrastructure-based program that will be now more targeted. I think the subsidy system has probably gone almost as far as it can and now there needs to be a much more significant infrastructure-based solution.

**Senator CONROY**—If the government plans to lead the way on broadband infrastructure, has the department met with representatives of what was then G9, but due to market movements is now G8, in the past six months to discuss their FTTN proposal?

**Ms Williams**—We had a brief meeting with G9 only about a week and a half ago.

**Senator CONROY**—Can you outline, without any commercial confidence issues you have, what was the nature of that brief discussion?

**Ms Williams**—They just took us briefly through—you may also have had the briefing—their proposal. It was quite a short meeting, our first meeting. They left us some papers to look at.

**Senator CONROY**—It was just them briefing you?

**Ms Williams**—Yes.

**Senator CONROY**—Have members of G9, or G8, made any requests for assistance from the department?

**Ms Williams**—They did not at this meeting. You mean as a group?

**Senator CONROY**—Yes, around their proposal.

**Ms Williams**—This was really just a briefing on that proposal.

**Senator CONROY**—So they have not asked for any—

**Ms Williams**—We said we would look at it and we will probably talk again.

**Senator CONROY**—Has the department convened any ongoing meetings or future meetings or proposed to convene any of representatives of G9 and government agencies?

**Ms Williams**—We have not set a date at this stage for another meeting.

**Senator CONROY**—In August of last year Optus CEO, Paul O'Sullivan, stated in a speech to the AICC:

I call upon the government to push Telstra to come to the table with the rest of the industry, the G9, to negotiate a cooperative approach.

Have you made any representations of this kind to Telstra on behalf of G9?

**Senator Coonan**—I think Telstra has made it fairly clear that they are not interested in consortia of any kind.

**Senator CONROY**—So they are going to pull out of Foxtel. That is an amazing announcement.

**Senator Coonan**—No, in the rollout of the G9.

**Senator CONROY**—Those socialists!

**Senator Coonan**—Are we talking about G9 or are we talking about cable? If we are talking about—

**Senator CONROY**—G9 is the fibre proposal from Optus and—

**Senator Coonan**—Yes, but if we are talking about G9 and the fibre proposal, my understanding is that Telstra is not interested in any sharing or consortia approach to a fibre deployment.

**Senator CONROY**—I did see some comments on those lines from Mr Trujillo about consortiums with socialism, which I thought was interesting, given his Foxtel triumvirate. I cannot imagine—

**Senator Coonan**—We do not want to put too fine a—

**Senator CONROY**—Mr Packer, Mr Murdoch and Mr Trujillo being referred to as socialists.

**Senator RONALDSON**—I thought Sol was your new best mate.

**Senator CONROY**—I have shaken his hand once. That is it. The minister has met him more often than I have, luckily for her.

**Senator Coonan**—He is a charming individual.

**Senator CONROY**—Has the department met with representatives of Telstra in the past six months to discuss their FTTN proposal?

**Ms Williams**—We have certainly met with representatives of Telstra.

**Mr Lyons**—But not specifically on—

**Senator CONROY**—Not on FTTN because they sort of announced that it was off and on, and off and on, but not specifically on FTTN. Have Telstra asked for any assistance around the FTTN proposal or they are just not on the radar screen at the moment at all?

**Ms Holthuyzen**—They have not asked us for assistance.

**Senator CONROY**—Has the department convened or is planning to convene any meetings with representatives of Telstra and government agencies to discuss this proposal?

**Ms Holthuyzen**—If Telstra wants to talk to us about it we are very willing to talk to them.

**Ms Williams**—But we do speak to Telstra on an ongoing basis.

**Senator CONROY**—On many issues, I am sure—High Court challenges, you name it. It must be just fun, fun, fun.

**Senator Coonan**—This is a serious question and I have an open offer to Telstra to speak to me about fibre or any other matter that it wishes to bring to my attention.

**Senator CONROY**—Yes, I know.

**Senator Coonan**—I would not like it to be thought that I was not prepared to speak with them.

**Senator CONROY**—No, I am not suggesting that at all.

**Senator Coonan**—That is their choice, not mine.

**Senator CONROY**—What I am looking for is some evidence that the government, as you described it in your broadband blueprint, is providing leadership on broadband infrastructure. Can anyone point to any substantive discussions the government has had to assist either G9 or Telstra fibre proposals—any meetings, phone calls or representations, or are you just waiting for them to come to you?

**Senator Coonan**—No. I think really what we are talking about there is the fact that we have underway a tender process whereby the government has on the table up to \$600 million to encourage the rollout of an infrastructure-based solution to some of these very difficult, underserved areas. That is, I would think, what was really being referred to there. I just do not have the blueprint in front of me but it was certainly in our mind at the time that that was the

kind of leadership we think is critical because, eventually, services are provided commercially, basically in populous areas and we look to where people otherwise would not have an opportunity to have these services. That is really what we are talking about. Plus the very significant coordination role that is necessary to ensure that we have both a strategic and coordinated approach to the rollout of scaleable broadband infrastructure, and it is important I think that all the states, territories and local authorities have some input into the process. So that is what was intended rather than talking specifically about commercial proposals that may or may not eventuate.

**Senator CONROY**—I have seen you comment on a regular basis that Telstra is now not on the table, I think is the current status, FTTN and G9—I have seen you comment publicly saying there is another one on the table, there is that, there is that. I am just trying to get a view whether the government wants to drive this issue or whether you believe that it is up to the ACCC to be engaged in those conversations.

**Senator Coonan**—I do not think it is an either/or. What I was talking about was what we can do and will do as part of getting scaleable infrastructure built to these underserved areas.

**Ms Williams**—You can understand that, while such a big tender is underway, there are real probity issues and we are being very careful to be, if you like, a little bit more distant at this stage while that tender is underway.

**Senator CONROY**—That is a fair point. I am just looking to see how you are helping drive this issue of FTTN, whether it is through discussions or conversations with Telstra or G9 or anyone at all. As I said, I just look and see the government driving it, that is all.

**Senator Coonan**—The government will not be driving a commercial decision. We will facilitate whatever needs to be done to ensure that the framework is responsive, and we think it is, and we will get on with making sure that, for those Australians who otherwise would not be able to have access to these services, they will be able to get them, and we do think that the building of something like an wholesale alternate network is important to do that.

**Senator CONROY**—I just wanted to talk about that coordination role you described. The document, 'Broadband, A Blueprint', states:

The blueprint will ensure that the rollout of next generation broadband is coordinated across jurisdictions with clearly delineated roles for state, territory and local government to meet the needs of end users.

How does the department intend to do this?

**Mr McCormack**—The primary mechanism for coordinating across states and territories with the federal government has, up to date, been the National Broadband Strategy Implementation Group. That group, as foreshadowed in the broadband blueprint, will be replaced by a new group with probably differing membership, a more expansive membership which will quite likely include some industry representation as well as states, territories and federal government representatives. The NBSIG has been a very successful group to date. The new group will refine that success and will take on that role of coordinating across the states, territories and federal.

**Senator CONROY**—Is this new group a subcommittee or is it a totally separate and distinct group?

**Mr McCormack**—To the NBSIG?

**Senator CONROY**—You have the online—

**Mr McCormack**—It is a working committee of the OCC.

**Senator CONROY**—So it is a subcommittee of it?

**Mr McCormack**—Yes.

**Senator CONROY**—With an expanded membership, you said.

**Mr McCormack**—With an expanded membership.

**Senator CONROY**—Expanded—who is supplementing it? Who are the extra people?

**Mr McCormack**—That has not been determined at this stage. However, discussions which are underway would possibly include some industry representation, yet to be determined.

**Senator CONROY**—So is that subcommittee meeting on an ongoing basis or is its first meeting in June?

**Mr McCormack**—No. That will be a committee which will meet more regularly than the OCC. The OCC, as you will be aware, meets on an annual basis. The next meeting is 29 June. The National Broadband Strategy Implementation Group has to date met at least quarterly, often more frequently. The NBSIG will have its final meeting in March. One of the items for that agenda will be to discuss what form that new group will take to replace the NBSIG, and of course it will also deal with details of how frequently it would meet. I would expect it would be at least quarterly.

**Senator CONROY**—At this stage you are still discussing structure?

**Mr McCormack**—Essentially I think that, if we are going to have a collaborative approach, it is not something that the federal government should be imposing on the other participants. It should be done in a fashion where we do consult them, as we have tried to do throughout this whole process.

**Senator CONROY**—Was the government in correspondence with the Queensland government before it announced its plans to call for tenders for a fibre access network in south-east Queensland?

**Mr McCormack**—The government is regularly in contact with the Queensland government. In terms of their intention to let that tender, I would have to take that on notice as to whether we were informed in advance.

**Senator CONROY**—Have you been in contact with the government subsequent to the announcement?

**Mr McCormack**—Regularly.

**Senator CONROY**—On this matter?



**Mr McCormack**—I personally have spoken to them after that, the Coordinator General's department, which is responsible for that and I am uncertain as to whether other members of the department have also been in contact, although I would expect they probably have.

**Senator CONROY**—Was the department in correspondence with the West Australian government before it announced its plans to call for tenders for a fibre access network in Western Australia?

**Mr McCormack**—Yes, we were.

**Senator CONROY**—What was the nature of those discussions?

**Mr McCormack**—We received a briefing from the Department of Industry and Resources prior to their decision to make that a public announcement.

**Senator CONROY**—Was the department in correspondence with the New South Wales government before it announced its plans to call for tenders for a wireless network in Sydney?

**Mr McCormack**—On that one, I am not certain at this stage. We can take that on notice.

**Senator CONROY**—Has the department been in correspondence with any local governments concerning local initiatives to improve broadband infrastructure in their council areas?

**Mr McCormack**—Yes.

**Senator CONROY**—Which ones?

**Mr McCormack**—We talk regularly, mainly through the Australian Local Government Association. The Australian Local Government Association is represented both on the Online Communications Council, also on the NBSIG and will continue to be represented on the NBSIG. We also have meetings out of session with them as well.

**Senator CONROY**—I appreciate you said you are talking with the peak body for local government but I was asking you about whether you had spoken with any of the actual local councils that actually have some initiatives underway.

**Mr McCormack**—I personally have not spoken with them. I tend to deal through ALGA but we also have feedback from those councils; for example, if you were to look at the Aurora project in Whittlesea through Multimedia Victoria, they give us updates on how that is progressing. They recently provided full details of the study that was undertaken as a result of that project.

**Senator CONROY**—Given the plethora of different state government initiatives—there is more than just Whittlesea—local government initiatives that have been designed to roll out broadband infrastructure that have emerged over the last 12 months, it is looking like that coordination role is a big of a struggle for you.

**Senator Coonan**—No, it is not. The whole idea of this online council is that you can know where it is happening, they can know what you are doing, so you are not all rolling out over the top of each other. That is very important. But, locally, you have to have something that will be fit for purpose and scaleable to meet the requirements of a very wide range of different users. There is a very important overarching role for the online council, I would suggest, and certainly my colleagues on that council I think tend to agree with me that the coordination and

overarching role is very important. We have the very big initiative on the table but that does not mean that there are not groups of councils, for instance, that are looking at their own individual needs and looking at how that can get funded. We have discussions. I have many meetings with different groups of local councils and bodies that want me to be aware of what they are doing as part of this whole process of trying to ensure that we have end-to-end national solutions.

**Senator CONROY**—But even on Mr McCormack's own admissions, you are unaware of a raft of these proposals.

**Senator Coonan**—I am aware of a number of them. I am not saying every one of them but, of every one you have mentioned, I am well aware prior to its being deployed.

**Senator CONROY**—The West Australian government is going it alone without you. Queensland is going it alone. New South Wales is going it alone.

**Senator Coonan**—So they should.

**Senator CONROY**—And a raft of councils are going it alone because of your—

**Senator Coonan**—Are you suggesting there is something wrong with that?

**Senator CONROY**—lack of leadership on a national broadband footprint.

**Senator Coonan**—I think you misunderstand the role of governments to be able to do their local or otherwise state-based projects. Next thing you will be accusing the government of taking over communications.

**Senator CONROY**—Given that you have constitutional responsibility for it, it would almost be a blessing.

**Senator Coonan**—The point about the broadband blueprint is that it provides a level of strategic cooperation. All the states are very interested in the rollout of Broadband Connect. That is the biggest of the projects. But you do not always achieve something by rolling over the top of everybody and totally disregarding what somebody does locally. We have to ensure that we have fit-for-purpose and scaleable infrastructure that meets the individual needs of communities rather than some broadly based thing that does not. There is a very important role for this online council and I am not getting, to date, complaints from my colleagues that this is not an appropriate way to take forward a coordinated role.

**Senator CONROY**—No, they are just wandering off without you; they have given up.

**Senator Coonan**—That is not correct.

**Senator CONROY**—I do not know how you can claim to be coordinating this when clearly you have been unaware of a whole raft of the proposals.

**Senator Coonan**—I just said I was not unaware of it and I am not unaware of a raft of proposals. In fact, I am aware of every proposal you have mentioned.

**Senator CONROY**—I am sure you are now.

**CHAIR**—We are approaching our dinner break.

**Senator CONROY**—I am happy to break at this point.

**CHAIR**—That is a very good idea. We will resume at 7.00 pm.

**Proceedings suspended from 5.58 pm to 7.00 pm**

**Senator CONROY**—Is it not true that the federal government's last attempt to coordinate a federal/state response to broadband rollout was the national broadband strategy? Would you characterise the national broadband strategy as having been successful in coordinating a federal/state response to broadband infrastructure?

**Senator RONALDSON**—I think that is asking this officer to comment on policy.

**Senator CONROY**—I accept your point entirely. I was just hoping the minister would be here to do her job. I will move on to a different area and come back to that.

**CHAIR**—Perhaps you might ask more appropriate questions, Senator Conroy?

**Senator CONROY**—We can come back to that. You are saved by the bell, Mr McCormack; the minister has arrived. I am happy to repeat the question. I was just asking the officials: is it not true that the federal government's last attempt to coordinate a federal/state response to broadband rollout was the national broadband strategy? I was wondering if the government would characterise the national broadband strategy as having been successful in coordinating a federal/state response to broadband infrastructure?

**Senator Coonan**—I think it has played a part. It has now morphed into a more contemporary and focused program. Like all these areas, they do not just standstill; they are not set and forget. Certainly broadband technology continues to evolve.

**Senator CONROY**—Is it not true that Victoria refused to participate in the national broadband strategy?

**Senator Coonan**—I do not know. Not that I am aware.

**Mr McCormack**—The Victorian government chose not to sign on to the national broadband strategy. That does not mean that they did not participate. They did participate quite actively. They were interlocutors both within the NBSIG and also out. We have a regular and ongoing dialogue with the Victorian government. So, no, I do not think that is correct.

**Senator CONROY**—They would not sign up to the national broadband strategy?

**Mr McCormack**—They chose not to, as you said.

**Senator CONROY**—I admire your optimism. New South Wales failed to submit an action plan required under the national broadband strategy; is that correct?

**Mr McCormack**—I would have to take that on notice.

**Senator CONROY**—I believe it is. I am not trying to trick you.

**Mr McCormack**—I will take your word for it.

**Senator CONROY**—I am happy for you to come back and correct me if I am wrong.

**Senator RONALDSON**—That is your first mistake.

**Senator CONROY**—That could have been a cardinal mistake. Victoria and New South Wales are both refusing to participate or actually not participate even after they said they would? Have all the states signed up to the current Broadband Blueprint?

**Mr McCormack**—The states were not asked to sign up to the current Broadband Blueprint.

**Senator CONROY**—That is one way to make sure they cannot say no. How will you ensure all the states are onboard and you do not have a Victoria/New South Wales situation with this strategy?

**Mr McCormack**—I do not think it is correct to say that we do not have the Victorian or New South Wales—

**Senator CONROY**—No, I said how will you avoid that same problem?

**Mr McCormack**—By ongoing dialogue, which we have now—very active and very fruitful.

**Senator CONROY**—The Constitution does provide that telecommunications is a federal responsibility; is that correct?

**Mr McCormack**—That is correct.

**Senator CONROY**—It is not like health or education, where there is a shared responsibility? It is clear-cut, Minister?

**Senator Coonan**—We do the regulatory framework. There is no prohibition on someone who wants to put in some local, state or other infrastructure of their own—nothing at all. In fact, historically they have.

**Mr McCormack**—It is a partnership and it has worked that way.

**Senator CONROY**—I repeat: I admire your optimism, Mr McCormack. The states have not been asked to sign anything. Are they being asked to provide any capital or ongoing resource? And I do not mean to fund the secretariat. What are the requirements of the states?

**Mr McCormack**—The states have been involved in the formulation of the Broadband Blueprint. We have had active discussions with them through the National Broadband Strategy Implementation Group since June of last year. I think the first time we consulted with them was at the NBSIG meeting in late June or early July of last year, and also through the minister's online council. That will continue. They have all been given the opportunity to give us any feedback along the way on that, and all of them have provided input into that blueprint. Our focus is to produce a collaborative document, which is why we are ensuring that in every step of the process we engage the states and territories and we take into account their views, needs and priorities.

**Senator CONROY**—So they are just wandering off, doing their own thing and they let you know by a press release?

**Mr McCormack**—No, that is not correct.

**Senator CONROY**—They do not let you know by press release; you just read about it the next day?

**Mr McCormack**—No.

**Ms Williams**—You would remember the minister did say that the next meeting of the Online Communications Council to develop the implementation plan was I think in June this year.

**Mr McCormack**—That is correct.

**Senator CONROY**—I have a number of questions to the department about the government's Metropolitan Broadband Connect program. Some of the answers may have been given to questions I asked previously. I have been here all day and I have not had a chance to check your answers. If you have already answered some of these, I apologise. These questions were possibly sent over the weekend and answers have possibly been forwarded to me. Please bear with me.

**Mr Bryant**—I am happy to address any questions.

**Senator CONROY**—When was the Metro Broadband Connect program announced by the government?

**Mr Bryant**—10 May 2005.

**Senator CONROY**—That is when its funding was announced. It was a 2004 election commitment?

**Mr Bryant**—Yes, I believe so.

**Senator CONROY**—When was the discussion paper seeking input into how this program should operate released?

**Mr Bryant**—Draft guidelines for the program were released on 17 November 2005, and the final guidelines were released on 8 March 2006.

**Senator CONROY**—But the discussion paper seeking input was, I believe, 5 August 2005? That was prior to 17 November?

**Mr Bryant**—Yes, 2 August.

**Senator CONROY**—You said the guidelines were released on 17 November?

**Mr Bryant**—Draft guidelines.

**Senator CONROY**—Draft guidelines. And the final guidelines on the 8th?

**Mr Bryant**—Yes, 8 March.

**Senator CONROY**—How long has the program actually been operating for?

**Mr Bryant**—The program has been operating since the final guidelines were released.

**Senator CONROY**—So 8 March?

**Mr Bryant**—At that time the process involved a call for registrations for service providers. Obviously we needed to have those applications in and providers registered before services could be provided.

**Senator CONROY**—It is almost a year since you opened for registration?

**Mr Bryant**—That is correct.

**Senator CONROY**—How many metropolitan broadband black spots program services have been provided to date?

**Mr Bryant**—I can tell you that, I think. This is as at 1 January this year. Two registered providers had lodged claims, totalling \$235,381.

**Senator CONROY**—\$287,000?

**Mr Bryant**—No, \$235,000.

**Senator CONROY**—\$235,000. Thank you. The number of program services provided under Metropolitan Broadband Connect is a performance indicator for this program; is that correct?

**Mr Bryant**—I would have to take that on notice, but undoubtedly—

**Senator CONROY**—So you do not know your own performance indicators?

**Mr Bryant**—There is an evaluation plan for the program. I am sure that would be one.

**Senator CONROY**—I could not imagine it is not one. Thank you. I appreciate that. If it is not, then you can come back and correct that. That would be great. Has the number of program services provided under Metro Broadband Connect met the performance targets? Does two ring a bell as one of the performance targets?

**Mr Bryant**—Obviously the program has not been evaluated.

**Senator CONROY**—Fully subscribed?

**Mr Bryant**—No, it has not been evaluated yet. So I am unable to make—

**Senator CONROY**—This is a \$50 million program; is that right?

**Mr Bryant**—Yes.

**Senator CONROY**—And you spent only \$200,000 in the first year of it?

**Mr Bryant**—That is correct.

**Senator CONROY**—Have you given the money back to Finance?

**Mr Bryant**—Obviously the program has been slow to start up. That is quite clear. It is clear now, though, that there are a number of applicant service providers. I think we have now three registered service providers and about 18 under consideration.

**Senator CONROY**—So there has been one extra since 1 January?

**Mr Bryant**—Yes.

**Senator CONROY**—So plus one. And 18 expressions of interest?

**Mr Bryant**—No, applications being considered. I think that is correct.

**Senator CONROY**—Do you have to return the money? Is it \$50 million per year or \$50 million for the whole program?

**Mr Bryant**—It is \$50 million for the whole program.

**Senator CONROY**—So you do not have to return the money after 12 months?

**Mr Bryant**—There may be a need to rephrase it.

**Senator CONROY**—Is the amount that has been spent under this program consistent with funding allocations for the program made under the 2005 federal budget?

**Mr Bryant**—Are you saying that—

**Senator CONROY**—I am presuming there was a yearly allocation as well as the overall program allocation?

**Mr Bryant**—Yes.

**Senator CONROY**—I am just asking—

**Mr Bryant**—Yes, from the 2005-06 budget an amount of \$7.369 million was rephased into the current financial year.

**Senator CONROY**—Could you provide a breakdown of the proportion of the funding spent under this program by technology type? This is the \$235,000. Given there are only two, you might even be able to do it off the top of your head.

**Mr Bryant**—I think I can do it off the top of my head, actually. Yes, they are both providing wireless technology, one in the Gold Coast area—Allegro. And the second I think is in the central coast area—Cirrus Communication.

**Senator CONROY**—That is a fairly dramatic underspend of your program, Mr Bryant. Would that be an accurate statement?

**Mr Bryant**—It is certainly a major underspend, yes. There is no question about that.

**Senator CONROY**—I have a note saying that the annual funding allocation including the cost of administering it—I think this is consistent with what you said—is \$10 million in 2005-06?

**Mr Bryant**—Those are the allocated funds, yes.

**Senator CONROY**—I am just trying to work out what \$200,000 is as a percentage of \$10 million. Can you help me there?

**Mr Bryant**—I think it is about 2.3 per cent.

**Senator CONROY**—So that would be a 97 per cent underspend?

**Mr Bryant**—Yes.

**Senator CONROY**—Is there an explanation for why there is such a dramatic underspend, Mr Bryant?

**Mr Bryant**—There are several reasons, I think. Firstly, there are problems in program design to design a black spots program like this, because the nature of the black spots in metropolitan areas is that they are largely as a result of technology impairments, which mean that the black spots are very difficult for providers to identify where they are and what the business opportunity is. There have undoubtedly been some problems in prospective service providers identifying what the actual opportunity is. Also, the nature of the black spots in metropolitan areas has changed since the program started. Certainly, there is still a need. There is still a number of black spots, but it has diminished very significantly, in our estimation, largely as a result of commercial activities by Telstra to reduce technology impairment, such as pair gains and RIM systems in those areas. If you put those two factors

together, prospective providers clearly have had difficulty in identifying a business case to participate in the program. But as I have indicated, we have certainly now got an increased level of interest and we are actively considering applications under the program.

**Senator CONROY**—Were you anticipating that Telstra would apply for this program?

**Mr Bryant**—They clearly had the opportunity to apply. I do not know whether you could say we were anticipating it. Obviously we talked to them about the opportunity.

**Senator Coonan**—I think Telstra's Next G network with claimed reach of up to 98 per cent of the population is what they have said is their answer to this particular issue.

**Senator CONROY**—They have said that their 3G network is a—

**Senator Coonan**—They have not said it. I am just speculating that, because they say their Next G network that they have rolled out since this program had been commenced will reach up to 98 per cent of the Australian population, they may not necessarily see a business case to be spotting black spots.

**Senator CONROY**—But Telstra—

**Senator Coonan**—They could apply. They still can.

**Senator CONROY**—But Telstra has even started up a little lobby campaign, which I think you read about every day. You should not always believe everything you read. They are claiming that they still want to lay fibre and fibre is the answer and that 3G is not a substitute. This is a program about fixed line, this metropolitan black spot is a fixed line program.

**Senator Coonan**—Not necessarily. They have been wireless—

**Senator CONROY**—No, in terms of where the black spots are with Telstra's existing copper network—

**Senator Coonan**—That is just an upgrade arrangement, whereas the people who have responded here appear to be doing it by wireless.

**Senator CONROY**—But Telstra have never said that their 3G is a solution to the metropolitan—

**Senator Coonan**—No, I have never said they said it. I am just saying that they claim that their Next G network in any event reaches up to 98 per cent.

**Senator CONROY**—I was at the same launch you were; in fact, I think we jointly launched it.

**Senator Coonan**—We did.

**Senator CONROY**—Has Telstra ever put in any paperwork or applied?

**Mr Bryant**—No, they have not applied.

**Senator CONROY**—Or have you just had discussions with them?

**Mr Bryant**—We have had discussions.

**Senator CONROY**—But they have never applied?

**Mr Bryant**—No.



**Senator CONROY**—Have you invited them to?

**Mr Bryant**—Yes, with everyone we talk to we invite them to be involved, obviously.

**Senator Coonan**—Applications are now closed. I should make that clear.

**Senator CONROY**—So they cannot apply now even if they want to?

**Senator Coonan**—No, the applications are closed under the program.

**Senator CONROY**—You said there are 18 more?

**Mr Bryant**—I will get you the exact number.

**Senator Coonan**—Twenty-one companies have applied to participate.

**Senator CONROY**—That includes the three that have been accepted?

**Senator Coonan**—I think so, yes.

**Senator CONROY**—So there are 18 other applications?

**Mr Bryant**—Yes. Twenty-one all up.

**Senator CONROY**—What is the total spend of the remaining 18? What are their claims or their applications?

**Mr Bryant**—The funds can be provided to registered service providers in two ways. One is as per the current Broadband Connect program, where they connect services and then put in a claim against those services connected. Under the Metro Broadband Connect program we are also offering the opportunity for registered service providers to seek an upfront payment and then have that upfront payment, provided it is approved, netted off against services actually provided during the year.

**Senator CONROY**—But you have the applications now, so you must know exactly how much is being sought. Even if they just say, ‘By the way, we are laying some infrastructure. We will get back to you about how much we want,’ they come to you with a firm proposal?

**Mr Bryant**—My point is that, until they are approved and sign their agreement, we will not know how much they expect to spend in a year, but certainly in terms of upfront payments the total number of applications is looking for an upfront contribution of somewhere over \$20 million.

**Senator CONROY**—So the total is \$20 million?

**Mr Bryant**—Of the current applicants, yes.

**Senator CONROY**—But we have just been told that there are not any more applications to be accepted. So the \$50 million program has a maximum, if you gave everything everybody asked for, of \$20 million?

**Mr Bryant**—No, that is not correct. As I said, there are two components, upfront payments that can be a proportion of payments made to providers—

**Senator CONROY**—But you must know how much people are applying for? They have not just sent you a letter saying, ‘Look, we are applying, but we don’t know how much we are applying for’?

**Mr Bryant**—It depends on where they roll out and how many services they provide. The way the program works is similar to the Broadband Connect program in that, once people are registered, they put an estimate of where they expect to roll out and how many services they expect to provide in the year. But certainly not in the out years.

**Senator CONROY**—Do you have any idea how much you might be spending under the 18 further applications? You must have some ballpark figure?

**Mr Bryant**—It is difficult to say in the out years. I have given you an indication of what people are seeking in upfront funding. Obviously we are going through those applications and assessing whether those bids are reasonable, and indeed whether the applications should be accepted. I am not really in a position to say how much may be in the out years, because it depends entirely on a whole range of issues around those services providers' participation in the program, levels of demand and so on.

**Ms Holthuyzen**—It depends how many customers actually take up the service. While some of the payments are up front, some of the payments relate to actual number of customers that you sign up. So you get the incentive payment like you do under the Broadband Connect scheme. So the more customers you sign up the more funds you get. It depends how many customers those service providers sign up.

**Mr Bryant**—The Metro Broadband Connect program operates in the same way as Broadband Connect. It is a demand driven program. It depends to a large extent on the level of demand for broadband.

**Senator CONROY**—When they applied for these funds they have had to register an application, and that would have given you some estimate of what they anticipated the demand would be? I cannot believe you have a program that just says: 'Look, we've got a bucket-load of money here. Apply for it and tell us how much you want later.' I appreciate your point that it could be a little bit more or even could be a little bit less, but they have to give you some figure about what they anticipated in demand?

**Mr Bryant**—I have given you an indication of the element they have sought in terms of upfront funding. I am happy to take on notice the second part of the question, which is what are their expectations to roll out over a number of years. It is a complex issue, so I am happy to take that on notice and explore that.

**Senator CONROY**—Telstra has never applied for this, has it? Last year in parliament the minister said that two service providers are already fully registered delivering Metropolitan Broadband Connect services via wireless technology, and that:

Four other providers are about to follow, and a further six companies are also applying for registration, while several others, including Telstra, have exchanged draft deeds of agreement with my department. Senator Conroy is so out of touch.

Were there any draft deeds of agreement with Telstra around this program?

**Mr Bryant**—As I said, Telstra has not applied for the program.

**Senator CONROY**—No, I am asking now about a draft deed of agreement that the minister has described in public.

**Ms Holthuyzen**—Telstra has never signed an agreement. But as Mr Bryant said, we have discussions with Telstra. I think Telstra originally may have expressed some interest but they have never actually come through and signed up for the program.

**Senator CONROY**—The minister seems fairly definitive in this statement. She says, ‘Telstra have exchanged draft deeds of agreement with my department.’

**Ms Holthuyzen**—It may be that they had access to the draft agreements that we had, because there were some standard-type agreements.

**Mr Bryant**—Absolutely.

**Ms Holthuyzen**—We probably provided them with a draft agreement—a standard agreement that was available to everybody—and they may have had that. So I suspect—

**Senator CONROY**—But the minister says ‘have exchanged’. That implies it is two way, not that you have handed them the application forms.

**Ms Holthuyzen**—I cannot comment. All we can say is that they have not signed up, but they were obviously spoken to. They expressed some interest. We obviously gave them all the paperwork, including any draft agreements, and they have made the decision not to sign up.

**Mr Bryant**—I think that is correct. I am happy to take that on notice again just to confirm. But my recollection was that there were informal discussions with Telstra about what the agreement would look like and we were happy to share those, as I said, with anybody who wanted to talk about it.

**Senator CONROY**—I have no doubt you have given—

**Mr Bryant**—But I reiterate my point that they have not applied—formally applied—under the program.

**Senator CONROY**—No, I am talking about a statement the minister made in answer to a question in parliament, on 10 August 2006, where she stated that there had been an exchange of deeds.

**Mr Bryant**—As I said, I think that is correct. I think, as you quoted, you talked about draft deeds of agreement, yes?

**Senator CONROY**—No, I did not, the minister did—‘Exchanged draft deeds of agreement with my department’.

**Mr Bryant**—Yes.

**Senator CONROY**—Telstra have given you no such documents ever.

**Ms Holthuyzen**—But we exchanged them with them.

**Senator CONROY**—No, you gave them. An exchange is a two-way transaction where people give each other one thing and one thing. An exchange is not ‘I give you’. They never gave you any documents whatsoever, did they, Mr Bryant?

**Mr Bryant**—I am happy to take it on notice. All I can say—

**Senator CONROY**—No, Telstra have denied emphatically they have ever given you anything. I want you to confirm it. You know it is the case. They have never given you anything?

**Mr Bryant**—I am happy to take it on notice, because I know that at that time there was some discussion around draft deeds of agreement. I am happy to take that on notice and check exactly what happened.

**Senator CONROY**—There is a difference between discussion and actually a statement that Telstra had given you anything. Telstra never gave you anything. They said so publicly. I understood there is a convention that, when ministers perhaps inadvertently give incorrect information, the department immediately alerts them. That is your role. You can't not have noticed what the minister said in question time. Did you attempt to correct the minister's statement?

**Senator RONALDSON**—I do not know that internal advice to the minister is a matters that can be legitimately raised at these Senate estimates. There are sufficient rulings from a lot of chairs in relation to this. Clearly from the economics chair's resolution from October the Senate has resolved that witnesses are not required to answer on, and cannot be questioned about, internal advice to ministers.

**Senator CONROY**—Let me further go to a question from Senator Lundy on the 10th. Senator Coonan, in the supplementary question, stated:

Thank you very much. I know that this really upsets the Labor Party. The government's metropolitan broadband black spots program is being rolled out. For Senator Lundy's information, Telstra are in fact participating in filling these black spots around metropolitan areas.

That is not true, is it, Mr Bryant?

**Senator RONALDSON**—This witness really—

**Senator CONROY**—I am asking about a fact: Telstra is not participating in filling in black spots?

**Senator RONALDSON**—On a point of order—if the question is, 'Is Telstra participating in this?', then that is a legitimate question. But to reflect on what the minister has said is totally inappropriate.

**Senator CONROY**—Can you confirm the minister's statement that the government's Metropolitan Broadband black spot program is being rolled out—

**Senator RONALDSON**—On a point of order—

**CHAIR**—Telstra was involved in it. That is really all you have to answer.

**Mr Bryant**—I have indicated to you that Telstra has not applied under the program. I have also indicated to you that Telstra has done a lot of work commercially in filling black spots, which is part of the reason that the program has been slow to start up.

**Senator CONROY**—Telstra have never participated in this program? They have never given you a document to say they were?

**Mr Bryant**—I can just repeat what I said before: they have not applied to participate in the program. I have taken on notice your question about whether draft deeds of agreement were exchanged. As I said, my recollection is that there was some discussion around the draft deed of agreement, and I will go back and check exactly what happened.

**Senator CONROY**—Thank you, Mr Bryant. Ms Williams, it is the role of the head of the department, if you are aware that the minister has inadvertently/accidentally said something that could be questioned, to advise her of this? That is the kindest way I can describe it.

**Senator Coonan**—Obviously it was correct, Senator Conroy.

**Senator RONALDSON**—As confirmed by Mr Bryant.

**Senator CONROY**—No, Mr Bryant has confirmed no such thing. It is an outrageous thing to do to a public servant—

**Senator Coonan**—Yes, he has.

**Senator CONROY**—to suggest that he has said that Telstra would participate. He has made it quite clear that Telstra would not—

**Senator RONALDSON**—No, Mr Bryant said that Telstra was participating in eradicating black spots, which is exactly—

**CHAIR**—He did say that.

**Senator CONROY**—This is an outrageous verbaling of Mr Bryant and you really should be ashamed of yourselves.

**CHAIR**—No, it is not. He said that twice, Senator Conroy.

**Senator RONALDSON**—Mr Bryant deliberately clarified it, because Senator Conroy wanted the answer to the first part but not the second part.

**Senator CONROY**—Stop trying to put words in Mr Bryant's mouth.

**Senator RONALDSON**—Mr Bryant quite properly indicated that Telstra was participating on a commercial basis in addressing black spots.

**CHAIR**—He is not at all doing that, Senator Conroy.

**Senator CONROY**—This is outrageous.

**CHAIR**—You may think so.

**Senator CONROY**—Mr Bryant is sitting in front of us and you are trying to verbal him, when he is not in a position to respond.

**Senator RONALDSON**—You were not asking him the full suite of questions; that would give you an answer that you did not want.

**Senator CONROY**—You should be defending the public servant from being verballed, Senator Eggleston, not defending Senator Ronaldson's right to do it.

**CHAIR**—Senator Conroy, I heard what I heard. Just move on.

**Senator CONROY**—I have a few questions about the administration of the Broadband Connect program. Is that you as well, Mr Bryant?

**Mr Bryant**—That is me.

**Senator CONROY**—Last year DCITA indicated that it expected to finalise funding arrangements with successful bidders under the scheme in the 2006-07 financial year. Is this still the department's position?

**Mr Bryant**—It depends on what scheme you are talking about. Are you talking about the infrastructure program? I think it is—

**Senator CONROY**—Both. I am happy for you to break them up and apply the question to both programs.

**Mr Bryant**—With respect to the infrastructure program, which is an amount of up to \$600 million that we have launched guidelines for and invited applications to, those applications have closed and the government is currently in the process of assessing proposals that have been put forward. Clearly I think as Secretary Williams indicated, for probity reasons there is not much comment we can make about that process at all. In the meantime, of course, the Broadband Connect incentive program, which is the scheme that has been operational since April 2004—

**Senator CONROY**—HiBIS rollover, yes.

**Mr Bryant**—HiBIS turned into Broadband Connect. That continues to operate.

**Senator CONROY**—When can we expect the winning bidders to be announced?

**Mr Bryant**—That is really a matter for government. We are doing our part in assessing the proposals.

**Senator Coonan**—I am sorry, I did not hear your question?

**Senator CONROY**—I was just asking when we could expect the winning bidders to be announced for the infrastructure rather than the HiBIS?

**Mr Bryant**—The infrastructure program.

**Senator Coonan**—I have not seen the applications. I am waiting for advice. I cannot give you an answer.

**Senator CONROY**—Mr Bryant says it is your responsibility.

**Senator Coonan**—It is. But I cannot announce it in thin air. I have to have some kind of advice from the department.

**Senator CONROY**—Mr Bryant, would you like to give the minister some advice?

**Mr Bryant**—We are undertaking the assessment at the moment. It is our expectation—

**Senator CONROY**—I am not actually trying to catch anyone out. I am only asking—

**Ms Williams**—I do realise that, Senator Conroy, but we have to be very careful for probity reasons. We are still assessing the—

**Senator CONROY**—The date of completion is an appropriate question. Come on.

**Senator Coonan**—It is when I am ready to announce it. How is that?

**Ms Williams**—It really depends on the assessment when we can advise the minister and when she can announce it.

**Senator CONROY**—When were applications opened? Go back to the basics.

**Mr Bryant**—I will get the exact date for you again. It was early September, I think.

**Senator CONROY**—When did they close?

**Mr Bryant**—18 December.

**Senator CONROY**—So you are assessing them at the moment?

**Mr Bryant**—Yes.

**Senator CONROY**—And you have—

**Mr Bryant**—21 September was when—

**Senator CONROY**—Thank you.

**Mr Bryant**—the program was announced.

**Senator CONROY**—I will not hang you over three days. So all applications have closed?

**Mr Bryant**—Yes.

**Senator CONROY**—You are assessing them. What is the next stage of the process after you have assessed them? Do you make a decision and recommend that to the minister? Or do you say, 'Here are all the applications,' and the minister chooses? What is the process?

**Mr Bryant**—It is a matter for government to make the final decision, but the department is carrying out an assessment process at the moment.

**CHAIR**—It is their decision about what the selection process is do you refer them all to the minister and the minister makes a decision? I am trying to make sure I understand the process.

**Mr Bryant**—The department is undertaking an assessment process. The government will make the final decision.

**Senator CONROY**—So you do not make the recommendation?

**Senator RONALDSON**—The witness has said that the department is providing advice to the minister.

**Senator CONROY**—I am just asking about the format. I am not asking what the content is or who you are recommending. I just want to understand the process.

**Ms Holthuyzen**—We will provide an assessment report to the minister. That is how it works.

**Senator CONROY**—Having never been in government, I am not sure what an 'assessment report' means? Does that mean you say: 'These ones have failed, these ones have passed. These meet the criteria, these ones don't'?

**Ms Holthuyzen**—We assess the projects in terms of how they meet the criteria and the guidelines that were set out in terms of the applications and then we provide that report to the government and then the government makes a decision on the successful applicant or applicants.

**Senator CONROY**—So you are not required to make a recommendation under that process you are describing?

**Ms Holthuyzen**—Not specifically.

**Senator CONROY**—You will say: ‘These ones have passed the criteria. These ones have not and, here, it’s up to you’? Or do you provide them in a ranking and say, ‘Here is a ranking’?

**Ms Williams**—We would discuss the applications against the criteria.

**Senator CONROY**—I appreciate there are probity issues. I am not talking about content. I just want to understand the process.

**Ms Holthuyzen**—No, I realise that. We are just being quite careful.

**Senator CONROY**—I am happy for you to be as careful as you need to be around those issues, but I am just trying to clarify the process, which I think I am entitled to do. I am sure the bidders must know what this process is. I do not think it is a state secret for me to find out what it is.

**Mr Bryant**—The guidelines set out the whole assessment process the department will undertake in some detail, including specific criteria and the various stages of the process. At the end of that assessment process, as Ms Holthuyzen identified, that report addressing all of those criteria and providing the assessment to government for decision will be provided to the minister.

**Senator CONROY**—Thank you for that.

**Mr Bryant**—The guidelines are quite detailed in terms of setting out how we will follow that.

**Senator CONROY**—What you are assessing them against, and I appreciate that point.

**Mr Bryant**—Yes.

**Senator CONROY**—But it must also give you some indication in those guidelines that ultimately the minister makes the decision rather than the department. Because there are different types of processes involved.

**Mr Bryant**—Indeed.

**Senator CONROY**—I am just trying to understand which of the processes you are following. What do the guidelines state about the final selection process?

**Mr Bryant**—I am not sure it is that specific. It talks about the process of working our way through the criteria. Again, it might be useful if I take that on notice. But it probably talks about government making a final decision.

**Ms Holthuyzen**—The guidelines are public.

**Senator CONROY**—I appreciate that. Given you were administering it, I would hope you would have a quicker recall on them than me, Mr Bryant. But it is fine if you take that on notice. So you have not yet determined how many of the bids were deemed to comply with the program guidelines?

**Mr Lyons**—As a matter of probity, I do not think it would be appropriate to answer that question about how many applicants have passed which parts of the process.

**Senator CONROY**—Could you expand on why you think it is a problem? Could you explain what that probity issue is?



**Mr Lyons**—The process is under way and the department has not completed its assessment. We really should not be speculating.

**Ms Williams**—We are really getting a little bit into speculation now.

**Senator CONROY**—I am happy to accept that answer. You actually have not finished assessing them all so you cannot give me an answer. That is fine.

**Ms Holthuyzen**—That is right.

**Senator CONROY**—Rather than saying it is a probity issue, you are telling me that you have yet to make your final—

**Mr Bryant**—And the guidelines set out a specific process. There are different phases of the assessment: a benchmarking phase, a comparative phase and so forth. All of that has not yet been completed, so it would be inappropriate.

**Senator CONROY**—Has anyone failed the basic one? Has anyone failed the first stage? Often you receive them and you say, ‘No, that one does not pass even the first test.’ Has anyone failed the first test?

**Mr Bryant**—Again, that is not appropriate. There is a process that is set out. At the end of that there will be a report and then it goes to government for decision.

**Senator CONROY**—If there is a problem with one of the applications, do you go back to them and say, ‘Look, can you change this?’ This is very important around the probity issue. I am trying to actually understand whether your guidelines allow you to iterate—

**Mr Lyons**—The guidelines are based on a principle of fairness. Part of that fairness process is not providing bidders with an opportunity to enhance their bids after the bids have been submitted.

**Senator CONROY**—Thank you. That is a good answer.

**Mr Lyons**—Just to cover off what is in the guidelines, there are two processes of going back to applicants. The first is to seek clarification of information that is provided in applications. The second is to request applicants to revise their bids in ways that do not actually enhance their bid. And that is to take into account the possible scenario that you might have a national bid and you might have state based bids and then you ask the national bidder to break up their proposal into options. Indeed, we canvass that in the guidelines to encourage people to put forward options.

**Senator CONROY**—Thank you for that. How much money has the government allocated to the Broadband Connect subsidy program?

**Mr Bryant**—For the current year?

**Senator CONROY**—Yes, all of it and then on a yearly breakdown? Is it the remainder between the \$878,000 and \$600,000? I have not seen a dollar figure specified. I have made the assumption myself that it is the remaining \$278 million. But I actually have not seen anything—

**Mr Lyons**—I think it is approximately \$260 million for the incentive part of the program.

**Senator CONROY**—That leaves, on my calculation, \$18 million?

**Mr Lyons**—I think that is departmental expenses.

**Senator CONROY**—That is ongoing. Is that \$260 million over three years or four years?

**Mr Bryant**—Let me give you the exact breakdown. In the year 2005-06, \$124.7 million was provided for administered. Then in the current year \$251.7 million has been provided for administered, and a proportion of that has been set aside by the minister for the infrastructure program we have just been talking about, and a total of \$133 million has been provided for the incentive program.

**Senator CONROY**—You have left me a little bit confused there. The confusion is at my end, not yours. I am talking about the Broadband Connect subsidy program. I am trying to break out those figures. You said that the total after the \$600 million was \$260 million allocated, and then you were hopefully giving me a breakdown of the \$260 million over a couple of years. You said for 2005-06 it was \$124.7 million?

**Mr Bryant**—That is correct.

**Senator CONROY**—Was that the old HiBIS program?

**Mr Bryant**—No, that is Broadband Connect.

**Senator CONROY**—So it is \$124 million in 2005-06.

**Mr Bryant**—This does not include the HiBIS numbers.

**Senator CONROY**—Thank you. I thought you said for 2006-07 there was \$251 million?

**Mr Bryant**—Point 7.

**Senator CONROY**—Is the \$260 million an ongoing figure or a total?

**Mr Bryant**—No, overall—

**Senator CONROY**—That adds up to \$370 million, which is more than \$260 million. Either I just have not got my maths right or I have just misunderstood.

**Mr Bryant**—Let me work through the three or four years of the program: \$124.7 million for 2005-06; \$251.7 million for 2006-07, the current year; \$239.5 million for the next financial year; and \$245 million for 2008-09. That is net of departmental costs, which total over those four years about 17 million.

**Senator CONROY**—Could you add up those four figures for me?

**Mr Bryant**—If you add up all of those plus the departmentals, you should get to \$878 million. I think it is close to that.

**Senator CONROY**—Where does the \$600 million come out of? I thought the \$600 million came out of the \$878 million?

**Mr Bryant**—It does. If you look at the out years, 2007-08 and 2008-09, plus a proportion of funds that are allocated—

**Mr Lyons**—A proportion of 2006-07 funds is allocated to the infrastructure program.

**Ms Holthuyzen**—Those numbers relate to the Broadband Connect program in total, which covers the incentive part and the—

**Senator CONROY**—I think that is where I am confused. I am just trying to get a breakout of the monies for the subsidy program. With respect to, say, 2005-06, the \$124 million, what proportion of that is for the subsidy program?

**Mr Bryant**—All of it,

**Senator CONROY**—And for 2006-07?

**Mr Bryant**—As I said, \$133 million has been allocated to the—

**Senator CONROY**—That is 2007-08?

**Mr Bryant**—No, 2006-07, the current year.

**Senator CONROY**—I thought you said that was \$251 million?

**Mr Bryant**—You need to understand that Broadband Connect is an overall budget and there are two components, because we are transitioning from one approach to another approach.

**Senator CONROY**—I am obviously double counting, and I appreciate that I am. I am trying to identify where I am double counting so I can determine how much the subsidy is. I am not getting anywhere.

**Mr Lyons**—I said approximately \$260 million for the incentive program. As I understand it, \$124 million was the expenditure on the incentive program in 2005-06, and \$133 million in 2006-07.

**Mr Bryant**—That is correct.

**Mr Lyons**—The balance between \$251 million and \$133 million is the amount that would be allocated to the infrastructure program in this financial year. And the out years will be also allocated to the infrastructure program.

**Senator CONROY**—I genuinely appreciate that. So \$260 million is essentially for 2005-06, \$124 million; and the 2006-07 is \$133 million, which gives us around \$250 million.

**Mr Lyons**—I said 'around'.

**Senator CONROY**—I am happy to take the rounding. Even though that is about \$400 million closer than I was, I will take a rounding of a couple of million.

**Mr Bryant**—\$258 million.

**Senator CONROY**—Going back to the Metro Broadband Connect program, I see the annual funding allocation, including the cost for administering the program, was \$10 million in 2005-06, \$20 million in 2006-07 and \$20 million in 2007-08. What is the admin figure in the \$50 million?

**Mr Bryant**—For the current year it is \$0.99 million.

**Senator CONROY**—For next year?

**Mr Bryant**—\$1.066 million

**Senator CONROY**—\$1.066 million?

**Mr Bryant**—Yes.

**Senator CONROY**—And what was the admin cost last year?

**Mr Bryant**—\$1.3 million.

**Senator CONROY**—Sorry, \$1.3 million? So it cost \$1.3 million to administer a program from which you handed out \$200,000?

**Mr Bryant**—As I said, we have talked through that.

**Senator CONROY**—\$1.3 million to administer a program that you actually handed out only \$200,000 of?

**Ms Holthuyzen**—The costs of the department in putting the program together and establishing it are much greater at the start.

**Senator CONROY**—I have no doubt there were start-up costs. I appreciate that. It costs five to six times more to administer than what was actually handed out. That has to be a record.

**Ms Williams**—I think in the next financial year that will reverse very reasonably.

**Senator CONROY**—I am sure that proportion will turnaround. Six times the money handed out has got to be up there. I will go back to Broadband Connect. Thank you, as I said, for clearing up those figures for me.

Has the amount of money spent under the Broadband Connect subsidy program met departmental projections about how much money would be spent under those programs to date? You have allocated \$124 million. Was all of that spent last year?

**Mr Bryant**—Yes.

**Senator CONROY**—Is it a little early to say whether all \$133 million will be spent?

**Mr Bryant**—That is right.

**Senator CONROY**—Are you confident that it will all be spent?

**Mr Lyons**—Yes.

**Senator CONROY**—How much do you forecast will be spent under the subsidy program in the next six months? Half the \$133 million? Is it lumpy? Are there applications at the beginning? Or is the money reconciled on a monthly basis, a six-monthly basis or an annual basis?

**Mr Bryant**—As I indicated to you, it is a demand driven program so it is notoriously difficult to predict how things will go. But the profiling of past years has indicated that it is lumpy or seasonal or however you want to describe it. So it depends on a number of matters. Obviously, one of the most significant issues is the growing level of demand for broadband. That is exactly what the program is addressing.

**Senator CONROY**—Could you provide a breakdown as to the service types—for example, ADSL, satellite, wireless—that have been subsidised under the program and the percentage of funds spent on each service type, looking at the last 12 months, which I presume you have got reasonably handy?

**Mr Bryant**—Yes.

**Senator CONROY**—Could you give us that?

**Mr Lyons**—I think the figures that we have are under the program as a whole rather than the last 12 months.

**Mr Bryant**—These are total to date. Seventy per cent of services or incentive payments—it is the same thing—have been for connections to ADSL—principally but not exclusively Telstra.

**Senator CONROY**—What was that figure?

**Mr Bryant**—Seventy per cent.

**Senator CONROY**—Seventy per cent for ADSL?

**Mr Bryant**—Yes. Seventeen per cent connected to satellite, twelve per cent connected to wireless, and 1 per cent connected to cable broadband, and that is essentially in Western Australia.

**Senator CONROY**—Who have been the recipients?

**Mr Bryant**—We have 53 service providers registered in the program.

**Senator CONROY**—Is most of that Telstra for the ADSL?

**Mr Bryant**—Yes, as I said, primarily to Telstra, but there are ADSL resellers who get a partial incentive payment. They are in the program as well.

**Senator CONROY**—Was there a cap previously on HiBIS? I thought it was a 60 per cent cap for Telstra?

**Mr Bryant**—Yes.

**Senator CONROY**—And they have ended up with nearly 70 per cent?

**Mr Bryant**—No, that is overall 70 per cent have been connected to ADSL, but because there are differential payments, in other words, satellite services are almost universally paid at the high-cost payment, the percentage of 70 per cent connected does not necessarily mean that they have had 70 per cent of the funds. Indeed, they have not.

**Senator CONROY**—Is it possible to say who has received the bulk of the money? Is there a percentage breakdown?

**Mr Bryant**—I can tell you for the current year. I think Telstra has received 52 per cent of payments to date.

**Senator CONROY**—What about last year, 2005-06, the \$124 million that has already been spent, and that was a breakdown you gave me—70 per cent, 17 per cent, 12 per cent and 1 per cent?

**Mr Bryant**—Yes.

**Senator CONROY**—Is that 52 per cent for Telstra from that year?

**Mr Bryant**—Of the HiBIS funds, going right back to 2005-06, they received 63 per cent, and 63 per cent for Broadband Connect. As I said, overall on Broadband Connect it is 52 per cent.

**Senator CONROY**—Thank you.

**Mr Bryant**—Just to explain in terms of the cap, it operates as a soft cap.

**Senator CONROY**—I think we have been through that before, so I am relaxed about that, thank you very much. Recent media reports suggest that the government is planning an advertising campaign to persuade voters in rural and regional Australia that the standard of Australian broadband services is adequate. Are those reports accurate? Have you seen those reports? I know you have a monitoring service. It is excellent now? Unfortunately at home my broadband is too slow and it takes about a week to download one of your weighty documents. But you must know about this You must have seen those reports as well?

**Ms Williams**—Yes, I have seen the reports. No, they are not strictly accurate. There is an information campaign.

**Senator CONROY**—Sorry, an information campaign.

**Ms Williams**—It is really a consumer information campaign.

**Senator CONROY**—I am sure it is. What does this information campaign consist of?

I was just asking about the information campaign. Could I start with the simple question: how much?

**Dr Hart**—The 'how much' is \$5.9 million.

**Senator CONROY**—\$5.9 million.

**Dr Hart**—That is over two years.

**Senator CONROY**—Over two years?

**Dr Hart**—Yes.

**Senator CONROY**—How much is going to be spent this year?

**Ms Forman**—\$4.1 million. And \$1.8 in 2007-08.

**Senator CONROY**—\$4.1 million this year? Is this going to be a letter-writing campaign. Are we going to have two letters from the minister going out, one about Internet porn filters and one about rural broadband? What does the information campaign consist of?

**Senator Coonan**—You are not suggesting they should be combined, are you? I think that is just to situate the campaign against the finding of the regional Internet telecommunications inquiry, which found that there was a relatively low level of awareness of consumer safeguards in the telecommunications area. So that is the starting point that informs the nature of the campaign.

**Senator CONROY**—What will the \$4.1 million be spent on?

**Dr Hart**—Obviously some of it goes to actually developing the campaign. The department has let a number of consultancies that are in the public arena to do with the development of the campaign. There are components that go to advising regional householders of information on the telecommunications consumer safeguards and the kinds of step that they can take if they have any problems. There will also be some additional components related to briefings in regional centres. As in the past, we have held forums for regional affairs, bringing together industry players, consumer stakeholders and government representatives to discuss regional matters. We are planning two of those.

**CHAIR**—Can I get a breakdown of the different components you have just described in dollars?

**Dr Hart**—I do not know that we would be able to do that. Certainly I can take it on notice.

**Senator CONROY**—Can I go back, then, and revisit what those different points were?

**Dr Hart**—I should preface what I am saying by saying that this is not the final form of the campaign. These are the kinds of activities that we are working on at the moment and that we think it will include. That is why I am being a bit hesitant about putting any dollars against them, because the final form of the campaign has not been determined at this point.

**Senator CONROY**—You said that some contracts have been let?

**Dr Hart**—Yes, they have.

**Senator CONROY**—Who have they been let to?

**Ms Forman**—The market research company is Quantum Market Research and the creative has been done by The Creative Palace. We have undertaken tenders for both the public relations and Indigenous public relations, but those consultancies are still being finalised.

**Senator CONROY**—Did you say Creative Palace?

**Ms Forman**—The Creative Palace.

**Senator CONROY**—Who are the proprietors of Quantum?

**Ms Forman**—I would have to take that on notice.

**Senator CONROY**—Where are they based, do you know?

**Ms Forman**—Melbourne, I think.

**Senator CONROY**—How much is the Quantum contract worth?

**Ms Forman**—Once again, I would have to take that on notice.

**Senator CONROY**—Creative Palace?

**Ms Forman**—I can get you those numbers.

**Senator CONROY**—Hopefully before Christmas. Are we talking half a million each? Are we talking \$10,000 each? I am trying to understand the quantum of the \$4.1 million.

**Ms Forman**—I am afraid I might have to come back to you on this.

**Ms Williams**—We do not know.

**Senator CONROY**—Ms Forman sounded like she was prepared to hazard a rough estimate. I will not hang her if she is \$100,000 out.

**Ms Forman**—I was going to say that it is closer to the former than the latter.

**Senator CONROY**—What did I say? I was distracted by the minister.

**Ms Forman**—I think you said half a million and \$10,000.

**Senator CONROY**—So it is closer to half a million for the combined total of those two?

**Ms Forman**—Yes, but I would much rather get you the exact numbers.

**Senator CONROY**—I appreciate you are giving a rough figure and I will not hold it against you if it is \$700,000 or \$300,000. But that just give a bit of a ballpark. I appreciate you have not made the final decisions. Are you considering a mail-out?

**Dr Hart**—Yes.

**Senator CONROY**—Would it be a mail-out to all Australians or just regional areas? What is the target?

**Ms Forman**—We are considering just regional at the moment, and we are looking at some kind of a lasting product that consumers can actually—

**Senator CONROY**—A fridge magnet?

**Ms Forman**—That has been suggested. Apparently it is one of those small lasting things.

**Senator CONROY**—Be alert but not alarmed.

**Ms Forman**—It basically gets the message across about what people need to do if they are having a problem with their telecommunications, and letting them know how to go to their provider and, if they still have problems, going to the TIO.

**Senator RONALDSON**—It is certainly a very effective campaign if you can still remember it, Senator Conroy.

**Senator CONROY**—The poor people will have to buy a second fridge so they can put on all the magnets from you lot.

**Senator RONALDSON**—Can I ask some questions?

**Senator CONROY**—Have you run out of biscuits? Are you bored? I am on the last page of my questions, so I will be happy to finish up in a second. So we could have a fridge magnet. Will the advertising be via television, radio or billboards?

**Dr Hart**—Not at this stage. The focus is very much on the consumer information. If there is any associated advertising, it would be really to support that activity, I would imagine.

**Senator CONROY**—There won't be an ad saying, 'Watch out for your new fridge magnet?'

**Dr Hart**—More about alerting people that there is likely to be a mail-out.

**Senator CONROY**—In what form would that be? Would that be an ad on television or an ad on radio?

**Dr Hart**—That is being worked through at the moment.

**Senator CONROY**—Between the cost of a mail-out to this many people and the actual magnet itself, there would not be much left for an advertising budget on top of that?

**Senator Coonan**—No-one said there was going to be a magnet. Disappointing but, no, no magnet.

**Senator CONROY**—Ms Forman, I thought—

**Ms Forman**—We said that was an option being considered.

**Senator CONROY**—It was an option. She suggested it would be an option.



**Senator Coonan**—Yes, but you morphed it into a costing.

**Senator CONROY**—No, I am trying to work out how you are going to spend the remaining three and a half million. I would have thought that, if there is a TV or radio advertising campaign, there would not be much left. It would be a very small magnet.

**Senator RONALDSON**—I am sure the minister will see a policy advice from the department in relation to the expenditure.

**Senator CONROY**—No, I am assuming Quantum and The Creative Palace will come up with a few ideas like this. Do you have a theme? You mentioned it was off the back of the information from that report.

**Dr Hart**—Yes.

**Senator CONROY**—Is there a title yet?

**Dr Hart**—Not at this stage.

**Senator CONROY**—Nothing yet? When is the first mail-out?

**Dr Hart**—The timing has not yet been decided.

**Senator CONROY**—Was that financial year or calendar year for the spending of the \$4.1 million?

**Ms Forman**—Financial year.

**Senator CONROY**—That was allocated last budget?

**Dr Hart**—Yes.

**Senator CONROY**—You are aiming to have it completed by the end of the financial year, I presume?

**Ms Williams**—No. The \$4.1 million was at the 2006-07 financial year, and \$1.8 million was in 2007-08.

**Senator CONROY**—The \$4.1 million is not allocated until after 1 July?

**Ms Williams**—No, the \$4.1 million is for 2006-07 and the \$1.8 million is for 2007-08. It is a total of \$5.9 million.

**Senator CONROY**—This is not mandatory but presumably you need to have spent the \$4.1 million by 30 June this year to fit within that—

**Ms Williams**—That is the intention.

**Senator CONROY**—Yes, which would mean the magnet/advertising—whatever it was that was going to be done; I think a mail-out seems to be a consistent nod, and no-one is suggesting that there is not a mail-out—will be prior to—

**Ms Williams**—Not necessarily. We have just assessed what we will need this financial year. We have not got to the level that I think you think we have. This is still under development.

**Senator CONROY**—I appreciate that. It is just regional homes, did we say?

**Ms Williams**—It is households across regional Australia.

**Senator CONROY**—Regional households. How many is that?

**Ms Williams**—2.75 million households.

**Senator CONROY**—2.75 million households?

**Ms Williams**—Yes.

**Senator CONROY**—Is there a difference between a household and a home, or are you just being very, very accurate?

**Ms Williams**—Very, very accurate.

**Senator CONROY**—Some lucky Australians should be getting one letter from the minister about digital TV, one letter from the minister about Internet porn photos and a broadband letter. Some of them could be getting three letters from the minister. She is nodding; you are shaking your head. I would be worried. Or were you shaking your head as well, Minister?

**Senator Coonan**—I am shaking my head. I do not know where you are getting all of these letters from. The only letter I have—

**Senator CONROY**—I thought you told Senator Fielding earlier today that you would—

**Senator Coonan**—If you stop talking for two seconds I will say that the only letter that I am aware of that I am writing that I have committed to—and which I am very surprised you would be critical of—is the letter about Internet pornography and the filters. I will be writing a letter to that effect to every Australian household.

**Senator CONROY**—I was just saying that I thought you confirmed that to Senator Fielding earlier—

**Senator Coonan**—I did and I have just confirmed it again. That is the only letter that I am committed to.

**Senator CONROY**—I thought I got an indication—and I am not trying to verbal anybody or get anyone in trouble—which no-one has disagreed with up until then that at a minimum there will be a letter to all 2.75 million regional households?

**Senator Coonan**—It is under development and under consideration, but the letter that I am able to tell you about that I have committed to is the one advising Australian families about a filter that they can have for their home computer. It may be that in the course of development of other programs letters may be part of what I am recommended to do. I have one letter that I have in my mind at the moment, and I have told you about it.

**Senator CONROY**—Although there is a possible letter?

**Ms Williams**—It is possible. But what we are talking about is really a summary of consumer safeguards and how to access them. It is an information campaign about consumer safeguards.

**Senator Coonan**—It may not be a letter.

**Ms Williams**—It may not be a letter.

**Senator CONROY**—I am not meaning for people to get defensive, but some communication from the minister, possibly to 2.75 million households in regional Australia about broadband and ensuing issues?

**Ms Williams**—About consumer safeguards and how to access them.

**Senator CONROY**—Yes, consumer safeguards. If you can allow me to just use the word ‘broadband’ and we will agree that that is what I am referring to in the program that you have just described.

**Senator RONALDSON**—But that does not mean the witness responds according to your interpretation.

**Senator CONROY**—Yes, you are right. Thank you for that, Senator Ronaldson. There has been a suggestion that there is also a digital TV communication campaign as well?

**Senator Coonan**—Has there?

**Senator CONROY**—I have read reporters.

**Senator Coonan**—Have you read reports?

**Senator CONROY**—I have, usually supplied by your department with your wonderful new electronic media monitoring service. Is that accurate, Minister? You are the one who can say yes or no.

**Senator Coonan**—You are talking about letters and some kind of fiction. The letter I have told you about is what I am able to say. The rest is entirely speculative and under development. This is a fairly sterile line of inquiry, if I may say so.

**Senator CONROY**—What is not speculative and under development is whether there has been a budgetary allocation for a communication campaign.

**Senator Coonan**—No-one has ever said that. What was said was that people did not disagree that it could possibly take all sorts of shape. People did not disagree with it. They did not agree with you, either. We know we have got this amount of money. That has been talked about. But how it is expended in the taxpayers’ interest is going to be a matter that is under development.

**Senator CONROY**—There is also a suggestion of a communication campaign around digital television. Is there a funding allocation for that?

**Ms Williams**—Digital television is particularly focusing at the moment on a unit within the department really to encourage digital.

**Senator CONROY**—Since the minister will not allow you to describe how this will take place, I am asking you to confirm whether or not there is a funding allocation for some sort of communication campaign—community consumer based—around digital television. Is there a funding allocation?

**Senator Coonan**—Not just yet; there has not been an allocation for it, I do not think.

**Dr Pelling**—There is no decision about a particular allocation for a consumer information campaign. The digital action plan says that ‘Digital Australia will undertake consumer and information campaigns and work closely with industry and industry representative bodies’.

But any decision about a future campaign would be a matter for government in the future. Digital Australia has an allocation of funding, which is for staff and support costs. Digital Australia will have a particular role obviously in promoting digital television, but there is not a specific—

**Senator CONROY**—They will just shout loudly?

**Dr Pelling**—I beg your pardon?

**Senator CONROY**—They will just shout loudly?

**Dr Pelling**—At the moment there is not a particular funding commitment for an information campaign of the type being discussed in relation to these other programs.

**Senator CONROY**—I am happy to move on. You indicated that you had not finalised the message of the advertising campaign for the broadband community in relation to the campaign. You have not finalised that yet?

**Dr Hart**—It is not a broadband communications—

**Senator CONROY**—I cannot remember the exact title. The campaign you were describing earlier—

**Dr Hart**—The consumer information campaign.

**Senator CONROY**—Yes, relating to what I call broadband but you call something slightly more specific. But we have agreed, yes.

**Dr Hart**—I said it was a communications consumer safeguard.

**Senator CONROY**—Thank you.

**Ms Williams**—I think it is important, because of the misleading report.

**Senator CONROY**—I am not trying to be misleading, I promise you. Will this advertising campaign comply with the guidelines of the promotion of broadband speeds outlined in the recently released ACCC paper *Broadband Internet speed claims and the Trade Practices Act*?

**Dr Hart**—That is a level of detail that we have just not gone to at this stage.

**Senator CONROY**—Given this is in its infancy, I just wanted to make sure that you understood about this paper and about the concerns of the ACCC in relation to false advertising on broadband speed. They have actually put out a paper because they are so concerned about companies misleading.

**Ms Holthuyzen**—Any information campaign will comply with the law.

**Senator CONROY**—The problem is that you are not a profit generating institution and, therefore, you are not covered by the Trade Practices Act. You could issue a statement that said ‘ADSL delivers 5,000 kilobits a second’ and not be sued.

**Senator Coonan**—Senator Conroy, don’t be silly. I mean, really.

**Senator CONROY**—No, I just wanted to—

**Senator Coonan**—Let’s realise we are in estimates here.

**Senator CONROY**—It is very important that when Ms Holthuyzen says, ‘We will comply with the law’, I point out that you are not actually bound by this particular law, but that does

not mean that you can mislead consumers. I am just drawing it to their attention. I see them nodding and they will take onboard my points. I look forward to seeing a fridge magnet or whatever.

**Ms Holthuyzen**—As we said, it is about consumer rights. It is not about broadband speeds.

**Senator CONROY**—I do not know how you can say that, because it is still in its infancy. If you want to tell me what it is not, then perhaps we will deduce from that what it is. That could be a lengthier process than I am willing to go through tonight.

**Senator Coonan**—You will just have to wait and see.

**Senator CONROY**—The trick about estimates is that I get to ask these questions and, if the answers are available—

**Senator Coonan**—Yes.

**Senator CONROY**—the department actually gives them to me.

**Senator Coonan**—But we get to answer them or not depending on whether it is appropriate or indeed whether it is relevant.

**Senator CONROY**—I am almost finished. The community information campaign will not be promoting any theoretical maximum speeds of broadband products that are rarely achieved in real life?

**Senator Coonan**—We have said that this is under development.

**Senator CONROY**—You could tell me what it is not a moment ago.

**Senator Coonan**—It is entirely inappropriate to continue to ask officers what is in it or what is out of it when it is under development.

**Senator CONROY**—I will just finish by saying that I draw your attention to that paper by the ACCC.

**Senator RONALDSON**—Under the Broadband Connect program there was money allocated—and I cannot remember how much—to a program called Backing Indigenous Ability. Was it \$10 million out of Broadband Connect? I cannot remember. The program was called Backing Indigenous Ability, was it not? Is that right?

**Mr Allnut**—Yes, there is actually \$89.9 million for Backing Indigenous Ability.

**Senator RONALDSON**—I asked the question because this committee—and I do not expect you to have any knowledge of it—started an inquiry last Friday in relation to Indigenous art. During the first day of the hearing we heard a lot about arts centres and the roles that they played. We heard a lot about real issues with education, about legal issues and copyright issues, and so on. My recollection was that there was reference to education in the Backing Indigenous Ability parts of the program. How wide ranging do you see this component of the Broadband Connect with the ability for Indigenous communities, whether they be in arts centres or wherever it might be, to start utilising those services for a whole range of education opportunities, including whether it might be the arts centres getting some online legal advice from Sydney about issues or some general education? I know it is completely out of left field, but it is not a trick question. What came out of that meeting on Friday was the absolute remoteness and the lack of education in a lot of those Indigenous

communities, which is an accepted fact. The issue is whether we can bring a lot of those services to these Indigenous communities and these Indigenous art centres through this program and whether there will be such opportunities.

**Ms Williams**—The Backing Indigenous Ability telecommunications program is still being decided in terms of its elements. But you probably did hear a fair bit about Indigenous art programs, which of course we will also discuss tomorrow; it is on the agenda for tomorrow.

**Senator RONALDSON**—Yes.

**Ms Williams**—Certainly broadband is very useful for those, particularly through online sales. In addition to advice, the big arts centres use broadband for online sales. It is a very important aspect of the future perhaps.

**Senator RONALDSON**—I suppose my question in a roundabout way was: is there anything in the program that would preclude those sorts of education opportunities that were so clearly evident from the evidence we got on Friday? I take it that the answer to that is probably 'no'.

**Ms Williams**—I will hand over to Mr Allnutt. The telecommunications aspect of this program is in its final stages, but still the guidelines are not totally decided. That I think is where the real opportunity lies.

**Mr Allnutt**—That is right. This is a \$36.6 million program, and it is envisaged that it will include elements such as Internet capacity and telephone capacity, video conferencing and so on. To the extent to which it provides those sorts of services to Indigenous areas, that would enable, for example, arts centres then to—

**Senator RONALDSON**—Given my lecturing of Senator Conroy about asking departmental officers about policy advice to the ministers, I am not going to push that any harder. I will take it that the outcome of this may well be the ability to address some of these matters. I thank you most sincerely for that. That is all I have in relation to that particular matter. But I intend keeping Senator Fielding here for at least three-quarters of an hour; he came down and thought he could just jump straight in. In relation to Broadband Connect, again, can anyone indicate to me how many exchanges have been enabled with broadband as a result of the money that has been spent?

**Mr Bryant**—I think the number at last count was well over a thousand additional exchanges as a result of Broadband Connect.

**Senator RONALDSON**—Would you have a rough breakdown of where they are state by state?

**Mr Bryant**—I am happy to take that on notice. It is probably instructive to understand the size of exchanges that the programs facilitate enablement of, and they are going down to quite small exchanges now in smallish country towns.

**Senator RONALDSON**—How many additional broadband services have been supplied as a result of that?

**Mr Bryant**—At last count, the program has directly funded something like 195,000 services, but you will appreciate that as a result of the enablement of exchanges, there are a whole lot of other customers that now have accesses to broadband services, and our

estimation is that it is well over one million additional services now available as a result of Broadband Connect.

**Senator RONALDSON**—I do not know whether you are able to answer this. I will make the statement and if you agree you can do so, but I will conclude that is a huge number of additional services that are being provided. It is a matter of fact that a huge additional number of services have been provided, isn't it?

**Mr Bryant**—Yes.

**Senator RONALDSON**—Minister, I do not know whether you want to talk about this or defer to the department. I was just looking through some figures in relation to broadband take-up and some international benchmarking. I would like to run through some matters with you, and you could let me know if you agree or disagree.

**Senator Coonan**—On take-up or speeds?

**Senator RONALDSON**—The lot. I will probably go through them bit by bit. It is my understanding that the broadband take-up in Australia is now above the OECD average. Is that correct?

**Senator Coonan**—That is my understanding, with nearly four million Australian homes and businesses connected to broadband. Our take-up figures are expected to continue to rise sharply. The figures that I have indicate that Australia has connected to broadband faster than any other OECD country, except Denmark, in the 12 months to 30 June last year, and it appears that Australian consumers have taken up broadband at a similar rate to those in the US and the UK, according to a Nielsen survey, as at June 2006. ACMA reports that more than a third of all Australian homes had broadband by June last year, and obviously the figures are growing very quickly. The policies that I think the government have put in place have helped boost home user take-up of broadband, which on my figures here have increased faster in regional homes—up to 80 per cent—compared to metro homes, which are up 39 per cent in the 12 months to June. This exceptional growth in the regions coincides with the fairly exceptional and rapid take-up of services under the Broadband Connect program, of which I am very proud, of course.

**Senator RONALDSON**—I was going to ask you about the regions. Being a regional Victorian, as you well know, I was interested to hear what the regional take-up was. I would like to talk about competitive pricing and rankings and I also want to talk about broadband speeds. Are you able to give the committee an indication of average speeds and coverage of exchanges that are providing various speed levels?

**Senator Coonan**—I have got some general information. The department might be able to give you a bit more. In relation to broadband speeds, the latest information that I have suggests that almost 90 per cent of Australian households are connected to exchanges providing speeds of up to eight megabits and that is from 19 providers, and nearly 50 per cent of the population can access even higher speeds of between 12 to 20 megabits from ADSL2+ broadband and pay TV cable, and fixed wireless networks extend the reach of high speed broadband already reaching about 6.5 million premises. In addition, there are now four third generation mobile phone networks operating in Australia, all of which offer broadband services, and two of these now have plans to extend their reach beyond 96 per cent of the

population and to offer multi-megabit speeds. Small businesses, which are, of course, the backbone of how regional communities function, are taking advantage of the faster speeds, with close to one in five online small businesses using connections of two megabits or greater by October 2006. No doubt the department could give you a better answer on coverage and pricing if you would like to ask about that.

**Senator RONALDSON**—I am wondering where our entry levels stand compared with the rest of the world. Are there any figures on that?

**Senator Coonan**—We have got the cheapest entry level ADSL pricing in the world, I think.

**Mr McCormack**—Australia has internationally competitive broadband pricing. A 2006 UK report ranked Australia's residential broadband plans as cheaper than residential plans in South Korea and also the United States. It is also interesting to note that we have some of the cheapest entry level ADSL pricing in the world, and Australian entry level ADSL was cheaper than that of South Korea, Germany, France and the Netherlands in 2006. Overall it is a very good story.

**Senator RONALDSON**—Finally, I would like to ask you about fibre rollout and whether there is any international experience with that with costing?

**Mr McCormack**—The department's position is that market dynamics will dictate when the time is right for a fibre to the premises rollout in Australia. It is early days in the development of fibre to the premises worldwide and we need to keep that in perspective when we are looking at this issue. A recent Ovum report forecasts significant growth only in Japan and, to a lesser extent, South Korea in terms of fibre deployments. They are two large markets with very high density dwellings, lower capital expenditure and also lower infrastructure costs, so trying to compare Australia to countries such as those is not a fair comparison.

**Senator RONALDSON**—It would be fair to say, would it not, that the costs of doing so in South Korea would be substantially less than they would be in Australia, because of the geographical size?

**Mr McCormack**—That is correct.

**CHAIR**—They all live in high rise.

**Senator RONALDSON**—It is cheaper by the minute.

**Senator Coonan**—There is another interesting point about it. I think it would be a very good thing if Australia, along with other countries, see a place for the rollout of fibre but there is a price point at which consumers wish to take it up. Not everybody needs the speed of a Ferrari. They might like it but they do not want to pay for it. So, commercial returns on deployment of something like fibre do have significant risks. For instance, it has been shown in Korea where, despite its being very widely available, the take-up does not nearly replicate how available it is.

**Senator RONALDSON**—What was the cost of the rollout? I presume the government paid for that?



**Senator Coonan**—About \$40 billion and they have about eight million subscribers, which is really quite small when you think of the fact of the cost. I do not think anyone as yet has made money out of fibre, including Japan and Korea, and in some other more isolated areas.

**Senator RONALDSON**—That is \$40 billion and you are talking about apples and oranges with regard to geographic spread, about the cost of the start-up and the costs of infrastructure. It is \$40 billion?

**Senator Coonan**—It is \$40 billion. When people talk about broadband they often do not really know what they are talking about. It is really a bit like talking about fruit. It might be pears to some, apples to others and a bowl of cherries to someone else. It is all fruit but it obviously has very different characteristics. Fibre is a very interesting technology. We are going to ensure that we have the very best framework, but it is a commercial decision as to its deployment and it is not without risk. We appreciate that.

**Senator RONALDSON**—Thank you very much.

**Senator Coonan**—I also put on the record, as you would appreciate, Senator, that anyone who rolls this out has to get a fair commercial return but there are risks as to just how and when people want to take it up. There is a price point at which people want to buy broadband and often it is not very fast speeds, even if it were available.

**Senator RONALDSON**—If it is \$40 billion in South Korea, given all their advantages in relation to rollout et cetera, you would assume that it is going to be substantially more in Australia.

**Senator Coonan**—Yes.

**Senator RONALDSON**—It could be double that. This is more a comment, but I do not think taxpayers would be terribly happy about parting with \$60 billion, which would probably be the approximate cost, plus. That was more of a comment than anything.

**Senator Coonan**—I have just been given a note. You are quite right about the cost. In Korea, the take-up was 14 per cent in December 2005, so it shows that there is a big expense and a lot of risk. In Australia, goodness knows what it would cost if you were to lay fibre from end to end. It would not be sensible. We know in Australia that having a fixed technology and only one particular technology is often not the best use of technology. We all know the great risks of adopting any particular technology in Australia. One of the great values of the way in which we have approached telecommunications in this country, with vast distances and sparse populations, is not to hitch our wagon to any particular technology, to encourage the market to rollout technology as it chooses and then to provide incentives, so that it is technology neutral. Otherwise you would find that, by the time you have commissioned and rolled out a particular technology, it is obsolete. If the taxpayer is paying for it, there has to be an appropriate level of commercial risk. It has to be a sound investment for a commercial operator. They have to get a fair return and, if the government provides incentives, there has to be value for taxpayers.

**Senator RONALDSON**—Yes, thank you, Minister.

**Senator FIELDING**—Minister, I am wondering whether you or your department could clarify this. I asked questions earlier with regard to television ads and where people go to

complain about those ads. We were not sure whether it was this department or another department. Can someone clarify that for me now? I am back here just to make sure I do not miss out on this opportunity. Is this the area?

**Dr Pelling**—I believe your question as I recall it related to regulation of television ads to the Communications Media Authority. To get the details, I may have to take that on notice, but television ads are regulated at a number of levels. The Commercial Television Industry Code of Practice covers issues related to things like the amount of advertising and the placement of that advertising. I cannot tell you right now whether it also covers issues relating to the content of that advertising in the sense that you were referring to it.

**Senator FIELDING**—What was that first one again?

**Dr Pelling**—The amount of advertising.

**Senator FIELDING**—The amount and placement?

**Dr Pelling**—And the placement of advertising.

**Senator FIELDING**—You are not sure on content. Which group was that?

**Dr Pelling**—That was the Commercial Television Industry Code of Practice.

**Mr Neil**—It regulates the broadcasters including for content.

**Senator FIELDING**—Would you like to keep going for a moment?

**Dr Pelling**—The code of practice is a code adopted by the broadcasters and enforced by the regulators—the Australian Communications and Media Authority. In addition, there are Children's Television Standards, which are set under the broadcasting act, and they stipulate a range of rules about the placement and the dealing of advertising during those periods when children's television operates. I understand the third level, in addition to the coregulatory approach for broadcasters, is the Australian Association of National Advertisers, which has voluntary industry codes. For example, it has a code relating to things like marketing of food and beverages and it would certainly deal with other areas of content. I think the AANA is an industry association which is not directly related to any government department. That is a voluntary code of practice that they adopt.

**Senator FIELDING**—Is the AANA a voluntary code?

**Dr Pelling**—Yes. That applies to the advertising industry.

**Senator FIELDING**—What was the first one that you mentioned?

**Dr Pelling**—I have mentioned three: the Commercial Television Broadcasters Code of Practice, which is what all their general program content is regulated under; the Children's Television Standards, which ACMA makes under the act specifically related to children's television.

**Senator Coonan**—That is the classification placement and amount.

**Dr Pelling**—The advertisers themselves have an association called the Australian Association of National Advertisers, which has its own code.

**Senator Coonan**—That is content.

**Senator FIELDING**—Thank you for that.

**Mr Neil**—ACMA regulates the broadcasters; it does not regulate the advertisers. Within the BSA—the Broadcasting Services Act—and within the codes of the various parts of the industry by which they are answerable to ACMA, there are elements of that which go to what they may or may not advertise, but in fact the advertisers have their own independent regulatory system which is not overseen by any act of the Commonwealth. Of course, they are subject to regulation by the Trade Practices Act for false and misleading and the general provisions of various laws, but there is no explicit regulation of advertisers per se.

**Dr Pelling**—That relates to things like where the ads are put and how many ads are shown in a given time, but not actually to the content of the ads.

**Senator FIELDING**—Do the Children’s Television Standards cover just placement and not content?

**Senator Coonan**—No. The standards that are administered by ACMA also prohibit certain types of advertising to children during programs that are classified C for children and P for preschool. That is not quite right.

**Senator FIELDING**—Does the government regulate children’s ads for the correct way of content now and not just placement?

**Senator Coonan**—The standard does. It is administered by ACMA.

**Senator FIELDING**—The content standards.

**Mr Neil**—For instance, the television sex ads that are on at midnight. If they were on at five o’clock they would breach the codes of the broadcasters because they would be out of classification.

**Senator FIELDING**—There was a caller on one of the talkback shows in Melbourne who really classified the ads that are on late at night masquerading as dating services as soft porn. I am interested to know what standards are there of content of non-children’s ads now? I am just talking about ads now. Is there any government department responsible for that or does anyone look at the standards?

**Dr Pelling**—My understanding is that they would have to comply with broad classification rules.

**Mr Neil**—The Attorney-General is responsible for what was the Office of Film and Literature Classification. It has just changed its name. It sets the standards, which are used to determine the levels of G, PG, M, MA, R, 18+, XRC. They provide those. The commercial broadcasters in fact have standards, which are based on those but are slightly different. They have an MA violent category where the OFLC has Mature Accompanied and it has Mature Adult. They have modified them slightly for television but they are very close to them and those standards are used to determine at what time of night on free-to-air television a classification may be shown. In the case of the internet, we rely entirely on the OFLC’s classification system.

**Senator FIELDING**—Whose classification?

**Mr Neil**—The Office of Film and Literature Classification, and as I said, this is where the Attorney-General’s Department was raised.

**Senator FIELDING**—I would like to come back to the complaints side of things. If someone is complaining about television ads—as I said, some people describe them as sort porn—where do they go?

**Mr Neil**—In that case, if they believe the ad was inappropriate for the time and, indeed, it could be inappropriate for television on its classification, the first port of call should be to the broadcaster to say that they believe that they have broadcasted something inappropriate for that time zone. The broadcaster has 35 days to respond. If they do not respond or the person is unhappy with the response, then they go to ACMA with their complaint.

**Senator Coonan**—ACMA can take action if it wishes. An example of that was when I initiated an inquiry by ACMA in relation to the *Big Brother* online episode. The code is designed to reflect providing community standards. It is due to be reviewed this year and, what is different about it, was that with the reality TV program, how it happened, the type it happened, et cetera, and whether or not the standards and the rules were properly able to cope with that particular kind of iteration of what was shown both by broadcaster and stream was the subject of that particular inquiry. We have collapsed or at least added into this review reality TV. I will be getting a report back on that shortly.

**Mr Neil**—I would like to add that if the person believed it was X or RC—by ‘soft porn’ they meant something which exceeded the allowable standards—then that is a breach of the BSA and they can complain directly to ACMA without going through the first stage to the broadcaster because it is a breach of the act, as opposed to the code.

**Senator FIELDING**—Thank you for that. It raises my point as before. I think people believe that complaining to a television station leads nowhere so they do not pick up the phone to start with. That is a concern. For you not to tell me otherwise and prove that I am not right in what I am saying—as I speak to a lot of people and they just feel that if they complain then nothing is going to happen, so they do not complain—that is the reason I am going to continue to push for ACMA to be copied in on all complaints, so that you can start to get a feel for what Australians are genuinely thinking about what is going on. Does the film and literature review board look at the content on every ad?

**Senator Coonan**—No, they classify it.

**Senator FIELDING**—They classify it before it goes?

**Senator Coonan**—Yes.

**Senator FIELDING**—They classify every ad before it goes to air?

**Mr Neil**—The broadcasters classify their ads before they go to air.

**Senator FIELDING**—The broadcasters classify them?

**Mr Neil**—They have their own central group that looks at ads and each of the broadcasters has its own experts for looking at this material. That is their own checking system but in the end they are answerable to ACMA. Their job is to get that right. If they get it wrong then they have got a problem.

**Senator FIELDING**—I would like to clarify this, and it may be a little bit separate. Is it correct that a film must be classified by the film and literature review board before it is shown?

**Mr Neil**—All films are classified.

**Senator FIELDING**—Television ads can go to air with the current players themselves looking at it and agreeing in their own process that this is quite okay to go to air with no classification?

**Mr Neil**—Broadcasters have highly trained individuals with long experience who do this for them and have done it for a long time. They are experts in the field.

**Senator FIELDING**—I think a lot of people in Australia would disagree with that, especially with the ads that are on a lot of the time at night—raunchy ads—which people have described as soft porn masquerading as dating services, selling phone sex and all sorts of things on them. Quite clearly something is going astray.

**Senator Coonan**—Can you give me an example of a channel—I presume it is free-to-air—a time and a particular ad?

**Senator FIELDING**—I was going to bring them in here and show a couple. I wish I had done that now.

**Senator Coonan**—Yes.

**Senator FIELDING**—And the people that are complaining about them.

**Senator Coonan**—What channel was it?

**Senator FIELDING**—I have not got it at hand but I can certainly go back and look at it for you.

**Senator Coonan**—Was it a free-to-air?

**Senator FIELDING**—It was free-to-air.

**Senator Coonan**—Free-to-air, thank you. Will you give me some information?

**Senator FIELDING**—Yes.

**Senator Coonan**—I would be interested to follow that.

**Senator FIELDING**—So if someone has a complaint, where do they go regarding these television ads?

**Mr Neil**—If they believe the ad is X or beyond, they can complain directly to ACMA because that would be a breach of the Broadcasting Services Act. Normally if you have a complaint with the broadcaster, you would go to the broadcaster first. The notion is to give them an opportunity to answer your concern. If they do not satisfy you then you go to ACMA. They do advertise regularly the complaints procedures and where you can get their code, et cetera. In fact, on free-to-air television they are required to do that.

**Senator FIELDING**—Is there any way of someone requesting ACMA to look into these ads or have I done that by basically mentioning it here today?

**Mr Neil**—We would need to identify the ads. If you bring them to us then we can take them to ACMA and ask if they are breaching the Broadcasting Services Act.

**Senator FIELDING**—I have not got copies readily at home. I do not record these things. I will need to work out how to get them. I am sharing a community feeling that people are

concerned about these ads and I am concerned that the people that are rating them are the people that are airing them.

**Senator Coonan**—That is what a coregulatory arrangement does. That does not mean to say that it is perfect. When you look at the hours and hours of content that is broadcast, not all of it is looked at by anyone other than the broadcaster. Most of it is fine, but not all of it is, and if you are in a position to be able to identify where someone may have infringed this code, please bring it forward because we will treat it very seriously.

**CHAIR**—Senator Conroy?

**Senator CONROY**—I have some questions to do with the new media ownership laws.

**Senator Coonan**—Are the telecommunications people finished?

**Senator CONROY**—Yes, I have finished with that.

**CHAIR**—We have finished with telecommunications. Can you run through what you have?

**Senator CONROY**—Media law implementation; community television; digital action plan; back to some more questions about the porn filter scheme and then on to SBS. There has been a lot of speculation in the market about the start date for the new media ownership laws.

**Senator Coonan**—There has.

**Senator CONROY**—You have them on the edge of their seats. What are the government's intentions in this area?

**Senator Coonan**—We will proclaim it sometime this year.

**Senator CONROY**—Sometime this year?

**Senator Coonan**—Yes.

**Senator CONROY**—Will the proclamation date be named some weeks in advance or will we just wake up one day and find the legislation has commenced?

**Senator Coonan**—I have not reached a concluded view about how I will announce it.

**Senator CONROY**—At the last estimates you stated that 'the proclamation would probably be aligned to the opportunity for new services to emerge'. Does that statement still reflect the government's position?

**Senator Coonan**—Yes, broadly, but I am not going to go into a list of things that I might tie it to.

**Senator CONROY**—Would you like to expand on what sort of things there are?

**Senator Coonan**—There are a number of things happening including, for instance, the completion of the ACMA register. There are a number of things happening, so when I consider that it is appropriate I will announce the proclamation.

**Senator CONROY**—Do you think it is possible to argue that the opportunity for new services to emerge has arisen before ACMA and the ACCC have established the rules for the auction of the new channels?

**Senator Coonan**—I am not going to be drawn on that.

**Senator CONROY**—That would seem to be a commonsense interpretation of what you said.

**Senator Coonan**—It might be but I am not going to agree with you. I am going to reserve my position about what I might consider to be an alignment of new services and an appropriate date for proclamation.

**Senator CONROY**—Would it have an impact on your decision if the auctions were unsuccessful for one or both of the channels—in other words, if no-one bid or reached the reserve price?

**Senator Coonan**—That is entire hypothetical.

**Senator CONROY**—Last October the government established an ACMA review of the local content provisions on regional radio. I understand that there are two reviews. Can you outline the difference between the two reviews?

**Senator Coonan**—I am sorry. I missed the second part of the question?

**Senator CONROY**—I understand that there are two reviews. Can you outline the difference between the two reviews?

**Senator Coonan**—ACMA is conducting them; you had them here. I do not have the precise details other than in the very broadest sense. I thought that question was answered earlier this evening.

**Senator CONROY**—Can you explain the significance of the definition of a trigger event for the purposes of the legislation? I am happy for Ms Williams or a departmental officer to take the question.

**Dr Pelling**—The trigger event is set down in legislation as basically when there is a change of control in an organisation that triggers a series of local content requirements.

**Senator CONROY**—When do these reviews report?

**Dr Pelling**—ACMA has to provide a review into local content, the 4½ hours of local content, by 30 June, and 31 March is the date for the trigger event review.

**Senator CONROY**—Is it possible for the new laws to be proclaimed if there is uncertainty about the trigger event provisions?

**Dr Pelling**—The first thing that needs to be in place before proclamation is the register, which ACMA is working on. With the other local content provisions, ACMA has to make licence conditions in relation to things like local presence.

**Senator CONROY**—I am talking about the definition within the legislation. It is pretty critical.

**Mr Neil**—The understanding is that there are things that are desirable to be in place, but the proclamation is entirely in the hands of the minister and understandings could occur at any time.

**Senator CONROY**—I understand.

**Mr Neil**—It is not necessarily contingent. Parliament has said that there should be a condition for local presence in place at the time of proclamation, so the act that says that ACMA must have in place a local presence condition at the time of the proclamation.

**Proceedings suspended from 9.01 pm to 9.16 pm**

**CHAIR**—We will resume.

**Ms Williams**—Can I make a quick comment about the consumer information campaign. I understand she talked about Creative Palace being one of the market researchers. It is actually Company Palace, I understand. Our apologies for that.

**Senator CONROY**—No, that is fine. Thank you for correcting it. The Company Palace?

**Ms Williams**—Yes, I gather. Sorry, it is apparently Campaign. I cannot read the writing. The Campaign Palace.

**Senator CONROY**—The Campaign Palace. We were just talking about a trigger event. I was not sure if you were talking about a local content plan or what happens when a trigger event occurs. There are two different things. I just was not sure which one you were actually talking about.

**Mr Neil**—I was talking about the local presence condition. The act requires ACMA to have in place a local presence licence condition at the time of proclamation.

**Senator CONROY**—Does ACMA have that in place at the moment, as far as you are aware?

**Mr Neil**—ACMA is required to consult the industry. It has to gazette a draft and then gazette a final.

**Senator CONROY**—Is it gazetted?

**Mr Neil**—No.

**Senator CONROY**—So it is under consultation, as far as you know?

**Mr Neil**—It is under preparation.

**Senator CONROY**—Under preparation to gazette?

**Mr Neil**—Part of the consultation process is to gazette the draft and then to give the industry a reasonable opportunity to respond.

**Senator CONROY**—What is defined as a reasonable opportunity?

**Mr Neil**—That is a very good question. It is also a very legal question. The act does not define it.

**Senator CONROY**—Would it be a week, two weeks, three weeks? I am not trying to lead you. What is the standard legal—

**Mr Neil**—My problem is that somebody might say that ACMA has not given them a reasonable time and I would not want them to reply on what I said was a minimum.

**Senator CONROY**—They cannot use anything you say under parliamentary privilege in a court of law. That is the good news. But I do appreciate your caution. One of the problems is



an unintended consequence if an owner of a media company dies. That is a trigger event. Does the local content issue come into place at that time?

**Mr Neil**—A change of controller is a trigger event.

**Senator CONROY**—There are then local content provisions?

**Mr Neil**—Yes, local presence conditions, and they include certain local content requirements, 12½ minutes. Then there are local presence conditions and then reporting requirements.

**Senator CONROY**—Do we have a definition of what a trigger event is yet?

**Mr Neil**—Yes.

**Senator CONROY**—A trigger event defined in the legislation?

**Mr Neil**—Yes.

**Senator CONROY**—Do we have an understanding of what the local presence conditions are yet? Or that is the ACMA thing that you are talking about?

**Mr Neil**—That is what ACMA is required to do.

**Senator CONROY**—The other issue around local content, the 12½ minutes?

**Mr Neil**—At the review of local content, which is required by 30 June, ACMA is asked to consider whether the 12½ minutes that might arise due to a trigger ought to be considered with the 4½ hours that arise from the general local content condition.

**Senator CONROY**—But that does not start until 2008?

**Mr Neil**—No.

**Senator CONROY**—So there is no need for local content obligations to be finalised in a legal sense before proclamation?

**Mr Neil**—No.

**Senator CONROY**—It is not a requirement.

**Dr Pelling**—There is a local content requirement that comes into place from 1 January 2008 and there are other local content requirements that come into place from a trigger event.

**Senator CONROY**—It is those ones that I am trying to—

**Dr Pelling**—On a trigger event, the licensee will be required to meet minimum local content levels, including local news bulletins and weather bulletins, local community service announcements and emergency warnings. The legislation sets down certain time periods and/or numbers that they have to meet in regard to those things. In addition, they have to maintain the existing levels of local presence, as we have already said, and they have to submit local content plans that will specify how licensees will meet their local content licence conditions.

**Senator CONROY**—Is there any misunderstanding or any consultation to take place on those requirements?

**Dr Pelling**—At the moment ACMA is consulting in regard to the local presence issue. I am not sure what they intend to do in regard to the—

**Senator CONROY**—Is there something required to be gazetted? I am just trying to make sure that there are two separate distinct things. The thing that was to be gazetted was not those issues that are being consulted on? Or is it a separate thing that you were describing?

**Mr Neil**—There are two consultation processes, one on the local content provisions of 4½ hours of local content required, and ACMA is also currently considering the local presence to define what is required in terms of a local presence condition. They are required to consider staffing levels, studios and other production facilities.

**Senator CONROY**—You mentioned that in the legislation there is a requirement that final gazettal, not the draft gazettal, has to be completed before proclamation can place?

**Mr Neil**—The act says that ACMA should have in place—

**Senator CONROY**—Should or must?

**Mr Neil**—Must.

**Dr Pelling**—‘The ACMA must ensure that at all times after the commencement of this section’—which is on proclamation—‘there is in force under section 43 a condition relating to the trigger event’, and the local presence part of the trigger event.

**Senator CONROY**—So that is one requirement that ACMA must comply with before proclamation, by the law?

**Mr Neil**—Yes.

**Senator CONROY**—Are there any others that you are aware of in the legislation—conditions that must be met on other things?

**Dr Pelling**—They must also have the register in place.

**Senator CONROY**—Which they have almost got complete now?

**Dr Pelling**—Which they are working on.

**Senator CONROY**—They said a couple of days, I think. Were you here when Mr Chapman was giving—

**Dr Pelling**—Yes.

**Senator CONROY**—I think he said a couple of days for the first draft. Is that a first draft or the—

**Mr Neil**—No, the register is an operational tool; it is an actual—

**Senator CONROY**—Even though they will not necessarily have finished all of the checks, compliant/not compliant?

**Dr Pelling**—They are not obliged to do all of that. As I think Mr Bezzi said this morning, they can rely on what the broadcasters give them for the initial formation of the register but they then have to confirm it.

**Senator CONROY**—Yes. Is proclamation dependent on the creation of the initial or after they have confirmed the information on it?

**Dr Pelling**—Proclamation for practical purposes requires that the register be in existence. I think that provided they have—

**Senator CONROY**—It does not matter whether it is right or wrong, just that it exists?

**Dr Pelling**—Obviously, ACMA will be working to make it as accurate as possible, but essentially the register must be in place, because that provides the basis for the assessment against the number limits in each operation.

**Senator CONROY**—Are there any other conditions that must be met before proclamation can take place?

**Dr Pelling**—Not that I am aware of. Not that I can think of, no.

**Senator CONROY**—So just those two—register and the gazettal of the local presence conditions?

**Mr Neil**—Yes.

**Dr Pelling**—Yes.

**Senator CONROY**—Thank you. There is review of the trigger event definition that comes in on 31 March?

**Mr Neil**—No. The trigger event definition is in the act. ACMA must put in place a condition and it must define what it means by ‘local presence’ and it must have regard to the level of staffing, studios and other production equipment.

**Senator CONROY**—Are there any implications for the proclamation date around that issue?

**Mr Neil**—ACMA is required by the act to gazette a draft. They must prepare a draft licence condition which goes to local presence, including defining what they mean by that and then setting out the conditions associated with that. That must cover staffing, studios and other production facilities. They must gazette that as a draft. They must give stakeholders a reasonable opportunity to respond and then they gazette a final.

**Senator CONROY**—In your view, if there is uncertainty about trigger event provisions, it does not matter; you could still proclaim?

**Mr Neil**—That is a review of a particular condition.

**Senator CONROY**—I might come back to that. I wanted to have a quick chat about the so-called digital action plan announced in November. The plan proposes the creation of a body called Digital Australia to coordinate the drive to switch over. Has Digital Australia been established yet?

**Dr Pelling**—Digital Australia is in the process of being established.

**Senator CONROY**—Has an office been sourced in Sydney?

**Dr Pelling**—Negotiations are underway in regard to suitable sites.

**Senator CONROY**—How many staff will it have?

**Dr Pelling**—Approximately 20 staff from next financial year, and a smaller number this financial year.

**Senator CONROY**—Have any been recruited yet?

**Dr Pelling**—Sorry, have any staff been recruited?

**Senator CONROY**—Yes.

**Dr Pelling**—No. What we have done is tender for a recruitment agency and that process is underway.

**Senator CONROY**—It is an agency in DCITA. Are staff being transferred into it?

**Dr Pelling**—Staff will be recruited into it through normal recruitment processes. If existing staff in DCITA wish to avail themselves of the opportunity, that is up to them.

**Senator CONROY**—Does Digital Australia have a website yet?

**Dr Pelling**—We have registered a domain name but at the moment it only takes you to the document.

**Senator CONROY**—What is the domain name?

**Dr Pelling**—It is [www.digitalaustralia.gov.au](http://www.digitalaustralia.gov.au).

**Senator CONROY**—My office tried to type that one in and it got redirected back to DCITA.

**Dr Pelling**—Yes, at the moment it just redirects you.

**Senator CONROY**—When are you hoping to have an office, some staff, a website?

**Dr Pelling**—We are working on it as quickly as possible this year. As I have said, negotiations are underway with property owners in Sydney for suitable property. We have a recruitment process for the SES officers. The process of selecting a recruitment agency has commenced. Those practices will be followed up by the fit-out, IT purchase and those sorts of things. Over the next few months hopefully we will see some developments in that area.

**Senator CONROY**—Are there any initiatives in the digital action plan that will facilitate the provision of additional digital content?

**Dr Pelling**—The government's media package basically announced that the genre restrictions on the ABC and SBS would be lifted and the new channels A and B will be allocated. In addition, there is, for example, removal of the simulcast rules for high-definition television channels for broadcasters. In terms of new content, that is where the government's plan, if you like, focuses.

**Senator CONROY**—So it is the ABC really?

**Dr Pelling**—Yes. I think you should not see this as some sort of stand-alone thing. This is really an agenda for the way forward that is built on the government's media reform packages, including the digital television changes that were announced last year.

**Senator CONROY**—Will channel B, or mobile TV, which is what people are talking about, do anything for digital TV take-up in the home?

**Dr Pelling**—It depends on what people actually use it for. Channel B is potentially available for a range of different services. While the government has indicated that commercial broadcasting services and subscription broadcasting services to in-home devices will not be provided on channel B, there are other services that might be provided to in-home environments.

**Senator CONROY**—But if it is a mobile TV by definition it is for use outside the home?

**Dr Pelling**—Yes.

**Senator CONROY**—That means it will not contribute to take-up of digital TV inside people's homes? Are they mutually exclusive?

**Dr Pelling**—But remember there is also channel A, and I think in deciding on the appropriate uses for those two channels the government had in mind a balance of issues in terms of take-up of digital terrestrial television but also providing new services in terms of increasing diversity and new service opportunities for Australians.

**Senator CONROY**—Can the department confirm that not one broadcaster has established a high-definition multichannel as allowed under the law?

**Dr Pelling**—That is my understanding. It is possible they may have. I do not have—

**Senator CONROY**—I think we would have heard about it if they had.

**Dr Pelling**—Quite possibly.

**Senator CONROY**—Is the government disappointed that no broadcaster has taken the opportunity to launch an extra HD channel?

**Senator Coonan**—It is early days. You expect everybody to be up and running the second they can do it. A lot of them might be waiting until they can do multichannel in standard definitions. It is just an additional option.

**Senator CONROY**—No, I am saying that you have given them the option, and I think that is a good thing.

**Senator Coonan**—We have given them lots of options. One small part of it does not particularly, I think, define the package.

**Senator CONROY**—I was not suggesting it did. I was just asking you whether you were disappointed that no-one appeared to be following up, taking the opportunity you have given them. If the channels indicate that none of them is going to take up an HD multichannel, would the government reconsider the date for the establishment of SD multichannelling?

**Senator Coonan**—I doubt it. The date for SD multichannelling, at least for partial relaxation, is set.

**Senator CONROY**—I was just asking: if they all turn their backs on the HD multichannel—

**Senator Coonan**—It was an additional option. It was not meant to be something that in any way pre-empted or presupposed what would happen with standard definition multichannelling.

**Senator CONROY**—If no-one takes up an extra HD channel, will that make the target of achieving switchover between 2010 and 2012 more difficult?

**Senator Coonan**—No, I doubt it would have much impact.

**Senator CONROY**—So you do not think it would have driven take-up at all if an extra HD channel came?

**Senator Coonan**—I am not speculating. It is an option there if broadcasters wish to avail themselves of it. Technology and areas in this whole field move so quickly I am not going to

speculate about where it will be, other than the fact that I expect the take-up will rise, and in fact it has.

**Senator CONROY**—The law was passed back in October. I know you say it is early days; it is February now. It is four to five months, and no-one has even registered an interest in starting an HD channel?

**Senator Coonan**—I do not know whether that is correct. I think you need to look at the take-up figures, and they are certainly growing very significantly. We can give you those. I do not have them here, but I will get them for you, if you like—an update.

**Senator CONROY**—Thank you for that. Does the government believe that the ABC and SBS can launch additional multichannels without additional funding?

**Senator Coonan**—That is a matter for them to identify.

**Senator CONROY**—I thought they did.

**Senator Coonan**—To identify if they need additional funding. But they have big archives. They also have ways in which they can package some very interesting content, and in fact they have. The ABC started their second channel and have run it very successfully without additional funding specifically for that.

**Senator CONROY**—But I thought they did identify that, when they put in a submission under the digital action plan.

**Senator Coonan**—I am sorry?

**Senator CONROY**—I thought they did identify that they needed more funding, both in their last budget submission and in the digital action plan?

**Senator Coonan**—I think only in a very general sense. I think it is a wish list, but when you look at the current funding for the ABC in particular you would have to see what they brought forward, what it was all about, how they proposed to deploy their archives, and what innovative other content they wanted to use.

**Senator CONROY**—Would the government like to see them launch additional channels?

**Senator Coonan**—That is going to be a matter for them, but I think they have done extremely well so far and they have indicated that they are expanding their services. Of course, that is very welcome. That is why the genre restrictions have been removed.

**Senator CONROY**—I know you did have some discussion with Senator Fielding and I think you were talking about community TV at one stage, so I apologise if I go over some of the questions asked by Senator Fielding when I was not here.

**Senator Coonan**—I thought it was Senator Macdonald.

**Senator CONROY**—Sorry, thank you. I just remembered hearing discussions about community television. I would like to talk about the subject of converting community television to digital. Does the government accept that the audience for community television is being eroded?

**Senator Coonan**—I just cannot understand what you are saying.

**Senator CONROY**—My apologies. Does the government accept that the audience for community television is being eroded as more people switch to digital television?

**Senator Coonan**—That is what is said but, on the other hand, if on your argument people are not switching very quickly, obviously that would militate against that particular argument.

**Senator CONROY**—But if you switch over to digital you can no longer get community TV; is that your understanding?

**Senator Coonan**—It would depend. Can you say that again?

**Senator CONROY**—Community TV are not broadcasting a digital signal?

**Senator Coonan**—No, they are not. They are broadcasting in analog.

**Senator CONROY**—If you switch over to digital, you can no longer get access because by definition there is not a digital signal to receive?

**Senator Coonan**—If you cannot get analog, you cannot get community TV.

**Senator CONROY**—Yes?

**Senator Coonan**—Yes.

**Senator CONROY**—Does the government accept that if, as you are hoping and we are all hoping, digital TV penetration rises, community television will find it harder to attract sponsorship if they remain stranded in the analog world?

**Senator Coonan**—There is a finite time in which that kind of overlap would happen. I do not think we are there yet. As you know, we are watching very closely how best to accommodate community TV. As I have said to Senator Macdonald—and I will repeat it here—community TV will not be left behind. It is a matter of how they are brought over to digital. Clearly they cannot do it by themselves and they will need to be carried on a digital platform by someone.

**Senator CONROY**—You said there is a finite moment. Could I put to you that their business model will have collapsed long before that finite moment when analog is switched off or everyone goes across?

**Senator Coonan**—What do you think the finite moment is?

**Senator CONROY**—I am asking you as the minister. I accept that there is not an absolute fixed point.

**Senator Coonan**—Can you just accept that we will be monitoring it carefully and, as always, carefully consider what is brought to us by the sector.

**Senator CONROY**—I accept that the government is monitoring it and I am just seeking to get some guidance.

**Senator Coonan**—You will have to wait, because it is fluid.

**Senator CONROY**—I appreciate that. My job is not to only ask you questions that you deem appropriate, so I am going to keep asking my questions.

**Senator Coonan**—You can ask until 11 o'clock. That is fine. But in all honesty I have to say that this is a fluid situation and we have committed in the digital action plan to looking after community TV at an appropriate time.

**Senator CONROY**—The point that I am trying to get to is that their business model collapses long before the final switch-off point. Is that a reasonable proposition?

**Senator Coonan**—There is a point at which they need to be taken—or at least someone needs to carry them—on digital space.

**Senator CONROY**—And it is earlier than that finite point that you mentioned?

**Senator Coonan**—There is a point at which they will need to be accommodated, yes.

**Senator CONROY**—The digital action plan states that the sector is being encouraged to explore options for a simulcast arrangement with a digital platform operator. They are basically being told to seek a commercial arrangement with the purchaser of channel A. Is that what you are intending?

**Senator Coonan**—No. Any carrier. It does not have to be just channel A.

**Senator CONROY**—Is the government aware that the community broadcasters have already made inquiries to broadcasters and potential bidders for the new digital licences about the possibility of a simulcast and reported that the costs are prohibitive?

**Senator Coonan**—No, that has not been conveyed.

**Senator CONROY**—They have not told you that yet?

**Senator Coonan**—No.

**Senator CONROY**—That is what they are indicating to me, that they have actually had some discussions. It may come as a surprise to you, but the free-to-air and others are looking for a return that is perhaps beyond the community sector.

**Senator Coonan**—I am very pleased that they are keeping you uniformed, but that is not information that been brought to me and substantiated in any way.

**Senator CONROY**—I am happy to tell them that they should urgently get you the information. I am happy to pass that on.

**Senator Coonan**—I have asked for some information, so I will be pleased to receive some information about these matters.

**Senator CONROY**—You have given a couple of positive indications while we have been talking already. Is the government prepared to consider providing any financial assistance to assist community broadcasters to reach a simulcast arrangement?

**Senator Coonan**—I think it is a bit early to tell that. I think what I need to do is to understand more appropriately what inquiries have been made, what their business case is, what they can offer, and what their ultimate audience is going to be. It is really important that, rather than just a knee-jerk reaction here, we have to always have regard to the fact that we are looking after scarce resources, and in the interests of taxpayers we have to ensure that important groups like community groups are looked after. Getting into digital space is expensive. We all know that. That is why I have provided an assurance to the sector that they



will be looked after in some way, shape or form. If all else fails, they already have some space that can be made available to a carrier on the basis that they carry community. Everyone needs to just calm down and community will be looked after as we move to digital.

**Senator CONROY**—Has the government ruled out imposing a must-carry requirement on the purchaser of, say, a channel A licence to broadcast community TV?

**Senator Coonan**—That was not part of the original policy decision.

**Senator CONROY**—We ended up with two negatives there, so I just—

**Senator Coonan**—It was not part of the policy decision. It is not currently under consideration.

**Senator CONROY**—You have not ruled it out?

**Senator Coonan**—It was not part of the current decision or the basis upon which this auction will proceed—or ‘price based allocation’, to take up the broader term.

**Senator CONROY**—The government will not consider a must-carry requirement on channel A?

**Senator Coonan**—A decision has been made as to the basis on which the price based allocation of these two will proceed. They do not include a must-carry—

**Senator CONROY**—Why was that? Why was it not included?

**Senator Coonan**—Because that was not part of the decision and there are other options.

**Senator CONROY**—What are the other options?

**Senator Coonan**—As I have explained, they currently occupy spectrum, which is obviously valuable spectrum. If they cannot get onto anybody else’s platform by negotiation, the government will probably allocate that spectrum—at least price based—and put a must-carry on that one.

**Senator CONROY**—So when you switch off the analog you then—

**Senator Coonan**—No, I did not say that.

**Senator CONROY**—I am just trying to understand exactly what you mean by that last—

**Senator Coonan**—Yes. You started your question—

**Senator CONROY**—I am happy to be corrected. That is why—

**Senator Coonan**—on a false premise.

**Senator CONROY**—No, it was not a false premise.

**Senator Coonan**—It will not be when we switch off analog.

**Senator CONROY**—I was not trying to start on a false premise. I am trying to understand the implication of what you said. You would put a price on the spectrum they are currently using?

**Senator Coonan**—That is one option. I am not saying that that is what will happen.

**Senator CONROY**—I am just trying to understand what you meant by that option, though. I am intrigued by it. I am interested in it. I am actually—

**Senator Coonan**—It is all set out in the digital action plan. It is not really groundbreaking news.

**Senator CONROY**—No, but I was just hoping to understand it better than I currently do. You have ruled out imposing a must-carry on channel A? As you said, it is not included, so you have ruled it out?

**Senator Coonan**—It is not included and it is not in the price based allocation conditions.

**Senator CONROY**—So it is ruled out?

**Senator Coonan**—You can say that if you like. I am just answering the question the way I regard it as appropriate.

**Senator CONROY**—Did the department do any work on the impact of a must-carry requirement on the value of a channel A licence?

**Dr Pelling**—The department considered a wide range of issues in relation to community broadcasters, as well as other issues relating to channel A and channel B, and provided advice to the government.

**Senator CONROY**—I think this is what you are alluding to. Again, I am not trying to start out on a false premise. I am just trying to work my way through what you said before. If community TV cannot reach a deal for a simulcast, the digital action plan states, as you have said, that the government will consider allocating analog Channel 31 for digital services and that the new channel would be subject to a must-carry requirement for community TV. That is what I think you were describing. Do you think this option would be an extremely disruptive option for community TV? Would they not actually have to make a decision about whether they were going to have a digital or an analog; there would be no simulcast-type arrangement like everybody else has? It is a tough choice if they are not able to get a commercial settlement.

**Senator Coonan**—Let us see how they go.

**Senator CONROY**—But it is a tough choice. If that is the last option for them, it would be a very tough situation.

**Senator Coonan**—I do not agree with that. Basically, what we are trying to do is, at no cost to the community sector, accommodate them on a digital platform with an obligation on another operator to so carry them. There are lots of different ways of doing it. There are ways in which you could look at the national broadcasters taking some of that spectrum, for instance, and carrying. There are lots of different ways. That is really what I am saying. I do not intend to have the community TV sector substantially disadvantaged. They will get onto a digital platform in an appropriate way.

**Senator CONROY**—I am heartened by that. That is good. In contrast, commercial TV will be able to service both digital and analog audiences until switch-off day. But, if they go down that option that you have suggested as one of the options, Channel 31, community TV, will not get that same simulcast opportunity?

**Senator Coonan**—I am not entirely sure that I agree with you on that, but I think we just have to wait and see how it goes and in what circumstances the community TV sector are brought over and what they can offer. It is appropriate to look at their business case and to

look at what they can provide and what they wish to do, how they see their future, rather than having knee-jerk reactions now. But, as I have said, they will be appropriately looked after in terms of being able to move to a digital platform at an appropriate time.

**Senator CONROY**—I want to return to your question about the trigger event, which I was discussing earlier and that I indicated I might come back to. I have in front of me the ministerial direction setting up the ACMA review that we were talking about. Clause 4 talks about a review of the definition of ‘trigger event’. Is that due to report on 31 March?

**Mr Neil**—Yes.

**Senator CONROY**—How can ACMA gazette a local presence condition as required by section 43B of the Broadcasting Act if the definition of ‘trigger event’ is subject to a review?

**Mr Neil**—The definition for a trigger event is in the act.

**Senator CONROY**—But the minister has ordered a review.

**Mr Neil**—ACMA reviews parts of their act regularly. That is not unusual. What they are required to do is establish a local presence condition taking into account certain factors. The trigger event is in a separate part of the act. There are two processes going on. One is putting in place a local presence licence condition, and in another part of the act that contains the trigger event they have been asked to review that trigger event.

**Senator CONROY**—Section 43B states:

The ACMA must ensure that, at all times after the commencement of this section, there is in force under section 43 a condition that has the effect of requiring that, if a trigger event for a regional commercial radio broadcasting licence occurs, then, after the occurrence of the event, the licensee must maintain at least the existing level of local presence.

Under clause 4 the minister has directed ACMA to review the definition of a trigger event. I am just confused about how any business that is going to be operating after the proclamation date is going to be able to interpret the fact that the legislation is actually under review by ACMA—

**Mr Neil**—They are required to operate under the law as it prevails at the time. ACMA reviews parts of the act/conditions in the act. While it is doing that review, the law as it prevails applies. Assuming there is a licence condition in place, a local presence, and assuming the act is proclaimed, then the trigger event will operate according to how it is defined in the act.

**Dr Pelling**—Perhaps it might help further to describe it like this. The local presence condition will set certain things like the staffing levels, studio and production facilities and so on. The trigger event is about whether or not the trigger event, as it is defined, has unintended consequences, for example, and whether an intergenerational transfer would be unintentionally caught by the definition of a trigger event. The trigger event is really about whether or not that local condition will apply to a particular licence or not. ACMA can proceed to impose or decide what the licence condition is. The trigger event really will determine the point at which that would apply. So you can review separately the scope of a trigger event without necessarily impinging on whether the licence condition does A or B, because the trigger event really just defines whether or not that licence condition applies.

**Senator CONROY**—Would you call that procedurally fair? I would have thought there would have been at least a legal argument that that is a little procedurally unfair; while you may be able to argue that a trigger event is clearly defined, the impact of a trigger event is uncertain at the moment. If someone died the day after the proclamation, on the current reading, there is just going to be confusion.

**Dr Pelling**—But that is not necessarily a reason why ACMA should not in the meantime make the licence condition and consult with industry on the licensing.

**Senator CONROY**—No—

**Dr Pelling**—The trigger event is about whether or not that licence condition is opposed and the circumstances under which—

**Senator CONROY**—The issue is whether you can proclaim before this information.

**Mr Neil**—There is no confusion; the law as it is written applies. ACMA will conduct a review, but the law applies.

**Senator CONROY**—Laws have to be procedurally fair, too. Laws can be subject to challenge based on procedural fairness, and high courts have knocked out laws that they deem to be procedurally unfair. They do so quite regularly, even when parliament has passed law. That is what the High Court does. It says, ‘No, unconstitutional. It does not comply with X, Y and Z parts of procedural fairness.’ It happens with refugee cases all the time. That is based on laws that are passed by parliaments.

**Senator Coonan**—I do not think that is correct, because the situation is that this is being reviewed and it may ultimately be amended, but it does not stop the condition being imposed. It is there.

**Senator CONROY**—I was just being consulted by the chair. The point you made, I think, was an important one towards answering some of my queries. I am happy to move on. I wish to talk about the Protecting Families Online initiative announced by the government in June. As was noted in the Senate last week, it is now eight months since the proposal to give away free filters was announced. Did the government want the scheme to be operational by now? Are you disappointed that it is not?

**Senator Coonan**—I would like it to have been operating from the time it was announced. But if you were listening to my earlier answers—

**Senator CONROY**—I was out of the room when Senator Fielding was—

**Senator Coonan**—I think it is really important to make the point with this that this is a world-first scheme, to my knowledge. I have never seen anything like it in any other country. It has to be built from scratch. It is an ambitious and I think justifiable program to deal with this very important problem to communities. It is the subject of two tender processes to test the filters and to design the content. It obviously has to comply also with some other treaty obligations, as you would appreciate. AUSFTA2 comes into it, as indeed it does with just about any government contract. I am very confident that, having gone through all these processes appropriately, it will be up and running by about May.

**Senator CONROY**—By May?

**Senator Coonan**—By about May.

**Senator CONROY**—What assumptions have been made about the take-up of the free filters? How many have you exactly taken up each year?

**Dr Pelling**—I think that the assumptions that were built into assessing the program are really a matter for the government in setting up policy.

**Senator CONROY**—There is a dollar attached.

**Dr Pelling**—But we will obviously be hoping that the take-up will be as wide as possible and by—

**Senator CONROY**—There is a dollar cost to the filter program per filter and there is an allocation. What is the funding envelope envisaged that will be taken up in each of 2006-07, 2007-08 and 2008-09? You must have put a figure in the forward estimates?

**Dr Pelling**—In providing advice—there are figures in the estimates—

**Senator CONROY**—Of course there are.

**Dr Pelling**—Do you want those figures?

**Senator CONROY**—No, I do not want the figures. What I want to know is what those figures represent and how many filters will be picked up. You must know the cost?

**Dr Pelling**—The figures represent an estimate that we provided in internal advice to government based on issues about the assessments of what we thought a reasonable valuation of a filter might be.

**Senator CONROY**—Yes, and the government committed to a spending program based on that information. There is a dollar figure attached to it, and I am entitled to ask: what is the take-up of the filters in the first year?

**Dr Pelling**—But the take-up of the filters will be what it is. At the end of the day we want it to be as many people as possible.

**Senator CONROY**—How many filters does \$93 million buy?

**Dr Pelling**—It will depend on the price that we agree in a tender with each filter provider.

**Senator CONROY**—Are the costings based on one per family?

**Dr Pelling**—The costings are based on—

**Senator CONROY**—Is it one per computer or one per family?

**Dr Pelling**—Essentially the program is based on providing a free filter for every family if they wish to take it up.

**Senator CONROY**—So it is one per family?

**Dr Pelling**—Three licences per family is what we are also currently working on. So, in other words, if you have a network in your home with a number of computers on, you will be able to put that filter on more than one computer.

**Senator CONROY**—No, if they are not networked though, if they are like just three separate—

**Dr Pelling**—We would not be discriminating.

**Senator CONROY**—Is the program available to schools as well?

**Dr Pelling**—No. The program is aimed at families and a separate component aimed at libraries.

**Senator Coonan**—And libraries.

**Senator CONROY**—How much money has been allocated for advertising this initiative?

**Mr Neil**—It is \$18.3 million over three years.

**Senator CONROY**—How much is the total program costing over three years? Is that the \$93 million I mentioned?

**Dr Pelling**—There is \$93 million for filters over three years, \$18.29 million for the consumer information campaign, and \$4.9 million to NetAlert.

**Senator CONROY**—So 20 per cent of the funding is for advertising?

**Dr Pelling**—116.5 in total.

**Senator Coonan**—I would not call it advertising.

**Ms Williams**—Community information.

**Dr Pelling**—It is an information—

**Senator Coonan**—It is not advertising—

**Senator CONROY**—You can give it any spin you like.

**Senator Coonan**—No, it is a substantial information campaign to tackle a serious problem of genuine concern to Australian families, and I am surprised that you insinuate to the contrary.

**Senator CONROY**—I have not insinuated anything. What I have actually asked to be confirmed—

**Senator Coonan**—You said, ‘You can spin it any way you like.’ That is—

**Senator CONROY**—What I have asked to be confirmed is that out of the total program, there is \$93 million actually set aside for the filters and \$18 million for you to tell people about it; so 15 or 20 per cent of the entire program is in community information?

**Ms Williams**—The \$18.3 million over three years actually is broader than that. It is increasing awareness and understanding of online safety issues, empowering parents to protect their families from inappropriate online content, and online grooming. It is a broader thing than just telling people about this filtering.

**Senator CONROY**—It is an opportunity to put the government logo inside people’s houses.

**Senator Coonan**—I can understand your paranoia about it, but something on this important I am surprised that you are prepared to be snide.

**Senator CONROY**—Do not hide behind—

**Senator Coonan**—I am not hiding behind it.

**Senator CONROY**—Be proud.

**Senator Coonan**—It is reprehensible of you to be casting aspersions about such an important initiative. I hope you are going to go and tell everybody that you think it is inappropriate that the government does something to help people to understand such a serious problem.

**Senator CONROY**—Be proud of how much taxpayers' money you spend. When will the information campaign commence?

**Dr Pelling**—The campaign will commence once the filters are available.

**Senator CONROY**—I was going to say that. I presume you have to wait until the filters are available.

**Dr Pelling**—Yes.

**Senator CONROY**—Is there any legislation required for the protecting families online announcement?

**Dr Pelling**—No.

**CHAIR**—That is the end of the department's evidence. I thank the department for appearing. I would like to call SBS now.

[10.03 pm]

#### **Special Broadcasting Service Corporation (SBS)**

**Senator CONROY**—At the last estimates we had a lengthy discussion about the new SBS program break structure. The policy had just been implemented when you last spoke. What has been the audience reaction to date? Can you update the committee on how many complaints the SBS received about the new advertising policy? I actually just received another one while we have been in here this evening. I am sure you must still be receiving some or more given that you have now fully implemented the new regime?

**Mr Brown**—When I was last before the committee we had just, I think, commenced a partial introduction of the new break structure. Between those dates we have introduced breaks in more programs. But on 22 January that process was complete. As to the number of complaints, yes, people continue to ring in but in fairly small numbers. But they are persistently calling in. I guess as new people discover programs that they particularly like are interrupted, they ring in to voice their concern. We do have a system set up, particularly for people who either ring in or send us emails. We direct them to an online resource where they can at least see in detail the rationale behind the decision. We have had some feedback from people who say, 'Well, thank you, now I understand it. But the numbers are not high.

**Senator CONROY**—They do not say, 'Thank you, we agree.' Come on.

**Mr Brown**—A few, I think. A few would be in that category. I am not going to claim a great many.

**Senator CONROY**—Is SBS taking these complaints into account in assessing the policy, or are you just ignoring them and hoping that people will get used to it?

**Mr Brown**—I think the fact that we have been receiving complaints was entirely predictable. We have always acknowledged that the introduction of breaks in programs was not going to meet with widespread approval. I would have to say that the level of complaints is lower than one might have expected, and that is possibly because there is a recognition of the rationale behind it. We will look at the end of the year and see how things have progressed, but I think the salient fact is that audience numbers are strong. In the first six weeks of this year on every week ratings have been higher than they were for the comparable six weeks last weeks last year.

**Senator CONROY**—You mean you think this has been a ratings winner for you?

**Mr Brown**—No, but I think it has not been a ratings problem for us, either.

**Senator CONROY**—You never know, you could have had higher ratings than otherwise.

**Mr Brown**—We will never know.

**Senator CONROY**—Can you take on notice the exact number of complaints?

**Mr Brown**—Yes.

**Senator CONROY**—Has the advertising policy been discussed with the SBS Community Advisory Committee since it was implemented, and what feedback have you received from this committee?

**Mr Brown**—I am not aware of a meeting of the Community Advisory Committee since full implementation. I am trying to remember whether there was one at the earlier stage. It certainly has been discussed by the Community Advisory Committee.

**Senator CONROY**—I know, but I am saying—

**Mr Brown**—I think we talked about it last time.

**Senator CONROY**—Yes. I know we did. I am saying: since it was fully implemented have you—

**Mr Meagher**—I think the last committee of the Community Advisory Committee was probably in November last year.

**Mr Brown**—So that was after the introduction.

**Senator CONROY**—I suspected that was the case.

**Mr Brown**—I think it would be fair to say that their reaction is not dissimilar to community reactions. Some of them expressed some concerns. Some of them said that they had had concerns expressed to them. Others said that, on thinking about the rationale, they could understand it, whether or not they were entirely happy with. It is pretty much what you would expect.

**Senator CONROY**—Is there any chance that the policy will be modified, or are you saying that you have no choice given the level of government funding available?

**Mr Brown**—We do not have any intention of modifying the policy. We are capped at five minutes per hour. That is the legislative cap, so that is the primary constraint, which is outside of our control even if we wished to vary that. We might look at the exact structure to see whether or not it is consistent with our objectives, which was, you will recall, to have a less



number of breaks than might be seen on any other commercial channel and of very short duration. So you will recall that we have a model that sort of ranges from two breaks in half-hour programs to three breaks in hours and two breaks only in movies. I cannot say that in six months time somebody will not come along and say, 'I think we might be able to achieve a slightly different mix.'

**Senator CONROY**—You have been in TV for a long time, Mr Brown. I am familiar with the concept of over summer most people sort of watching commercial TV sort of throw their hands up in despair and I know that Foxtel's ratings are the highest over summer because, frankly, what free-to-air shows over summer is old, failed or a repeat. So when you say your ratings were up, could there be a correlation with what was being shown?

**Mr Brown**—No. These are year-on-year comparisons. I think the phenomenon you have observed is one we have seen as well. We have always enjoyed higher share rather than higher ratings, because it is a consequence probably of lower viewing figures. The fact is that we hold on to our audience more substantially because we do programs—

**Senator CONROY**—You are showing new stuff.

**Mr Brown**—That is right.

**Senator CONROY**—You actually run an advertising campaign about the fact that you are actually showing new stuff, not the usual recycled rubbish that the free-to-air shows.

**Mr Brown**—That is right. And last year in summer we launched *Remote Area Nurse*, which was a major Australian drama production. The year before that it was *The Colony*. So we have a track record. So a year-on-year comparison is a genuine apples-to-apples comparison.

**Senator CONROY**—Last time we discussed the fact that you sought advice from senior counsel to satisfy yourself that the new meaning that you have given to the phrase, 'natural program break' in the SBS act is actually consistent with the act. Is it still your position that SBS will not provide the community with a copy of that legal advice?

**Mr Brown**—That is our position, yes. It remains so.

**Senator CONROY**—Has any other media organisation suggested that it would take litigation over the new policy?

**Mr Brown**—Not directly to SBS, that I am aware of. Well, I would be aware of it, so I can say, no, not directly to SBS. I have no idea whether there have been any discussions amongst other media organisations.

**Senator CONROY**—Are you prepared to share the advice with the committee on an in-camera, in-confidence basis?

**Mr Brown**—You will recall that the constraints were twofold. One is a commercial-in-confidence issue. But the other was the status of legal privilege if it was divulged to any third party. We have consistent legal advice that to maintain that legal privilege position we should not do that.

**Senator CONROY**—Have you told us how much that external advice cost you? What are you being charged for this secret advice?

**Mr Brown**—I do not believe I have divulged that, but can I take that on notice?

**Senator CONROY**—Yes. Minister, you indicated last time that you had not asked your department for advice on whether SBS's decision to put ads within programs was illegal; is that still the case?

**Senator Coonan**—I have not asked for it, no. My understanding is that it is, and I have received that advice.

**Senator CONROY**—When the policy was announced SBS stated that the new break structure would raise an estimated additional \$10 million in the first full year of operation. Is this forecast on track? Are you going to raise as much as you expected or more?

**Mr Brown**—Yes, it is on track. It is very early to be clear, because we really only have been effectively charging increased rates since 22 January, so we were only expecting to get a proportion of that in the financial year to 30 June. But, yes, it is on track.

**Senator CONROY**—You did last time describe it as conservative estimate. Are you seeing a variation at this stage?

**Mr Brown**—It is hard to differentiate between a lift in revenue that is related to this initiative, to our programming success or to a general lift in the market. But revenue performance has been strong in recent months.

**Senator CONROY**—I am advised by my office that you actually took on notice last time how much the legal advice was. My office advised me. I am just not sure that we got an answer to that. I am happy for you to take it notice that you might have taken it notice that you took it on notice, that you took on notice.

**Mr Brown**—If we have not responded to the last request—

**Senator CONROY**—It could be sitting on the minister's desk. Anything is possible.

**Mr Brown**—Sorry, we did respond. SBS's external legal costs to date are \$17,500 inclusive of GST.

**Senator CONROY**—Thank you. You do not have to take it on notice any more. As you know, I do have an unhealthy obsession with a number of sporting matters, particularly football. I noticed that Australia played last week against Denmark in a friendly international over in Europe and I was looking through the program guide looking to see when SBS were going to cover it. To my horror I found it was not there. Why did you not have Australia—the Socceroos—playing Denmark last week?

**Mr Brown**—The deal that allowed us to broadcast Socceroos matches expired on 30 December last year. I think as we have previously reported, it is now owned by Fox Sports as an exclusive property.

**Senator CONROY**—You have not been able to negotiate a highlights package? There was some talk at the time that there may be a highlights package available.

**Mr Brown**—Not regarding that, and certainly we have not negotiated any highlights package. What I have signalled, both to Fox Sports and possibly to this committee, is that we have been interested in talking about sublicensing arrangements relating to football properties that it owns, which includes very much the Socceroos. We had an informal general discussion

last year, but it has not gone any further. It requires Fox Sports to make a decision on whether its best interests are served by retaining it exclusively or allowing a sublicense of highlights, delayed broadcast or whatever to another player like SBS. We would be interested in discussing that.

**Senator CONROY**—I noticed an announcement last week that Australia will play Argentina in Melbourne in June. Will you be showing that one?

**Mr Brown**—No. We do not have any rights to show that.

**Senator CONROY**—Do you think that is a satisfactory situation for the Socceroos?

**Senator Coonan**—I am sorry, I tuned out.

**Senator CONROY**—I was asking Mr Brown why he was not able to show the Socceroos play Denmark last week and if he was going to be showing the Socceroos playing Argentina, and he was informing me that their deal has expired and Foxtel have bought it. I was wondering if you felt it was a satisfactory outcome from the antisiphoning list that the Socceroos matches are not being shown on free-to-air television?

**CHAIR**—It is a commercial arrangement.

**Senator Coonan**—It was not on the list.

**Senator CONROY**—You have not put it on the list. Millions of Australians are being denied the opportunity to watch Australia play Denmark and the Socceroos play Argentina later in the year. I am just asking if you thought that was a satisfactory outcome?

**Senator Coonan**—The list is the list, and it is not on it because the rights are not available.

**Senator CONROY**—Do you still think that the Socceroos have as much interest out there in Australia as the Tour de France?

**Senator Coonan**—I am not going to play these games, so please move on.

**Senator CONROY**—I would like to turn to SBS's plans for digital television. Does SBS plan to make any changes to its digital TV offerings now that the genre restrictions have been lifted?

**Mr Brown**—We are currently giving consideration and intending to proceed to a reallocation of bandwidth. It is not related to the genre restrictions lifting. It is more in relation to the consideration of the future role of HD. To that end, we are apportioning bandwidth differently so that we can configure for 720p delivery of native HD, which in the past we have not sought. We have been doing an upconverted HD signal.

**Senator CONROY**—Will you have an HD multichannel and an SD multichannel?

**Mr Brown**—No, it will not be an HD multichannel; it will be an HD simulcast initially. That is the commercial model, to simulcast HD. If it is a piece of premier content, it is most likely going to be on your main channel, whether that is HD or SD.

**Senator CONROY**—Is SBS going to stick with its World News Channel? Do you have any evidence that this channel is driving digital take-up?

**Mr Brown**—That is not our long-term view. That has been consistently the case, as you can see from triennial funding requests of a year or so ago; our preference would be to offer a

range of other content on multichannel. It might include some world news, but there are other areas, including original Australian content, that we would wish to put on multichannel.

**Senator CONROY**—Will you be adding English language news channels now that the law allows it?

**Mr Brown**—That is not a specific consideration at this stage.

**Senator CONROY**—Is it possible for SBS to do more in the digital space, like launching an extra multichannel, without additional government funding?

**Mr Brown**—At the moment our consideration is not to look to add further multichannels. The configuration that we currently favour—and these things will change as compression regimes change—is to provide a simulcast SD, an HD simulcast and an extra single SD multichannel, which is currently the World News Channel.

**Senator CONROY**—Your plans to launch two extra channels in your triennial funding submission last year were rejected. Are you planning to revisit this issue in this year's budget?

**Mr Brown**—We have made a number of submissions to government for consideration in the budget. I cannot go into the details of those specific bids.

**Senator CONROY**—I was just asking whether you were going to revisit the bid, not the particular details.

**Mr Brown**—To go through a process of elimination of what is in the list or not would cause me to reveal some issues that are in confidence.

**Senator CONROY**—You mentioned that on your HD multichannel or simulcast you were going to do 720p?

**Mr Brown**—Yes.

**Senator CONROY**—Why not 1080i?

**Mr Broderick**—Currently, SBS has a transport stream that runs at 19½ megabits per second. The commercial broadcasters are running 1080i at 13 megabits per second. Because we would like to run two alternate channels—the two SD channels—at roughly five megabits per second, it does not leave enough space. We also feel that 720p is a far superior product, because it is progressive, and a 1080i—it is also the format adopted in Europe, which is the source of a fair amount of our content. It is a consistent position there.

**Senator CONROY**—I got the impression from your comments a few moments ago when I mentioned the World News Channel that it did not have a long-term future. Will you be dropping the World News Channel now?

**Mr Brown**—Our preference, as previously stated—and we remain of this view—is that that space would be better used with a full-service channel that contains a range of content and not just a single genre.

**Senator CONROY**—Thank you.

**Senator NETTLE**—I would like to ask about the new news format. Are you happy with that change?

**Mr Brown**—Yes, we are really pleased with it. It is a distinctive offering, in contrast with all the other networks. It gives an opportunity for us to provide a greater depth and greater breadth of coverage. Every network that changes its news product experiences some inevitable comments from viewers who are unhappy about change. In the case of media criticism, it is quite challenging. This launch has been particularly effective. We have had some good feedback and our ratings are tracking about 25 per cent up year on year for the equivalent hour at this time last year, which is a very commendable performance on launch.

**Senator NETTLE**—How did you come to the decision to change the format? Was that an internal decision based on focus groups? How did that come about?

**Mr Brown**—It was partly an editorial decision that we wanted to position our news service, which is widely admired, in a way that could tackle content with greater depth and also increase the range of content being considered. It is important for a network like SBS to differentiate itself from other networks, and it has done that successfully. On a practical front, it has seemed for as long as I have been at SBS that the sports program, which was previously at seven o'clock, although a very professional product, struggled to engage with audiences in significant numbers. Half-hour sports programs in prime-time of that type have had no success to speak of anywhere in the world. It is too challenging a proposition to commit a whole half hour in prime-time for a sports news program of that type.

**Senator NETTLE**—You said that you have positive feedback in relation to the new change in format. I imagine you have a whole range of different types of formats. Where is the balance in terms of the positive versus negative?

**Mr Brown**—We have not really done an analysis, but my general sense is that it is about fifty-fifty, which is far better than one would expect. Normally if you change a news program—and I have launched news hours for other networks—the initial reaction is generally negative, because you have disrupted something that the viewers have become very loyal and attached to. That is perfectly understandable. If it is a success, what you observe is a gradual warming and strengthening of the ties to the new product. I see that happening already.

**Senator NETTLE**—Can you take on notice the number of complaints in relation to the change in format?

**Mr Brown**—Yes.

**Senator NETTLE**—There was a report that you had been receiving so many complaints that staff had been told not to record the complaints. Did you want to comment on that?

**Senator CONROY**—I asked those questions in the last questioning?

**Senator NETTLE**—On the new news format?

**Mr Brown**—You asked about the advertising break structure and did we put on extra staff.

**Senator CONROY**—That is slightly different.

**Mr Brown**—We do record all complaints.

**Senator CONROY**—It is a requirement under the act, is it not?

**Senator NETTLE**—How much did you have to pay to get Stan Grant?

**Mr Brown**—That is a commercial matter—an individual’s contract.

**Senator CONROY**—That is one that we are allowed to ask and you have to tell us. You have been asked.

**Mr Brown**—I will take that on notice and seek guidance on that.

**Senator CONROY**—No, it is not about guidance. It is about what it is.

**Senator RONALDSON**—I am very mindful of the time. I intend putting a number of questions on notice. There is some benefit to sitting around here all day, and it is getting on to half past 10, which would not be lost on you. There is an even greater benefit for Mr Scott, who is sitting out the back; we have an 11 o’clock deadline. I have one question that I want to ask you today and I will put the rest on notice. I want to get back to the *Dateline* and *Campus Watch* question that we discussed at the last Senate estimates, which I am sure you remember well. I should ask you, though, if you remember that being raised by me?

**Mr Brown**—I do remember it being raised.

**Senator RONALDSON**—I am not asking you for intimate knowledge of the content, but I am sure that you are generally aware of the content. I noted at the time that you said that there was no connection between the program’s postponement and the date of the estimate’s hearing. That may prick your recall a bit. At the last estimate’s hearing in October you acknowledged that the content of *Dateline* falls within the news and current affairs under your own code?

**Mr Brown**—Yes.

**Senator RONALDSON**—Do you agree that the program portrayed the activities described taking place on US university campuses as an attack on academic freedom?

**Mr Brown**—I did not see the program, so I could not really confirm that. Am I right in remembering the discussion that we had was prior to its broadcast and your questioning was about it being delayed at the time?

**Senator RONALDSON**—Yes. Do you want to take that on notice?

**Mr Brown**—Yes.

**Senator RONALDSON**—As an example in his introduction to the program, host George Negus said:

Tonight the battle for freedom of speech on American campuses with Professors in middle east studies accused of pro-Palestinian bias.

Again, in introducing the story, reporter Chris Hammond described Columbia as:

The main battle ground in a war being fought across American campuses over the issue of academic freedom.

Do you acknowledge that the program’s contents could be more accurately described as deliberately anti-Israel and anti-Western messages being passed on to university students in the guise of an academic contribution?

**Mr Brown**—As I did not see the program, it would be inappropriate for me to form a view. Let me take that on notice. I cannot recall any complaints to that effect at the time of this

broadcast. Let me check on that as well—whether there were formal complaints. Certainly I am confident that there was no formal complaint upheld about that program.

**Senator RONALDSON**—For something to be upheld it would have had to have been made. You are not too sure whether it was made; therefore, it would be hard to speculate about whether something was upheld, presumably.

**Mr Brown**—That is correct.

**Senator RONALDSON**—I will go on, because we are running short of time. I noted at the last estimate's hearing you acknowledged that the current SBS code of practice in relation to news and current affairs says in part:

SBS believes in the right of the audience to make up its own mind after an objective presentation of the issues. To this end all reasonable effort must be made to ensure that the factual content of news and current affairs programs is accurate, having regard to the circumstances and facts known at the time of preparing and broadcasting the programs. SBS will take reasonable steps to ensure timely correction, not misrepresenting them, or unduly favouring one over another. Reasonable efforts should be made to ensure news and current affairs programs are balanced and impartial.

That last quote, 'Reasonable efforts should be made to ensure news and current affairs programs are balanced and impartial', comes back to your confirmation, again, that *Dateline* falls within news and current affairs under your own code. Do you agree that the program failed to conform with your own code insofar as it did not provide an objective presentation of the issues?

**Mr Brown**—I have not seen the program, so I will take that on notice. Again, there have been no complaints about that *Dateline* program breaching the codes upheld.

**Senator RONALDSON**—The fact that it has not been upheld may well mean that your guidelines have not been properly implemented. What I am doing is inviting you to look at that, take those questions on notice and then come back to me after an objective assessment of the program itself.

**Mr Brown**—I will check to see whether or not they have been through the objective complaints procedure with the Audience Affairs Manager to see whether that has already been tested.

**Senator RONALDSON**—We have a very short time remaining. I have a number of other questions that I will put on notice.

**Mr Brown**—Thank you.

**Senator FIERRAVANTI-WELLS**—I have a number of questions that I would like to ask in relation to answers that you have given on notice, and then I will refer to some material. For some of these you will have to go back and have a look at the question and then answer it that way. Because of time, I suspect that you will have to have a look at them and come back to me on them. Question 27 goes back to questions in previous estimates about an online poll that you conducted about the 10th anniversary of the Howard government. I asked three specific questions which I do not believe that you have answered—in particular, your assertion about the idea that the Prime Minister's leadership played on fear. I would appreciate if you could go back and have a third crack at giving me a proper answer, because

you did not answer my question, which is: where did you get the idea that the Prime Minister's leadership plays on fear, which was the subject of your online poll?

**Mr Brown**—You asked whether or not we were adopting a political posture of the Greens and Democrats—

**Senator FIERRAVANTI-WELLS**—It is a three-part question. I would appreciate if you could answer each of the parts. That is why I asked a three-part question. Yes, you did answer the latter part but not the former part, so could you please go back and answer that?

**Mr Brown**—We will look at that again.

**Senator FIERRAVANTI-WELLS**—In answer to question 28, you said that the *Dateline* guestbook is 'a lightly moderated space'. Could you tell me what 'lightly moderated' means and what sort of quality control you put on this guestbook, when material has to be 'defamatory, too personal, abusive, racist or plain mad' before you delete it? Again, my questions were very specific and they also included what procedures are in place for monitoring the guestbook and who is responsible for this. You have not answered that component of the question. If you could go back and explain what 'lightly moderated' means, and what sorts of procedures does that require being reviewed?

**Mr Brown**—The section that has been answered is, 'What criteria, if any, do you use for consideration in the removal of material?'

**Senator FIERRAVANTI-WELLS**—I want to get through this quickly. I asked you a series of questions. You have been very selective in what you have answered. I am asking you to go back and answer all components of the questions that I have asked.

**Mr Brown**—I will look at that again.

**Senator FIERRAVANTI-WELLS**—In various questions about material covered by *Dateline* you responded to this effect—and indeed in about three or four instances—'*Dateline* has not reported on these matters yet but could well do so in the new season.' Could you just explain who chooses what is reported on and what criteria are used in that choice?

**Mr Brown**—The process is the same as what would apply to any current affairs program, and that is that story ideas—given the nature of *Dateline*, which is specifically overseas—are identified through a process of editorial discussion amongst reporters and producers. At a certain point, that is put into a formal proposal, which is submitted to the executive producer. It then requires approval from the director of news and current affairs to proceed on that. Because it involves international travel, it also requires my approval.

**Senator FIERRAVANTI-WELLS**—In some ways *Dateline* is a very structured program, so whatever goes on *Dateline* is not policy-driven, as such, but it has been well thought through. So, if there are, and clearly you have upheld, certain breaches in relation to *Dateline*, it seems to me that you obviously go through—as you have just explained—quite a careful process about what gets on there. If you do have that sort of process, why do you have breaches?

**Mr Brown**—I cannot recall a breach in terms of story selection, and that is what your question related to. It did not relate to the treatment or the final form that the story took. When



you refer to the complaints upheld, in all respects you are talking about content issues and not the choosing of the story.

**Senator FIERRAVANTI-WELLS**—Part of that also goes to the nature of what you are putting to air, but you have answered my question for the specific purpose. In answers 35 and 36, you admit some poor translation by one broadcaster within that program. I must say that I have noticed on various occasions, for example, translations from Italian to English, translations that are not always accurate, especially when it relates to translating colloquial expressions. Who undertakes the translations at SBS and what procedures are in place to ensure accuracy and quality control? You might like to take that on notice.

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

**Senator FIERRAVANTI-WELLS**—In relation to question 43 and my request that you provide me with the multicultural broadcasting experience of your executive, I have to say that your answer was totally deficient. All I got was some glib comment that the SBS executive has the necessary experience for the fulfilment of their duties, and the answer just continued in that vein. If you are quite proud of your executive, can you give me details? I am sure that you would be happy to provide me with CVs or resumes so that I can make my own assessment about that, but the six-line answer that you have provided to me, which purports to cover all of your executive, is totally inadequate, so you will need to address that properly.

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

**Senator FIERRAVANTI-WELLS**—On the point of experience, in answer to question 46, I take you to the appointment of Miss Masselos. Again, your answer to that was totally inadequate. I have looked at the roles, responsibilities, skills and knowledge required from the material that you have provided to me. There is a strong focus on radio management experience. In effect, you were looking for a professional radio person who could manage a large workforce. I also had a look at the media release. I have some concerns with the process of appointment of Miss Masselos, particularly in light of the media release that you promulgated in relation to her appointment. I have read the release and I have had a look at it again, and there is absolutely no mention of radio management experience, no mention of professional radio experience, and no mention of experience with a large workforce. I will be providing you with some material, which is the basis of considerable material that has been provided to me, and I will be putting her appointment on notice because I am very concerned about that appointment.

**Mr Brown**—Are you suggesting that the process was flawed in some respect?

**Senator FIERRAVANTI-WELLS**—I understand that there are some concerns about it and I will be putting those on notice to you about that appointment. I am concerned about the fact that Miss Masselos's experience, as you promulgated in your media release, does not quite match the roles and responsibilities that you have provided to me and that will be the gist of my question on notice.

**Mr Brown**—I would remind you that any appointment of this type within an organisation such as SBS is not going to be universally approved. There are people who will find fault with it.

**Senator FIERRAVANTI-WELLS**—I appreciate that. I am well able to read someone's experience and then compare it. I was 20 years in the Commonwealth Public Service, so I am able to look at selection criteria and compare them with the person who has received the appointment and note where there are anomalies.

**Mr Brown**—The fact remains that this was the unanimous decision of the entire panel.

**Senator FIERRAVANTI-WELLS**—I appreciate that.

**Mr Brown**—That included external advisers from the multicultural community and the chairman of our board.

**Senator FIERRAVANTI-WELLS**—I will put that in writing to you and then you can answer me on that. I note, with interest, the figures that you provided in answer to questions 47 and 49 about the SBS radio budget. Taking into account the organisational restructuring—and you have made reference to that—I note that the budget for the radio has gone from 11.36 per cent in 2001-02 to just 7.75 per cent in 2006-07. When I look at much of the history of SBS—and I have been aware of SBS virtually since its inception—much of it has been focused on extensive radio broadcasting to meet its charter obligations, so can you just explain to me the shift away from radio? Are we seeing a gutting of the radio services so that you can prop up what is in effect an arthouse, two-television station which is watched by less than four per cent of Australians?

**Mr Brown**—I do not know where to begin with that one. The average share last year was about 5.8 and the year before was 6.5. I am not sure how you conclude that it is less than four per cent, which is a very significant share by international standards of a fifth network. Secondly, your assertion that money has been taken out of radio is incorrect. Any reading of the figures that were presented to you should demonstrate that. Yes, radio percentage has gone down from 11.36 to 7.75. That is clearly a result of restructuring, which saw a number of cost centres that were previously held by radio located elsewhere.

**Senator FIERRAVANTI-WELLS**—You are saying that there has been no loss of actual services?

**Mr Brown**—Absolutely. You can put a stronger case, which really runs completely contrary to your assertion on behalf of television, because there the share has gone from 43.7 to 22.25. The idea that money has been shifted from radio into television is clearly not true.

**Senator FIERRAVANTI-WELLS**—Asked in the context of the ethnic television market, when you have players such as United Broadcasting International, UBI, and other pay TV outlets, which I have been advised have a market share of over 25 per cent—

**Mr Brown**—Of free-to-air viewers?

**Senator FIERRAVANTI-WELLS**—I have been quoted this, but in any case, given the presence of—

**Mr Brown**—It cannot possibly be the case that 25 per cent—

**Senator FIERRAVANTI-WELLS**—Please let me finish asking my question. I have visited UBI. UBI sends to air 29 television stations in 13 languages. Now the point that I am asking you is, in the context of that sort of market, can you explain to me why the taxpayers

of Australia should continue to fund an SBS which appears to be, quite frankly, sinking in its percentage and its market share?

**Mr Brown**—The reason that I unfortunately interrupted you is because you pile assertion upon assertion and then end up with a question at the end of it which is close to absurd because you cannot possibly say that the ratings for SBS television are four per cent and, for an ethnic channel, 25 per cent. You are simply not comparing apples to apples.

**Senator FIERRAVANTI-WELLS**—I did not say that they were ratings.

**Mr Brown**—Share, sorry.

**Senator FIERRAVANTI-WELLS**—I have been advised. If you think that is incorrect then please provide me with your figures.

**Mr Brown**—It is so patently incorrect that it does not stand any sort of test of credibility, that a single ethnic broadcaster is reaching 25 per cent share, because that is the sort of share that Channel 7 and Channel 9 get. Any sort of analysis would show that. Secondly, you compare us to an ethnic television service when we are not an ethnic television service. A simple reading of our charter demonstrates what our purpose is. It is to reach out to all Australians and to reflect Australia's multicultural society. To try to define us as a service that is only there for the benefit of ethnic viewers is to misrepresent our purpose.

**Senator FIERRAVANTI-WELLS**—What you are saying is that, notwithstanding the growing ethnic television market, you still say that there is a place for SBS television and some of the stuff that it is putting out there.

**Mr Brown**—I am saying to you that, contrary again to what you asserted, ratings for SBS television are increasing. It would be the only organisation, I suspect, that is enjoying growth and yes, there is an appetite and an audience for what we are delivering, because that is demonstrated by the ratings that we receive.

**Senator FIERRAVANTI-WELLS**—We will agree to disagree.

**Mr Brown**—You could take a similar situation. You could say that there is a growth of ethnic radio as well.

**Senator FIERRAVANTI-WELLS**—Well, there is. That is the other side of the equation when you have got more free-to-air. I come back to the point of why should the taxpayers continue to subsidise material which is available in the marketplace? Why should it continue to subsidise that when they are available and people are free to purchase them?

**Mr Brown**—Because that is not our purpose.

**Senator FIERRAVANTI-WELLS**—That is a philosophical argument.

**Mr Brown**—That is to misrepresent our purpose. That is to define us as a television service that is addressing only the needs of ethnic communities, and the charter clearly does not state that. It is a secondary responsibility. The primary responsibility of the charter is unambiguous. It is to reach out to all Australians and reflect Australia's multicultural society. The secondary responsibilities of the charter deal specifically with our needs to foster the language and to contribute to the communication needs of Indigenous and ethnic Australians.

**Senator FIERRAVANTI-WELLS**—On the last occasion I raised some instances, particularly about some of the material which I thought was inappropriate. I do not understand how that fits into the sort of outline of the charter that you have given, but again we will agree to disagree, because I think a lot of the material that is on SBS—particularly SBS television—certainly does not appear to be for the benefit of all Australians. Some of it is very questionable and in bad taste, but, if you feel that you need to use taxpayers' money to send that sort of stuff to air, I really do not see why the taxpayers of Australia should subsidise that. I think people can just go to pay TV if they want to watch that sort of stuff. Anyway, I will agree to disagree with you. You did uphold various aspects of complaints that I made about the *Dateline* report on 22 November called 'The Worst Ramadan'. In particular, I refer to the remark at the end of the report by Mr Negus, who I have previously criticised for being pro-Arab and anti-Israeli, where he took the Palestinian side of events and repeated their description of events as a massacre. I have to say that I am very concerned about this consistent bias from SBS, particularly in the *Dateline* program and particularly Mr Negus. In view of my complaints and the material that you have upheld, what is in process to deal with Mr Negus's activities and his continual breaches?

**Mr Brown**—We are talking about the inappropriate use of a word at the end of a program in a back-announce.

**Senator FIERRAVANTI-WELLS**—I have a copy of your letter which upheld various aspects of complaints.

**Mr Brown**—Did that relate to—

**Senator FIERRAVANTI-WELLS**—After my complaint was received, what did you do? Did you speak to Mr Negus? Did you raise it with him? Did you ask him?

**Mr Brown**—I would like to deal with the first question that you raised. The assertion that you made that there was a series of complaints upheld against Mr Negus—

**Senator FIERRAVANTI-WELLS**—You wrote a letter to me.

**Mr Brown**—I know. Let me finish please. From my recollection, there was only one specific element to that complaint that related to George Negus, and that was his back-announce to an item. The other elements related to content within the program itself—the taped item. The back-announce included the use of the word 'massacre', and you will recall that the judgment of the complaints committee was that, while that word in itself may not be inappropriate, in the particular context where the reporter in a preceding comment had drawn a distinction between how the event was being described by the conflicting interests in the Middle East, for George to have selected one word appeared to create an inappropriate bias towards that position. It was our view that was an unintentional mistake, nevertheless—to answer the second point of your question—discussions have taken place with the producer of the program, the presenter of the program and the reporter of the item, as is always the case if a complaint is upheld.

**Senator FIERRAVANTI-WELLS**—Just following on from that, on 13 April, again with *Dateline*, another complaint about balance, accuracy and fairness is upheld and then another one back in April. I assume that Mr Negus was spoken to after that; then again on 9 August, with another one being upheld for balance.

**Mr Brown**—It depends on whether Mr Negus was involved.

**Senator FIERRAVANTI-WELLS**—The program *Dateline*.

**Mr Brown**—George Negus is the presenter of the program.

**Senator FIERRAVANTI-WELLS**—Let me just say the program *Dateline* seems to be a frequent offender. The point that I am referring to is that there are complaints about *Dateline*. Senator Ronaldson, myself and even from the material that you have provided to me refers to complaints about *Dateline*. What then do you do about it? There are complaints about the program. What do you do about it? Do you just say, 'I'm sorry this happened' and move on? How do you deal with it?

**Senator RONALDSON**—The program is a serial offender.

**Mr Brown**—We investigate complaints. You asked what we do with these complaints and my response is that we investigate them. You cannot condemn a program because it attracts complaints. You may have a legitimate criticism of a program when those complaints are upheld. I have made the point before that there is a long bow to draw between the number of specific upholds and some sort of systemic bias, which I suspect lies at the heart of your concerns.

**Senator RONALDSON**—I think there is systemic bias.

**Senator FIELDING**—I will put the rest of my questions on notice. I have some new material and I will put those on notice.

**Senator RONALDSON**—Senator Fierravanti-Wells and I would say that there is systemic bias in relation to that show and our very strong view would be that it needs to be looked at long and hard. I accept that you are putting in place—I might not agree with your decisions—some other editorial practices but this show is a serial offender.

**CHAIR**—Senator Fierravanti-Wells is putting her questions on notice. We will call the ABC for a few minutes.

[10.54 pm]

#### **Australian Broadcasting Corporation**

**Senator CONROY**—Do you have an opening statement?

**Mr Scott**—I am happy to receive questions.

**Senator CONROY**—Can you provide the committee with an update on the ABC's progress in finding new studios after you had to leave the facility in Toowong late last year? How many staff had to be relocated and when do you anticipate finding other headquarters?

**Mr Scott**—As you would be aware, in July we commissioned the Armstrong inquiry to look into incidence of breast cancer in Toowong. Professor Armstrong and his committee reported to us in the week prior to Christmas a finding that we had an atypical incidence of breast cancer on the site, 6.5 times higher than may have been anticipated. That is a dramatic finding and a totally unprecedented finding, as far as a spike of breast cancer is concerned. We immediately undertook to relocate staff from the site. We commenced the relocation on that day and continued that process to our deadline of completing the removal from the site of staff members by the end of January. We put into place interim arrangements that we had

developed to relocate staff around Brisbane, and that is where they are currently working from as we continue to search for either a permanent site or a site where we can relocate staff on a temporary basis over the next couple of years.

As you would be aware it is a very tight commercial market in Brisbane at the moment. The vacancy rate is less than one per cent. So we are continuing to search for the kind of facility that we need, which is 6,000 square metres plus the power and IT infrastructure that we require. So we are currently in our interim arrangements. We continue to work with consultants up there in pursuing a site. We are hopeful that in coming months we may be able to find an appropriate premises or undertake an agreement to develop a permanent new site in Brisbane.

**Senator CONROY**—How many employees who worked at the site have now been identified as having breast cancer?

**Mr Scott**—The Armstrong inquiry undertook a detailed study which study identified 10 women who had developed breast cancer of a kind that could be in a sense compared for their study purpose. So more women have been diagnosed with breast cancer. There was a question that there may have been 12 or 13, but for the purposes of their report they were looking at women who had developed a similar kind of invasive breast cancer, and 10 was the number of cases they came up with.

**Senator CONROY**—Has any progress been made in identifying the cause of the breast cancer cluster?

**Mr Scott**—Professor Armstrong is continuing to advise us on that matter. Up till his most recent report nothing to do with the site or the facilities or the work processes at the site had been identified as a cause of the breast cancer. What we said to Professor Armstrong is: tell us if there is any additional work that needs to be done, any further testing that he would like to do or his committee would like to do, and then of course we will undertake that. But at the moment, no, we are no closer to ascertaining a cause of the breast cancer spike.

**Senator CONROY**—Does the ABC intend to sell the land?

**Mr Scott**—We have not made a final decision yet on the future use of the Toowong site. We have indicated, though, that we would need a permanent facility. I think a prospect for us would be the sale of the site at some stage, even though we have not made any steps at all in that regard. Our total focus has been the relocation of the staff from the site from December and through the January period and then finding better interim accommodation.

**Senator CONROY**—What impact is the lack of a permanent facility having on ABC programming?

**Mr Scott**—Very little, I am pleased to say. I would like to take the opportunity of paying tribute to our staff who are working in these interim facilities where we have relocated them. They are working well and our program is going to air. We took advantage of the January period where we do more national programming, or sports programming, on radio, which gave us some additional flexibility. Now basically programming is going ahead as much as possible as can be the case on our regular schedule. I noted with interest our television ratings for the period of January; our highest year on year improvement for our January television

ratings was in Brisbane. *Stateline* returned last week; there were strong local radio performance and contributions to the national programming schedule.

**Senator Coonan**—Mr Chairman, can I draw your attention to the fact that the allocated time has now expired.

**CHAIR**—Yes, I am aware of that. So that concludes this day's session of estimates. Other questions can be put on notice.

**Senator CONROY**—Unfortunately we need to get the ABC back on Friday.

**Senator Coonan**—There is no spillover for these. This is my understanding, that what was nominated as the spillover was environment and water. It was not conveyed to me, and I am not available on Friday.

**Senator CONROY**—That is actually not correct. I am not trying to say you are wrong. It is not correct. The committee has discussed this at some length. The committee as a whole was nominated and agreed to by Senator Minchin, as was my understanding in discussions, as being spilling over on Friday. If you are not available, I understand; we are happy for someone else to stand in. I do not think there is anything that is going to be greatly political. There is about an hour's worth of ABC questions.

**Senator Coonan**—I would not have thought so. It certainly was not brought to my attention, which is one of the reasons why I want to convey that to the committee but because I was not aware.

**Senator CONROY**—There is no criticism at all. We are happy to accept anybody else. There will be hopefully only about an hour of questions on the ABC and that will be it.

**Senator IAN MACDONALD**—Is there any possibility of having the junior minister in this portfolio deal with the ABC for an hour tomorrow morning?

**Senator CONROY**—I am more than happy to if we can come to that arrangement. I do not want to take up any of the time of any senators who might be scheduled between nine and twelve, because that would cause a disruption to a previous agreement we have all collectively reached. I am happy to do it from eight to nine o'clock tomorrow morning if people would like to do that to facilitate the committee. We would not necessarily be dragging along Senator Coonan, because she is not slotted at all tomorrow, and that is perfectly understandable.

**Senator Coonan**—No, I have the happy experience of being back on Wednesday and Thursday.

**CHAIR**—We had an arrangement by which we agreed to finish arts and sports by 1 pm tomorrow. That is an arrangement. I take note of the minister's view that the spillover was for water and environment. We could call the ABC back tomorrow morning. I think we should start at the scheduled time because lots of other people—

**Senator CONROY**—We cannot, because we have already got an understanding, and people have agreed on the basis that they have got a certain period of time tomorrow morning. We are all happy for that, as we know.

**CHAIR**—We can add an hour onto that time, but there are people like Hansard and various others.

**Senator CONROY**—I understand. The only alternative is to commence at nine o'clock on Friday. Accepting that Senator Coonan is genuinely unavailable and would not be able to do it, we are happy to accept any other minister.

**Senator Coonan**—I would like to seek clarification, too, because the running order says very clearly that at the—

**CHAIR**—May I say this is not necessarily recorded in *Hansard*.

**Senator Coonan**—At the conclusion of the communications technology and the arts—we know we are now up to arts and sport—it goes onto environment and water.

**Senator CONROY**—We had a discussion about this.

**Senator Coonan**—There was not any nomination of any of the items in my side of this portfolio for Friday, or I would have made other arrangements.

**Senator CONROY**—There is no criticism of you whatsoever.

**Senator Coonan**—No, I understand that, but I am just saying this because I think it is very important for the witnesses. I do not want to gild the lily here, but I take my part of this very seriously. If my particular agencies are before the committee I like to be here. I stay from nine o'clock till whenever the appointed time is. It was not ever suggested that there would be any spillover of my agencies beyond 11 o'clock tonight. I really say this very forcefully.

**CHAIR**—That is the rule that is being followed, that we finish at 11. How the time is used is up to the senators.

**Senator Coonan**—Senator Conroy, I am not making any criticism of you either, but you did spend a lot of time about a commercial agreement about which the government can do nothing and should do nothing. You use your time however you wish, but the time is allocated.

**Senator CONROY**—The time that is not allocated—

**Senator Coonan**—If you do not get all your questions in, that is hardly the fault of the witnesses who have been here under that understanding and also myself.

**Senator CONROY**—Senator Minchin has agreed that this committee spills over to Friday. There was no restriction placed on it by Senator Minchin. This committee has discussed this both formally and informally about the ABC. We have had this meeting at the committee and other discussions that, if we did not finish today on ABC and SBS being at the tail end, it would spill over to Friday. That was part of the discussions but if people suddenly want to have a collective amnesia—

**CHAIR**—The secretary might like to comment on that.

**Senator CONROY**—We are on Hansard. The secretary cannot speak.

**Senator RONALDSON**—Chair, my recollection is that the discussions of the committee revolved around the water issue and whether, given that water had been added, we were going to finish the water and that would be rolled over. There was certainly no discussion about the



ABC or SBS or anything else from today being rolled over. My recollection was that it revolved around the water.

**Senator IAN MACDONALD**—Mr Chairman, certainly the committee agreed that SBS and ABC would follow ACMA in this and that is what has happened. If I can just finish, we are now—

**CHAIR**—It is all being recorded by Hansard.

**Senator IAN MACDONALD**—Perhaps it should be, because we need to have some not unrecorded agreements at meetings that everyone forgets. Mr Chairman, I think we have now two situations. We either finish ABC for good tonight and they go home. Even if we are going to do Friday it is ridiculous getting all these people back from Sydney. If you are going to do that, you should do them for an hour tomorrow with the junior minister. I have no interest in either. I am just trying to resolve the matter for the committee. We either do them tomorrow and put arts and sports back an hour, and spill over water and the environment to Friday or we call it quits now. I am easy either way, but I throw that in by way of depending on how important—

**CHAIR**—First of all, I would like to close this meeting at this point. We can discuss this in a private way here after the hearing is closed.

**Senator CONROY**—You should have stopped it ages ago. I am certainly relaxed about it.

**CHAIR**—This meeting is now concluded.

**Committee adjourned at 11.07 pm**