



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## **SENATE**

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

**Consideration of Supplementary Estimates**

WEDNESDAY, 22 NOVEMBER 2000

CANBERRA

BY AUTHORITY OF THE SENATE



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**SENATE**  
**LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE**  
**Wednesday, 22 November 2000**

**Members:** Senator Payne (*Chair*), Senators Coonan, Cooney, Greig, Mason and McKiernan

**Senators in attendance:** Senators Buckland, Calvert, Carr, Coonan, Ludwig, Lundy, McKiernan and Payne

**Committee met at 9.08 a.m.**

**ATTORNEY-GENERAL'S PORTFOLIO**

**In Attendance**

Senator Vanstone, Minister for Justice and Customs

**Attorney-General's Portfolio**

**Departmental Executive**

Mr Robert Cornall, Secretary

Mr Geoff Dabb, Executive Adviser

Mr Ian Govey, General Manager, Legal Services

Mr Ian Carnell, General Manager, Justice Services

Mr Geoff Hine, General Manager, Corporate Services

Mr Peter LeRoy, General Manager, Information and Knowledge Services

**Federal Court of Australia**

Mr Warwick Soden, Registrar

Mr Alan Dawson, Senior Deputy Registrar

Mr Rod Tout, Manager, Court Resources

Mr Philip Williams, Director, Human Resources and Finance

**Family Court of Australia**

Mr Richard Foster, Chief Executive Officer

Ms Jenny Cooke, Manager, Client Services

Mr Andrew Phelan, General Manager, Corporate Services

Mr Bruce Frankland, Chief Finance Officer

**Administrative Appeals Tribunal**

Ms Kay Ransome, Registrar

**Human Rights and Equal Opportunity Commission**

Ms Susan Halliday, Sex Discrimination Commissioner

Ms Rocky Clifford, Director, Complaint Handling Section

Mr Darren Dick, Director, Aboriginal and Torres Strait Islander Social Justice Unit

Mr David Robinson, Senior Policy Officer, Human Rights Unit

Mr Timothy Pilgrim, Deputy Privacy Commissioner

Mr Graeme Innes, Deputy Commissioner, Disability Discrimination

Ms Chris Cowper, Director, Policy

Ms Fiona Ciceran, Promotion and Education Officer

Ms Elizabeth Lowe, Manager, IT Standards  
Mr Robyn Ephgrave, Finance and Services Manager

**Australian Government Solicitor**

Ms Rayne de Gruchy, Chief Executive Officer  
Mr David Riggs, Chief Finance Officer

**Office of the Director of Public Prosecutions**

Mr Damian Bugg, Director  
Mr Grahame Delaney, Principal Adviser, Commercial Prosecutions and Policy  
Mr John Thornton, Deputy Director, Legal and Practice Management  
Ms Stela Walker, Deputy Director, Corporate Management

**Federal Magistrates Service**

Mr Peter May, Chief Executive Officer

**Australian Customs Service**

Mr Lionel Woodward, Chief Executive Officer  
Mr John Drury, Deputy Chief Executive Officer  
Mr John Jeffery, Deputy Chief Executive Officer  
Mr Phil Burns, National Director, Commercial  
Ms Jenny Peachey, National Director, Office of Business Systems  
Rear Admiral Russ Shalders, Director-General, Coastwatch  
Mr Paul O'Connor, National Manager, Trade Measures  
Ms Marion Grant, National Manager, Border Operations  
Ms Gail Batman, National Manager, Passenger Processing  
Ms Melanie Challis, National Manager, Information Technology Management  
Ms Philomena Bisshop, Executive Director, Illicit Drug Unit  
Mr Bruce Smith, Director, Olympic Games Coordination  
Ms Leanne Howard, Director, Accrual Budgeting  
Mr Tom Marshall, General Manager, Tax Reform Team  
Mr Alastair Cochrane, Chief Financial Officer

**Australian Federal Police**

Mr Mick Palmer, Commissioner  
Mr Mick Keelty, General Manager, National Operations  
Mr Simon Overland, Chief Operating Officer  
Mr Brian Cooney, Chief Finance Officer

**High Court of Australia**

Mr Christopher Doogan, Chief Executive and Principal Registrar  
Ms Elisa Harris, Senior Registrar  
Mr Lex Howard, Marshal  
Ms Cate Saunders, Accountant

**Attorney-General's Department**

Mr Robert Cornall, Secretary  
Mr Geoff Dabb, Executive Adviser  
Mr Ian Govey, General Manager, Legal Services  
Mr Ian Carnell, General Manager, Justice Services  
Mr Geoff Hine, General Manager, Corporate Services

Mr Peter LeRoy, General Manager, Information and Knowledge Services  
Ms Kathy Leigh, First Assistant Secretary, Civil Justice Division  
Ms Maggie Jackson, First Assistant Secretary, Criminal Justice Division  
Mr Peter Ford, First Assistant Secretary, Information and Security Law Division  
Mr Jeremy Wainwright, First Assistant Secretary, Office of Legislative Drafting  
Ms Philippa Lynch, Assistant Secretary, Office of Legal Services Coordination  
Ms Philippa Horner, First Assistant Secretary, Native Title Division  
Dr Margaret Browne, First Assistant Secretary, Family law and Legal Assistance Division  
Ms Sandi Peisley, Director, Protective Security Coordination Centre  
Mr Martin Studdert, Director, Australian Protective Service  
Mr Kim Terrell, Acting Chief Executive Officer, CrimTrac

**CHAIR**—I declare open this public meeting of the Senate Legal and Constitutional Legislation Committee considering supplementary budget estimates 2000-01. On 30 November 1999 the Senate referred to the committee the particulars of proposed expenditure for the year ending 30 June 2001 for the Attorney-General's and Immigration and Multicultural Affairs portfolios. The committee will consider the portfolios in the order in which they appear on the circulated agenda, beginning with the Federal Court.

The committee has authorised the recording and rebroadcasting of its proceedings in accordance with the rules contained in the order of the Senate dated 23 August 1990. At the conclusion of this hearing, a date will be set for receipt of answers to questions taken on notice and any additional information.

I have been requested to remind committee members that the Finance and Public Administration Legislation Committee is continuing to monitor the format and content of the portfolio budget statements. If you have any comments that you wish to make about these documents, please place them on the public record during these estimates hearings or direct them at a later stage to that committee. I have also been requested to remind everyone present that mobile phones should be turned off while in the hearing.

**CHAIR**—I welcome Mr Robert Cornall and officers of the Attorney-General's Department and associated agencies. When officers are called upon to answer a question for the first time, I request that they state their full name and the capacity in which they appear, to assist *Hansard*. Please speak clearly and directly into the microphones, to again assist *Hansard* recording of proceedings. Officers will not be required to answer questions relating to policy or the advice they have given in the formulation of policy. Mr Cornall, do you wish to make any opening statement?

**Mr Cornall**—No, thank you.

#### **Federal Court of Australia**

**CHAIR**—Thank you. We will begin with questions in relation to the Federal Court. I welcome Mr Soden and your colleagues.

**Senator McKIERNAN**—I am pleased to be here. I do not know about anybody else. It has been a long time since we have assembled together in estimates and I will be saying something about responses to questions on notice at a later time when the minister is present. Some questions on notice from the last round in May we only got responses to last week, so I will be following that through when the minister arrives. I just make that comment at the outset. I have done it before at the opening of estimates committees and I would not want to break that pattern, even though we are somewhat breaking a pattern here today. I wish to

commence with questions to the Federal Court of Australia, particularly dealing with the interaction of the court with the Federal Magistrates Service. Has there been any perceptible impact on the workload of the court as a result of the establishment of the Federal Magistrates Service?

**Mr Soden**—Before I answer that question, I thank the committee for its willingness to have us on first. We do have some important commitments in Sydney, so that is very much appreciated.

We have some figures that we could give you in relation to the number of matters that have been transferred from the Federal Court to the new Federal Magistrates Service. We do have some information about the number of appeals that have been lodged already. From memory, when we last looked at the figures, a total of 40 matters have been transferred to the Federal Magistrates Service. As at last Friday, three appeals have been lodged with us from the Federal Magistrates Service. I think it is a little too early to tell what the real impact is likely to be. It is clear that the profession are learning more and more about the new jurisdiction and seem to be in the position of starting to make decisions about which jurisdiction to commence in, whether it be the Federal Court or the Federal Magistrates Service.

As an indication of that, I looked at some figures in relation to Brisbane only last week. Quite a large number of bankruptcy matters appear to have been commenced in the new Federal Magistrates Service and there has been a decline in the number of bankruptcy matters commenced in our court. But our decline has not been equivalent to the number of matters commenced in the Federal Magistrates Service. That, to me, is an indication that perhaps some of the practitioners or their clients might be going to use the new Federal Magistrates Service for bankruptcy actions which might otherwise have been debt related actions in state jurisdictions. So it is a little too early to tell.

We arranged, in consultation with the Law Council of Australia and the Federal Magistrates Service, a seminar in Melbourne last week over which the Chief Magistrate and the Chief Justice presided and which 170 Melbourne practitioners attended. The seminar was for the purpose of explaining to those practitioners the new jurisdiction and how the interaction would work between the new court and our court. That seemed to go very well. I think it is a little too early to tell. It does not have a negative impact on us at this stage.

**Senator McKIERNAN**—Are there any discernible patterns emerging between the different registries at this stage, or again are we in the too early stage?

**Mr Soden**—I think it is a bit too early, yes.

**Senator McKIERNAN**—We will be returning to this. No dates have been set for the additional supplementary estimates in the earlier part of next year. We are locked in at this stage to ask you to undertake that extra work of providing figures. Perhaps we might be revisiting that at the additional supplementaries. When those dates are announced, you might give some thought to digging up some figures for the process of that particular type, if you could, Mr Soden.

**Mr Soden**—Senator, we will come prepared on that basis.

**Senator McKIERNAN**—Thank you. What resources, such as building, staff and library resources, of the Federal Court are shared with the FMS at this stage?

**Mr Soden**—I think the best way to answer that is to say that all of our resources are shared. I think that is the fair thing to say. We provide registry services in all of our registries for the Federal Magistrates Service for non-family law related matters. We provide

accommodation for magistrates. Magistrates use courtrooms when they are available—that is, courtrooms of the Federal Court. Library facilities are shared. I think it is fair to say that all of our facilities are available for sharing.

**Senator McKIERNAN**—Have you got any formal arrangements in place on that sharing? Is there a cost then levied to the FMS for doing the work of the FMS?

**Mr Soden**—The precise formal arrangement is yet to be completed, but we have been working with the Federal Magistrates Service working out the details of that formal arrangement. There will be an arrangement whereby the cost of the services we provide will be met by the Federal Magistrates Service.

**Senator McKIERNAN**—Have you received any payment or transfer of funds at this stage?

**Mr Soden**—Only in respect of some matters that are really one-off situations.

**Mr Tout**—The Federal Court purchased a couple of computers, PCs, to provide access to our library network. We bought those and installed them for the Federal Magistrates and we have been reimbursed for those. We did some work in making available a duplicate of our case management system. We have a case management system called FEDCAMS. We replicated that and called it MAGCAMS so that the Federal Magistrates Service had something they could put non-family law matters into and manage those cases. We have been paid for that as well.

**Senator McKIERNAN**—So for a client coming into the court is there actual division of where to go and how to do things if they wanted to approach either the court or the service? Is it a simple one-desk job at this stage?

**Mr Soden**—At this stage, yes. There is suitable signage which indicates that our registry is also the registry of the Federal Magistrates Service. Senator, that is not an unusual situation for our court. We have done that in a number of areas for a number of years.

**Senator McKIERNAN**—So there is some experience?

**Mr Soden**—Yes.

**Senator McKIERNAN**—The annual report at page 15—I am moving away from the FMS—states that the management of native title matters is likely to become increasingly complex and resource intensive for the court. Given that the Corporations Law jurisdiction of the court is likely to be restored some time this financial year—I am mindful of the reports of the happenings of last week—how is this expected to impact on the capacity of the court to resolve matters within its performance targets?

**Mr Soden**—Like you, Senator, we are also expecting the return of the corporations jurisdiction—that just appears to be a matter of time. The fact that we have not had that jurisdiction for most of this year and probably will not for some part of next year has enabled us to devote more time than we would have otherwise devoted to native title work. There is no simple solution to the question of how we are going to do that—that is, manage the return of that work and native title. We will do it in the way we did it prior to us losing that work, that is, dealing with cases in terms of priorities and managing cases to fit them in. Again, it is probably a bit too early to tell whether there is an insurmountable burden that we will have. I am fairly confident at this stage that we will be able to receive it and manage it, fitting it in in order to achieve our time goals. I think our individual docket system really does help that

because, as the cases commence, the judges can work out, particularly in Corporations Law cases, whether they ought to get priority and they can often be fitted in. Some of them clearly are going to take a long time to hear, but they are usually the exception rather than the norm.

**Senator McKIERNAN**—Are you expecting a backlog of corporations cases if and when the Corporations Law reverts to the Federal Court?

**Mr Soden**—I do not think so. I think the Supreme Courts of the states have been dealing with Corporations Law cases as necessary. We have fairly close consultation, particularly with the New South Wales Supreme Court. Those consultations have revealed that that court has been dealing with a fairly large Corporations Law workload. I do not have the impression that there is a queueing system of Corporations Law work waiting for the return of our jurisdiction, but I am confident that, when our jurisdiction is returned, we will be the court of choice.

**Senator McKIERNAN**—Just going back to native title matters, you said that the court will continue to develop and implement innovative procedures for the management and resolution of native title matters. Have any of those initiatives been put in place at this time and, if so, can you inform the committee of those initiatives?

**Mr Soden**—There is a list of those I can refer you to in the annual report. Page 49 of our annual report lists under the heading ‘Court initiatives’ all of those matters we have implemented so far and which are indicators of initiatives for the future in managing our native title workload. I think one of the most important initiatives has been the way in which some of the more senior court staff have actually, as part of the case management process, mediated the resolution of some parts of the dispute and have enabled those matters to proceed quickly to trial or settle as a result of our staff mediating some issues. That is not to say that good work was not done in that area already from the Native Title Tribunal. It has turned out to be the case that the issues that we have been able to mediate have been somewhat different. But I think it is also fair to say that, when the court actually conducts a mediation, sometimes actually in a local courthouse in areas outside of the city, the parties bring to that process a different approach, which has produced some quite startling achievements in relation to getting agreements for the joinder of parties, consents in relation to separating out some issues or consents in relation to overlapping claims which have taken away a lot of some very difficult and intractable issues and enabled consent agreements. This is occurring particularly in Queensland, and it is a model that we intend to use in other places.

**Senator McKIERNAN**—Thank you very much, Mr Soden; I look forward to seeing you in the new millennium.

**Senator LUDWIG**—As I understand it, FEDCAMS allows public access at registry computer terminals. Is that a service provided in-house or is it contracted out? What is the cost of that, and how are you monitoring its effectiveness? And what is this shift between paper documents and the predicted use of the computer filing system?

**Mr Soden**—There are a number of issues in your questions that I probably should separate out. The FEDCAMS system that we operate at the moment is a fairly old system, and we are in the process of developing a new system to replace it. The public access that we provide to FEDCAMS at the moment is public access in our registries, where searches can be made by



the public when they come into the registries and use the computer system. It is limited searches in relation to whether certain parties have commenced proceedings in certain jurisdictions. Access to the actual information about the processing of the cases is not permitted at this stage. That is a system that we run in-house, although the maintenance of the system and the maintenance of the operation of the system are outsourced. It is not the same as our electronic filing plans for the future. Our electronic filing rules at the moment enable practitioners to file electronically through our webpage, which is different from the FEDCAMS system. Our plan for the future is that we will enable electronic filing which will come directly into our new case management system. We also propose that practitioners and the public will get access through our web site into our new case management system and obtain details from the record of processing in relation to their cases.

**Senator LUDWIG**—You say on page 67 of your annual report:

The Court also continued work on a project to allow for the electronic filing, lodgment, service and handling of documents ...

That is different from FEDCAMS?

**Mr Soden**—Yes.

**Senator LUDWIG**—Is that outsourced or provided in-house? Is there a cost to that? In addition to that, when will that be completed?

**Mr Soden**—Just before my colleague Rod Tout answers, in relation to when it is going to be completed, there is a fourth stage project that we are undertaking which has not got a completion date yet, because it is related to the completion of our new case management system where we will enable practitioners to come in through our web site into our new case management system. We do not have a completion date yet for our new case management system.

**Mr Tout**—Stage 1, which is now live, enables parties to file images of documents and to file an application electronically over the Internet into the court. They can also pay their fees online using a credit card. Those systems were set up. We obviously got some consultants in to do that project for us. The people that we used were involved in setting up the ANZ Bank's secure system for fee payments over the Internet. We decided we certainly needed a robust and very secure model for that if the system was to have any credibility. Stage 1 of the project is now in place, so people can file on line. As Mr Soden said, though, down the track there will be stage 2, stage 3 and stage 4. Stage 4 will be a totally integrated system where there is very little manual intervention between the time somebody sends that electronic record and when it is fully allocated within our various internal databases.

**Mr Soden**—I would like to clarify one issue. You mentioned cost—

**Senator LUDWIG**—Is that reflected in here? I was looking for that part of it that has been outsourced. Has there been a budget allocation or a forward allocation for each stage? Sometimes it is difficult to separate out from the various outputs the total cost.

**Mr Tout**—There was a cost in developing it. It was not terribly large, but I cannot give you the precise figure now. I am more than happy to provide that in writing. In addition, there is a maintenance cost. Obviously we pay for the maintenance of that service, and we can provide that. In terms of our webpage, it is hosted through austlii, and there is no charge for that web hosting service.

**Mr Soden**—Senator, if you have the time, there is a whole lot of information about our electronic filing project on our web site.

**Senator LUDWIG**—I cursorily had a look at it earlier. The information I was interested in was more about the costing, the maintenance and the interruptions to service through the maintenance contract, which is external to your organisation. That is the area I was interested in and that does not talk about that, obviously. That might be a bit sharper than what you might want to talk to me about just at the moment, but if we start off with some of that early information we can perhaps explore it further at a later time. Will that overtake FEDCAMs?

**Mr Soden**—It will. Our new case management system will replace FEDCAMs. We do not have a name for our new case management system yet. We will probably run a competition within the court to come up with a name for it.

**Senator LUDWIG**—The judges perhaps can turn their minds to that. Will that be integrated with your videoconferencing or your remote court work? I wanted to talk to you about the cost of that and how much it is being utilised. Is it being underutilised? Do you have any figures that could tell us about the sorts of remote hearings or videoconferences that occur? In your report you talk about how helpful it is but there are no statistics as to whether it is delivering or what the cost of maintaining it is.

**Mr Soden**—That is a valid point, Senator. One of the reasons we have not specifically mentioned it in this and the last few reports is that we implemented videoconferencing across the court nationally in 1994 and at that stage we were the first court in the world to have a national videoconferencing system. We reported quite comprehensively in those early years about the cost and the extent of usage. It is just so much a part of what we do now across the country each day that we have not thought it necessary to separate out the occasions we use it and the cost of using it. It is certainly probably timely to do that again because, in terms of cost efficiency, it is extremely valuable. I can give you a good example. We often put together benches of judges for appeal purposes where the judges can be in three different places at the one time. You can have a judge sitting on a bench and two appearing by videoconference. That saves the cost of taking a judge across the country.

**Senator LUDWIG**—I am sorry to interrupt you, but we are limited by time. I do understand the savings that can be made. I am more interested in what savings are being made—not potentially what can be made—in its usage and how it is going to be integrated with the new technology. What I want to explore with you also at some point—if not now, at some time in the future—is this: when you integrate your filing, the Internet and all those parts, does that give you an additional benefit in being able to spin it off into videoconferencing as well? You can use the Internet for that sort of thing. Have you contemplated that and any savings in that area? That is the direction I am moving in and we will come back to it in the ensuing 12 months. If you have some early comments, we would certainly welcome them.

**Mr Soden**—We can certainly do some work for you in relation to cost and projected savings together with an indication of what we have already looked into by way of integration of videoconferencing and the Internet.

**Senator LUDWIG**—Thank you.

**CHAIR**—If there are no further questions to the Federal Court, I thank Mr Soden, Mr Dawson, Mr Tout and Mr Williams for assisting us this morning.

[9.35 a.m.]

**Attorney-General's Department**

**CHAIR**—We now return to the area of general questions. I welcome the minister representing the Attorney-General, Senator Vanstone.

**Senator McKIERNAN**—Upon arriving in Canberra on Thursday of last week, other members of the committee and I were given responses to questions that had been placed on notice at the previous committee hearing on 29 May 2000. I have not totalled them, but we received responses to about 25 questions. These responses have had a six-month gestation period. I accept—we all do—that departments are not expected to meet deadlines set by committees when putting questions on notice. There are times when detailed questions, such as one here regarding the Family Court of Australia, require major research, investigation and searching through files, which takes time. However, upon reflection, I believe a large number of these questions should have been responded to at the committee hearings.

I invite the minister, the Attorney-General and whoever else is responsible to look at those questions—particularly those that Senator Crossin put on notice. Perhaps individual officers were not present at the budget estimates hearings to respond to those questions. However, six months is frankly too long to wait for a response—I choose one at random—that states:

The agreement with the Northern Territory specifically covers funding for the training of Aboriginal interpreters. Commonwealth funding will be applied to 50% of the recurrent costs of the Service, including annual training costs. On top of the annual training costs, a one-off allocation of \$250,000 from the \$5 million Commonwealth funds will be for the training of Aboriginal interpreters in the first year.

I think it is a bit rich to have to wait for responses such as that—and there are many others—that should have been delivered within the time frame that the committee laid down. The committee operates with a great deal of cooperation on all sides. Another question asks: 'Do you know where they will be located in the Territory?' The response is:

It is expected that diversionary programs will be available in all significant communities in the Northern Territory.

A six-month wait for that response is a little rich. I do not wish to labour the point as we are short of time and we have given a commitment to conclude the estimates hearings of the Senate Legal and Constitutional Legislation Committee today. We do not want to run over into Friday—other committees will do that. However, receiving responses such as that after we have given such an undertaking puts pressure on us to go back and explore them in detail—and we have a right to do that. I will not do so today—and I am not threatening to do it in the future, as we operate through cooperation. However, I am very disappointed that we received this package of responses last week when we had an enormous workload comprising other matters—and I do not speak only for myself.

I record my appreciation of the minister's past undertakings to secure better and quick responses from the Attorney-General's Department. That process has worked reasonably well; I acknowledge and appreciate that fact. I would hate to see it slip back into old habits of past estimates. I will not labour the point, but I feel obliged to put my comments on record.

**Senator Vanstone**—Thank you for not choosing to labour the point, Senator McKiernan. You do not need to: it is crystal clear. We had this discussion when the tables were turned and we came to government and you lot—I do not mean that to sound disparaging—went into opposition. I think things have improved. I understand your frustration. I have had a quick look at the time frame in which the department has provided responses. I know that Mr

Griffiths, the departmental liaison officer in my department, works very hard to ensure that the flow of information is as good as it should be.

I have not checked all the responses—I do not know how many relate to me or to the Attorney-General—but I had a quick look at the sheet this morning and I suspect that the problem is not with the department. A bunch of answers was probably caught under a file in either my office, the office of the Attorney-General or both. I do not think that was intentional, but I will take up the matter. I remain determined to ensure that you get the service that you should receive.

**Senator McKIERNAN**—I am reminded that we received some earlier detailed responses from the Family Court of Australia to questions about the court that were asked the last time around. Included with those responses—which I think we received three weeks ago—was an explanation for the delay. There is no such explanation attached to these responses, which is what, in part, caused me to raise the matter today.

**Senator Vanstone**—If it is my office that has caused a delay, I will get you an explanation; if it is the Attorney, I will ask him whether there is anything he would care to say; and if it is the department, I will ask them to respond to you.

**Senator McKIERNAN**—Thank you. I will move on to some general questions dealing with the portfolio department. Concerning the Audit Committee mentioned on page 18 of the annual report, who are the members of that committee?

**Mr Cornall**—The committee is chaired by Mr Tony Ayers. Mr Will Laurie of PricewaterhouseCoopers is also a member of the committee, and the balance of the committee is made up by officers of the department.

**Senator McKIERNAN**—Mr Ayers's name keeps popping up in various guises. What dates did the Audit Committee meet during 1999-2000 and what dates has it met since 1 July 2000?

**Mr Cornall**—I cannot relate to you immediately the exact dates. The committee meets four times a year and otherwise as required, so there would normally be a special meeting to consider the annual financial statements at the end of July or early August. But I can provide you with the detailed dates on notice.

**Senator McKIERNAN**—On what occasions did you as secretary also attend the Audit Committee as observer?

**Mr Cornall**—I think I attended all but two meetings. Again I can confirm that after this hearing.

**Senator McKIERNAN**—Are minutes of these meetings available and can they be provided to the committee?

**Mr Cornall**—I will take that question on notice. My reaction is that there should be no reason why the minutes should not be made available to the committee.

**Senator McKIERNAN**—Dot points 3 and 4 in the annual report talk about the review of audit reports involving matters of concern to senior management of the department. What are those matters of concern?

**Mr Cornall**—These would be any issues that have come up in the course of the internal audit function process.

**Senator McKIERNAN**—But what were the issues?

**Mr Cornall**—I am sorry, but I just cannot recall details of those. They would be recorded in the minutes of the committee. This is setting out basically the functions of the Audit Committee and its overview processes to define its constitution or its charter in effect. That is the role the committee is being asked to undertake. This is now included in the Audit Committee charter, which can be provided to this committee if it would like to see it.

**Senator McKIERNAN**—Can you also provide what advice the Audit Committee provided in regard to each of the matters of concern?

**Mr Cornall**—If there was any such advice, I can. As I say, this is to do with the charter of the committee basically and what its functions are. I reconstituted this committee on a new basis with independent participation to give it a more independent overview and a more rigorous responsibility in relation to the review of our internal audit process. So this is directed at its functions. Mr Carnell has just reminded me that in the past it has been the practice not to provide detailed internal audit reports in case that has, by publication, the result of inhibiting the internal audit function.

**Senator McKIERNAN**—Are you still taking the question on notice?

**Mr Cornall**—I will take that question on notice.

**Senator McKIERNAN**—If you are not able to provide the minutes, can you then provide details of what those matters of concern were?

**Mr Cornall**—I will take that question on notice and provide you with as much information as I reasonably can.

**Senator McKIERNAN**—Thanks for that.

**Mr Dabb**—Can I make one point on the membership aspect. The Australian National Audit Office is also an observer on the committee and routinely attends all meetings. It would always have at least two members of that office there—not as members but as observers.

**Senator McKIERNAN**—But if we asked them, they would not tell us what the matters of concern were either, would they? Likely not.

**Mr Dabb**—I am sure.

**Senator McKIERNAN**—You are not expected to answer that one, Mr Dabb.

**Mr Dabb**—That goes to the membership.

**Senator McKIERNAN**—Yes. Moving down to the ‘establishment and maintenance of appropriate ethical standards’, can the committee be provided with the formal procedures for determining the breaches of the code of conduct?

**Mr Cornall**—I will provide you with whatever procedures are established in the department. I have not had occasion to review those procedures in detail since I took office as secretary, but I will certainly ask for that information to be provided.

**Senator McKIERNAN**—Could we also be provided with the procedures established for dealing with whistleblower reports as required by the Public Service regulation 2.4?

**Mr Cornall**—I will take that question on notice and provide you with any information that I can obtain from the department.

**Senator McKIERNAN**—Have there been any whistleblower reports since 1 July 1999?

**Mr Cornall**—There is one matter that I can recall where a report was made to me where a person referred to the whistleblower provisions, but it was my view that that was not a matter that was covered by those provisions.

**Senator McKIERNAN**—Can you provide further details of the nature of the report?

**Mr Cornall**—It is going back some time, and I do not have the details to the forefront of my mind. I will see what information can be provided.

**Senator McKIERNAN**—Thank you. I now go to appendix 1 of the annual report, which deals with departmental structures. Could you provide the committee with a detailed departmental structure which identifies the reporting relationship for each employee in the department? What we are particularly interested in is the number, level and employment status of employees contributing to each of the output groups and subgroups—for example, details of the employees contributing to each output group 1.1.1, 1.1.2 and so on as identified in the appendix that I referred to.

**Mr Cornall**—I will take that question on notice.

**Senator McKIERNAN**—Thank you. Consultancy services are detailed at appendix 8 on page 187 of the report, and the total expenditure on consultancy services for 1999-2000 was almost \$5 million. What was the budgeted figure for that year?

**Mr Cornall**—I will have to ask Mr Hine to assist me with the answer to that question.

**Mr Hine**—We do not have that information within the terms of the actual budget figure. That figure in the annual report refers to consultancies that were let or continued to be undertaken during the 1999-2000 financial year. We do not have a specific budget, if you like, for consultancies. It is a matter of looking at where we need to have the resources applied and the work undertaken. We did spend some money on consultancies associated with implementation of the CrimTrac project and implementation of the SAP systems within the department, for example.

**Senator McKIERNAN**—There was a budget figure for the CrimTrac project, though, wasn't there?

**Mr Hine**—There was \$20 million made—

**Senator McKIERNAN**—And it was a specific on its own?

**Mr Hine**—That is right. Within that, we would have then used those funds to engage consultants to assist with the implementation of that program.

**Senator McKIERNAN**—So the \$4.9 million that is on this page and the details over the page are matters that arose during the course of the financial year in question, 1999-2000?

**Mr Hine**—Yes.

**Senator McKIERNAN**—For any of those consultancies on pages 188, 189 and 190, were there any cost overruns on any of the agreed prices or the contract prices?

**Mr Hine**—I am not aware of that. We would have to look at that information. I am not aware of it, so I would not like to give a definitive answer without further investigation.

**Senator McKIERNAN**—Perhaps you could on notice provide the committee with a list of the consultancies for which the actual cost exceeded the initial quote by, say, five per cent. If it is only a couple of dollars, we will not worry about it. Five per cent is probably a reasonable amount. Could you do that on notice?

**Mr Hine**—Yes.

**Senator McKIERNAN**—Thank you. I note also that the annual report lists only consultancies with a value of \$10,000 or more. How many consultancies were there with a value of less than \$10,000?

**Mr Hine**—I would have to go and do research on those. This is about the reporting requirements. We would have some consultancies that might be only a couple of thousand dollars. We have a large number of consultancies during the year. Some of them are to engage staff for short periods of time to assist with specific projects. They might be only \$1,000. We would need to get that information, and I would need to go through and look at each individual one.

**Senator McKIERNAN**—What would a simple way of doing that be? If there are thousands of them and we are asking for that information to be provided, can you offer me some suggestions about an easier way of informing the committee of the details included in them?

**Mr Hine**—No, I cannot, unfortunately. We would need to go through and look at the number of transactions that we have paid during the year and link those back to individual consultancies. We are still bedding down our new financial systems, and this is one area where we are looking at getting more readily available information. But, no, we would need to look at it.

**Senator LUDWIG**—Do you have a total cost of what you have under \$10,000? Do you have a total figure?

**Mr Hine**—No, we do not.

**CHAIR**—Why not?

**Senator McKIERNAN**—I have a feeling you are going to have to get one!

**Mr Hine**—I think we may have to get one. This is an area that we have looked at in terms of how we extract from the system the amount of money that we spend on individual consultancies for that sort of thing. We have done some work in that area, but we have not yet completed that.

**Senator LUDWIG**—So you do not even have a guesstimate?

**Mr Hine**—I would not like to guess on the record.

**Senator LUDWIG**—Do you have a budget for it?

**Mr Hine**—No, not for consultancies as such.

**Senator LUDWIG**—So it is a ball of string?

**Mr Hine**—No, because we have a total budget in which we need to operate within the department, so it is not a ball of string from that point of view. We constantly review. At the end of each month, we produce financial statements down at the general ledger. We look at the expenditure. We have instituted new procedures in terms of who has the authority to engage consultants and those sorts of things. So there is a fairly stringent review process before we do go out and engage consultants or spend money in other areas. With respect, it is not a ball of string. We do not say, 'This is what we'll spend,' because the very nature of the work that we undertake will require different responses to different circumstances.

**Senator LUDWIG**—I appreciate that, but you would surely have some sort of monitoring process which would give you the return each month so that in the ensuing months you could say, ‘This is getting out of hand.’

**Mr Hine**—We do that.

**Mr Cornall**—We do, Senator. The definition of consultancy for annual reporting purposes is not the definition that we use in our accounting system. We record the suppliers of a range of services for the purposes of our budget and our monthly management reports. Those suppliers include consultancy services and other services purchased by the department which are not within the definition of a consultant for the purpose of the annual reporting process. All of those expenses are monitored monthly. I have issued an instruction that all proposals to engage consultants are to come to me for approval before they are engaged so that I have a forward look at all of them. It is a significant expense for the department. I certainly want to ensure that it does not get out of control and that it is carefully monitored.

**Senator LUDWIG**—One of the issues that immediately arises in my mind is whether or not it could have been done internally. That is where the questions were going but it gets a bit truncated when I do not have an idea of the amount. When you then have a consultancy under \$10,000—say, for \$1,000—there is a real question mark as to whether or not the department internally could have actually done it rather than have it off and what criteria were meant to determine that the internal department could not do it and then had to use the consultant for such a value under \$10,000. I can appreciate where they might be in excess of \$10,000 but then you would have a tender arrangement and a range of procedures put in place and they are far more visible. But under \$10,000 there is a whole range of things that you might or might not use them for. But without that information it is a bit hard to question you.

**Mr Hine**—Consultants in excess of \$2,000 appear in the *Gazette*, Senator, and I can assure you that we do look at the best way of getting their particular activity undertaken. So whether it can be done with available resources in reordering priorities or whether we need to supplement those resources either with consultants or additional staff is always one of the issues that we will consider.

**Senator McKIERNAN**—What limits are there within the department for awarding consultancies below the \$10,000 figure that we are talking about? I would not expect that each and every one of them would come to you, Mr Cornall, to be signed off.

**Mr Hine**—General managers will have certain delegations and we have a delegation system so officers can incur expenditure up to certain limits. But, as the secretary indicated, we do have, with respect to consultants, a list that goes up and says, ‘Right, this is what we are doing.’ Some may be renewal of existing contracts. For example, we use McMillan Shakespeare to assist staff with their remuneration planning and those sorts of things. So that one was originally approved some time ago and we have just extended it in this financial year. So there are people using their discretion to live within their allocations and also then more sizeable ones or more ongoing ones are obviously cleared through the secretary.

**Senator McKIERNAN**—Yes, that was my expectation. For auditing purposes then, there will obviously have to be a different requirement on the recording of the consultancies—different from the requirements for the annual reporting.

**Mr Hine**—We record consultants in our general ledger and obviously then part of both the internal audit program and the review from the Australian National Audit Office will ensure that that expenditure has been properly incurred and properly recorded. When we produce the annual report, we then go through that information and pick out those consultancies that are



relevant for the reporting requirements for the annual report. So the expenditure on consultancy is checked and subject to the same sort of audit standards as expenditure on airfares, for example, or stationery or any other activity that we might purchase.

**Senator McKIERNAN**—As you have got those matters on records, I will ask on notice—I do not expect you to do it now—to provide the committee with a list of the consultancies, those to the value of less than \$10,000, including the name of the consultant, the contract price, the purpose, the selection process and the justification of proceedings by way of a consultancy.

**Mr Cornall**—Can I just be clear? Are we talking now for the financial year 1999-2000?

**Senator McKIERNAN**—Yes. The reason I am limiting it to that is that you said earlier in this part of the hearing that you are still developing your financial systems; Mr Hine I think said that.

**Mr Hine**—Yes, I said that. We are still bedding those down and looking at the reporting things and how we code stuff. The bottom line will always be correct: sometimes somebody might code something to a different cost centre. That is what we are looking at trying to improve—the accuracy of the data at a micro level.

**Senator McKIERNAN**—The reason I did persist then and ask for the information is that you have got that information on record as it is.

**Mr Hine**—Yes.

**Senator McKIERNAN**—So I am not asking you to do an enormous amount of additional work. I am mindful of the pressures on the department.

**Mr Hine**—We will need to produce the reports and go through. We may then need to get back to the line areas and get the details in terms of the purpose. That probably will not be disclosed on the financial management system, but we can pick up the invoice payments and all that other financial information—to go back and seek information on purpose and selection process from the areas that incurred the expenditure.

**Senator McKIERNAN**—I have some questions on the individual consultancies that are detailed in the annual report. Arbiter Pty Ltd, which was \$45,900: that was for work in the development and implementation of an information management strategy for the Federal Magistrates Service. Could you describe the nature that work?

**Mr Cornall**—I do not personally have the information you have asked for. I will see whether Ms Leigh can answer that. If we cannot answer it accurately and in detail, we will have to take that question on notice.

**Senator McKIERNAN**—There are a number of other questions relating to the consultancies. I do not know whether Ms Leigh is the person to answer all of these questions. I will identify them now: Community Link Australia, Chris Creswell, the Law Foundation of New South Wales, Berrico, People and Strategy, People First International, Rushworthy Consulting, Timmins Consultancy and Training.

**Mr Cornall**—I understand that Peter May from the federal magistracy will be able to answer the question about Arbiter Pty Ltd.

**Mr May**—The contract with Arbiter Pty Ltd was entered into by the department, which was providing all of the support services at that early stage of implementation of the FMS. The contract itself is to assist the service to determine what its IT strategies would be in relation to issues such as: the type of network architecture we would adopt, how we would

work with the Federal Court and the Family Court in establishing systems that were going to operate cooperatively with their systems, the type of case management systems that we might use, the sort of software that we might use as part of our business systems, basic issues such as what sort of email system we might adopt in order that we could in a very short span of time—and I am talking about 12 weeks—go from having no staff at all and no infrastructure to having an operating IT system on 23 June when business started for us.

**Mr Cornall**—I wonder whether we could address your other questions by taking them away now. When we come back to the department after the agencies, we could provide whatever answers we are able to do in the short time between those two.

**CHAIR**—That would be very helpful, Mr Cornall.

**Senator McKIERNAN**—Thank you very much for that. I am more than happy to oblige him with that.

**CHAIR**—Do you have all the information, Mr Cornall?

**Mr Cornall**—I think we have, yes, thank you.

**Senator McKIERNAN**—The advertising and market research at page 191 of the annual report, appendix 9, lists the advertising and market research payments. There is reference to a payment to Focus Publishing for \$6,000 for participation in *The story of Sydney airport* publication. I am intrigued. Can you provide the committee with a copy of the publication?

**Mr Studdert**—That book was produced by the Sydney Airport Corporation. I think it was to do with the 75th anniversary of the airport. The Australian Protective Service have had a fair history with them over the last decade and they asked if we would like to be involved in the publication. That involved the allocation of that money in relation to advertising/sponsorship effectively of the book. We got a fare mention in the book and I felt it was pretty good value for money.

**Senator McKIERNAN**—What was the distribution of the book? Coming from Perth, it is not one of my must-read publications.

**Mr Studdert**—I am not sure how the Sydney Airport Corporation distributed it. I do have a copy of the book, which I would be happy to get to you, if you would like it.

**Senator McKIERNAN**—That was entered into by way of advertising for the Australian Protective Service, the APS?

**Mr Studdert**—Yes.

**Senator McKIERNAN**—Who was the legal entity with which the contract was entered into or the payment was made to?

**Mr Studdert**—I would have to check that. I will get back to you on that. I assume it was Sydney Airport Corporation but I would just like to confirm that fact.

**Senator McKIERNAN**—Could you find out when it was published and what the distribution of it was also, in taking it on notice?

**Mr Studdert**—Yes.

**Senator McKIERNAN**—Discretionary grants, appendix 10, page 192. Listed there are some, but not all, of the discretionary grant recipients. The level of detail in the appendix is cursory. What were the criteria for including grant recipients in the annual report? Is there a requirement there now; and why does the annual report not include the full information of all grant recipients?

**Mr Cornall**—I am not sure of the answers to all those questions. I do not think there are any significant amounts of money in any of these issues. But it may be simpler if we provide you with those details. I think the reason that these were included as they are is that these were the only ones that had any significant amounts of money and even then it was not a large sum. I know, for example, that the Victorian Court Information and Welfare Network was a payment of the order of \$65,000, which has been discussed at this committee before. My recollection is that the amount to the New South Wales Council for Civil Liberties was about \$12,000, I think. But we can confirm those amounts for you. I think the reason that there are only these four is that these were the only ones of any significance whatsoever, but we can confirm that.

**Senator McKIERNAN**—Please do that; that would be appreciated. If there are any other organisations, which this implies there are—other discretionary grants—could you provide us with information in regard to them, including the amounts?

**Mr Cornall**—We will see if we can do that this afternoon.

**Senator McKIERNAN**—Moving to page 214 of the financial statements, the schedule of unquantifiable contingencies states that at 30 June 2000 the department was involved in a number of legal matters which may result in losses or gains. The same statement appears in relation to both administered and departmental outputs. What are the legal matters in which the department is involved? Is it possible to provide an estimate of those outcomes? Are there any upper limits placed or to be placed on the liabilities that may arise?

**Mr Hine**—As those matters, as has been indicated, are legal matters, I think we indicated that we did have a financial figure in mind. That may compromise our ability to resolve the issue. This is there as a contingent liability. It is something that may or may not occur. It is just in terms of exposure in the financial statements. But I obviously do not have the information here in terms of the number of matters. But to indicate that in matter XYZ we anticipated an exposure of \$1 million would, I think, be inappropriate.

**Senator McKIERNAN**—Can you identify the matters or what they are, without going into that detail you have just given me now?

**Mr Hine**—I would need to take that on notice, I think. I cannot identify them here, so I would have to take it on notice anyway. But whether it would be appropriate to disclose the matters themselves, I would need to clarify further as well.

**Mr Cornall**—I should just point out, though, that the amount listed here as contingent claims for damage or cost is a total of \$373,000 and the contingent gains are \$248,000 with a net contingency of \$125,000. So while I respect your question, on the basis of these figures they are not significant amounts of money.

**Senator LUDWIG**—Have you completed your move from Macintosh to PC?

**Mr Cornall**—We are in the process of doing that now. Mr LeRoy may be able to tell you whether every computer has been changed over. But certainly we are in the process of doing, if not having completed it.

**Senator LUDWIG**—Where in the annual report provides the costing for the move from Macintosh to PC? Is it part of your normal ongoing operating expense or your budget? What consultancies have been utilised to smooth the transition from the Macintosh to the PC platform? With your database or your records management system, what costings have been put in place? I guess some of the material would be stored in a Macintosh format so you will need it, by and large, to be translated to a PC format so it can be accessed again. Is that being

looked at and what is the cost of that translation? Has any information been lost in the translation? Perhaps you might want to take some of those questions on notice.

**Mr Cornall**—They are very detailed questions.

**Senator LUDWIG**—In transferring from a Macintosh to a PC platform, obviously there are some issues that surround that.

**Mr LeRoy**—We will complete the changeover to PCs from Macintoshes within the next two weeks. There are just a couple of divisions left.

**Senator LUDWIG**—Have external consultancies been utilised in the transfer or has it been done in-house?

**Mr LeRoy**—No, with the exception of the firm that won the tender to supply the PCs, the rest of the technical services have been supplied in-house.

**Senator LUDWIG**—What about the maintenance of the PC platform?

**Mr LeRoy**—That is part of the supplier contract.

**Senator LUDWIG**—Is that in the budget, and under what name—just so I can identify where it is and what consultancy it is and the total cost of the consultancy? Is there a monitoring process to ensure that it has been finalised? Is there a sign-off date?

**Mr LeRoy**—I do not think I can answer those questions.

**Senator LUDWIG**—By all means, you can take them on notice. You can understand the drift of the questions. What I am looking for is that there will be a date where you will hand over; in other words, when it will be up and running from a Macintosh to a PC. At the moment, are you running under a PC or a Macintosh system?

**Mr LeRoy**—We run under both systems. One of the reasons we changed from the Macintosh is that it costs us a lot of money for the Macintoshes to be able to access our core systems.

**Senator LUDWIG**—I was not going to ask you the question why you went to Macintosh in the first place!

**Mr LeRoy**—There is no concept of dual systems. That is the point I was trying to make. There is a single system and people either access it from a Macintosh or a PC.

**Senator LUDWIG**—So it is a hardware changeover?

**Mr LeRoy**—It is just a desktop hardware changeover, yes.

**Senator LUDWIG**—Where was the Macintosh in place?

**Mr LeRoy**—Throughout the department.

**Senator LUDWIG**—What was it accessing? Was it accessing through a UNIX server?

**Mr LeRoy**—No, it accesses NT servers.

**Senator LUDWIG**—I think I have asked whether you can give us a break down of the costs of that. When is the changeover date? When do you finally turn off the Macintoshes, so to speak?

**Mr LeRoy**—They are being turned off incrementally as we remove a Macintosh from a desktop and replace it with a PC. We expect to do the last one of those within the next two weeks.

**Senator LUDWIG**—What is the name of the consultant who is doing that?

**Mr LeRoy**—Dell Computing is the company that is supplying the computers.

**Mr Cornall**—I stress that is a supplier of computers, not a consultancy.

**Senator LUDWIG**—That was my next question. I know Dell are a supplier. They are hardware suppliers. Are they also supplying the consultancy?

**Mr LeRoy**—There is no consultancy. It is just the supplying of the hardware and the rolling out of the hardware, and the technical services associated with that were supplied in-house.

**Senator LUDWIG**—I am with you. Has any material been stored on the Macintosh that needs translation to a PC format?

**Mr LeRoy**—Yes.

**Senator LUDWIG**—Who is dealing with that?

**Mr LeRoy**—The supplier, Dell. Part of the contract was that they would provide that conversion at the time of changing over each PC.

**Senator LUDWIG**—In relation to the ART, do you have plans in place as to when that will be up and running? I understand there is a bill, so we are limited by the bill to a certain extent, I guess. I wanted to ask you about your plans in terms of having the ART up and running and the transition between the current regime to the new ART.

**Mr Cornall**—We are working to a business plan to have the ART operational on 1 July 2001. We have two internal project teams working on different aspects of the implementation. We have called for expressions of interest for appointment as both president and CEO and I think more recently as executive members of the ART. We have expressions of interest in relation to the appointment as president and appointment as CEO. Suitable applicants for those positions are about to be interviewed in the next couple of weeks. We are proceeding on the basis that it will be operational by 1 July.

**Senator LUDWIG**—Could you advise the committee when those appointments are made?

**Mr Cornall**—Yes, we can.

**Senator LUDWIG**—Thank you.

**CHAIR**—Mr Cornall, thank you for assisting us with those general questions. As per the advertised agenda, we will now proceed to the Family Court of Australia. I invite Mr Foster and his officers to come to the table.

[10.16 a.m.]

#### **Family Court of Australia**

**CHAIR**—Thank you, Mr Foster. I understand that my colleague Senator Mason, who chairs the Finance and Public Administration Legislation Committee, which meets simultaneously with this committee, does have matters which he wishes to pursue in relation to some questions he had previously asked. If he is unable to attend during these proceedings because he is in the chair of another committee, he will put those matters on notice in due course. I call Senator McKiernan.

**Senator McKIERNAN**—In regard to the retirement and replacement of judges, could you inform us which judges have retired and in which locations since 1 July 1999?

**Mr Foster**—As at 22 November 2000, there were 46 judges in the court, including the admin judges and the Chief Justice. There have been two retirements since 30 June 2000—Justice Moss and Justice Hilton. Thus far there have been no appointments in this current

tice Moss and Justice Hilton. Thus far there have been no appointments in this current financial year to replace those two judges. There have been two relocations. Justice Barry has relocated from Townsville to Brisbane as and from 1 July 2000 and Justice Wilczek transferred from Dandenong to Melbourne as and from 1 November 2000. In relation to retirements prior to 1 July 1999—

**Mr Phelan**—I will have to take that on notice. We may need to take some time to derive that answer. To add to what Mr Foster said, the retirements in this financial year have occurred in Sydney and Brisbane, which I think was part of your question. Justice Moss was from Sydney and Justice Hilton was from Brisbane.

**Mr Frankland**—Josephine Maxwell retired from the Sydney registry in July 1999. Richard Gee retired from the Parramatta registry in July 1999. Justice Hugh Burton retired from the Adelaide registry, but I do not have a date for that one.

**Senator McKIERNAN**—Are you in a position, Mr Frankland, to tell us whether replacements were made for those justices?

**Mr Frankland**—Yes, working upwards, Steven Strickland was appointed to Adelaide to replace Burton. David Collier was appointed at Parramatta and Jennifer Boland was appointed at Sydney.

**Senator McKIERNAN**—Thank you. Are you aware of any announcements about the replacement of the other judges, the ones who retired in this financial year—about whether or not they are going to be replaced?

**Mr Foster**—As I understand it, the Attorney-General is still considering suitable persons for appointment.

**Senator McKIERNAN**—Mr Foster, in your response you mentioned the two judges who have been transferred—one from Townsville to Brisbane and one from Dandenong to Melbourne. How has this affected the work of the registry from which the judges have been transferred?

**Mr Foster**—There is an appointment imminent to Townsville, and Townsville since that date has been serviced by judges from the rest of the court. So there has been a continuity of service but different judges have been visiting Townsville on a circuit basis. But the appointment to Townsville is now, as I understand it, imminent. In terms of Justice Wilczek in Dandenong, a decision was made to not have final defended hearings at Dandenong. The judge was transferred back to Melbourne. On the basis that there were very few such matters being heard in Dandenong and Dandenong is relatively close to Melbourne, it is much more efficient to have a large number of judges in terms of listings in an overlisting factor. That decision was made. Other than that, Dandenong still provides the full suite of Family Court services.

**Senator McKIERNAN**—Moving on to the SES band 2 registrars, which courts still employ SES 2 registrars? How many and where are they located?

**Mr Foster**—The first figure I will read out will be as at 30 June 2000, then the figure as at today's date and then the proposed figure as at 30 December 2000. So I will give you three figures. Adelaide—there were three as at 30 June, there are currently two and the proposed figure as at 30 December is two. Brisbane—there were four as at 30 June, there are currently four and the proposed figure as at 30 December is three. Canberra—there was one as at 30 June, there are currently zero and proposed zero. Darwin—there was one as at 30 June, there are currently zero and proposed zero. Hobart-Launceston—there was one as at 30 June, there

is currently one and the proposed figure as at 30 December is zero. Melbourne—there were five as at 30 June, there are currently five and the proposed figure as at 30 December is three. Newcastle—there was one at 30 June, there are currently zero and proposed zero. Parramatta—there were two at 30 June, there are currently zero and proposed zero. Sydney—there were two at 30 June, there are currently two and the proposed figure as at 30 December is two. Townsville—there was one at 30 June, there are currently zero and proposed zero. Totals—there were 21 as at 30 June, there are 14 as at 9 November and the proposed figure as at 30 December is 10.

**Senator McKIERNAN**—Thank you for that very expansive answer. It saved me asking some other questions and it has saved the committee some time. We appreciate that. What measures are in place in those registries that have lost the SES 2 registrars to make up for the loss of those senior staff?

**Mr Foster**—The reason for the band 2s leaving was related to the funding shift to establish the Federal Magistrates Service. This work has largely been picked up by the Federal Magistrates Service, and that is an ongoing process—as further magistrates are appointed, registrars will leave the court. That has been the basis of the funding shifts from one court to another.

**Mr Phelan**—We have attempted to align the retirement of the band 2s with the appointment of the federal magistrates as best we can in each individual registry.

**Senator McKIERNAN**—I am trying to recall where federal magistrates have been appointed: Townsville, Launceston, Newcastle, Canberra, Parramatta and Melbourne. Is there any area that is not covered? I can explore this further when the Federal Magistrates Service appear before the committee.

**Mr Foster**—From memory, only Darwin, and that is being serviced on a circuit basis by the magistrate at Townsville.

**Senator McKIERNAN**—Thank you. I want to move on to counselling and mediation services. Can you outline to the committee the way in which counselling and mediation services have been reduced as a result of the cuts in the 1999-2000 budget?

**Ms Cooke**—At the end of June 1999 we had 127 counsellors. As at June 2000 there were 113. Currently we have 97 counsellors.

**Senator McKIERNAN**—What has been the result of that for clients?

**Ms Cooke**—The reductions have been the result of major changes in the way the court counsellors operate in terms of their productivity and work practices. In terms of the reductions that have happened this financial year, 10 of those reductions resulted from improved work practices. About six of the positions relate to changes in the level of pre-filing counselling that the court undertakes. In relation to the pre-filing counselling, the court has been working with funded community based organisations to look at them providing some of the services that were previously provided by the court. The court has been working in partnership with these agencies and has been looking at referral mechanisms as well as joint projects and partnerships so that the impact on clients will be minimised—so that clients will be directed and informed of a range of services available to them. However, the court does not turn people away; if people want to come to the court for a pre-filing counselling they are accepted. The courts, for several years now, have had a commitment to working with the community based sector where they can provide equivalent services.

**Senator McKIERNAN**—It is a pretty dramatic reduction in the number of counsellors—in the region of 25 per cent. Has that reduction occurred across the board of the registries or have some registries suffered more than others? Has any analysis been done of the distribution of the cutbacks?

**Ms Cooke**—I can certainly give you the figures in relation to each registry. That is looked at in terms of our resource planning model, which looks at the allocation of resources across a number of parameters. So the reductions are in line with basically the workload of that registry, which is worked out through the resource planning model. We have been paying particular attention to the needs of regional areas because—in terms of the previous philosophy I talked about before in terms of working with community based organisations—obviously the infrastructure in regional areas is less developed than in the major capital cities. We have attempted to, to some extent, buffer the reductions in those regional areas so that client services can be maintained. I could go through registry by registry if you wanted.

**Senator McKIERNAN**—In order to save the time of the committee perhaps you could provide the detail on that to us on notice. There is a number of registries around, and we had those very detailed figures before. I am thinking of myself as well. So could you on notice provide that detail of where the reductions have taken place?

**Ms Cooke**—Certainly.

**Senator McKIERNAN**—In the use of community organisations to provide the counselling, does the court itself undertake any responsibility for testing to see if the people who are providing the counselling services are competent and properly trained to provide the service?

**Ms Cooke**—The agencies that we refer to are accredited under the act. As well, there are local links with those agencies. So at a local level—for example, a registry level—there would be dialogue and links between the counselling managers of both organisations. Certainly I would say the counselling managers take an interest and have a good understanding of the services that are provided when these referral networks are being developed.

**Senator McKIERNAN**—You talked about accreditation under the act.

**Ms Cooke**—Yes.

**Senator McKIERNAN**—So that is already in place. Is that accreditation done by the court itself?

**Ms Cooke**—No. That accreditation is through, I think, the Department of Family and Community Services and through the A-G's Department. I would have to find out.

**Mr Phelan**—I think it is the Department of Family and Community Services. Certainly the names of accredited agencies appear on their web site, so I assume that somehow they take some ownership of it.

**Senator McKIERNAN**—Could you just check that for me?

**Ms Cooke**—Certainly.

**Senator McKIERNAN**—And in doing so, could you find out if there is any specific and special training for dealing with Family Court matters, rather than a general counselling service? Family and Community Services provide an excellent service in most areas, but I suggest there are unique requirements within the Family Court for dealing with the trauma of



separation of couples, and then of course when children come into it. So could you provide details of that information as well?

**Ms Cooke**—Certainly.

**Senator McKIERNAN**—I have just got two other questions in the area of counselling.

**CHAIR**—If you conclude with those two, then I will go to Senator Buckland.

**Mr Phelan**—There is a further comment in relation to reg 8s, the people who do Family Court—

**Ms Cooke**—The court does outsource some of its family report function, and we have our own internal accreditation process for that function. When the reports are provided from outside contractors they are approved by the manager counselling and they are not released unless they meet the same standards that the internal court counsellors are required to meet.

**Senator McKIERNAN**—Other than the family reports that you have just mentioned, has the court made any payments to any organisation for the conducting of counselling or mediation services for people who have previously accessed services through the court?

**Ms Cooke**—No, we have not. At the moment we are looking at a project in Rockhampton, and there has been some discussions with the community based organisations there. The rationale for this is that we were having difficulty in recruiting counsellors in that area. We are looking at, in conjunction with these organisations, the possibility of perhaps referring some court clients to these agencies for court ordered counselling. So this is after people have actually filed within the court. But at this stage we are still in the discussion stage with those organisations. There has been no decision whether or not to proceed, but we have had some initial discussions. Again, we had some problems recruiting in Darwin, and we have contracted Relationships Australia there to provide a counsellor who is employed by us on a part-time basis, which is an arrangement that is working well. They do the full range of court counselling duties.

**Senator McKIERNAN**—In that question we discussed earlier about the skills of people who do counselling and the accreditation of people who do counselling for the courts who have been accredited by FACS, could you also provide detail of the skill requirements of the people and what training is provided by the department for those counsellors?

**Ms Cooke**—Yes.

**Senator BUCKLAND**—You have been asked this, Ms Cooke, on a number of occasions in the past, but just humour me, if you will, because I am new. I have a concern with the perceived reduction in services. What is the actual waiting time, firstly, for families seeking mediation and, also, for those seeking pre-trial counselling?

**Ms Cooke**—I do not have the exact figures with me. The figures are registry by registry. I could get them for you, but I do not have them at the moment.

**Senator BUCKLAND**—Could you get those figures but, more particularly, could you isolate those that are non-capital city based—that is, the regional based ones that are using community groups to do the counselling.

**Ms Cooke**—Yes, Senator.

**Senator McKIERNAN**—I have some detailed questions which in fact follow up from what my colleague was just asking. I am particularly interested in the impact of the cutbacks

that have occurred at each registry of the court as a result of the 1999-2000 budget. I am looking for specific detail on the impact of that, like the hours of operation in each registry. I do not expect you to have that information off the top of your head. There are six dot points in the first question and two dot points in the second question. I will put these on notice and ask for a response to the detail contained in these. They all deal with the results of the cutbacks. I have also been asked to put some other questions to the court, but, again, from reading the questions, I would not have an expectation that the representatives of the court would have the detail in their heads or available to them at the moment. They deal particularly with the Newcastle registry: details of what is happening in Newcastle and comparative figures from other areas. I put both sets of questions on notice for the court.

**Mr Foster**—Are they in relation to counselling?

**Senator McKIERNAN**—No. They are in relation to the impact of the overall running of the court itself in each of the registries.

**Mr Foster**—Are they in terms of filing? I just want to make it clear.

**Senator McKIERNAN**—The details are included in the questions. I can read them if you want.

**Mr Foster**—No, that is fine.

**Senator LUDWIG**—In your report, you say that the recommendations contained the Australian Law Reform Commission's report *Managing justice* were of little value. Could you tell me which recommendations were of little value; why were they of little value; how are you dealing, or not dealing, with them, as might be the case; and how is it that your court says that you do not need to deal with them? Then I would like to ask you, Mr Cornall, whether or not you are aware of those recommendations and that the Family Court has said that they are of little value? And has your department from a higher view had a look at the recommendations and had a look at whether or not the answer that the Family Court has given in relation to those recommendations—that they are of little value—is an accurate reflection? And have those comments been passed on to the Australian Law Reform Commission, because they might be interested to know that their work was of nought value to the Family Court? Should there be any follow-up in relation to that?

**Mr Cornall**—I assume we cannot do that until we have the starting point, which is the court's response.

**Senator LUDWIG**—No.

**Mr Foster**—The term 'little value' might relate to the fact that the future directions committee of the court had already—

**Senator LUDWIG**—I do not want to stop you, but it says:

... the recommendations were of little value, as they frequently reflected initiatives the Court was already in the process of implementing or trialing ...

But that is, with respect, your view. Someone else has given you a view. What I was interested in was how you are really responding to that.

**Mr Foster**—Basically, that was what I was going to say. Largely, the recommendations of the ALRC reflected much of the work the court was doing in the future directions committee.

The court has set up a process to report to the department and to the ALRC on progress on the recommendations that are contained in the report. So in that sense many of the recommendations were already contained in the future directions report which the court had already started work on. So it was recognising the report's existence, that there is a process within the court to report back to the ALRC on its recommendations and the progress the court has made towards those recommendations. I do not know that I can add much more to what the Chief Justice said in the opening of the annual report.

**Senator LUDWIG**—No, perhaps you can take the question on notice in the sense of coming back to me with something a little more concrete than that they are actually being dealt with in a general way.

**Mr Foster**—Certainly.

**Senator LUDWIG**—Mr Cornall, unless we see you again before that time, I might follow up that at that point.

**Mr Foster**—The court essentially agrees on the recommendations contained in the ALRC report.

**Senator LUDWIG**—Thank you. It does not say that, though.

**Mr Foster**—Because it is building on work that was already commenced in the future directions report. I guess that is the point that is trying to be made there.

**Senator LUDWIG**—Are you saying perhaps it is a bad turn of phrase, with respect?

**Mr Foster**—We will take it on notice and respond in detail.

**Senator LUDWIG**—In relation to appendix 2, the consultancy categories, I will not go through each one in detail. Is it the amount that decides whether they will be put out—that is, advertised and go through a tender process? Is there a cut-off amount which determines how that will be done? I note that KPMG Consulting at No. 5 was in the order of \$173,000 and it was advertised. One for Value Creation at No. 11 was \$202,000 and was not advertised. So it must not be money which decides whether they will be advertised and a tender process put out. My question relates to how you determine whether they would be advertised; what criteria you used to determine that, whether it was an amount or service provided; and how you then followed it up to monitor that the process was open and accountable and done to your satisfaction.

**Mr Phelan**—Senator, in relation to the monetary amount, generally our preference would be to advertise except if the market situation, knowledge or special skills that the consultancy might have dictate that there is no value to be had by going out to the market. Some of these consultancies I think also built on earlier consultancies where the particular consultants might have developed special skill and knowledge and therefore would have been quicker on the uptake and moving on to some enhancement of it. So, generally, we would prefer to advertise. If we have knowledge that other agencies have gone to the market fairly recently on similar sorts of consultancies or the consultants have special skills and knowledge, we might prefer to go to them individually.

In relation to the monitoring, we have a very strong internal audit function. We outsource that to Deloitte Touche Tohmatsu and they have a roving brief to review our contract management. We also have a very strong finance committee that meets monthly. The finance committee includes, at partner level, PriceWaterhouseCoopers, our financial advisers and other senior people who monitor the progress of important issues, including progress and expenditure of important items. I think that answers the full range of your questions.

**Senator LUDWIG**—How much have you spent on strategic management consultancies? I counted two or three and expenditure of about \$274,000 in one financial year. Perhaps you could take that question on notice and let me know if I have missed anything.

**Mr Phelan**—I think a table was omitted—it went missing somewhere—when the annual report was printed. It forms the basis of a corrigendum that is probably winging its way to you.

**Mr Frankland**—The total for strategic planning consultancies is \$505,000.

**Senator LUDWIG**—Has that report been completed?

**Mr Phelan**—There is a series of reports. That is a summary of not just the raw strategic planning but the critical process re-engineering that has led ultimately to our case-flow management model of improving service to clients. While it is described as strategic planning, it picks up a range of process improvements as well.

**Senator LUDWIG**—Is there a final document regarding what has come from the expenditure of \$505,000?

**Mr Phelan**—There is a series of documents.

**Senator LUDWIG**—Are they available?

**Mr Phelan**—I am sure they are.

**Senator LUDWIG**—Perhaps I could have a look at them. Could you take that question on notice?

**Mr Phelan**—Yes.

**Senator LUDWIG**—As I understand it, you have spent \$6 million on Casetrack. Is that about right?

**Mr Phelan**—We have not spent that amount; we have budgeted it. The budgeted amount is about \$6.6 million—I think that is what we say in the annual report.

**Senator LUDWIG**—As I understand it, the Federal Court is developing an IT management system, you are developing Casetrack and the Federal Magistrates Service will use parts of the Federal Court system. From memory, the High Court has its own system. Have you talked to anyone about that?

**Mr Phelan**—Absolutely. The contract that we have with Oracle flowed from a development in Western Australia. That contract has been followed by a contract between the Federal Court and Oracle. Very similar systems, with enhancements and modifications suited to the different agencies, are being developed at this point. We are talking to each other. We are using a similar core system. We are certainly continuing discussions with the Federal Magistrates Service. The High Court has much lower volumes and, the last time I checked, I think it was using a fairly simple Lotus Notes based system. Our systems are dealing with massive volumes. They are being built, as we say here, eventually to handle clients browsing their records using PIN numbers and full electronic filing. Returning to your question, we are certainly communicating with each other.

**Senator LUDWIG**—My final question relates to client surveys. I see that you have moved those surveys from yearly to every two years. What is reason for that?

**Mr Phelan**—These are the full client surveys. We may review it, but we are trying to mainstream our client feedback registry level, which might occur on a more regular and ongoing basis. We are exploring ways of trying to mainstream that process.

**Senator LUDWIG**—Perhaps you could inform me at some stage of your final decision: whether you intend to maintain a two-year client survey or move to another system.

**Mr Phelan**—Certainly.

**CHAIR**—Before we conclude questions about the Family Court, I want to return to the Federal Magistrates Service and the relationship between the court and that service. I work alongside the Parramatta registry of the Family Court—in terms of co-location of buildings—and have heard anecdotally of good responses regarding coordination and cooperation between the court and members of the FMS at Parramatta. Can you expand on that subject?

**Mr Foster**—I think that good cooperation and support has been reflected through every registry. It has been reflected at registry level and at senior management level. The Family Court of Australia has worked very hard to ensure that the Federal Magistrates Service implementation has gone as smoothly as it has. There has been exceptionally close cooperation between both courts in that regard, and that will continue.

**CHAIR**—So the anecdotal evidence I have about Parramatta would be accurate across the board?

**Mr Foster**—Absolutely.

**CHAIR**—Thank you. There are no further questions in relation to the Family Court, so I thank you, Mr Foster, Mr Phelan, Ms Cooke and Mr Frankland for your assistance.

[10.51 a.m.]

#### **Administrative Appeals Tribunal**

**CHAIR**—Welcome, Ms Ransome. We will begin with questions from Senator McKiernan.

**Senator McKIERNAN**—The committee, under a slightly different guise, is undertaking an inquiry into the Administrative Review Tribunal Bill and the Administrative Review Tribunal (Consequential and Transitional Provisions) Bill—we are collecting information in regard to that legislation at our hearing. So we will not be, as best we possibly can, repeating questions that we have and will be asking in regard to that at the inquiry, but there are a number of matters that we would seek clarification on at this particular point in time. In the concluding paragraph of her introductory comments to the annual report the president states:

It is unclear at the time of writing whether this will be the last annual report prepared by AAT.

Can you update that comment, Ms Ransome?

**Ms Ransome**—The president's overview was written at a time prior to the announcement that the ART would not commence operations until 1 July 2001. At the time of writing it was our understanding that the ART would be commencing on 1 February. But since writing the announcement has been made that it will be commencing on 1 July 2001.

**Senator McKIERNAN**—So we are not actually dealing with the last report of the AAT at this particular point in time. We can expect another report in the new millennium?

**Ms Ransome**—Yes, I think the consequential bill for the ART makes provision for the president of the ART to produce an annual report on the last year of operation of the AAT, which—if the implementation date of the ART is 1 July 2000—will in fact be the ART producing the annual report of the AAT for 2000-01.

**Senator McKIERNAN**—I cannot recall seeing that provision within the consequential bill itself.

**Ms Ransome**—I believe, from memory, it is in schedule 15, which deals with the transition of matters from the AAT to the ART. Perhaps the department is in a better position to give you more specificity.

**Mr Cornall**—Ms Power will be able to answer your question, Senator.

**Ms Power**—Ms Ransom is correct that schedule 15, item 7, of the consequential and transitional provisions bill includes a provision requiring the president of the ART to prepare an annual report for the last year of operation for the AAT.

**Senator McKIERNAN**—Thank you, Ms Power. I am most impressed. I believe it is the largest consequential bill that we have had before the parliament in the history of federation, and you have been able to pick it out just like that! Certainly I am impressed. I think Mr Cornall should note that too. Thanks very much. That is helpful as to where we are going. The committee in its other guise has received some information on the record about the status of tribunal members and the arrangements that are going to be made for them on the ART being established. I do not want to repeat all the information—remembering we have received information, but probably not comprehensive information—on all the arrangements relating to AAT personnel. But could you in brief, Ms Ransome, detail to the committee what the transitional arrangements are for AAT personnel in the lead-in to the establishment of the review tribunal?

**Ms Ransome**—That really is a matter for the Attorney-General's Department. The AAT itself will not be involved primarily in redundancy issues et cetera. Our understanding is that all members of the Administrative Appeals Tribunal will, as at this stage, cease to be members on 30 June 2001. What arrangements are put in place in relation to payment et cetera will be dealt with by the Attorney-General's Department, I presume on advice from the Remuneration Tribunal which makes provision in its existing determinations for what happens if a statutory office holder's term is terminated prematurely. Special provision has been made in the consequential bill in relation to deputy presidents of the AAT who, at the time of abolition of the AAT, will not have met either one or both of the qualifications for the judges' pension. Certain deputy presidents of the AAT have elected to be part of the judges' pension scheme, which is a non-contributory scheme available to certain statutory office holders but more particularly judges. Most of the deputy presidents of the AAT have already or will shortly reach entitlement—those who are full-time. But there will be a couple who, as at 30 June next year, will either not have served 10 years or have reached 60 years of age. The consequential bill sets out a formula for determining what their future pension entitlements will be, and that is a matter which the department has dealt with.

**Senator McKIERNAN**—Thank you for the response, Ms Ransome. Mr Cornall, perhaps it might be helpful if you were able to elaborate on what Ms Ransome has had to say in regard to that. Also, I say on the record that as a committee we will be talking to the department sometime early next month in regard to the matters contained in the bill, and it is not my wish to canvass all matters concerning the department and its involvement in the establishment of the ART at this particular point in time.

**Mr Cornall**—I think Ms Ransome has very accurately and succinctly stated the position, but I will ask Ms Leigh or Ms Power if they feel anything else needs to be added.

**Ms Leigh**—No, thank you. I believe we can leave it until those other hearings.

**Senator McKIERNAN**—Fine. We have got the bill and we have got the consequential bill, but the bill has not yet passed through the parliament. Are there any contingency arrangements in place to deal with the circumstances if the bill does not pass through

parliament? By way of explanation of where I am coming from with the question, the tribunal was to come into operation on 1 February next year. That has now been postponed until 1 July. The parliament is master of its own destiny when it comes to legislation before it, and it is possible that the bill might not pass within the required period of time. What contingency arrangements are in place or could be put in place to look after the employees of this particular tribunal? Of course, we will deal with other tribunals as they come before the committee during the course of the day.

**Mr Cornall**—We are on a very tight time frame to have the new tribunal operational by 1 July, and that is our current focus, but that is still some seven months and a few days away. We would anticipate having an indication as to the passage of the bills relatively soon. In the event that there is a delay—we are hoping there will not be—we will have to look at those plans. But the most significant task ahead of us right now is the plans to have it operational by 1 July.

**Ms Leigh**—The existing legislation would, of course, continue if that legislation were not passed. So the existing tribunals would continue.

**Senator McKIERNAN**—In regard to administrative staff of the tribunal, are there provisions contained in the legislation before the parliament to provide for rollover of employment, as is the case with some of the other tribunals?

**Ms Leigh**—In relation to one proposed division of the new tribunal, there is such a provision. That relates to the migration and refugee division. In relation to the other divisions, there is no such provision.

**Senator McKIERNAN**—What is being done to measure the morale—

**Ms Leigh**—I beg your pardon, Senator. I misheard your question. You were referring to the staff, I understand; I was answering in relation to members.

**Senator McKIERNAN**—I was referring to the staff, yes.

**Ms Leigh**—In relation to staff, all of the staff of the existing tribunals will be transferred to the ART and then it will be a matter for the ART to determine the staff it needs for its operations.

**Senator McKIERNAN**—What work is being done on that now? I will explain where I am coming from. There are said to be dramatic savings in the establishment of the ART, and one would assume that some of those savings will occur in the area of staff. Has any analysis been done on where those savings will occur?

**Ms Leigh**—Yes. We expect a reduction in staff in the order of 15 per cent.

**Senator McKIERNAN**—Going back to the response that you gave me earlier about the rollover of members, I used the term wrongly in asking the question so your response was quite accurate. The rollover is occurring for tribunal members within the refugee and migration division.

**Ms Leigh**—That is correct.

**Senator McKIERNAN**—What are the provisions for membership of the ART for the work that is currently done by the AAT?

**Ms Leigh**—That will go into some of the divisions of the ART, primarily the commercial and general division but also the workers compensation division and the taxation division.

**Senator McKIERNAN**—So on establishment of the ART, will the persons doing that work be new appointees to that position? Will there be provision for current AAT members to be employed in those new positions, or will it be new appointments completely?

**Ms Leigh**—It will be a new appointment process. Of course, the existing members may wish to apply and they would be considered, but there will be a new appointment process.

**Senator McKIERNAN**—How is morale being measured within the AAT at the moment? I am now talking at a membership level.

**Ms Ransome**—Morale within the AAT at the moment I would possibly describe as patchy amongst the various sections of members and staff. The workload of the AAT is ongoing. We have no decrease in the number of matters lodged with the tribunal. We have had no decrease in fact in the number of jurisdictions conferred upon the tribunal. So in terms of workload, the work is ongoing and the members and staff are doing their best to get through that workload. However, I would have to say that for some individuals, the issue of the ART does cause them great concern and that does have an effect upon morale.

**Senator McKIERNAN**—How was the decision to defer the 1 February start up date of the tribunal conferred to the AAT? I suppose, Mr Cornall, you could take it further: how was it conveyed to all the other tribunals as well?

**Mr Cornall**—I am not sure of the answer to that question. I will ask Ms Leigh or Ms Power if they are aware of the answer.

**Ms Leigh**—The Attorney-General made a public announcement about that, Senator.

**Senator McKIERNAN**—Did he make it by way of media release? I have searched his web site and I cannot find anything.

**Ms Leigh**—As I recollect, he made it in a speech.

**Senator McKIERNAN**—Do you know where that speech was made?

**Ms Leigh**—I believe it was given to the Australian Government Lawyers Association on about 25 September.

**Senator McKIERNAN**—Do you know whether the Attorney-General gave direct notification to each of the tribunals and the staff employed in those tribunals?

**Ms Leigh**—I would like to take that on notice.

**Senator McKIERNAN**—Has the Remuneration Tribunal started looking at the question of remuneration for the members of the new tribunal? Has a brief been given to the Remuneration Tribunal to look at what remuneration will be paid to the various members of the tribunal?

**Ms Leigh**—Yes, it has.

**Senator McKIERNAN**—And that work is in progress now?

**Ms Leigh**—Yes, Senator.

**Senator McKIERNAN**—When is a report expected from the tribunal?

**Ms Leigh**—The tribunal will not make a formal determination until the legislation is in place, but it has made an indicative determination.

**Senator McKIERNAN**—Thank you. We will explore some of those matters in more detail at a later time. I am not canvassing the whole of the inquiry; there are some threshold questions which would be better put when we have the minister, Mr Cornall and the other

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officers at the table. One of the difficulties of the ART proposal is that each division will be responsible for negotiating a budget from its supervising portfolio agency. We understand that the AAT currently operates on the basis of a formula which puts it at more than an arm's length from the funding portfolio than tribunals in other areas. Can you please explain the basis on which the AAT currently receives its funding and what new procedures will be in place for the future? What changes will be put in place as a result of the establishment of the ART, from an AAT perspective and the divisions that will be established from that?

**Ms Leigh**—Currently the AAT has a specific appropriation. Under the proposed arrangements in the bill, each division of the ART will negotiate a resource agreement with the relevant portfolio and that will provide for funding for the matters that come to it—that that portfolio has responsibility for. I say that in a loose sense because, in some instances, the Attorney-General's Department will be the relevant portfolio even though the legislation may be administered by another department. That is where there are fairly small areas of jurisdiction covered in the commercial and general division, so it is not sensible to spread it amongst all of the relevant portfolios. In other cases, for example the income support division, that will be the responsibility of the Department of Family and Community Services, which administers all the relevant legislation.

**Senator McKIERNAN**—We will be exploring that in more detail at a later time at a different sitting, I suspect. One of the other proposals related to the establishment of the ART is that there will be a limit on the number of senior members that can be appointed to the ART. What is the current balance between members and senior members within the AAT? What are the reasons for there being so many senior members currently? As I recall, it is one senior member for every three members, or 30 per cent.

**Ms Power**—Yes, the senior members are a class of members of the AAT, and of course the more senior members still are the deputy presidents and the president of the AAT. If you look at the senior members alone, I think it is about a quarter of the AAT establishment. If you look at it in conjunction with the more senior members, it is probably about a third. What we have looked at, however, is the proportion of senior members across the four tribunals that are being amalgamated. It is currently just under eight per cent, so a 10 per cent figure for the tribunal as a whole would be consistent with the current proportion of senior members. But the proportion of senior members in the AAT is very much higher than in any of the other tribunals.

**Ms Ransome**—If I could just clarify, the structure of the membership in the AAT is very different to the membership in the other tribunals: the SSAT or either of the migration tribunals. Since the AAT's inception, the class of members has always been designed to be a specialist expertise membership which gives assistance to the tribunal, which sits as part of the tribunal panel and which provides their medical expertise—they may have expertise in aviation matters or a whole raft of expertise. The senior members of the AAT are not necessarily in a class of membership superior to the members, but they are the members who do the bulk of the hearing work within the tribunal and, in that sense, would be more equivalent to a certain level of member in the other tribunals. For example, in the AAT structure the deputy presidents perform the role of the senior members in the other two tribunals.

**Senator McKIERNAN**—Thank you for that clarification. I am thinking particularly now of the RRT, which has only two registries. If you are counting the senior members in the registries and comparing those to the AAT, which has registries in all capital cities, is that a fair basis for comparison?

**Ms Power**—I am not sure where your question is directed in the sense that I have just explained that the maximum proportion of senior members in the ART would be slightly higher than that of the tribunals as a whole. Whether the figure will be high enough for each of the individual divisions is a matter that your committee will no doubt be considering.

**Senator McKIERNAN**—Yes. Are you going to appear before us?

**Ms Power**—I will be available.

**Senator McKIERNAN**—I will leave that for the moment.

**CHAIR**—We might need Ms Power's knowledge of the C and T bill.

**Senator McKIERNAN**—We certainly will. It is an enormous piece of legislation.

**CHAIR**—And we have read it all.

**Ms Leigh**—If I may, Senator, I can provide a response to the question that I took on notice earlier. I have been advised that the Attorney-General did telephone Justice O'Connor directly before he gave the speech announcing the change of start date for the ART.

**Senator McKIERNAN**—Thank you for that information, Ms Leigh. Ms Ransome, do you know whether Justice O'Connor then distributed that information to the tribunal?

**Ms Ransome**—Yes, Justice O'Connor was actually not in the office at the time, but the Attorney phoned her. She spoke with him. She informed me of the Attorney's announcement. At that point, the Attorney had not actually made the announcement. It was not going to be made until a couple of days later. I believe I was then in contact with Ms Power, and I asked Ms Power whether there would be a press release that I could circulate widely throughout the tribunal. In the event, there was no press release, but Ms Power informed me of when the Attorney was making the speech and I was then able, via email, to circulate nationally the fact that the date had changed. That was roughly around the time that the Attorney made his speech.

**Senator McKIERNAN**—It is encouraging to note that the telephone call was made before the announcement. We will hear some more about that from another set of witnesses in a little while. I will leave my questions at this point.

[11.15 a.m.]

### **Human Rights and Equal Opportunity Commission**

**CHAIR**—I welcome Ms Halliday, the Sex Discrimination Commissioner—for the second time in two days; the last time was in a different incarnation of the committee of course—and officers of the Human Rights and Equal Opportunity Commission. We will begin with questions from Senator McKiernan.

**Senator McKIERNAN**—I again make the point that the committee under another guise is doing other work within certain areas, which Ms Halliday is informed about. We will be restricting and limiting our questions in regard to that. I put a suggestion to the committee in order to save time: Ms Halliday appeared before the references committee at our hearing in Melbourne yesterday on the Sex Discrimination Amendment Bill (No. 1) 2000. You provided the committee with a submission and you gave us an oral presentation there as well. I put that comment on the record because that is in the *Hansard* and we can refer to that and we certainly will in the guise of the committee continuing its other work.

In relation to one of the last questions to the previous set of witnesses, I ask you again—and this will be the only question I will be repeating—when you, as the Sex Discrimination

Commissioner, were consulted about the Sex Discrimination Amendment Bill (No. 1), which has a dramatic effect on the legislation which you have got a responsibility to oversight. I asked a question on the record yesterday, but I think it is worth while asking that again at this time.

**Ms Halliday**—You want me to go through the process of when I first heard?

**Senator McKIERNAN**—Yes, please.

**Ms Halliday**—Okay. I heard about the cabinet decision on the radio. The process then was that I got a phone call from the Attorney-General's office, I think within roughly an hour after that. My understanding is that the Prime Minister had a press conference straight after the cabinet meeting and went from the cabinet meeting to the press conference. So I first heard about it on the radio and then later via contact from the Attorney-General's office. With respect to consultation on the actual drafting of the amendment bill, there was no consultation with HREOC on the first amendment, nor on the redraft.

**Senator McKIERNAN**—That is all I propose to ask in regard to that. We have your evidence from yesterday and we asked a number of questions of you on the record yesterday. That record stands. I do not see that we should delay proceedings here any further in regard to that particular matter.

**Senator LUDWIG**—On another matter, page 161 of your annual report relates to the Workplace Relations Amendment Bill 2000 where you provided comment in relation to subsection 170LGA(4). Has that been made public or is that available to the committee as to what your views were in relation to principles of natural justice in respect of that provision?

**Ms Halliday**—This was part of a submission. This is a summary of part of a submission. Are you talking about—

**Senator LUDWIG**—The middle of the page.

**Ms Halliday**—Workplace relations under the bigger title 'Submissions'. That is an overview of submissions that the Sex Discrimination Unit undertook to do throughout the year on behalf of the Human Rights and Equal Opportunity Commission. Indeed, the Workplace Relations Amendment Bill 2000 was one of those where we provided some advice on principles of natural justice. That is exactly what we did. We just ran through the basics of what natural justice was. We were a tad concerned that there may be some limited understanding about that.

**Senator LUDWIG**—Was that committed to paper and passed on to them? Is that available?

**Ms Halliday**—I do believe so, yes.

**Senator LUDWIG**—I just wondered whether I could have a copy of that. That was all.

**Senator McKIERNAN**—I have some other questions dealing with the Privacy Commissioner rather than the Sex Discrimination Commissioner.

**CHAIR**—Mr Pilgrim?

**Ms Halliday**—Yes. The Deputy Privacy Commissioner is with us.

**Senator McKIERNAN**—Mr Pilgrim, does the Privacy Commissioner have a fee when he speaks at business functions?

**Mr Pilgrim**—There is an arrangement by which we enter into some fee for presentations, yes.

**Senator McKIERNAN**—What is the fee that is usually charged? Who sets it? Is it a standard fee? Does it depend on the occasion and the number of people attending? How is the revenue applied?

**Mr Pilgrim**—The fee is usually set at approximately \$1,500. I am not quite sure exactly how we arrived at that fee but I can look back into our records and provide that later. In regard to how we determine when we apply it, we certainly look at a range of issues, as we do generally before we determine at what conferences or presentations the commissioner will present. We assess whether it is a commercial venture, or whether it may relate more to a community service approach where we may be able to be providing useful and beneficial information to the community. On those grounds, we would then determine whether we would ask for a fee to be paid.

**Senator McKIERNAN**—You say it is usually \$1,500. Is there a range?

**Mr Pilgrim**—When I say usually \$1,500, there may be some arrangements whereby we look at that amount being recouped by way of accommodation, if there is need for an overnight stay, or through airfares, depending on the arrangements with the particular organisation. As I said, that will be determined by whether it is a commercial venture and who is organising the actual seminar or conference.

**Senator McKIERNAN**—Did you respond to the part of the question which I asked earlier about how the revenue is applied?

**Mr Pilgrim**—No, I did not. The revenue is receipted back to the organisation through section 31 accounts.

**Senator McKIERNAN**—Do we have a figure of what was raised through this process during the course of the annual report that we are dealing with?

**Mr Pilgrim**—I do not have a breakdown of what amounts were solely attributed to presentations, but we can certainly find those out and provide them to the committee.

**Senator McKIERNAN**—Could you provide the committee with the detail of the list of functions that the Privacy Commissioner has spoken at since 1 July 1999 and the fee that was charged on each occasion?

**Mr Pilgrim**—I will undertake to get the fees. I believe the majority of the conferences, if not all of them, are actually in the annual report for that period. But I do not think the fees are allocated against those particular presentations, so I will get those for you.

**Senator McKIERNAN**—Thank you. Are there any other fundraising activities in the Office of the Privacy Commissioner? If there are, what are they?

**Mr Pilgrim**—Fundraising activities—I assume you are referring to presentations.

**Senator McKIERNAN**—Revenue raising.

**Mr Pilgrim**—In regard to the operations of the organisation, we have a number of other areas in which we receive revenue or payments. We have an arrangement with Centrelink in regard to the data matching provisions in which we are paid money or receive funding to undertake our data matching activities. The amount of that arrangement is \$331,000 per annum. We have an arrangement with the ACT government for the provision of services under the Privacy Act for their jurisdiction. That is \$79,500, I believe. Again, these are set out in the annual report. We have some minor revenue incurred through the sale of some pamphlets, brochures and the annual report itself when there is particular interest in it. I do not have the break-up of those amounts that were received for that. I should add that, apart

from the commissioner, there are some other opportunities for us to get fees paid for presentations done by other members of the office, including me, but those are of a much lesser degree.

**Senator McKIERNAN**—Does the Privacy Advisory Committee ever meet? If it does, who are the members of it and how often and when does it meet?

**Mr Pilgrim**—In regard to the membership, I would suggest that the status of the membership would be best addressed by the department to ascertain where exactly arrangements are for the membership of that committee, if I could suggest that.

**Mr Cornall**—Mr Ford will be able to answer that question.

**Mr Ford**—All I can say is that the membership is under consideration. There are some vacancies and that matter is being addressed by the Attorney-General.

**Senator McKIERNAN**—When does it meet?

**Mr Ford**—It meets infrequently. Its purpose is to assist the Privacy Commissioner. I do not have the details as to when it last met.

**Senator McKIERNAN**—Can you take that on notice and provide that?

**Mr Ford**—Certainly. It is not the only means of assisting the Privacy Commissioner. For example, when the national privacy principles were developed, the previous Privacy Commissioner set up a consultative group to work with her for that purpose. I do not want to leave the impression that it is the only form of advisory assistance available to the Privacy Commissioner.

**Senator McKIERNAN**—No, but there is provision for a Privacy Advisory Committee.

**Mr Ford**—Certainly.

**Senator McKIERNAN**—It is legitimate to ask questions on the membership and when it meets and so on. You indicated, Mr Ford, that the Attorney-General was considering the appointment of some people to it. Can you give us some details of who the current members are and how many vacancies there are on it?

**Mr Ford**—If I could take that on notice, I may be able to give an answer a little later on.

**Senator McKIERNAN**—Thank you.

**Senator LUDWIG**—Mr Pilgrim, in relation to DNA—I just cannot recall—did your organisation make a submission with regard to the amendments to the model forensic bill?

**Mr Ford**—Yes, I believe we have made a submission to that committee.

**Senator LUDWIG**—Principally about the collection, storage and handling of DNA?

**Mr Ford**—Yes, in regard to those areas.

**Senator LUDWIG**—Thank you. I could not recall whether or not you had actually made a submission and I thought it was easier to ask the source than to go back and find it. In respect of that issue, will you be following the amendments and how it is then implemented, or do you stop at the point of making a submission, or do you then go and have a look down the track at how the amendments are implemented and dealt with over time?

**Mr Pilgrim**—In regard to that general area, we have been having ongoing discussions with members of the organisation of CrimTrac in regard to how that particular area is going to be dealt with. At this stage, I am not quite sure what the process for monitoring will be further

down the track. We certainly do have an ongoing dialogue with the CrimTrac people in regard to how monitoring of the use of those sorts of samples will occur.

**Senator LUDWIG**—In relation to the Privacy Amendment (Private Sector) Bill 2000, could you give us an update on your role in its implementation?

**Mr Pilgrim**—Certainly. In regard to the implementation of the bill, as you would appreciate it has recently passed through the House of Representatives. I am not sure when it is to be put before the Senate. We are certainly undergoing a process of developing, for example, guidelines within our organisation: a process for us to consult broadly with relevant stakeholders in the community—community associations, business and the like—so that we get the best amount of information to help provide the most useful and ‘plain English’ guidelines. We are setting ourselves up so that we can undertake that process for the development of guidelines on the national principles themselves and also the development of the codes. We are also looking internally at our structures to make sure that we can best implement the legislation when it passes the parliament.

**Senator LUDWIG**—So at this point in time you have not developed either the codes or the draft guidelines?

**Mr Pilgrim**—Not specifically. The issue is that to be able to develop guidelines around them we will need to have the finalised act before us, including the national principles, so we know exactly the form they take and their basic structure. What we are looking at at the moment is a step before that, which is developing a process by which we can ensure that, through broad consultation, we get the best input from the community so that we can make sure the guidelines themselves are fairly clear and concise and are of assistance to the community—both the business community and the general community.

**Senator LUDWIG**—On another issue, do you have a budget for the Privacy Connections Network?

**Mr Pilgrim**—I do not have a budget with me at the moment, but I could take that on notice and provide you with it.

**Senator LUDWIG**—Thank you. I am curious about that. Also, how advanced are you in relation to that? It appears to be next year rather than in the new millennium that you are going to be doing that.

**Mr Pilgrim**—Potentially. We have actually already started the process of working with the network. We have just undertaken a series of seminars around all state capitals to raise awareness of the issues of privacy generally, and also the forthcoming bill and the act when it is passed.

**Senator LUDWIG**—Have you got a feedback system in place?

**Mr Pilgrim**—We have. We have undertaken at each of those seminars to ensure that we encourage feedback, not just on the spot but in a written form. We also provided a mechanism by which people could provide ongoing feedback to us about the usefulness of those seminars. A main facet of doing the actual presentations was that we wanted to find out from the people who attended them what would be useful by way of ongoing information from our organisation for them.

**Senator LUDWIG**—And will you be providing a report about the information that is obtained?

**Mr Pilgrim**—We are certainly pulling together a report at the moment. We have just this week finalised the last of those seminars, so as soon as we have that information in we will be pulling together a report on what we found from those seminars.

**Senator LUDWIG**—If possible, could I have a copy of that final report when it is available?

**Mr Pilgrim**—I would certainly be happy to provide a copy.

**Senator LUDWIG**—Thank you very much.

**CHAIR**—I have a question for you, Commissioner Halliday, in relation to the report that you launched in April this year on women's labour market participation in the rural and regional areas. It is referred to in the annual report, but I wonder if you could advise us of any feedback that has been received on that and the research that was presented in it.

**Ms Halliday**—Feedback from the general community?

**CHAIR**—Yes.

**Ms Halliday**—That particular report was one that was launched some time after it had been done. It was stage 1 of what had been planned: a three-stage piece of research in the area of rural discrimination, looking at the specific issues they face. This first piece of work was more like a 'lip research' piece—a compilation of what was around—and it was done by Newcastle University. I launched it at the Yarra Valley women farmers forum. Around 400 women were there. The feedback predominantly was a level of interest; in particular that issues of women in remote and rural areas are actually being seen as somewhat separate from the broader community. So, in talking of general unemployment figures, you can actually recognise that they are different and that seasonal and part-time work is more of an issue, as is distance or access to services—be they domestic violence or pregnancy services—in those areas. Generally there was a lot of support from women in those areas, and a lot of support from rural press, both radio and print media, because they were seen as a group that had quite a unique set of circumstances. So the feedback from the community was all positive.

#### **Australian Government Solicitor**

**CHAIR**—I welcome Ms Rayne de Gruchy and Mr David Riggs from the Australian Government Solicitor. Senator Ludwig will begin with questions in this area.

**Senator LUDWIG**—There was a press report of 16 November entitled 'Advisory Board for the Australian Government Solicitor'. It states, 'We are pleased to announce the appointment today of an advisory board for the Australian Government Solicitor, AGS.' It continues on in that line, and it is by Mr John Fahey. Can you tell me how many members have been appointed or selected for the advisory board? Can you also tell me of the process that was entertained, whether it was publicly advertised? Do you have the advertisement that was placed in the newspaper? Perhaps you could take that question on notice if you do not have it. This is, of course, if they have been finalised at this stage.

**Mr Riggs**—I think it would be more convenient if Ms Lynch were to answer that question.

**Ms Lynch**—The board positions were not advertised; they were done through a consultation process. There are four members of the board plus Ms de Gruchy as CEO; she is also a member of the board. The four members are named in that press release that you have there.

**Senator LUDWIG**—Who determined that group?

**Ms Lynch**—Shareholder ministers in consultation with Ms de Gruchy.

**Senator LUDWIG**—Who were the shareholder ministers?

**Ms Lynch**—Minister Fahey, the Minister for Finance and Administration and the Attorney-General.

**Senator LUDWIG**—That was in consultation with you, Ms de Gruchy?

**Ms de Gruchy**—Yes. I was consulted in relation to the range of people who could possibly be put forward as suitable members of the advisory board.

**Senator LUDWIG**—So there was no formal process, as such?

**Ms Lynch**—There was no advertisement of the positions, no.

**Senator LUDWIG**—Was a list developed? If so, who did it?

**Ms Lynch**—The Attorney-General's Department in consultation with the Department of Finance and Administration and the two ministers; the two departments did some of the work.

**Senator LUDWIG**—Did you or your department prepare a short list?

**Ms Lynch**—There were very short lists prepared in consultation with ministers and with the department of finance.

**Senator LUDWIG**—Who then determined the numbers from the list?

**Ms Lynch**—They were decisions that were taken by the shareholder ministers.

**Ms de Gruchy**—The board is appointed by me after the shareholder ministers choose those who will come on to the board. The advisory board will become part of AGS's corporate governance structure. The corporate governance arrangements under which we operate state that the advisory board will meet at least quarterly, and we will incorporate those meetings into our corporate governance.

**Senator LUDWIG**—Who will fund it—your department?

**Ms de Gruchy**—It will be fully funded by AGS.

**Senator LUDWIG**—Have you estimated how much that will cost? Will members be paid? How have these things been determined? Have you utilised any guidelines? Perhaps you could take that question on notice if you do not have the information available. I want to know what arrangements have been made regarding the cost of the board and payment of individual board members. Has the board met yet?

**Ms de Gruchy**—The advisory board members will meet for the first time on 5 December. Non-executive members of the board will be paid by AGS, so there will be no involvement by the department in relation to arrangements concerning the board or payment of fees to board members. That will be part of AGS's corporate governance.

**Senator LUDWIG**—What is the purpose of the advisory board?

**Ms de Gruchy**—The board's role is to advise me about certain aspects of AGS's strategy and operations. Each of the non-executive members comes to the board with a range of skills and experience. The concept of the board is that those members will provide me with the benefit of those skills and experience as AGS determines its strategic direction, reviews its financial performance and moves through the change processes that have been in place for some time now and will continue as AGS moves into the new Commonwealth legal service regime.



**Senator LUDWIG**—Will AGS provide secretariat support?

**Ms de Gruchy**—That is correct.

**Senator LUDWIG**—Is there a budget for that or an associated cost that you have set aside from the AGS budget?

**Ms de Gruchy**—Yes.

**Senator LUDWIG**—How much is that?

**Ms de Gruchy**—As to our normal budgeting, the advice of the Remuneration Tribunal was obtained in relation to fees payable to the non-executive members of the board. We have factored that sum into our operating costs and we have also factored in travel costs and other costs associated with running an advisory board.

**Senator LUDWIG**—Can you give me a breakdown of those costs at some point? Perhaps we can ask you that question in 12 months. Do you know whether it will cost \$1 million, \$500,000 or \$100,000 to run?

**Mr Riggs**—There is a slight difficulty in that it is not crystal clear how much of the internal commercial arrangements of AGS should be on the public record. In relation to the advisory board, I expect the full cost to AGS to be closest to your last figure—namely, \$100,000—rather than to the higher figures that you indicated.

**Senator LUDWIG**—I knew that you would leap in when you thought that you were breaching commercial-in-confidence, but I thought I would ask the question anyway. I understand that you announced an AGS profit of about \$8.5 million for 1999-2000. Did you have a forecast of profit expectations? If so, was that sum above or below expectations? Was that the sort of figure you were aiming at or was it a surprise?

**Ms de Gruchy**—As part of our corporate planning processes we estimate, based on what our understanding of the market and our business is at the time we do our corporate planning, what we will be looking for. We did exceed our forecast profit in relation to last year. To some degree you might say that that is a surprise but there are elements in the market that are not precisely quantified. For example, to what extent would competition in the market mean that AGS would either receive work or lose work? Things like that are not precisely quantified. Yes, we were pleasantly surprised with the performance but obviously we put in a considerable amount of effort in order to achieve the profit result that we did. A number of elements in relation to the profit figure relate to various things that occurred during the year so we have a higher profit result than we originally forecast.

**Senator LUDWIG**—What was your forecast? Perhaps you could take that on notice?

**Mr Riggs**—There is no published figure available for that. We set a different range of numbers for different purposes because our circumstances change throughout the year. It is a very dynamic business. Our principal feature is that we seek to develop an ability to serve the Commonwealth market. The extent to which that Commonwealth market is there will vary from time to time. Therefore, in a sense, any particular set of forecasts one makes is very unsure. I could not give you a single answer to that question.

**Ms de Gruchy**—The structure of government business enterprises and their monitoring by shareholder ministers is through a corporate planning process. We are required to submit a corporate plan to our shareholder ministers. There is a consultation process in relation to that corporate plan and then we are required to report against that on a quarterly basis. All of the corporate planning and quarterly reporting are not, in a sense, on the public record. It is a

function of the oversight of GBEs, and our public reporting comes through our annual reporting and our appearance before this committee.

**Senator LUDWIG**—Thank you. I will leave it at that.

**CHAIR**—The committee will now proceed to the Office of the Director of Public Prosecutions.

[11.49 a.m.]

### **Office of the Director of Public Prosecutions**

**CHAIR**—I welcome the officers of the Office of Director of Public Prosecutions.

**Senator McKIERNAN**—When was the Office of the DPP first contacted in relation to the Reith telecard matter? Who made that contact and what was the nature of the contact?

**Mr Bugg**—I could not give you a precise answer, but it was probably some time before the publication of detail about the matter in the *Canberra Times* on, I think, Tuesday, 10 October. My office had been involved in a consideration of the investigative material provided to it for at least a fortnight before that date. We were aware of the investigation some time before that date. But to give you a precise answer, I would need to obviously take that on notice.

**Senator McKIERNAN**—Do you know on which date a brief was provided by the Australian Federal Police for formal consideration by your office on this matter?

**Mr Bugg**—I would have to take that on notice as well. What I can say probably, from where that question is leading, is that my office had considered the content of the brief provided and had prepared a response to that brief in draft form in the week preceding the publication I just spoke about, which was the week ending Friday, 6 October. That was when a first draft of the response to the material was prepared. The final draft was settled on Monday, 9 October.

**Senator McKIERNAN**—That was the final draft of your consideration on the matter?

**Mr Bugg**—And response to the AFP.

**Senator McKIERNAN**—Could you give us the date when your office first briefed the Attorney-General on the DPP's decision not to lay charges against Mr Reith, Mr Paul Reith or any other person in relation to the misuse of the telecard?

**Mr Bugg**—Not exactly, but obviously at a time approximating the finalisation of our response on the material we had received at that stage, which was 9 October, sometime in that week. I would need to check that.

**Senator McKIERNAN**—How was the Attorney briefed? What was the manner of the briefing? Was it in writing? Was it in person?

**Mr Bugg**—A combination of both, in the sense that there was notification. I would need to check that in terms of the form of documentation, but certainly there was a briefing.

**Senator McKIERNAN**—Was it a personal briefing with documentation?

**Mr Bugg**—There was documentation made available. I would need, as I said, to check that. I would rather not provide an inaccurate response to you. I would rather give you a formal response to that, if that is acceptable.

**Senator McKIERNAN**—If that is what you are going to do, it will have to be acceptable. But I am surprised that you are not in a position to confirm whether or not it was a briefing in person.

**Mr Bugg**—I certainly did not formally meet with the Attorney-General to brief him—that is, in person—because in that week I was not in Canberra. I was in Hobart on the Monday and Tuesday, and in Sydney, I think, on the Wednesday, Thursday and Friday. I would need to check my diary on that, but certainly there was not a face-to-face briefing.

**Senator McKIERNAN**—By you?

**Mr Bugg**—By me, yes.

**Senator McKIERNAN**—What about senior officers of your office?

**Mr Bugg**—As I said, I need to formally consider that and respond to it.

**Senator McKIERNAN**—In responding, could you advise, if indeed a personal briefing did take place, who else was present at that briefing?

**Mr Bugg**—Certainly.

**Senator McKIERNAN**—Did the Office of the DPP have any contact with Minister Reith in the period prior to the decision of the DPP not to proceed with any charges against the minister or his son?

**Mr Bugg**—Apart from any contact with the minister—if there was any, and I would doubt it; I cannot think of any—in terms of other matters that may have brought either his office or mine into contact, no. Certainly in relation to this matter there was no contact at all.

**Senator McKIERNAN**—On 12 October 2000 a media statement was issued by the Director of Public Prosecutions which begins:

It is not the usual practice of my Office to publicise its reasons for not prosecuting matters. There are, however, on this occasion good reasons for doing so.

What were those reasons?

**Mr Bugg**—There was obviously quite a lot of public interest in the matter. I suppose the proximity of the determination of my office on the material we had been provided with to not prosecute was a matter which had been placed in the public domain, and I considered it appropriate in the circumstances of the extent of public interest in this matter to publish brief reasons as to why the decision to not prosecute had been made. Unfortunately, because of the timing of it there was an assumption by some people that my consideration of the matter and the determination to not prosecute followed the publication of the *Canberra Times* on the morning of Tuesday the 10th. But that was not the case. I had been considering the matter in the week before and obviously on the day before the publication.

**Senator McKIERNAN**—Was there any discussion between the Office of the Commonwealth Director of Public Prosecutions and the Attorney-General, his office or his department prior to the release of the media statement? If there was, who was that discussion with?

**Mr Bugg**—As I said to you a moment ago, I was in Sydney on that Thursday and Friday, and the release date I think was on the Thursday, if the 12th is the Thursday.

**Senator McKIERNAN**—My birthday was on the 11th, and I cannot even remember that.

**Mr Bugg**—We share the same birthday, then, because that is how I am able to remember these things. I left home on my birthday to be in Sydney.

**Senator McKIERNAN**—The 11th was a Wednesday, I think.

**Mr Bugg**—In any event, having digressed for the moment, I think the 12th is the Thursday. Certainly I did have some discussion with a member of the Attorney-General's staff indicating that I had proposed to make some brief statement about it, just to clarify for the purposes of public interest what my decision had been. But whether there was any discussion between staff of the Attorney-General's office—or the Attorney, for that matter—and people in my head office in Canberra on that day I would need, once again, to check. Before coming here today I did not go into the sort of detail required to answer that.

**Senator McKIERNAN**—Would you undertake to do that on notice and come back to the committee on it?

**Mr Bugg**—Yes, I would.

**Senator McKIERNAN**—Thank you very much. Did the Attorney-General issue the Office of the Commonwealth Director of Public Prosecutions any directions—be they formal or informal—in respect of this matter? If there were any directions issued, what was the nature of the directions?

**Mr Bugg**—No.

**Senator McKIERNAN**—Is there any impediment to the DPP releasing a full statement of reasons for the decision to not prosecute the minister or his son?

**Mr Bugg**—There are good reasons for not going into every aspect of the consideration of a matter by my office, particularly where there is a decision to not prosecute. If there is a decision to prosecute, obviously the detail of the consideration of the evidentiary material would ultimately come out in the subsequent prosecution process in court. But if there is a decision to not prosecute—and I am sure we could all understand this—and if things are not associated, as in this case, there are good reasons for not publishing all that material. In this case the precise reasons for not proceeding have been published. I think there has been some comment publicly about the brevity of the explanation, but that was the simple explanation for it. As I say, it is an unusual circumstance to publish reasons for not proceeding. It is usually done in a situation where there is high public interest in a matter, as there is in this. So that has occurred and the reasons have been spelt out. I do not believe there is any more detail that needs to be given to explain those reasons.

**Senator McKIERNAN**—Were there any directions given to you or your office not to release those reasons or concerning the brevity of those reasons?

**Mr Bugg**—No, the preparation of that statement was something which I undertook. There was no discussion with the Attorney or his staff about what should or should not be said. I had determined that it was necessary in the circumstances of this case to make that brief statement.

**Senator McKIERNAN**—Thank you.

**Senator CARR**—I am not looking for the names of particular referrals, but can you confirm that you have had referrals from the department of immigration and the department of education for briefs in relation to international education providers?

**Mr Bugg**—The simple answer is that I do not know. If we have, I would need to make inquiries.

**Senator CARR**—It is my understanding that you have had a number of referrals. My interest in this matter concerns the time it normally takes for the processing of a referral from

another Commonwealth agency. As a general rule, do you have a set of guidelines in relation to the speed with which you process applications or briefs for prosecution?

**Mr Bugg**—We have general performance indicators which are published in the annual report. They are readily available—the report for last year has been tabled. But, firstly, as to the specifics of the nature that you are inquiring about, I do not know of any matters that have been referred and, secondly, as to the time of processing, if there is some suggestion that there has been a delay in processing matters, I am unaware of any complaint or issue that has been raised in relation to those specific matters.

**Senator CARR**—Perhaps you could take these questions on notice. I do not want to jeopardise any possible prosecution, so there is some restraint on how I can identify these matters, but I understand that a number of briefs have been forwarded to you from DIMA and DETYA in relation to international education providers. Can you confirm the dates on which briefs have been forwarded to you; how many remain outstanding in terms of a response from the DPP; and, of those that are outstanding, how long before we are likely to see a decision from the DPP concerning those briefs?

**Mr Bugg**—Within the scope of those three questions, are you asking for particulars of what each brief or matter is about?

**Senator CARR**—I do not necessarily want to identify the plaintiff.

**Mr Bugg**—Do you mean the defendant?

**Senator CARR**—Yes, the defendant, or whatever you call them. I do not necessarily want to identify the particular enterprise—I believe I know the names of those—but I would like to know why there is a delay. My information is that some of these matters have been with you for some time.

**Mr Bugg**—Can you identify the region in which these issues have arisen, because that would certainly simplify—

**Senator CARR**—It is in relation to matters relating to ESOS—Education Services for Overseas Students.

**Mr Bugg**—Yes. But which region are we talking about?

**Senator CARR**—New South Wales and Victoria.

**Mr Bugg**—I think you understand the sensitivity of disclosure about operational matters, but within that scope I will endeavour to—

**Senator CARR**—I am highly conscious of that. But I think that, if it is being said that matters are being held up in your office, I would like to ascertain whether or not that is a statement of fact and, if it is the case, what reasons there might be for a delay in at least a response at this stage.

**Mr Bugg**—If there are matters about which I can respond—and they do not transgress this rather difficult position that we get into where matters are still operational in that sense—then I will endeavour to meet your inquiry.

**Senator CARR**—Thank you very much.

**Senator LUDWIG**—I have a question that follows up on Senator McKiernan's line of questioning. I thought Senator Carr was following that line, too, but unfortunately he was not.

In relation to the last question that Senator McKiernan asked you about further information that the DPP could put out, is it your intention to provide any further information to the public in relation to this issue, or are you saying that it was an unusual practice to provide reasons in the first instance and that no further information will be forthcoming, or is there an intention to provide more expansive reasoning?

**Mr Bugg**—No, there is not. Can I perhaps just clarify the state of the position: you will recall, I am sure, that further investigation was being undertaken, which was announced by the Commissioner of the AFP. Obviously, if after receipt of the material following that investigation it becomes necessary to make some further statement, then, if I consider it necessary in the public interest to do so, I will. That is a qualification to the no response.

**Senator LUDWIG**—That was in fact one of my next questions. As far as you are aware, at this point in time, the matter is concluded?

**Mr Bugg**—Certainly insofar as the material that was provided to me at the time, our report was concluded in early October. If there is any further need to examine material provided to me as a result of this ongoing investigation, then obviously I would see it as a continuation of this matter.

**Senator LUDWIG**—So there has been nothing put before you in respect of that ongoing investigation?

**Mr Bugg**—No; unless it has come through the front door whilst I have been here, but I doubt it. I would have been notified if it had.

**CHAIR**—Mr Bugg, I thank you and your officers very much for joining us this morning and assisting the committee.

[12.09 p.m.]

#### **Federal Magistrates Service**

**CHAIR**—On behalf of the committee, I welcome Mr Peter May, Chief Executive Officer of the Federal Magistrates Service, in his first formal appearance before the committee, I believe.

**Senator McKIERNAN**—Welcome. I was browsing through the Internet last night and picked up your web page. Obviously we have not had an annual report from you because there is no requirement for one until next year. But I did pick up this information: in the first year in which the service will operate, it will be as a prescribed agency under the Financial Management and Accountability Act. Some information in relation to the establishment of the service will be contained in the annual report of the A-G's Department for the period 30 June. There are certainly references to it but not what one could consider to be, in part, a report on the establishment of the service. I think there are about five references to the Magistrates Service in the department's annual report, but there is no combined account of the activities or the expenditures of the service during that period. Further, in appendix 2, on reporting arrangements for other elements of the Attorney-General's Department, we are told there that the service will report separately under point (b).

**Mr May**—Perhaps I could comment briefly, and the department might want to pick up on some aspects of that matter. The Federal Magistrates Service was established by legislation on 23 December 1999. The act provided that proceedings could be commenced in the court from

23 June 2000. So we operated for about five working days during the financial year. We have provided a report for the period from 23 December 1999 to 30 June 2000, and I had understood that the tabling copies of that report were provided to the committee. If that is not the case, it may be that we have to follow that up. So there is a separate report for the Federal Magistrates Service. Under the provisions of the Federal Magistrates Act, we have a statutory reporting requirement in our legislation. That report is not a report for the purposes of the Financial Management and Accountability Act because we were not a prescribed agency under that FMA Act until 1 July 2000.

The department had an output within its framework against which it has reported. My recollection is that that output was to establish the Federal Magistrates Service. It has reported, I understand, in its report on the expenditures which were part of the divisional expenditures of the Civil Justice Division within the department and has reported on the work that it has done in helping us to establish the Federal Magistrates Service. But perhaps the departmental officers might want to add something at this point.

**Ms Leigh**—I agree with what Mr May is saying. I do not have anything to add to that general comment.

**Senator McKIERNAN**—In regard to the report from December 1999 to June 2000 that you prepared, I am not aware of it. That is not to say it has not gone into the parliament or somewhere else, but I am certainly not aware of it.

**Mr May**—I could make some inquiries later of the Table Office and perhaps they can communicate to the committee's secretariat what has happened with that report. But I am certainly aware that it has been provided to the Table Office at some stage in the last two to three weeks.

**CHAIR**—Thank you, Mr May. In the volume of material, neither Senator McKiernan nor I have seen it. If you could check that, it would be helpful.

**Mr May**—Yes. The report is basically a short summary of the work that was done to establish the Federal Magistrates Service. In some respects, it attempts to predict how we will operate in some of the areas, taking that view from 30 June. So it is a bit of a potted history of the establishment of a small agency and our predictions about how the court will operate and where it will operate during the next financial year. It provides some very brief statistics on the filings within the court in those five days of operation. But really the story of the FMS must wait until our first annual report, which will be next financial year.

**Senator McKIERNAN**—I appreciate that and understand that. Nonetheless, there was quite a deal of activity which this committee was involved in. We looked at the bill to establish the service and there was quite a deal of what could be described at times as frenetic activity in the establishment of the service.

**Mr May**—None of that is in the report that we have provided. We have taken our starting point as the commencement of the legislation and then on.

**Senator McKIERNAN**—But there were personnel employed and salaries being paid—

**Mr May**—Indeed, I can tell you about that.

**Senator McKIERNAN**—We are making some inquiries to see where that summary is. It is quite possible that it is there and it has just escaped the notice of members of the committee. We are making inquiries into that at the moment. Moving to the present, rather than the past, are you in a position to provide the committee with a copy of the budget prepared for the service for the financial year which commenced on 1 July this year?

**Mr May**—No, I am not in a position to provide a copy of that budget to the committee today.

**Senator McKIERNAN**—Why not?

**Mr May**—I do not have it with me.

**Senator McKIERNAN**—Is there such a budget?

**Mr May**—There is a document that was prepared in the department which estimated a range of expenditures and receipts for this financial year and the two successive financial years. To some extent, as my former colleagues from the AGS said before, that is a moveable feast. As we implement the FMS, some of the expenditures that have been predicted in establishing the court are not eventuating and other expenditures are eventuating. If it will help the committee, I can provide in due course and take on notice the provision of a broad budget for the FMS for the financial year.

**Senator McKIERNAN**—Does that budget, from memory—I appreciate you have not got it here, so I am not asking a direct question—contain detail of the amounts that are notionally allocated for judicial salaries?

**Mr May**—Yes, they are fairly easy to predict. At the moment the remuneration paid to a federal magistrate as established by the Remuneration Tribunal, if my recollection is correct, is \$152,900. It was \$147,000 until 1 October and there is a determination currently before the parliament, I believe, which will raise that to \$152,900. There are now 13 federal magistrates appointed, including the Chief Federal Magistrate, whose remuneration is slightly higher. It is a fairly simple exercise to extrapolate those figures and come up with the amount that salaries for federal magistrates will cost us during the next year, assuming that no more are appointed. But it is predicted that at least three more will be appointed during the first year of the existence of the court and there may be others, depending on government decisions.

**Senator McKIERNAN**—I was going to ask for details of the allocations for staff salaries of the service, that is, other than judicial salaries. I was going to ask about the recurrent administrative costs of the service and, again, the one-off establishment costs. Obviously you do not have that material.

**Mr May**—I can tell you in broad terms what has happened there.

**Senator McKIERNAN**—That would be helpful.

**Mr May**—The department's original budgeting assumed that we would have certain numbers of staff performing certain functions over a full year. To some extent that has not occurred. The establishment of the court, particularly the administration of the court, did not happen automatically on 1 July, and I have certainly taken an approach that brings staff on in a fairly cautious manner, ensuring that we get the work done but ensuring that we have the right staff to do the job. I suspect that by the end of the year, because those expenditures have been delayed, we will not in fact spend all of the money that had originally been intended.

Our administrative expenditure is relatively small. We have had to purchase items such as our computer system, the hardware. But a lot of the support that a normal department, say, the Federal Court or the Family Court, have in their budgets remains in their budgets because the arrangements that have been made for our establishment rely on us using the existing Commonwealth resources that are in the Federal Court or the Family Court and over time determining what that usage is and adjusting the expenditure or the appropriations between the three agencies maybe at the end of a period, which could be two financial years away. What we are doing at the moment is measuring the use that we make of resources of the



Federal Court and the Family Court. I expect that that usage will be shown in the accounts of both the Federal Magistrates Service and the other courts in the next year and we will then have a better picture of the cost of running the Federal Magistrates Service, if I can put it that way.

**Senator McKIERNAN**—We look forward to exploring that further with you. Thank you for that information. The advice we have from the Senate Table Office is that they have not received anything from the Federal Magistrates Service. They will need more information.

**Mr May**—I will follow that up with the Table Office.

**Senator McKIERNAN**—How does the service propose to provide primary dispute resolution services?

**Mr May**—Some of our primary dispute resolution services will come from the existing providers in the Family Court and the Federal Court. At present we are making significant use of the mediation services in the Family Court that have previously been mentioned and we also have some of the mediation and other services provided by district registrars and registrars in the Federal Court provided in the general federal law jurisdiction of our court. That is an example of using the existing Commonwealth resources. We will also make use of the reg 8 providers that were previously mentioned. They are providers in the general community who provide specialist services, such as the provision of family reports. And we will do that on the same basis as the Family Court does, with fees being paid to those people.

In addition, we have recently appointed a PDR coordinator to the court. That person is Susan Cibau, who has come to the court from the Queensland Legal Aid Commission, where she has had considerable experience dealing with matters such as the case conferencing or dispute conferencing program that is run by the Queensland Legal Aid Commission. Her principal task during the next six months will be the conduct of a tender process or a process that will result in us having a range of agreements with community providers for the provision of some of our PDR requirements. It is too early to say just where and how those will be provided. That market testing is just about to commence but we are looking to have a significant part of our PDR requirements provided from community providers.

**Senator McKIERNAN**—How are you budgeting for that?

**Mr May**—In our very initial appropriation there was \$200,000 in the first year, \$400,000 in the second year, and \$600,000 in the third year to provide some money specifically allocated for PDR services. The first \$200,000 was rolled over, so we had basically \$1.2 million to spend in the first two years on the purchase of PDR services. We will need to go back to government if a need is identified for further funds and consider that with the Attorney-General's Department and, indeed, the Attorney.

**Senator McKIERNAN**—Have you established any particular relationship between the service and non-court counselling organisations or are you accessing their services through the Family Court?

**Mr May**—At the moment we do not have our own arrangements with the non-court agencies. We pick up those arrangements and we pick up the arrangements that the Family Court has around the country. We are yet to make our own arrangements. One of the things we want to be very careful about in doing that is that we do not cut across what the Family Court is doing with the same agencies. I suspect you will see a coordinated approach by the Family Court and the Federal Magistrates Service in some of their approaches to PDR. I

cannot say that in all cases we will work with the court because in some cases we will have different needs.

**Senator McKIERNAN**—Do the arrangements, particularly with regard to primary dispute resolution, differ from agency to agency or registrar to registrar?

**Mr May**—It is too early to say that. Do you mean community agencies or do you mean the Family Court and FMS?

**Senator McKIERNAN**—I am particularly focusing on the community organisations.

**Mr May**—I suspect that we will go to all community agencies who are providing similar services in a similar way, but I also suspect that we will find that some community agencies will have a capacity to provide some services and not others. For example, there will be some community agencies that can provide basic family counselling but will not have the skills to provide family reports.

**Senator McKIERNAN**—You raise counselling specifically: does the service have any direct arrangements with any counselling services throughout the country?

**Mr May**—None, other than the Family Court, at present.

**Senator McKIERNAN**—You are entirely using the Family Court links at this stage?

**Mr May**—Yes.

**Senator McKIERNAN**—Thank you. With regard to the draft budget you said you had prepared, I think I asked you to provide that to the committee.

**Mr May**—Yes, we will take that on notice.

**Senator McKIERNAN**—Thank you. How is the sharing of resources between the service and the courts and tribunals going? Are there any problems with that sharing arrangement?

**Mr May**—It is going very well. The Federal Court and the Family Court have been working with us to develop memoranda of understanding. Both of the those memoranda are at a stage where I can fairly confidently say they are close to finality. I hope we will have both of them in a final form by the end of this year. We are, however, operating against the principles that are in the drafts, and to some extent that has taken away the pressure to sign documents which only, in a sense, state for the world to know how we are operating together. We have received considerable assistance from the Federal Court and the Family Court in establishing our operations in all places. I should note that we have also received assistance from the Administrative Appeals Tribunal and considerable assistance from the Attorney-General's Department in doing that work.

**Senator McKIERNAN**—Are libraries still being shared?

**Mr May**—The libraries are provided by the Federal Court and the Family Court and we have access to each of their libraries under the sharing arrangements. We also make considerable use of the librarians and the skills that they have to support our federal magistrates.

**Senator McKIERNAN**—Moving to more general questions, which circuits have so far been developed for the Federal Magistrates Service?

**Mr May**—At present the circuit arrangements for next year for Victoria and South Australia have been finalised in cooperation with the Family Court. I should say that we are not looking at this stage at circuit arrangements in the general federal law jurisdiction, so I will limit my comments to the family law jurisdiction. We are this week and the next working

with the Family Court on the circuit arrangements for New South Wales and Queensland. The new federal magistrate for Tasmania commences in the first week in December. We will then look at arrangements for Tasmania, although it is very clear already that the federal magistrate in Tasmania will be sitting in Launceston, in Hobart and to some extent in the north-west of the state but it has not been determined where or when. The Northern Territory is being serviced by circuits that I understand have been set for the next year by the federal magistrate currently located in Townsville, although it is possible that another federal magistrate will go to Darwin from time to time. We do not have operations in Western Australia in the family law jurisdiction.

**Senator McKIERNAN**—If the minister were here, she would accuse me of being parochial or provincial again, but I am nonetheless going to ask questions about Western Australia. I appreciate what you have just said about family law in Western Australia. There will be a Federal Magistrates Service provided to Western Australia. What can you tell us about the detail of that?

**Mr May**—At present it is proposed that a federal magistrate will go to Perth in the general federal law jurisdiction once every two months. I did issue a press release the other day that said the first date was going to be 29 January, but I have subsequently been advised that it is now going to be a date in February. I am afraid that I cannot tell you today what that date is.

**Senator McKIERNAN**—Don't make it the 29th!

**Mr May**—No.

**Senator McKIERNAN**—But there will be no resident magistrate based in Perth?

**Mr May**—At this stage there are no proposals to base a federal magistrate in Perth.

**Senator McKIERNAN**—Did you provide me with the detail of when the service would first sit in the Northern Territory?

**Mr May**—The Federal Magistrates Service has already sat in the Northern Territory. The federal magistrate from Townsville travelled to the Northern Territory. I cannot tell you what the next circuit date is there. My recollection is that it is in either January or February.

**Senator McKIERNAN**—Has a pattern for sittings been established yet for Launceston, Hobart and other parts of Tasmania?

**Mr May**—The pattern has not been established but, as I mentioned before, the likelihood is that the federal magistrate will sit in Hobart, Launceston and other places, and on some occasions the federal magistrate will sit on the mainland. At present I expect that the federal magistrate will sit at least one week in every four weeks in Hobart. He will be based in Launceston and will be in either Launceston or the northern part of the state for at least two weeks of each four-week period. He may be used on the mainland and in other places or take leave during the balance of the year.

**Senator McKIERNAN**—When are additional magistrates to be appointed in Brisbane and Melbourne?

**Mr May**—That is not a matter that I can comment on. That is a matter for the department and the Attorney-General.

**Senator McKIERNAN**—Do you know the reason for the delay, Mr Cornall?

**Mr Cornall**—I am unable to answer the question, Senator.

**Senator McKIERNAN**—Are there any other appointments outstanding?

**Mr May**—At the time of the commencement of the court, the Attorney-General announced that there were expected to be 16 appointments during the first year of operation of the court, and the Attorney-General has recently announced that other appointments are expected soon. I think they were the words he used.

**Senator McKIERNAN**—How many have been appointed so far?

**Mr May**—Thirteen, including the Chief Federal Magistrate, one of whom takes up his appointment in the first week of December, but he has been formally announced.

**Senator McKIERNAN**—Are you in a position to advise the committee how many applications have been filed in the service at each of the registries at this time?

**Mr May**—I am not in a position to give you the exact numbers, but applications have been filed in all the registries that we work through. We have family law registries wherever the Family Court has registries—although there is a twist in that some registries, such as Sydney and, until recently, Dandenong, took family law applications only in divorce matters. We are about to commence filings in Dandenong in all matters, including divorce and ancillary matters. The Family Court also takes filings in its regional registries—or what it calls its sub-registries—in the northern area. There are no Federal Magistrates Service filings in those registries so people in Lismore, for example, must go to a filing registry—from memory, the nearest one is in Newcastle. They can do that by post.

**Senator McKIERNAN**—Do you know how many cases have been filed and resolved to date?

**Mr May**—It is probably best if I take that question on notice and give you the exact figures. It might be helpful if you give me a time frame.

**Senator McKIERNAN**—It is 23 June to 22 November 2000.

**Mr May**—It might be easier to close at the end of the month—perhaps 30 November?

**Senator McKIERNAN**—I am seeking indicative measurements of how the service has operated to date.

**Mr May**—Indicatively, in the family law jurisdiction we are taking a little more than 10 per cent of the form 7 and form 8 work that relates to children or property. We are getting filings in about 50 per cent of all divorces, but that figure needs to be examined having regard to the decision that those filings that attract no fee because fees are waived or there is no fee payable because a person is on a pension, for example, will be made in the Family Court. Our filings are those on which a fee has been paid in nearly every case. We are getting about 50 per cent of those, and I expect that figure to increase to about 60 per cent assuming the level of waivers remains about the same.

**Senator McKIERNAN**—We heard earlier from officers of the Federal Court that the system seems to be working reasonably well at the registries: there is no confusion on the part of clients as to which court or service they want to access. Are you happy with the way that things have been progressing to date?

**Mr May**—The arrangements at the registry level are working very well. We have the occasional little blip when the Telstra operators send inquiries about motor vehicle fines and the like to the Federal Magistrates Court because they pick the first Magistrates Court in the directory. But even those problems are being worked through. To return to your earlier question, the arrangements with the registries are working exceptionally well. At an administrative level, we are having no difficulties at all.

**Senator McKIERNAN**—My final question is about the number of staff employed and the breakdown of the types of people currently employed by the service. When do you propose to reach optimal employment? When will you be fully operational?

**Mr May**—It might be easier if I table this document, which is a simple summary of the staff and their position levels as at 22 November. The brief story is that, including the new Launceston federal magistrate, there are 13 federal magistrates. There are 12 staff who do not work directly with the federal magistrates and 13 staff who work with the federal magistrates. It is likely that, when we reach full strength, we will have 10 or 12 additional administrative staff within the FMS. It will be a very small agency with no more than about 60 staff, including the associates to the federal magistrates. All of our registry services will continue to be provided and the support for federal magistrates within registries will come from the Family Court or the Federal Court.

**Senator McKIERNAN**—And you would reach full levels after the appointment of those three outstanding magistrates, I would assume.

**Mr May**—The appointment of another three federal magistrates will simply add another three associates. The administrative staff of the court in Melbourne will not increase in response to the appointment of magistrates, but more in response to an increase in the workload of the federal magistrates who are there. That workload is increasing almost day by day as the legal profession in particular becomes more aware of the availability and capacity of the Federal Magistrates Service to deal with their matters and as they develop a greater confidence to come to the Federal Magistrates Service. So what we have seen is quite a steady increase in the workload of the court over the last five months, and I would expect that to continue during the whole of this financial year.

**Senator McKIERNAN**—Thank you for that. There is one other question. When the bill was before the committee there was quite a deal of emphasis on the fact that this new service would have a regional focus. It is my recall—and I do not have the precise appointments available to me—that only a minority of the magistrates are actually based in a regional area; I recall Townsville, Launceston and Newcastle. Are any other magistrates appointed to a different regional centre than those three that I have mentioned?

**Mr May**—They are the federal magistrates who are located in non-capital cities, if you assume that the Parramatta federal magistrates are part of Sydney, although—

**CHAIR**—One usually does, Mr May.

**Senator McKIERNAN**—Are you are arguing differently?

**CHAIR**—I think it would be a surprise to the magistrates to learn that!

**Mr May**—We certainly make the distinction between our federal magistrates who are at Parramatta and those who are in Sydney. There is quite a difference—not in them but in the workload and the way the workload arises.

**CHAIR**—Of course, Parramatta is a unique place, Mr May.

**Mr May**—In looking at where federal magistrates might be located, I would not assume—again, it will be a matter for government, not for me—that federal magistrates will be physically located in what I might describe as being ‘provincial’ towns. They need to be located where there is a sufficient workload. My understanding of the announcements that were made earlier in the year is that federal magistrates would circuit widely within regional areas and would make considerable use of videoconferencing and other technologies to reach regional areas. We are certainly working very hard to ensure that we make use of the

videoconferencing capacities that legal aid commissions in some states have established and the other facilities that are available to get to regional areas, plus organising the circuits that have already been mentioned as either having been established or in the process of being established.

**Senator McKIERNAN**—I do not mean this to be an unfair question to you, but there were three outstanding magistrates to be appointed, and I think one was for Brisbane and one was for Melbourne. Is there any possibility that a third would be located in a regional centre, not a metropolitan centre?

**Mr May**—The Attorney-General's original announcement suggested where the federal magistrates would be located. If that agenda is followed, the remaining appointments are one in Brisbane and two in Melbourne.

**Senator McKIERNAN**—Thank you very much.

**CHAIR**—Mr May, thank you very much for your assistance in the committee's consideration of the Federal Magistrates Service.

**Mr May**—Thank you. I table that document that I referred to.

**CHAIR**—Thank you.

[12.45 p.m.]

#### **Australian Customs Service**

**CHAIR**—The committee will now move to consideration of supplementary estimates for the Australian Customs Service.

**Senator COONAN**—I want to ask a few questions about the Tourist Refund Scheme, which is in output 1.4. I note the estimated annual cost for output 1.4 is \$123.963 million and the budget estimate is \$101.318 million. What was the set-up cost of the Tourist Refund Scheme component of output 1.4?

**Mr Woodward**—I will give the appropriation and what actually happened. The government appropriation was a total of \$13 million. There were some initial delays in expenditure of some of those amounts. The actual amounts were \$0.66 million for employee expenses, \$0.83 million for supplier expenses, \$0.002 million for depreciation and the rest was capital—I think there is an error in one of the figures I have here—leading to a total of \$1.69 million. There is additional expenditure, obviously, in 2000-01. The expenses we expect during 2000-01 are \$9 million for employee expenses, \$3.6 million for supplier expenses and \$2 million for capital—a total of \$15.2 million.

**Senator COONAN**—That is for the operating cost.

**Mr Woodward**—They are the expenses. I am using the new accrual terminology.

**Senator COONAN**—So is there a different figure for the annual operating cost?

**Mr Woodward**—You are using the former terminology.

**Senator COONAN**—Yes.

**Mr Woodward**—I am using accrual terminology. As close as I can get, what I would put under the heading of 'expenses' would pick that up, with the exception of capital, because you have to extract the capital figures.

**Senator COONAN**—Yes, I follow that. Under the heading 'Departmental', item 2 states:

Sales of goods and services increased significantly due to funding for the introduction of ANTS and the TRS being treated under purchaser/provider arrangements from the ATO—

What is the TRS budget allocation for sales of goods and services?

**Mr Woodward**—The figure we actually got was an all-up figure of \$43 million, I think, in the first year, dropping down to about \$37 million for the subsequent years. The precise way in which we would actually go about expenditure, obviously, had to be left very much for us to work out.

**Senator COONAN**—If you followed that through in a similar process, you would get the figure for the budget allocation for the Tourist Refund Scheme supplier expenses too. In other words, and I am now going to the notes at item 4: ‘Supplier expenses increased due to the cost implementation of ANTS and TRS.’

**Mr Woodward**—If I could just go back one little step to address what may be on your mind, what we did and how we did it was not determined by Customs. There were some operational aspects that were determined by Customs. They were not determined by our minister. The broad arrangements for the Tourist Refund Scheme were determined by the Treasurer. Obviously, we contributed to that process. We contributed with the Australian Taxation Office and the Treasury. But the decisions which underpin the way in which we operate—including relationships, whether or not we could contract out, and the small components which in the end were contracted out—were not decisions taken by us or by our minister.

**Senator COONAN**—You have said under item 3 and item 4 that two items ‘increased due to the cost implementation of ANTS and TRS’. One was for employees and one was for the cost implementation. Could you give me the figure for both of those? What is the budget allocation for the Tourist Refund Scheme for employees and what is the budget allocation for the TRS supplier expenses?

**Mr Woodward**—Yes, I can. It has just been confirmed that the figures that I read out are the figures that you are looking for.

**Senator COONAN**—Okay. As you just adverted to, the scheme is administered by Customs under an arrangement with the ATO rather than being outsourced, as it is in many other countries. What was the rationale behind Customs retaining administrative management of the scheme?

**Mr Woodward**—I think I have answered that, Senator. The decision on the framework of the administration was determined by the Treasurer. If you are really looking for the rationale as to what would be done in-house and what would be done by a contractor, I think that question would need to be directed to the Treasurer or Treasury. We were given a decision and we operated within that decision.

**Senator COONAN**—You did not ask why?

**Mr Woodward**—The Treasurer did not say anything to me.

**Senator COONAN**—And you did not ask?

**Senator Vanstone**—Even if he did, it is not our place to answer for the Treasurer’s decisions.

**Senator COONAN**—Minister, wouldn’t you be curious?

**Senator Vanstone**—I might rephrase that: it is not our prerogative.

**Senator COONAN**—Not even if you were curious, Minister?

**Senator Vanstone**—I can assure you, Senator Coonan, I am curious about why ants run up trees before the rain and about a whole range of things in the world that fascinate me, but it is not my place to answer for them.

**CHAIR**—And it does kill the cat, Minister.

**Senator Vanstone**—Yes, I am told it does, actually.

**Senator COONAN**—Dealing with ANTS and the Tourist Refund Scheme for a moment, Customs is a fairly curious place to place it, isn't it? This is not a core business of Customs, wouldn't you think?

**Senator Vanstone**—I have just come back from overseas—

**Senator COONAN**—You think it is?

**Senator Vanstone**—I came out of Rome and there was a big sign saying 'Customs' and that is where you go—to a little booth. In Singapore, I do not know whether the formality is that way, but it certainly appears to be associated with it there. It certainly is in Rome.

**Senator COONAN**—There are several countries that do it very differently, of course. In the order of about 30 other countries run these schemes in different ways. I am curious to know what the rationale was for doing it this way here.

**Mr Woodward**—I cannot give you another answer, Senator. The decision on the broad parameters, the way in which it would operate, including the fact that in large part the work would be conducted by Customs officers, was determined not by me and not by the minister. We operate within the framework determined by the Treasurer.

**Senator Vanstone**—I suppose the Treasurer has confidence in Customs' capacity to ensure compliance.

**Senator COONAN**—And quite rightly so.

**Senator Vanstone**—They do it, for example, collecting it coming in. So it is not as though it is completely unexpected. Customs collect this cash coming in. So, on that basis, you might say, 'Well, why not have them do it going out?' I can see that there are other arguments too. As Mr Woodward has said, for an elucidation of why the Treasurer chose one path out of a number available, you would have to ask him.

**Senator COONAN**—You take the view for the purposes of this line of inquiry that Customs are, more or less, just doing what they have been allocated to do by the Treasurer and you have not asked why.

**Senator Vanstone**—We are not more or less doing it; we are doing it to the very best of our capacity.

**Senator COONAN**—But that is the view you are taking in answer to this committee.

**Senator Vanstone**—Whether we have asked why or not is irrelevant. The point is: the reasoning is that it is the prerogative of the Treasurer to answer that.

**Senator COONAN**—You do not want to elicit or give any other view to this committee?

**Senator Vanstone**—No.

**Senator COONAN**—Did you have a conversation with the Treasurer about it?

**Senator Vanstone**—No.



**Senator COONAN**—Under the Tourist Refund Scheme, tourists are able to obtain back the GST on goods purchased during their stay in Australia. Can you just remind us of the conditions for eligibility?

**Mr Woodward**—The broad conditions—and I am sure my experts will correct me if I am wrong—are: there has to be an expenditure of at least \$300 in one store, we require an aggregation of bills and it must be within 30 days of departure from Australia. They are the key ingredients. Again, those ingredients were not determined by us; the rules were set out in ANTS.

**Senator COONAN**—You are administering them, is what you are saying?

**Mr Woodward**—We administer what the government decides, yes.

**Senator COONAN**—You are not determining them; is that correct?

**Mr Woodward**—There is a requirement for verification obviously as well, yes.

**Senator COONAN**—That means, in effect, that you cannot carry anything in your bag; you would have to have it available to be sighted.

**Mr Woodward**—That is one of the requirements and, as you would undoubtedly be aware, it has been the cause of some unhappiness on the part of some not just tourists but Australians leaving Australia. But they are the rules that we are required to work within.

**Senator Vanstone**—They are not uncommon.

**Senator COONAN**—Since the introduction of the GST, what percentage of international travellers, as they leave, claim back the GST on purchases?

**Mr Woodward**—As at 3 November, we had received just under 66,000 claims. Of those, Australian residents claimed 26 per cent and obviously non-Australian residents claimed 74 per cent.

**Senator COONAN**—Is that a low take-up rate by international standards?

**Mr Woodward**—I think the unusual feature about our scheme is that it applies to Australians as well as to tourists. With all of the schemes of which I personally am aware that are the equivalent of the Tourist Refund Scheme or VAT, refunds apply only to tourists; but in Australia the scheme applies to Australian travellers as well.

**Senator COONAN**—Do these figures mainly cover departures from Sydney?

**Mr Woodward**—Sydney claims represented 57 per cent.

**Senator COONAN**—Do you have any figures on what effect the Olympics and Paralympics had on the volume of refunds, or is it too early to say?

**Mr Woodward**—I think it is very difficult to relate a figure to the Olympics. For us it was not just the Olympics and the Paralympics; there were surges that were occurring before the Olympics. It is a question of at what point do you say that this is Olympics related or not. We simply do not ask people, 'Were you out here for the purposes of the Olympics?'

**Senator COONAN**—What publicity, if any, is the scheme given? I mean by that, ongoing promotion and publicity.

**Mr Woodward**—We did not publicise the TRS in the same way as some other aspects of ANTS were publicised. We were given a budget.

**Senator COONAN**—Is there a budget allocation?

**Mr Woodward**—There is a budget, and I will pick that up in a second. Basically, we worked on the basis of pamphlets and obviously general briefing of the media but also specialist media involved in the retail trade—in other words, briefing the retail industry and those producing publications that would find their way to retailers.

**Senator COONAN**—How was that actually done?

**Mr Woodward**—It was done in a number of ways, including some of our people talking to the major retailers and obviously providing a lot of information and briefing on the part of our communications experts to journalists involved in getting material out to retailers.

**Senator COONAN**—Was that for the purposes of the implementation of the scheme, or is there some ongoing educational training of retailers?

**Mr Woodward**—It is ongoing. We are continuing to attempt to project the scheme more than has happened in the past and project some of the contacts we have had with some of the major retailers. I think David Jones is an example. They actually handled their own internal publicity—for their own reasons, obviously—in a somewhat different way following those briefings.

**Senator COONAN**—I am just trying to get a picture; I am not trying to be opaque. What does this promotion involve? Is it something that happens every month or every week? When you say people go out and talk to other people, what sort of program is it? Is it a point presentation or is it a documentary? How does it work?

**Mr Woodward**—You are probably getting into detail beyond my level of knowledge. If you want to go into detail on that, I can get one of our people up to explain it to you.

**Senator COONAN**—I would not want to do anything other than have you take it on notice, if you would be so kind. I am just interested in knowing how it works. Some people have said to me that it has not been very well promoted, and I am just trying to give the lie to that. Has the department given any consideration at all to how this can be better developed and what the multiplier effects might be if you can keep more tourist dollars in the country and all of those trickle-down effects that we hear about occur?

**Mr Woodward**—Yes, we do, remembering that there are other agencies involved in that as well. That is a broad policy issue as well as an issue for us. Our job is to ensure that those who have a legitimate right to a refund get their refund as well, as quickly and as accurately as possible. We do see our role as extending a little beyond that. But, as far as attempts to vigorously project the scheme are concerned, it has to be in the context of what the government wants to do in relation to projection, and that is obviously a matter for ministers.

**Senator COONAN**—Anyway, you are going to get me some details about what you are doing.

**Mr Woodward**—Yes.

**Senator COONAN**—Thank you. How safe is the scheme? There have been reports of a recent audit examination of what I understand to be a similar scheme—though there may indeed be differences—run by Revenue Canada, a government agency, which uncovered in the order of \$3.1 million in erroneous refunds over a two-year period. Are you aware of that? Can you tell us broadly—I do not mean in a detailed, operational sense—what the safeguards are in the system?

**Mr Woodward**—I will go back to the Canadian model. Our scheme is different, even down to its basics. We do provide refunds for Australians as well as tourists. In other words,

there is an expectation that something like half as many again would probably use it, percentage wise. But the scheme was put together, as I recall, involving financial experts, and I think our audit people were involved in devising the arrangements. I am not aware of any specific or major loopholes in the system that we now have.

Part of Customs work is on a risk management basis. If we wanted to devise a scheme that was 100 per cent certain, we would have queues out the door and 10 times as many staff as we currently do, so we do work on an assumption that there will be matters involving probably small amounts that might get through our system. There is also the possibility, as in any circumstance such as this, of very careful orchestration of fraud—that can also exist. But I think the system we have takes all the principles of risk management we have in mind. We have auditing arrangements and we will be doing an evaluation of the scheme as well, so I do not think there should be a simple extrapolation of what might have occurred in Canada to the Australian scene.

**Ms Batman**—I might be able to help; I have some information about Canada. The big difference between the scheme that we have and the Canadian scheme is that we require verification of export at the border. In fact, following that report that highlighted this issue in Canada, the Canadians are moving to set up a similar verification process at their airports in order to address this problem that the auditors found. I think that we have already taken that on board. In fact, the Canadian revenue authority came out as part of the design of the scheme, and one of their strong recommendations to us was that we ought to have a scheme where we verified at the point of export. They had found that allowing people to make a claim once they had left the country had led to a fair amount of leakage.

**Senator COONAN**—Thank you for that. I understand it was mooted at the time that the scheme was set up—this may be a question for the minister rather than for the officers—that it was not intended that Customs would be administering the system forever and a day, and that after the initial implementation of the GST the scheme would be reviewed. Is that correct? If so, is a review under way to evaluate the scheme as presently administered?

**Mr Woodward**—I did say the evaluation was part of the approach. I have a suspicion that what might be implicit in your question is the hope on the part of some of those who would prefer to have the scheme administered in a different way that they were the beneficiaries of an evaluation. I think the first thing that has to be done is that we have to get on and do the job as we have been required to. We evaluate it and, if changes are to be made, we will make the changes. If the government says it has got to be done in a fundamentally different way, then we will do that and move out.

**Senator COONAN**—This may also be a question for the minister. Has there been any evaluation at all carried out of the benefits of an outsourced refund tax system, including the potential savings to the Commonwealth, as opposed to keeping this as a cost of government activity?

**Mr Woodward**—I am absolutely sure that, in considering the options for the conduct of the scheme, full outsourcing or partial outsourcing was contemplated. I am absolutely confident of that. The decision of the Treasurer took into account the options that were put to him, including outsourcing of part or all the scheme, and he took a decision to head in the direction which we now have.

**Senator COONAN**—Thank you for your help.

**Proceedings suspended from 1.09 p.m. to 2.16 p.m.**

**CHAIR**—We will reconvene with consideration of supplementary estimates pertaining to the Australian Customs Service. I welcome the officers back to the table and invite Senator Lundy to begin with questions.

**Senator LUNDY**—I have some questions relating specifically to information technology management and related issues. The first question I have relates to some overarching questions that build on answers to questions on notice from the last round of estimates. I have been in the intervening period provided by the Office of Asset Sales and IT Outsourcing with an analysis of the minister's claimed savings to date, and their fairly limited table identifies \$100 million worth of projected savings attributed to the three initial IT outsourcing contracts that were let outside of the IT outsourcing project, or initiative, per se. Given the Australian Customs Service has a \$200 million contract with EDS, what proportion of that \$100 million nominated by the Department of Finance and Administration can be directly attributed to your IT outsourcing projected savings over the next five years?

**Mr Woodward**—I am not 100 per cent sure that I can say definitively whether the \$100 million included or did not include our figures because, as we explained to you last time, we went down the outsourcing track before the general government arrangements got going. So it may or may not be included in that \$100 million.

**Senator LUNDY**—I draw to your attention the table provided to me by the Office of Asset Sales and IT Outsourcing, which tabulates the five contracts let under the initiative to date and then has an initial row that has 'contract value \$290 million', which includes Department of Veterans' Affairs at \$60 million, DOFA at \$30 million and the Australian Customs Service at \$200 million. This table clearly indicates that the Australian Customs Service has been calculated into this table and identified against \$100 million worth of savings. Whilst I appreciate that you are not part of the initiative per se, it is very clear from this table that the Department of Finance and Administration or OASITO are saying that a proportion of that \$100 million is directly attributed to your department.

**Mr Woodward**—The information provided by the minister for finance at the time the decision was taken to outsource our IT to EDS indicated that there would be savings, with two provisos: with re-engineering or without re-engineering. Coincidentally they arrive at the same figure, which is \$44 million over a period of five years. So I am guessing that the \$44 million would have been included in some way or other in that. Part of that \$44 million relates to the figuring that was necessary in our assessments to deal with competitive neutrality. We gave you those figures in answer to your question last time.

**Senator LUNDY**—I just wanted to clarify that because, up to now, you would probably be familiar with the fact that the minister for finance has been quoting the figure of \$368 million in savings over five years for all of the contracts. Up to now that was clearly with respect to the IT infrastructure initiative. This is the first time I have seen your savings form part of the minister's justification for the savings achieved under IT outsourcing. Further to that, again following on from last time, I have a point of clarification concerning the actual expenditure incurred by Customs through EDS as your service provider. Last time you identified a figure of \$250 million as a result of changes unforeseen—for example, GST implementation and Y2K issues. Based on that assessment—that you are now carrying a much greater expense through those changes—have there been any other significant increases in expenditure through EDS or other contractors in relation to information technology since last time we met?

**Mr Woodward**—Probably no hugely significant changes since the last time we met. I think the point we were wanting to bring out on that occasion was that our assessment of the tenders and the savings figures made public at the time were based on what we then knew was going to happen. Of course a lot of major things have happened since then—for example, GST; Y2K, which was taken into account at that time but matters became clearer; cargo management re-engineering, which is a major exercise for us; and a whole series of other initiatives. So it is very difficult to get a handle on a precise savings figure that would stand objective and detailed scrutiny.

**Senator LUNDY**—Are you in a position now to stand by that original savings figure of \$44 million, understanding of course all of the qualifications that you have provided in detail both on notice and at previous estimates, or has it changed so much to the point that you cannot now actually demonstrate any net saving to the agency at all?

**Mr Woodward**—The information we have given you before would stand. Given that a whole series of changes on a massive scale have occurred in Customs and that we have increased our budget—I think we are now spending something like \$52 million a year and only a year before that we were spending \$46 million—we are doing things that we would not have contemplated almost three years ago when we were considering the outsourcing arrangements. The point I want to emphasise is that the savings figure mentioned by us and drawn on by the minister for finance represented savings to the government and not savings to Customs. As everyone would know, a whole series of dividends are extracted from the overall \$44 million figure and the competitive neutrality figure of \$22 million is also extracted from the \$44 million. The implication for the Customs budget was a saving of about \$6.4 million and, give or take a few million either way, that figure is fairly accurate.

**Senator LUNDY**—I am trying to ascertain the credibility, if any, of the minister's continuing assertions about savings being achieved. Whilst they may have been, in terms of deductions of allocations to your department, you are certainly not realising any net reduction in costs.

**Mr Woodward**—Obviously I cannot speak for the \$100 million or any other figure that might have been used. The figure that was included in Mr Fahey's press release is, when you take into account the other comments I have made about competitive neutrality and the dividends that are extracted, reasonably accurate.

**Senator LUNDY**—You have no doubt familiarised yourself with the Australian National Audit Office report into the IT outsourcing initiative. Given the difference between the ANAO's financial methodology for assessing savings and that of the Department of Finance and Administration, have you taken the time to conduct the analysis under the ANAO's financial methodology?

**Mr Woodward**—Yes, of course. I stress that we did not follow the OASITO methodology because there was no OASITO methodology. We devised our own methodology and, as you are probably aware, I have been involved in other outsourcing exercises before this one. The financial evaluation was done for us by Deloitte Touche Tohmatsu. I will take you through an example of the difference. The Deloitte's methodology allowed for the sale of assets at handover to the outsourcer and purchase of assets on termination. It did not value either the assets to be bought from an outsourcer on termination or the written down value of in-house assets. The treatment of sale of assets under the Deloitte's methodology, which we accepted, is different from the OASITO approach, which obviously formed the basis of the assessment

that was then undertaken by the ANAO. As it happens, my experts tell me that the net result is pretty much the same.

**Senator LUNDY**—Did the Deloitte's methodology take into account the residual asset value?

**Mr Woodward**—That is the point I am making: there was a difference in the treatment of the residual value of assets. I am advised that the asset mix under either scenario would have produced no comparative result that was materially different from the result obtained under the approach which is now favoured by the Audit Office. I stress that it was well before the Auditor-General undertook his work and certainly before OASITO got going that we did our work.

**Senator LUNDY**—That is very interesting. Since the Audit Office report came out, have you investigated specifically the Deloitte methodology and the ANAO methodology? Have you produced a report or something that you can provide to the committee?

**Mr Woodward**—No, I do not have a report I can give the committee. We looked at it against the possibility that we would be asked whether we followed the ANAO preferred methodology or the OASITO methodology, and the follow up question of why we did not. The answer to those questions I have given you: we did our work before either methodology was developed. So far as our principal point of difference—the valuation of assets—is concerned, both methodologies would produce a similar answer, but we did not follow their methodology.

**Senator LUNDY**—Were you asked at any point to provide your Deloitte's methodology to OASITO, given that it could perhaps have provided a more appropriate financial methodology for IT outsourcing assessments?

**Mr Woodward**—The predecessor to OASITO was involved in our evaluation, so I would be absolutely staggered if they did not have our methodology when they were devising their methodology. They would have taken it into account, but I frankly do not know the extent to which they regarded it as relevant.

**Senator LUNDY**—If you have any documentation relating to the information having been provided to the Office of Government Information Technology, that would be most useful.

**Mr Woodward**—I will see what information we can provide that is not commercially sensitive. As I have said, a major accounting firm's methodology was used. However, if there is anything that we can give the committee, I will certainly do that.

**Senator LUNDY**—Yes. I do not accept for a second any notion of commercial confidentiality in relation to financial methodology. I want to place that point very clearly on the record. If that is your contention, you will need to provide a full and detailed explanation as to why you are claiming such confidentiality. In your annual report I found a fascinating phrase that I wish to pursue specifically. It says that EDS Australia's performance was 'variable in areas such as the delivery of tax reform' and that in preparation for Y2K it 'performed well'. We know from evidence to date that they were not part of the original contract with EDS but were additional variations. The report goes on to say that EDS Australia's performance in some other areas 'did not meet Customs' expectations'. Can you extrapolate the meaning of that statement?

**Mr Woodward**—Yes. In making that statement—we made a similar statement the year before, so it is not as if it is a major public revelation—

**Senator LUNDY**—I note that the situation has obviously not improved.

**Mr Woodward**—I begin my answer by saying that our assessment of how well EDS has done must be matched against the performance of Customs information technology before the exercise got under way. We went down that track—we got in when we did—knowing what the incoming government wanted to do and against a background of some dissatisfaction on our part in relation to the quality of some internal aspects. That is one question for us.

My second point, which flows from that, is that we went further than any other large agency in that we included applications development in our contract. That was a conscious decision taken against several backgrounds, including the fact that we were not altogether happy with the quality of our in-house IT. When I say ‘in-house’, I stress that there are more than 30 independent contractors working for us. In retrospect, I would summarise my assessment of our experiences over the last couple of years as follows. There are things that I think EDS have done well. I think the comprehensive review that they undertook of the state of the Customs’ application was necessary and was done very well. Their use of anti-virus procedures was excellent—much better than we could have done in-house, based on my knowledge of our people and capabilities before we moved to EDS.

A number of changes to key applications, including some specialised applications to fit in with our major import entry processing system, was done very well. We have a number of applications which are in some way linked to a major commercial entry system that we have; in other words, if a customs broker working with an importer and others wishes to transact business with us which results in the importation of goods, the broker puts in a commercial entry, and we have a number of systems which bear on that commercial entry process. And, as I said, a number of changes to key applications which bear on that commercial entry process were done very well, in my judgment.

The mainframe services we have are stable. EDS has provided two upgrades, and the figures that I have suggest that, overall, the stability is slightly better under EDS than it was before EDS. Year 2000 work was done well, as was our tax reform work—both were huge projects for us. To give you an idea of the scope, they cost over \$20 million. They also had the difficult task of handling a major change in our desktop environment where the planning and strategic work had been done in-house, but they then had to implement it. There were teething problems, I accept, but I think overall they did that pretty well.

On the downside, one of the reasons why we saw an advantage in moving to an outsourcer was that they would have access to a far greater skill and knowledge capability than we had in an organisation like Customs. EDS, for example—and I think the figures are still valid—had something like 110,000 people throughout the world. We worked on the assumption that, out of that vast resource capability, they would be able to provide the skill levels that we needed. In fact, we have had some problems in obtaining in some areas the skills that we want so that we can undertake some of our critical work.

Other areas where we have had some difficulties include ongoing work in relation to keeping existing systems running and some aspects of gearing up for a major re-engineering of our import and export processes. And it is inevitable that, when you are developing a relationship with an outsourcer, there are always haggles over bills, and we have had our share of haggling over bills. They are the sorts of things that were in the back of my mind when I included that sentence in the annual report.

**Senator LUNDY**—It is a pretty strong sentence to sum up with in the annual report, given you have just managed to come up with a number of strengths and a number of weaknesses. Just to investigate some of those areas a little more specifically, was the review that they conducted—that you identified as a strength—a part of the original contract?

**Mr Woodward**—Yes. I think it was a part of the original contract. It was certainly a part of our understanding that they would do it; whether it was written specifically into the contract I frankly cannot remember, but there was an expectation on both sides that they would do it.

**Senator LUNDY**—Did you end up paying them any additional money because it was disputed in any way?

**Mr Woodward**—You would have seen our draft contract, which we sent across to you following the last hearing—

**Senator LUNDY**—I confess I have not read it from cover to cover, but thank you for sending it.

**Mr Woodward**—It is a fairly extensive document, but included in it is a whole array of things which we expect from EDS under what we describe as baseline arrangements. My recollection, and if there is a need to correct it I will do it separately, is that that and a whole series of other things, including the original work that was done on our desktop PCs, were built into our baseline workloads. In other words, there is base work, there is base money that is paid and, over and above that, we can do deals based on a person day or whatever it is basis for extra work.

**Senator LUNDY**—I guess I am trying to ascertain whether there was any variation to that original contract.

**Mr Woodward**—No, not for that.

**Senator LUNDY**—What about the virus strategy?

**Mr Woodward**—In what sense?

**Senator LUNDY**—Was that part of the original contract?

**Mr Woodward**—It is an expectation of any reputable outsourcer that they would provide antivirus—

**Senator LUNDY**—That was not my question, though. It might be an expectation, but was it part of the original contract?

**Mr Woodward**—My recollection is yes. It was certainly an expectation on both sides but, like you, I have not refreshed my memory on the precise words. It was certainly an expectation that has never been challenged that they would do it, and they did it.

**Senator LUNDY**—You mentioned the customs broker transaction thing and key changes to applications. Was that part of the original contract?

**Mr Woodward**—It would have been part of our baseline figuring, yes.

**Senator LUNDY**—Could you take that on notice and clarify that for me. You mentioned the downside of skills and knowledge not being available to expectation. How has that hindered the implementation of information technology services in your department?

**Mr Woodward**—We are certainly not unique but we have a one-on-one relationship with our outsourcer. The problem we have is that we have a vast array of things that we want



undertaken in the IT area. We are very heavily IT dependent, as is the tax office, Centrelink and a number of other agencies. We want a whole set of things done and we want them done quickly. The difficulty we have in getting things done within the timetable we want on occasion can be the difficulty of getting skilled people.

**Senator LUNDY**—Was that one of your frustrations before you outsourced as well?

**Mr Woodward**—Very much a frustration, but probably an even greater frustration when we did it in-house. Another major frustration we had when we were doing it in-house was that we had a very, very significant group of people involved in applications work and, over time, what had happened was that more than half of those people found themselves doing maintenance and routine running and little in the way of new development work. It meant that, for any major development we wanted to undertake and many of the things that have been undertaken since then—such as the Cargo Management Re-engineering project, which is a \$30 million to \$35 million project; tax reform; Y2K—we would have had to contract it out. If we had continued to do it in-house, we would not have been able to do it.

**Senator LUNDY**—The point I am making is that a crucial area upon which many of these vendors sell themselves is providing the skills and knowledge base and arguing that that is their edge in the market. Yet I find it quite incredible that you are in a position now where you have to nominate that as one of their biggest weaknesses.

**Mr Woodward**—I am sure you wanted frankness, but you have to understand also that EDS has the contract with the tax office. There has been a lot of work going on in tax. They have the contract for the Commonwealth Bank and they handle the South Australian government's business, so there are a lot of pressures on them, but they can answer that.

**Senator LUNDY**—I am sure you are not in a position to make allowances for that under your contractual terms. You are not implying you do, are you?

**Mr Woodward**—No, I do not make allowances for them. We put a lot of pressure on EDS, but we also have come to realise that you cannot get blood out of a stone. If they do not have anyone quickly available, we will not get that person, but it is not for want of trying.

**Senator LUNDY**—So you just have to suffer in the meantime?

**Mr Woodward**—In areas where we critically need people, of course we suffer.

**Senator LUNDY**—The next point you made was about keeping existing systems operational and running smoothly. Would it be fair to say that EDS have excelled in the areas where, as with Y2K and the tax thing, there has been an opportunity to make additional money but have neglected some of the base level areas, like skills and knowledge, like keeping existing systems running smoothly—I guess in covering off the basics. Is that a reasonable comment to make?

**Mr Woodward**—That would not be my assessment, but I could be wrong. I do not know.

**Senator LUNDY**—From everything you have said today, it seems to be.

**Senator Vanstone**—Senator, I think Mr Woodward is trying to be very helpful here. You ask a question, he gives you a view and then you respond by saying, 'That's what I think you are saying.' If he gives you an answer, that is his answer. I think it is reasonable to leave any of the officers to give an answer as they see fit instead of what could be interpreted by some as trying to cajole them into giving an answer that suits the questioner. Mr Woodward is not likely to succumb to such pressure or temptation in any event, but I just thought I would raise it with you. It is a perception that has come over.

**Senator LUNDY**—Thank you, Minister. I reserve the right to make observations about any inconsistencies in comments that have been made.

**Senator Vanstone**—I make the point also that estimates is here for you to elucidate information, not for you to offer your own views. You have parliament to do that in.

**Senator LUNDY**—Then I presume we will look forward to the coalition's support for a Senate inquiry into IT outsourcing next week.

**Senator Vanstone**—You can look forward to whatever you want. I look forward to winning the lottery. I look forward to lots of things. I am just making the point—

**Senator LUNDY**—You made the point, Minister. Perhaps if you let me continue asking my questions and stopped interfering, we might get somewhere.

**Senator Vanstone**—I will, but the point I am trying to make is that if you ask a question you should accept the answer. Estimates is here for you to elucidate information rather than proffer your own view.

**Senator LUNDY**—Perhaps, Minister, you would like to comment on the state that Customs find themselves in with respect to IT outsourcing and the fact that you have just heard from the officer himself that this contract is not living up to expectations. How do you reconcile that with the statements of the Minister for Finance and Administration that this is a great program and they are going to keep doing it?

**Senator Vanstone**—I think Mr Woodward has given you a very frank and honest account of the difficulties we face. In any change, you have difficulties. Some, for a variety of reasons, seek to focus only on the difficulties and not on the advantages. That is for them to account for. We are being perfectly honest with you, as we should be. There have been some difficulties, but the government believes it is the appropriate way to go. In any change that I have seen implemented in the time I have been in parliament, there have always been difficulties. If I thought it appropriate, I would take you through a list of changes introduced by the previous government which had implementation difficulties. It is to be expected. It is a part of the adult world.

**Senator LUNDY**—Mr Woodward, are you aware of any industry development requirements on the vendor associated with this contract?

**Mr Woodward**—Yes, there were. I think there was one major component which related to the provision of services. This was not a requirement on us; this was a requirement that we satisfy industry development, including looking at the needs of small and medium sized businesses. That was part of all these contracts. EDS entered into an arrangement with an Australian producer—or maybe it was an assembler—of desktop equipment. I cannot recall the precise circumstances, but in essence the Australian business was unable to comply with its contractual requirements. In the end, EDS had to provide our desktop services separately. So, yes, there were elements of meeting Australian industry needs, and on this occasion the single most important component was unable to be met, not because of us or EDS but because the company was unable to satisfy its requirements.

**Senator LUNDY**—Who was that company?

**Mr Woodward**—Select.

**Senator LUNDY**—When those problems were incurred, was another supplier qualifying as an Australian business found as a replacement?

**Mr Woodward**—I do not believe that the way the contract was written would have enabled that to happen. We had a need—we had to get this gear onto our desks. We had put off making major changes to our desktop environment. The stuff was out of date, and some of our people were complaining very loudly. The contractual requirement was on EDS when one of its suppliers failed. We said to EDS, ‘You have to provide us with the gear.’ We did not tell them how they should provide it. If one company went bust—I am not saying that is necessarily what happened, but if it was unable to satisfy its requirements—we put it on EDS. There was nothing in it where we would then require EDS to look for another small Australian business.

**Senator LUNDY**—Who is in a position to oversee that industry development component of the contract? For example, who is in a position now to make an assessment whether EDS has complied with those industry development requirements, and obviously comment directly on the set of circumstances you have just described?

**Mr Woodward**—We have got a contract management group. What I expect of them is not merely to see that the money is going in and out properly and to check the bills are okay; we have a group which understands far better than I do all the nuances of the contract and which daily puts pressure on EDS. We have a joint management committee that meets every fortnight with EDS at a senior level to check how things are going. There are a whole series of processes which can go to the most senior levels of both organisations.

**Senator LUNDY**—So you should be able to provide to this committee, then, a full assessment of whether or not EDS have met their originally contracted levels of industry development, obviously with detail of any variations from that commitment?

**Mr Woodward**—Yes.

**Senator LUNDY**—Have you produced a report to that effect to date?

**Mr Woodward**—I do not believe we have made any public report available. We have information, and I will certainly see what we can assemble for the committee. I understand what you are saying.

**Senator LUNDY**—Have you provided that information to the Minister for Finance and Administration?

**Mr Woodward**—I personally have not. I do not think anyone else would have given it to the Minister for Finance and Administration, given that we are outside the normal OASITO type arrangements. If it had gone to OASITO, it probably would have been more informally than formally.

**Senator LUNDY**—He is using your savings as part of his public statements and attributing them to the IT infrastructure initiatives. I would be very interested to know if in fact you have provided that information.

**Mr Woodward**—I would have to check—I do not know. But, if it was, I would think it was probably more informally.

**Senator LUNDY**—Can you provide any documentation to the committee that you have either prepared for your own benefit or, indeed, prepared for the purpose of supplying it to any other agency, but with particular interest in OASITO, the Department of Finance and Administration or the minister’s office?

**Mr Woodward**—I understand the question.

**Senator LUNDY**—Thank you. You mentioned contract management and costs: have you done an assessment as to how much it is costing you to manage this contract, given it requires extreme diligence just to keep EDS on track?

**Mr Woodward**—Yes, we have. I have in the back of my mind a figure of about one and a half million a year.

**Senator LUNDY**—Were those figures contained in your original financial methodology as a contributing factor to what would constitute a competitive mutual assessment of in-house and outsourced IT?

**Mr Woodward**—It is pretty hard to say precisely. We had a whole series of reductions from our budget for the various dividends that apply that find their way back to the department of finance. My recollection is that, from those gross dividends, the department of finance passed back to us \$2.7 million for a range of activities which I think probably would have included acknowledgment of the fact that we had to administer a contract. So I think the answer would be within that \$2.7 million.

**Senator LUNDY**—So out of that \$2.7 million. Was that over a period of time, or was that per annum?

**Mr Woodward**—That was, as I recall, a simple handing back of a sum of money. Most of the other figures that I am talking about are five-year figures; the early figures that I mentioned to you were, in large part, five-year figures.

**Senator LUNDY**—So it was a one-off?

**Mr Woodward**—It was a one-off, but they also took the money from us on a one-off basis as well. So I think that is fair enough.

**Senator LUNDY**—Going to another point about industry development, do you have a current assessment as to what proportion of your IT work is contracted to IT providers other than EDS?

**Mr Woodward**—We have provided a fair amount of work to companies other than EDS. I am not sure that I have that in a readily available form and I do not think that I have the actual money amounts that would relate to that.

**Senator LUNDY**—Please take that on notice. Other departments have become notorious for their use of consultants, but could you also provide a list of any consultants you have engaged with respect to information technology—not necessarily in conjunction with EDS, but any advice in the form of consultancies?

**Mr Woodward**—Our web site includes a listing of all consultants; I think we went below the \$10,000 limit, which is a normal requirement. It includes all of the consultants. As I recall, it also provides the figures that we actually spent this year, so there would be some straddling. So all that information is there but, if you would like, we can see whether we can extract from that what you are looking for.

**Senator LUNDY**—That would be good. I have a couple of questions now about Tradegate and the Tradegate hub. Currently, if I understand rightly, there is quite a convoluted corporate structure around Tradegate, one body of which is an industry body and it has participants from industry participating on the board. Could you just run briefly through the Tradegate structure for me?

**Mr Woodward**—I will ask Mr Drury, who knows a little more about Tradegate than I do.

**Mr Drury**—I must declare that I am an elected director on the board of Tradegate. The structure of the board has evolved. It was set up originally with seed money from a number of key sectors of the transport industry. That included Customs but it also included AQIS and other bodies. About three or four years ago that was changed and the sectors that now provide the directors on the board of Tradegate are represented in proportion. In other words, they supply from their industry the customs brokers. Freight forwarding supply four or five directors to the board—I am not sure what the precise number is. Retailing supplies a director, government supplies a director, the airline industry supplies a director and wholesaling supplies a director. These directorships are advertised. People nominate and they are voted on by the members of Tradegate. Tradegate ranges across a number of activities, but its core business at the moment—its income generating business—is to supply a backbone facility for communications that come in and out of Customs and involve brokers and freight forwarders in the transport industry.

**Senator LUNDY**—So it is information technology infrastructure.

**Mr Drury**—I would not put it as simply as that.

**Senator LUNDY**—How would you put it?

**Mr Drury**—They provide some value added services but they also provide project work. For example, they have a role under the banner of Tradegate International where they are offering consulting services to countries like Saudi Arabia and so on. But that is about applications work and management development work and not just IT work.

**Senator LUNDY**—I refer here to an article from the *Daily Commercial News* that reports an effort by Customs to replace Tradegate with an EDS based service called customs connect facility. Is that happening? Can you perhaps clarify the situation, because from the way this article reads you are obviously planning to push EDS into that aspect of service provision within Customs?

**Mr Woodward**—John may wish to add something. In a sense it is ancient history. We have moved in a different direction.

**Senator LUNDY**—What is?

**Mr Woodward**—That article.

**Senator LUNDY**—Perhaps you should tell me.

**Mr Woodward**—Regarding the customs connect facility that we are talking about: at one stage we were intending to put the connection facility out to contract—in other words, invite tenders to provide that connection into the new Customs system. Since that time our contractor—EDS—has gone down a different path which, instead of using a number of Unix boxes, involves an IBM mainframe. We have negotiated with EDS for it to provide in addition to the large mainframe an AIX front-end capability, which means that we do not have to go out to contract, that all that we need to enable people to connect with our mainframe will actually come through in essence a box tied in with the IBM system. So that article was written against an entirely different background to what we are now working against. All of the potential bidders, as I recall, have been told of the change. So the article is almost irrelevant.

**Senator LUNDY**—Okay. I still want to get this clear. Are the changes you are proposing likely to alter the existing contracts you have in place—for example, with connect.com?

**Mr Woodward**—We do not have a contract with connect.com. Tradegate has a contract with connect.com.

**Senator LUNDY**—Let me rephrase the question: is the re-engineering you are talking about in terms of the system likely to impact upon contracts between Tradegate and other contractors—for example, connect.com?

**Mr Woodward**—It may—remembering we have a contract with Tradegate; what it then does with service providers is entirely up to it.

**Senator LUNDY**—Not if you are the one who has the contract with EDS. Are you suggesting that it is Tradegate that is now engaging EDS in some additional work?

**Mr Woodward**—No, I am not suggesting that. What I said is EDS—

**Senator LUNDY**—You said earlier that EDS were looking at some changes to key applications with respect to the Customs broker transactions and so forth. Isn't that something to do with Tradegate?

**Mr Woodward**—No. EDS is our outsourcer. EDS has decided to go down the track of having an IBM large-scale machine and a front end. That will be a mechanism whereby those from outside will be able to access a new properly coordinated and hopefully single Customs system for imports and exports. Instead of having something which provided a potential monopoly position which is used by connect.com—and I said, in essence, a monopoly position—our design for a cargo management re-engineering has an essential feature that those who wish to connect to the Customs facility can choose the way in which they connect. There will be some who will choose not to go through that system at all. So we are injecting an element of choice into it.

**Senator LUNDY**—I have a couple of questions with respect to that. Is it Customs that has embarked upon this strategy to, as you say, break down a monopoly, or Tradegate?

**Mr Woodward**—Customs.

**Senator LUNDY**—So you have decided that. What were the problems you had with Tradegate and the existing relationship that made you feel compelled to change the system?

**Mr Woodward**—I do not think there is necessarily a problem with Tradegate at all. They provide an efficient service. We have said as part of our underlying philosophy on re-engineering of our import and export systems that those who import goods into this country or export them should have a choice of the way in which they connect with Customs. At the moment, in large part, they do not. So that is the element.

**Senator LUNDY**—Hold that thought for a moment. With respect to what EDS are proposing, did EDS initiate this activity or did Customs in terms of providing an alternative mechanism for customs brokers to deal with the department?

**Mr Woodward**—The concept of cargo management re-engineering was a Customs concept. It is a Customs concept and EDS is a provider of very important services, including technical strategies, for that.

**Senator LUNDY**—Did EDS provide you with technical advice in the preparation of your cargo management re-engineering proposal?

**Mr Woodward**—They have provided technical advice and that technical advice is accelerating, but the design is a Customs design.

**Senator LUNDY**—And EDS are looking like they are the ones to implement the alternative infrastructure?

**Mr Woodward**—EDS, as our provider of services, will provide that front end that I was talking about.

**Senator LUNDY**—So they provide Customs with technical advice. Customs comes up with a re-engineering strategy but then seeks to provide another competitor in what you consider currently a monopolistic situation?

**Mr Woodward**—I go back a little to the point I made before about that article. I think some of your questions are in a sense ancient history. One or two of those involved in the process believed that EDS had access to privileged information that meant that the competition for that connection arrangement was unfair.

**Senator LUNDY**—I was actually coming to that. But I am glad you raised it.

**Mr Woodward**—What I am saying is that it is ancient history because we are not using that methodology.

**Senator LUNDY**—Can you tell me whether or not you are still looking at re-engineering the system in the way that you have just described?

**Mr Woodward**—We are re-engineering our cargo systems and the change that has taken place is that, instead of going out to contract and inviting tenders to provide that connection facility, we now have a capability built into our new mainframe arrangements to provide it. What you are talking about is based on something that we are not going to do.

**Senator LUNDY**—I think you are missing the point. The issue, as you say, is that, regardless of that article and the implications of that, you have embarked upon a strategy, in your own words, to break up what you perceive as a monopoly situation, even though the nature of that monopoly was something not under your control. It was in fact—tell me if I am wrong—in the hands of Tradegate Pty Ltd, not Customs per se, how that alternative contract was managed. Tradegate is an organisation in which Customs have participated in as directors. Yet we now see Customs working closely, by virtue of obtaining technical advice on setting up an alternative supplier for a similar service, to compete against the system that Tradegate has in place—monopolies or otherwise. Let us go to the point you raised about questions of privilege and breach of privilege, if you like. At any point, did you provide EDS with any information provided to you by other potential competitors, specifically connect.com, outside of what would normally be considered an open tendering process and what I presume connect.com responded to you as a request for information?

**Mr Woodward**—We look very carefully at the probity issues that you are raising because the complaints were made to me and to others, including at the level of managing director of the company concerned. I suspect that may have been involved in what lies behind your question. I can give you an assurance—and I think there is probably legal advice as well to say—that there was absolutely nothing wrong in terms of the probity issues involving us or EDS.

**Senator LUNDY**—My question was: did you provide EDS with any information received by you from other companies?

**Mr Woodward**—EDS is our outsourcer. If you had gone down the old approach, EDS would have had to have seen the information provided from other companies and there is nothing wrong with that.

**Senator LUNDY**—You may say that. Thank you for confirming that. I presume you did show them information. What you are suggesting, however, is that EDS will now emerge as having built a competitive system to what is already in place. I am questioning in a very straightforward way your conduct in fairness in operating in the marketplace, particularly with respect to any notional fair competitive tendering basis—that you have used your in-house operations to construct an alternative model bypassing what was formerly a competitive process in relation to Tradegate and tenderers that would compete for work with Tradegate.

**Mr Woodward**—I guess there is a limit to how many ways in which I can express the same thing, Senator. I think I have really answered your question. I am absolutely satisfied on probity.

**Senator LUNDY**—Obviously that remains a point of contention. Perhaps you can tell me this: if EDS implements the alternative system you are talking about, first of all, can you confirm that you are proceeding down that path and that will occur?

**Mr Woodward**—I can say quite categorically that we will not be going to tender. We will be using a front end that has been purchased and is in the process of being installed by IBM. All our hardware will be owned by EDS. What more can I say?

**Senator LUNDY**—Was this part of the original contract with EDS, that they would do this work? Or is this a variation?

**Mr Woodward**—That work would be done was in the original contract. The original contract, as included in the material that we have already given you, indicated that EDS had in mind heading down a track of a brand of boxes called Sequent boxes. They then changed their minds, looking at various options, and, as I recall, came up with an option of an IBM brand of using UNIX processes. After further discussions and close examination of changes in technology, EDS, in consultation with Customs, said that, instead of going down a UNIX distributed process arrangement, we ought to go down a large mainframe approach. They concluded that the best answer was an IBM 390 machine and that, as part of the arrangement, it made sense technical, financially and in any other sense to have an IBM front end to that. That is the background.

**Senator LUNDY**—So how much extra is it costing you because EDS changed their mind?

**Mr Woodward**—To have a front end?

**Senator LUNDY**—And for the changes to the back end that you just described to go from a network environment to a mainframe, what is that costing you?

**Mr Woodward**—I would need to check on this, but it would probably be cheaper. But, as far as the front end is concerned, the negotiations that have taken place with EDS in all probability will cost us nothing—it will be thrown into the deal.

**Senator LUNDY**—It will cost you nothing?

**Mr Woodward**—It will be thrown into the deal that we have done with EDS.

**Senator LUNDY**—And what will be offset as a result of that? Are they just doing that for nothing? Does that mean they are going to make money out of it—is there a revenue stream for EDS if they implement the system?

**Mr Woodward**—Again—as set out in the material we have given you, which is the contractual information—EDS have a contractual obligation to move away from the Unisys environment which we have now. That is in the contract. With reference to the history I just



took you through, it was originally going to be Sequent, but then they varied to a distributive process, and they have now gone to a mainframe approach. So there is a contractual obligation to migrate to a different platform. In the end there will be significant financial disadvantage to EDS if they do not do that.

**Senator LUNDY**—Is there a revenue stream in this new system to EDS if it is implemented?

**Mr Woodward**—They have a contractual obligation to do it.

**Senator LUNDY**—Please answer my question.

**Mr Woodward**—There is no separate revenue stream—they are not getting anything extra. They are obliged to do this under the contract we entered into 2½ years ago—they have to do it.

**Senator LUNDY**—Is there any alternative revenue stream to Customs or to EDS as a result of this system being implemented?

**Mr Woodward**—What do you mean by ‘an alternative revenue stream’? I do not understand. As I said, they have met their contractual obligations.

**Senator LUNDY**—With the current arrangements with connect.com and Tradegate does it not cost suppliers to participate in those exchanges of information?

**Mr Woodward**—Yes, they pay a fee.

**Senator LUNDY**—You are proposing an alternative system. Will there be a fee to participate?

**Mr Woodward**—This is the front end to the mechanism—in other words, I think there is a mixing of two concepts in this. I am talking about the connection facility that will enable linkages to occur with the Customs applications—that is what we have been talking about. Tradegate or connect.com do not provide a way of getting in separately through a series of boxes into the Customs systems. The Tradegate links are provided at a cost—in other words, there is a charge. Those who access these services have to pay.

**Senator LUNDY**—What I am looking for is a guarantee that that cost structure will not change. I understand it is a flat rate.

**Mr Woodward**—The cost structure will undoubtedly change.

**Senator LUNDY**—It will change?

**Mr Woodward**—Of course it will change, because of choice.

**Senator LUNDY**—That is my point. If there is a choice, if the cost structure is like that with Tradegate and the existing relationships and you are offering another cost structure in terms of choice, what is that cost structure and is there a revenue flow to Customs, the infrastructure supplier, the software supplier or whatever?

**Mr Woodward**—We have not developed the thing to a point where I can give you dollars and cents, but we are saying that, instead of having an arrangement where in essence we say, ‘You will use the system and this is what it is going to cost you,’ we are saying, ‘For those who want interconnection with the Customs systems, which provide virtually an instantaneous response, it is going to cost you more than if you are a small business supplier and you want to use an Internet based arrangement—that may cost you half or a quarter of that.’ So depending on your choice: if you want a quick answer, it is going to cost you more;

if you want to use a different approach, it is going to cost you less. That choice does not exist now.

**Senator LUNDY**—Could you provide full details of your proposals with respect to cargo management re-engineering and also, very specifically, the business model, the business case, behind that endeavour? You can take that on notice. As far as I understand, your existing supplier of both the infrastructure and the service levels for this whole system has recently invested in upgrading its own networks only to find itself presented with this situation—effectively a *fait accompli*—where its plans for the future were supplied to a competitor now in the marketplace, and it was orchestrated by Customs. Going back to my point about industry development, it seems that the situation we face here is that an existing supplier established in the marketplace is potentially going to be cut out or put under pressure by virtue of EDS's lucrative position as primary sole outsourcer with Customs. That seems a little unfair.

**Mr Woodward**—I will not continue the discussion because, clearly, you want to close it off, but industry has known for years the direction in which we are going. That firm took a commercial decision to go down that route and invest \$1 million or \$2 million knowing the broad direction in which we were going. I cannot be responsible for that.

**Senator LUNDY**—Please take those questions on notice and provide the committee with whatever information you can. Thank you.

**CHAIR**—Thank you, Mr Woodward and your officers, for your assistance this afternoon. That concludes questions for the Australian Customs Service.

[3.23 p.m.]

#### **Australian Federal Police**

**CHAIR**—Good afternoon. I welcome officers of the Australian Federal Police to this consideration of supplementary budget estimates. In particular, I welcome Mr Simon Overland, the new chief operating officer.

**Senator McKIERNAN**—I am looking forward to asking my questions.

**Mr Keelty**—I apologise on behalf of Commissioner Palmer, who is off sick. He has ruptured a tendon in his foot and cannot be here today.

**CHAIR**—That leads to a range of one-liners about feet which I am going to completely ignore.

**Senator Vanstone**—I am told that, when that happens, the sound is like a bone cracking.

**CHAIR**—Thank you, Minister, for that detail. It is very helpful.

**Senator Vanstone**—It is, apparently, very unpleasant.

**CHAIR**—I may now begin to make foot jokes.

**Senator McKIERNAN**—It is good to be here, as indeed various officers of the Federal Police expressed to our sister committee in a briefing that we had last week. It was a very interesting briefing and we were grateful for the opportunity to have it. That is a separate matter for a separate committee but, nonetheless, we are grateful for the information that was given to us then. To a certain extent, it saves time here today in the process of the estimates hearings.

I have a range of questions regarding the annual report and then I will move to dealing with more specific matters. I think it is probably easier to get the more general questions out of the way first. We then can come back to some more specific things at a later time. I will start with

the AFP contingent that has gone to East Timor. There is a budget measure of approximately \$104 million for four years to finance the ongoing contingent of Australian police officers to be part of the UN transitional force in East Timor. We are looking for details. I might go through a range of questions. We can handle them on an individual basis, but it seems to me that it might be more appropriate to deal with them in a general sense.

These are the questions, the responses to which we are looking for. How many AFP officers will go to East Timor each year and in how many contingents will they go? If the answer is yes, will there be officers from other police forces within Australia? How are the officers selected or recruited for that overseas duty? Is the AFP experiencing any difficulty in finding enough officers volunteering for the task if, indeed, they are going on a voluntary basis? Is any special training involved for personnel who go? How is the AFP covering the day-to-day and special operations in Australia which, prior to their departure, was the responsibility of and was being carried out by the officers who have been sent to East Timor? Hand in hand with that, has any extra recruitment or re-rationalisation of resources been undertaken to cover for those officers who have gone on that duty? It is a lot of questions at once, but it seems to me that you may be in a position to address them all as a whole. If not and if you would prefer, we can easily give them singly.

**Mr Keelty**—I will do my best. We are now at a point where 100 Australian police officers will be deployed to East Timor on six-month deployments of duty. They will rotate each six months. So, on an annual cycle, there will be 200 all up. The 100 are made up of 72 Australian Federal Police officers and 28 state police officers. That is the composition of the current contingent. All Australian police officers serving in East Timor are sworn in as special members of the Australian Federal Police. So they do go over there as Australian Federal Police members or special members.

We have not had any difficulty in attracting numbers up to this point in time. As for their recruitment, we have established a coordinator with each of the state police agencies and we have our own internal mechanism within the AFP where we call for expressions of interest. So the answer to one of those questions is that they are all volunteers, unlike the defence forces. We have had no difficulty in recruiting them. We identify people with skills that we believe are appropriate to the deployments in East Timor. I should say on that that I have had three visits to East Timor and I have had one visit in Australia from the deputy commissioner of operations. We have discussed specifically the skills that are required by police serving in East Timor, and we have tried to match that inventory of skills with the people who are selected.

In terms of training, recruits undertake a two-week training course in Canberra. We put together this training course, remembering that recruits come from different AFP states and different state police force backgrounds. We need to bring them to the one place and give them a consistent briefing. They receive briefings from several agencies before they are deployed to Dili. From Dili, they undertake another two-week United Nations training course and, after that, they are deployed in accordance with UN deployment decisions.

We have not had to do any extra recruitment because our attrition rate has not required us to recruit additional resources. We have not had to backfill. In fact, until the current deployment—which leaves on Friday of this week and is the first deployment of 100—we had deployed only 80. We have added another 20 because the attrition level in the AFP is not such that we have lost people resources. Therefore, we have been able to meet demand.

**Senator LUDWIG**—When you obtain officers from the AFP there are obviously gaps. How do you deal with those gaps when officers have been pulled out? I think you said that there are 72 AFP officers, which would leave a large gap in your operations. How are you dealing with that?

**Mr Keelty**—Because we have been doing this for in excess of 12 months, it has transpired that, when people return to duty, we rebuild the numbers where they once were. It is a matter of realigning resources and putting them where the priorities lie. As this is done on a rotational basis, it is having a minimal impact on departures because other people are returning.

**Senator LUDWIG**—Can the budget measures that have been allocated for that purpose be used for anything other than paying the salaries of officers in East Timor?

**Mr Keelty**—Yes, they are used for some equipment.

**Senator LUDWIG**—Do you have a breakdown of how those sums are allocated? Have you raised a specific budget to deal with that? Would a range of articles constitute that expenditure?

**Mr Keelty**—There is a range of articles, including travel and equipment. Mr Overland might be able to assist with more details.

**Senator LUDWIG**—Perhaps you could take that question on notice and provide that breakdown.

**Senator McKIERNAN**—On 6 November the Minister for Foreign Affairs announced that a contingent of AFP personnel would go to the Solomon Islands as part of a peacekeeping force. I understand that that force will be funded from the sum already allocated to the East Timor exercise. Can you confirm that? Am I correct in that assumption?

**Mr Keelty**—That is correct. We have been able to manage that from within existing funding for East Timor.

**Senator LUDWIG**—So there will be no additional cost to the AFP by virtue of that commitment to the Solomon Islands?

**Mr Keelty**—No, not at this stage. You may not be aware, Senator, but the deployment to the Solomon Islands is for a limited time at this stage of planning. At this point in time, we have been able to manage it from within the existing budget for East Timor.

**Senator McKIERNAN**—How many officers will go to the Solomon Islands and for what periods?

**Mr Keelty**—Ten officers left a fortnight ago and another 10 will go on 2 or 3 December. Those 20 officers will go for a 90-day deployment, which may be extended depending on the success of the operation on the ground.

**Senator McKIERNAN**—What duties will they be expected to perform while they are there? Will they be armed and will they be provided with flak jackets?

**Mr Keelty**—They are not armed. This is part of an international peace monitoring team which arose out of an agreement at the Townsville meeting of the differing factions. Their duties are to monitor the peace agreement that was decided on at Townsville. In addition to monitoring the peace agreement, one of the specific things they are responsible for as part of that agreement is the collection of firearms from the differing factions over there. No, they will not be wearing flak jackets.

**Senator McKIERNAN**—Are you aware of any other trouble spots in the world where there have been requests for Australia to send police officers?

**Mr Keelty**—We do not have any current requests for other trouble spots in the world.

**Senator Vanstone**—Senator McKiernan, I thought you were going to suggest that our reputation was so good that we should start up an arm of the Federal Police to subcontract ourselves out around the world as peacekeepers for a revenue stream.

**Senator McKIERNAN**—I am merely seeking information, Minister. I am not making suggestions at this time.

**Senator Vanstone**—I just thought maybe this is the day a compliment will come their way, but no.

**Senator McKIERNAN**—After the training exercise I undertook last week, I might even be volunteering for the next exercise, because I actually came out of there winning something.

**CHAIR**—We only hope it was caught on video.

**Senator Vanstone**—I have been away, but I know from your face, Senator McKiernan, that I need to make further inquiries about that.

**CHAIR**—I am surprised you were not briefed immediately on your return.

**Senator LUDWIG**—In the budget estimates in May, Mr Keelty, I asked you about the travel allowance owing to the AFP officers who went to East Timor. Without going to the transcript, I think your answer was that they were all paid. Do you recall that?

**Mr Keelty**—Was it travel allowance or mission subsistence allowance?

**Senator LUDWIG**—I think I asked questions on both but this one is specifically in relation to travel allowance. If I am incorrect about that, please correct me. I will come to the MSA shortly as well. As I understand it, there is a letter from Laurie Hutchinson, executive officer, to the Commissioner of the Australian Federal Police, where they still talk about the travel allowance. Has the travel allowance been finalised and completely paid?

**Mr Overland**—My understanding is, no, the travel allowance has not been paid. There has been an exchange of correspondence between the AFP and the AFP Association on this. Suffice it to say, there is a difference of views in terms of whether members are entitled to the payment of travel allowance. Our view has been made known to the association. There continues to be a difference of opinion.

**Senator LUDWIG**—Can you tell us briefly what that difference of opinion is? Does it revolve around an interpretation of determination No. 3?

**Mr Overland**—To the best of my recollection, yes, it does. It is a question of whether they are entitled to receive travel allowance whilst they are physically deployed in East Timor—if that is what you are asking—along with the other allowances they are entitled to either under our own determination or as part of the UN peacekeeping contingent.

**Senator LUDWIG**—What is the view you have expressed to the AFPA?

**Mr Overland**—The view that we have expressed is that they are not entitled to receive travel allowance, that they are already more than adequately compensated through payment of other allowances.

**Senator LUDWIG**—Why is that? Is that simply because they are adequately compensated through other allowances?

**Mr Overland**—Yes.

**Senator LUDWIG**—What other allowances are they? Are they travel related? I am quite happy for you to take that on notice, but the difficulty with that is that it seems to be an ongoing matter which has stretched over from last budget to now, and we will not get an opportunity to question you about this again for some months.

**Mr Overland**—It does include, and I am not sure of the correct term, the payment that is actually made by the UN and it is like a subsistence allowance. It is paid in US dollars.

**Senator LUDWIG**—Is this the MSA?

**Mr Overland**—Yes, I think this is the MSA. It is paid for the purpose of allowing people to subsist on the ground. If they are receiving that, it seems to us to be contradictory to also suggest that they can receive travel allowance.

**Senator LUDWIG**—Has the MSA been paid to them?

**Mr Overland**—Yes. It is paid in US dollars. I think it is about \$US96 a day, which is about \$A180 today.

**Senator LUDWIG**—Is that matter still being agitated by the AFPA, or has it been resolved?

**Mr Overland**—I guess it is for them to agitate. We have made our view known that we do not think that they are entitled to both. If they want to take it further, it is really up to them to do that.

**Senator LUDWIG**—Are you aware whether they have decided to take it further?

**Mr Overland**—No, I am not aware of that.

**Senator LUDWIG**—Where would they take it further, if they were so inclined?

**Mr Overland**—That is a good question. They might seek to take it to the board of reference that is constituted under the certified agreement. It is chaired by an industrial relations commissioner.

**Senator LUDWIG**—Has anything gone there?

**Mr Overland**—No.

**Senator LUDWIG**—Have you responded to the AFPA with your view?

**Mr Overland**—We have. We have certainly sent two responses; I think we have sent a third as well, but I would need to check on that.

**Senator LUDWIG**—Does that revolve around your view of what determination No. 3 means, or is it a view that you have taken that they are getting the MSA and therefore are not entitled to travel allowance, irrespective of what your regulations might otherwise say?

**Mr Overland**—I think it is more the view that they are receiving MSA, which is more than adequate compensation for living purposes whilst deployed to East Timor, and that therefore the question of travel allowance does not arise. My recollection—and, again, I would need to check—is that the determination does not specifically deal with the question.

**Senator LUDWIG**—Perhaps you could also check that to make absolutely sure.

**Mr Overland**—Certainly.

**Senator LUDWIG**—Is there a requirement under either the certified agreement or your operating procedures, or under any other determinations, procedures or policies—I am trying not to miss any just in case you have some that I have not mentioned—that would require the travel allowance to be paid? I am quite happy for you take that on notice.

**Mr Overland**—No, I believe is the answer. If it is wrong, I will come back and correct that. Can I say, though, that, on the back of experiences we have had with deployments to UN missions like East Timor, we recognise that, rather than deal with these matters on a case by case basis—which we have done in the past, and certainly we rely on precedents and we look at what has been done previously—we actually need to set a policy framework in place. We need to do that with the association. It needs to be agreed, and there need to be a number of formulas in there in terms of how entitlements are determined. And if that can be agreed and set in place, then questions like this become a lot more straightforward in terms of how we deal with them, because we simply refer back to the policy framework and that provides the answer. We recognise we need to do that. We are in the process of commencing work on that, and hopefully it will help to clarify issues like this.

**Senator LUDWIG**—Will you involve the AFPA in that?

**Mr Overland**—Yes.

**Senator LUDWIG**—That would be helpful.

**Mr Keelty**—Just on the previous answer, we in fact do not pay travel allowance per se in what might have been the traditional way of paying travel allowances. What we do is that, when people incur a cost, we refund the cost of the travel—whether that be for a hotel, meals or whatever. So we have moved on from that entitlement of a specific sum of money. There is also the issue of not paying someone twice for the same thing. The purpose of travel allowance is to provide someone with subsistence because they are away from home. The MSA—the mission subsistence allowance—is paid for specifically that purpose. There is another view on this: that we would in fact get our members into trouble by paying them twice for the same thing. In a previous answer to a question from Senator McKiernan, I indicated that people who travel to East Timor and other missions are volunteers. During the two-week course that I outlined to Senator McKiernan, one of the areas that is covered by the course is the determination. So when people volunteer to go under the terms and conditions of the determination, it is implicit in that that they accept those terms and conditions.

**Senator LUDWIG**—Yes. So you say in summary that, under determination 3—I am informed it is clause 22—there is no entitlement to travel allowance. Have you received legal advice on that?

**Mr Overland**—Yes, I think we have. But, again, I will check that absolutely. We believe we have implemented fully determination 3 and that people have been paid what they are entitled to receive under determination 3. The association has a different view.

**Senator LUDWIG**—I accept that you believe that. I am trying to work out an objective view from where I sit.

**Mr Keelty**—It is important too, I think, for us to say that, given the conditions that we are very aware of in East Timor, there is no way that we would be skimping on entitlements. That

is not what this is about; this is about giving people money that they are entitled to and protecting the taxpayer at the same time.

**Senator LUDWIG**—Have the AFPA advised you of their view of clause 22 of determination No. 3 in written form? Are you aware of their view of the determination or the interpretation to be applied to it? I am quite happy for you to take that on notice. Obviously what I am trying to examine is both sides of the argument to determine whether there is a legitimate issue surrounding travel allowance or not. Have you made any estimation as to what the costs of the travel allowance would be under clause 22, determination No. 3, if it was payable?

**Mr Overland**—No, we have not.

**Senator LUDWIG**—You say you have responded to the AFPA and the matter is now, as far as you are aware, closed—is that the position?

**Mr Keelty**—I would say yes.

**Senator LUDWIG**—Have you advised the minister about this?

**Mr Keelty**—As I recall, there have been several advices to the minister on outstanding claims for allowances. As to where we are at with them, specifically on this being a continuing issue, I do not think we have done a current recce. But what we have done is try to inform the minister of any of these outstanding matters as they have been raised by people who have served overseas.

**Senator LUDWIG**—That actually opens up another question, then. You mentioned ‘other outstanding matters’. What are they?

**Mr Keelty**—One was that the UN was quite slow at paying the MSA.

**Senator LUDWIG**—If I recall correctly, the last time we were here I asked you about the MSA. At that point in time it had not been paid. I think Commissioner Palmer—or you; I am not sure—informed me that it was going to be paid very shortly and the minister had been advised about that. That was, I guess, the general gist of it. I asked you earlier whether not it had been paid, and you answered yes. On what date was that paid?

**Mr Keelty**—It has been on varying dates, because of the entitlements of the individual members. It is not paid by the AFP; it is paid by the UN.

**Senator LUDWIG**—The follow-up question would have been, if it had not been paid, whether or not you were going to undertake to fill the gap. But you can assure me now that it has been paid out to all the officers?

**Mr Keelty**—And I can assure you there is no gap to fill.

**Senator LUDWIG**—Terrific.

**CHAIR**—On that point, is there any comparison to be made between treatment of members of the ADF and members of the AFP on deployment in East Timor in this regard? Are the members of the ADF paid similarly?

**Mr Keelty**—The members of the ADF, as far as I am aware, are also paid the MSA, because it is paid by the UN.

**CHAIR**—And they are not paid any further allowance through the ADF?

**Mr Keelty**—Any further allowances?

**CHAIR**—Through the ADF.



**Mr Keelty**—They may have other allowances. I am not sure—

**Mr Overland**—They do have other allowances, yes.

**CHAIR**—Is that an issue of contention between members of the AFP?

**Mr Overland**—It has been, yes.

**CHAIR**—Has it been resolved?

**Mr Overland**—It is being looked at at the moment. There is work being done on that at the moment. That has really been one of the precursors leading to the recognition that we need to put a framework in place. Defence do have a policy framework in place to deal with deployments overseas. One of the recommendations from the review that has been commissioned—it is a joint review being done in conjunction with the Assistant Treasurer—is that we move to put the same sort of policy framework in place so that we clearly spell out the terms and conditions and go from there. I think trying to make direct comparisons between the AFP and Defence is difficult.

**CHAIR**—I understand it is invidious, but it has been raised with me in terms of the circumstances.

**Senator LUDWIG**—I do not think I got a response in relation to one thing. You said that there were still some outstanding matters other than the travel allowance we spoke of and the MSA. I was just wondering what they were. You said they were ongoing and unresolved.

**Mr Keelty**—The only other unresolved matter that I am aware of is in relation to tax treatment.

**Senator LUDWIG**—Yes, I am coming to that. We may as well move on to the tax issue. As I understand it, you were going to examine with the minister and Senator Kemp whether there could be tax-free treatment for AFP officers. I guess the question is to you, Senator Vanstone. Has that been resolved?

**Senator Vanstone**—Senator, I got back from overseas at 11 o'clock last night, so can I answer you on the basis of the situation on the date I left, which is about the 10th of this month. At that point, it had not been finally resolved. Some work had been done. The matter is under consideration by the ministers, and I do not think it is very far from being resolved.

**Senator LUDWIG**—You cannot give us a time line as to—

**Senator Vanstone**—I am not the only person involved, so I cannot. I can undertake to advise you as soon as a decision is made and it is publicly announced. I will make sure you are informed.

**Senator LUDWIG**—That would be appreciated. I am sure the AFP officers would be only too pleased to hear an early response in relation to that prior to Christmas.

**Senator Vanstone**—They would be. I certainly would not want what I am about to say to appear churlish, because I hope I am a great defender of the Australian Federal Police and in particular the role they have played in Timor, but I want to underline the point that Mr Keelty made. Unlike members of the Defence Force, every AFP person who goes goes as a volunteer and accepts the terms and conditions on which they are going before they go. They are unlike the military, who are required to go and have no choice, and they perform a completely different role. Otherwise, you would not need both. One is an armed force to deal with matters that require an armed force to deal with them, and the other has in part been acting as unarmed peacekeepers and is now partly acting as the civilian police force.

There is a temptation, sometimes all too easily fallen into, to say that their pay and conditions should always be the same. Once you understand that they are performing different roles, it is not necessarily the case. I am sure that when the decision is finally made I will be able to give you some tables, for example, that provide a comparison in terms of the different benefits and requirements that each meets, and that will highlight for you how in certain circumstances it is not helpful or informative to simply pick one of those and say, 'This one gets it and the other doesn't.' I think there are some that can appear to work against the AFP and others that appear to work against the Defence Force. If you just bear with me, I will check to see whether a view I have about one is right, because it will make it clearer for you.

As I understand it, when AFP people go to Timor they, for the purposes of people like me, go up a rank. It is called a brevet rank, I am told. I am not sure what that means, but I know it means you go up a rank. I can assure you that every corporal and sergeant who goes from the Defence Force does not do that for the duration of the time. Equally, people could say, 'Hold on, this does happen in the AFP; why doesn't it happen in the Defence Force?' That is just one example. There may well be others. Anyway, I will come back to you when the decision is made, and I will have a list of those things.

**Senator LUDWIG**—Thank you. Mr Keelty, I think I asked a question at the last estimates about the breakdown across types of investigations, and you reminded me the last time we spoke that you might be able to help me a little bit further in relation to that. What I was specifically looking at was the breakdown of output group 1.1. There are now only two outputs, as I understand it. I was hopeful that you could provide some more information at least about the different priorities that you have set for yourself, such as how much of your budget has been put into illicit drug investigations compared with, say, fraud, and so on. I think that last time you indicated that might be able to be dealt with in the annual report, but it does not seem to have been expressed in the way I would have liked. But then I do understand that there is a new reporting system in place. Could you help me with at least some of that breakdown—if not now then perhaps on notice? I am primarily interested in gauging how much expenditure is put into the various areas. One lump together does not give me a meaningful breakdown to be able to make a comparison about your priorities. I understand that monetary amounts do not necessarily indicate your priority, but I can then ask questions about each individual area and determine it from there. I am a bit hampered without that.

**Mr Keelty**—You are quite correct; the current annual report is based on a five-outcome structure, as opposed to this financial year with a two-outcome structure. Under outcome 1 there are three output groups—1.1 being investigation services, 1.2 being protection services and 1.3 being international services. If we go back to output group 1.1, which I think is the area that you are asking about—the question of how much do we spend on drugs and how much do we spend on fraud—what we actually do—

**Senator LUDWIG**—On fighting those, anyway.

**Mr Keelty**—I had better correct the record—on fighting or investigating fraud offences and investigating drug offences. We have prepared a business plan, which has some target figures. Because the work actually dictates the priority as to where the resources will be spent, what we have done this year is enter into a business plan that divides up the work right across the 1.1 output group. That is divided up by incident type, and I will go through them. In fact, if it assists you, as I go through the incident types I will give you the weighted index of how much resource will be deployed to each.

For fraud, the weighted index is 17.625. For corporate bankruptcy and intellectual property, it is 1.5. Electronic and telecommunications crime, 1.5. E-commerce, 0.875. Transnational economic crime, 0.125. Money laundering and FTR Act offences, 6.25. Counterfeit currency, 0.625. Environmental crime, 0.125. Agency liaison and assistance, 4.0. Agency liaison and assistance for search warrants, 1.25. Agency liaison and assistance for operational matters, 0.875. Agency liaison and assistance for outpostting, 0.5. War crimes investigations, 0.375. Drugs imported, 23.875. Drugs exported, 0.25. Drugs trafficked, 2.125. Corruption, 1.75. Multiple voting, 0.25. General crime, 5.125. People smuggling, 13.25. Transnational crime, 0.125. Transnational crime—sexual offences, 0.25. Assistance—international liaison, 1.125. Interpol, 0.125. Family law orders, 6.125. That is the break-up of 100 per cent of the resources of the AFP on a business planning process. How we actually rate against that plan will obviously unfold as the year progresses and we will be able to give you a dollar figure. Under the time attribution that we have with our information management system, what we call PROMIS, our Police Realtime Online Management Information System, we will be able to give you dollar figures as the year progresses.

**Senator LUDWIG**—At appendix 1, if the five outcomes are added together, does that then express a total of your expenditure or is there something I am missing out of that?

**Mr Keelty**—Sorry, Senator—

**Senator LUDWIG**—In appendix 1, outcome 1 is \$184.4 million and outcome 2 is \$31.4 million—

**Mr Keelty**—Could you refer me to a page?

**Senator LUDWIG**—Where you have your budget allocation for the five outcomes.

**Senator Vanstone**—Can you give us a page number?

**Senator LUDWIG**—If you go to table 1 and outcome 1—

**Mr Keelty**—What page are you on?

**Senator LUDWIG**—On page 66 at table 1, the financial result, under budget allocation, is \$184.4 million. At table 7, on page 70, the financial result, under budget allocation, is \$31.4 million. At table 9, on page 71, the financial result, under budget allocation, is \$90.3 million. At table 21, on page 76, the financial result, under budget allocation, is \$34.6 million. At table 23, on page 77, the financial result, under budget allocation, is \$6.8 million. Do you see the amounts I have pulled out are the budget allocation amounts?

**Mr Keelty**—Yes, Senator.

**Senator LUDWIG**—Then you have the expenses and the variance. When you look at the expenses and the variance, you have variance in the order of \$16.3 million when you total all those up. So at table 23, on page 77, it is in the red by \$10.3 million. There is no point there, but I assume there should be a point there. At table 21, it is \$1.7 million. At table 9, I assume it is \$0.5 million. At table 7, it is \$7.7 million. The last one is \$0.05 million at table 1. That comes to a total of under budget by \$16.3 million. Where do you find the \$16.3 million? Or do you just report a loss of \$16.3 million as a budget variance? I might be missing something in all of that.

**Mr Cooney**—The budget for the Australian Federal Police did not take into account what is called an abnormal item of AFPAS expense during the year. If you refer to the financial statements on page 98, that might draw your attention to the unusual nature of item 16. About halfway down page 98, you will see ‘Abnormal item’ and an expense of \$34 million.

**Senator LUDWIG**—Yes, 7A.

**Mr Cooney**—Note 7A. That represents an unusual event that is included in the expenses of the AFP for that financial year. That is netted off against some other components of under-expenditure, deferred expenditure, that brings it into the total net impact that you mentioned. You will see that, under each of the tables that you quoted, there is a footnote that draws that out. For example, on page 70, under the table, there is footnote 1.

**Senator LUDWIG**—Yes, but that sends you further. When you add the variance up just on those, if you go through those tables, it comes to \$16 million. Discounting AFPAS, it was not a profit to you, was it?

**Mr Cooney**—I am not sure I would go that far—to say it was not a problem to us.

**Senator LUDWIG**—No, a profit.

**Mr Cooney**—No.

**Senator LUDWIG**—I think it was a problem, but that is another matter, and I am not asking you to comment on that.

**Mr Cooney**—It is an expense. The AFPAS appears as an expense. It also appears in the balance sheet as a capital injection. I think that is where you are getting your \$16 million from.

**Senator LUDWIG**—I see. What was your injection then—\$22 million or \$25 million?

**Mr Cooney**—The actual injection was about \$50 million for that purpose.

**Senator LUDWIG**—So you got a \$50 million injection. You had a budget variance of \$16.5 million, roughly, plus \$34 million. There was not much left out of the \$50 million. Where did that go?

**Mr Cooney**—It is an accounting artefact.

**Senator LUDWIG**—So that was the \$50 million.

**Mr Cooney**—I hope that helps.

**Senator LUDWIG**—Thank you. It just did not make sense.

**Mr Cooney**—We struggle with it too, Senator.

**Senator LUDWIG**—I am sorry about the time it took to find that out. Where is the \$50 million injection on here, just so that I can remember not to ask this again?

**Mr Cooney**—You will find that on page 100 in the balance sheet. There are a number of different references. But, if you look at the equity, there is a capital figure there of \$75 million. That relates to an equity injection of 50 for AFPAS plus the carryover from the previous year of \$25 million.

**Senator LUDWIG**—The capital injection for AFPAS: was that the \$50 million? You did not use all of that, did you, in the one financial year because you then utilised \$16.5 million of it to underscore your current budget?

**Mr Cooney**—No. We used all that \$50 million plus another \$10 million of cash. So the distinguishing feature here is an accounting artefact that separates the cash and the balance sheet issues from the operating statement.

**Senator LUDWIG**—Can we have a look at the NIDS initiative and identify the amounts given in initial budget funding announcements and how much has been spent? Do you have a

program that can tell me that? Then can you tell me whether it has all been spent as against the budgeted items? If you need to take that on notice, I am happy for you to do that. What I am looking for is a breakdown of those NIDS initiatives: the budget allocation to each of those and whether it has been expended.

**Mr Keelty**—I think we can give you that answer now. Certainly it is not all spent. We can provide you with a breakdown of how it is allocated.

**Senator LUDWIG**—There was \$22.6 million for the mobile strike team?

**Mr Keelty**—For this financial year it is as follows: \$4.435 million for the first three strike teams; \$2.894 for the next three strike teams; and \$6.317 for the final three strike teams.

**Senator LUDWIG**—You still have some money left out of the \$22.6 for strike teams?

**Mr Keelty**—Yes, we do.

**Senator LUDWIG**—Where is that sitting? I hope that has not gone into AFPAS.

**Mr Keelty**—No, it has not. It is quarantined funding; the NIDS funding is quarantined. It is broken up into strike teams: the placement of an officer on Thursday Island; the Heroin Signature Program; informant handling and witness protection; the expansion of overseas posts into Hanoi; an additional person in Hong Kong; the opening of the post in Beijing. It is also for the opening of posts in Rangoon, two additional positions that have been approved since May of last year for Hong Kong, a position in The Hague and a position in Bogota, the Law Enforcement Cooperation Program for Asia-Pacific and the rest of the world. It is also for the connection of the overseas posts to the AFP computer network, which allows them access to the PROMIS system, and an increase in telephone interception capacity. So there are a number of programs under the NIDS strategy. If you would like, I will give you the breakdown of the funding allocated to those programs.

**Senator LUDWIG**—Thank you, if you would not mind. Some of my questions surround some of those programs you have mentioned. I will go through them so that we do not miss them. There is extra funding that you mentioned for Thursday Island; that is now allocated. Is that ongoing funding, or will it run out at some point in time?

**Mr Keelty**—It is ongoing.

**Senator LUDWIG**—Will you come back to me with information on how much is provided annually?

**Mr Keelty**—It is \$200,000.

**Senator LUDWIG**—Likewise, is the National Heroin Signature Program being funded continuously, or is it contingent funding? You mentioned it as part of the budget outlay of the strike team now; will that continue?

**Mr Keelty**—Its continuation needs to be reviewed but, for this financial year, \$305,000 has been allocated to the Heroin Signature Program. The degree of success of that program will allow us to then consider whether it should be expanded to other things like the amphetamine type stimulants we are starting to see a lot more of in this country. We may review this in the context of expanding the program.

**Senator LUDWIG**—Is it due to run out at the end of this year? Perhaps you could take that on notice and give me some information about that funding and when it is likely to end. I assume that it is contingent upon your review.

**Mr Keelty**—The program allows that to be continued for another two years.

**Senator LUDWIG**—Regarding the creation of the new telephone monitoring team and its deployment, additional team members were allocated to each of the existing teams for three years. Is that right? Is that the additional funding for telephone interception that you referred to earlier? What is the budget for that and when will it run out? How much is it worth annually?

**Mr Keelty**—In answer to the first part of your question, you are correct: there was an expansion of the existing telephone intercept capacity to deal with the significant additional workload that was coming in as a result of the work of the strike teams. The annual allocation for that is \$927,000 and it runs out in 2002-03.

**Senator LUDWIG**—You mentioned the overseas liaison posts. When will their specific budget allocations expire?

**Mr Keelty**—The budget allocation for the opening of the Hanoi post, the one additional person in Hong Kong and the Beijing post was \$1.465 million. The posts in Rangoon, Hong Kong—for two additional—The Hague and Bogota is \$1.367 million. The funding for Hanoi, Hong Kong and Beijing will run out in 2001-02. The funding for Rangoon, the other in Hong Kong, The Hague and Bogota is, I think, until 2002-03. It was the NIDS 3 proposal.

**Senator LUDWIG**—On page 21 of your annual report you mention client satisfaction. There was a market survey of key clients. Can we obtain that survey and the findings or recommendations that might have come out of it?

**Mr Keelty**—The survey was conducted by a company called MARS, Market Attitude Research Services. The results of the survey can be provided. They indicated that 91 per cent of the people surveyed were satisfied with the services provided by the AFP.

**Senator LUDWIG**—Why did you decide to undertake a client satisfaction survey?

**Mr Keelty**—Because it is one of our performance indicators.

**Senator LUDWIG**—Who determined the key clients, and is a list of those available?

**Mr Keelty**—Anyone who referred matters to the AFP became a potential person or entity to be surveyed. We looked at the rate of referral and, in the first year of the client survey, tried to survey the main referral agencies. I can provide you with the list of the departments that were surveyed.

**Senator LUDWIG**—Who then ranked—or was it just a case that the agencies with the most referrals got the client survey?

**Mr Keelty**—The axle that made the most noise got the most grease?

**Senator LUDWIG**—Yes.

**Mr Keelty**—We did that internally in consultation with the consultant. Given that it was our first year, we tried to work with people from agencies with the largest number of referrals.

**Senator LUDWIG**—Did anyone decline to participate?

**Mr Keelty**—Not to my knowledge.

**Senator LUDWIG**—Perhaps you could have a look at that just to check whether or not there were people who you approached who may have declined. Who made the decision to use a private consultancy firm? Was that an in-house decision, and was this matter then put out to tender?

**Mr Keelty**—It was an in-house decision. My recollection is that it was not put out to tender. We tried to find an agency that would be capable of providing us with the result within a given period. Sorry, I missed the last part of your question.

**Senator LUDWIG**—I think I have forgotten it myself. We will move on. I think you might have answered this question earlier: concerning the conduct of the survey itself—the consultant obviously conducted the survey—why was the decision made to use a consultant to conduct the survey?

**Mr Keelty**—The decision to use a consultant was so that we could get, from an integrity point of view, a nonbiased, objective, scientific result that could be relied upon. I think I remember now that part of your question concerned how the survey was conducted. It was conducted by way of having meetings with focus groups initially, where the consultant went around to various agencies and met with focus groups. Then a written survey was sent out to people within the agencies.

**Senator LUDWIG**—How did you decide who would be a participant in the focus group or the personal interview?

**Mr Keelty**—We allowed the agencies to select the people who would be surveyed.

**Senator LUDWIG**—Did they give you a report back on the methodology they adopted; that is, when they got answers to written queries based on the usage that you have said, did they adopt a particular methodology to determine who they would then interview as part of the focus group or who they would accept only written responses from?

**Mr Keelty**—I am not sure that it was any more scientific other than to say who within the agency would be competent to reply to the survey—in other words, it was something based on interaction with, and knowledge of, us.

**Senator LUDWIG**—So about a third of your key clients expected the AFP to add greater value and improve service delivery. Were there specific complaints identified as part of that area they had targeted? If so, could you make those available and give me some background information as to why those complaints arose and whether there will be remedial action put in place to correct those? What we really want to know is how you are going to pay for it given the state of your budget. I am happy for you to take that on notice.

**Mr Keelty**—The areas of dissatisfaction include slowness in giving feedback and information, a general experience of poor service and delays, the time taken in investigating referrals, lack of consistency in case officers, inconsistency in the matters which are accepted by the AFP for investigation—

**Senator LUDWIG**—Yes, I can see those as the major areas. That is reported in your annual report, but obviously I do not have what MARS have told you. Are they all of the areas that they identify?

**Mr Keelty**—The report in the annual report is derived from the survey results.

**Senator LUDWIG**—It does not then give me a percentage breakdown. Is it in hierarchical order? Are the priorities first or last? Is it worst to the best or best to the worst?

**Mr Keelty**—I do not think it is reported in the annual report in any order. As I said to you before, we can make the survey results available to you. In answer to your other question about the cost, most of those areas of dissatisfaction do not have a cost attached to them. The comment about the budget—

**Senator LUDWIG**—Sorry, that was an aside.

**Mr Keelty**—I think the record needs to be corrected.

**Senator LUDWIG**—Then please correct it.

**Mr Keelty**—We do not have a budget problem in the AFP.

**Senator LUDWIG**—Do you intend to do a follow-up survey?

**Mr Keelty**—We do, because it continues to be, as you would see from the portfolio budget statements, one of our performance measures.

**Senator LUDWIG**—Who will undertake that survey? Will you put that out to tender or will you ask MARS to redo it?

**Mr Keelty**—We have not made that decision yet.

**Senator LUDWIG**—Is the Australian Institute of Police Management supported through the AFP?

**Mr Keelty**—Yes, it is.

**Senator LUDWIG**—What is it responsible for?

**Mr Keelty**—It runs a number of programs. Its principal program is called the Police Management Development Program. It also has a Police Executive Leadership Program. It also conducts critical issue forums for senior police. The institute is a common police service, owned and contributed to by all the law enforcement agencies in Australasia. Attendance at the course at management level tends to be around the commission officer rank level. Attendance at the executive courses tends to be around the more senior levels of policing. It is used to provide contemporary learning and development to police executives and police managers.

**Senator LUDWIG**—On page 99 of your annual report, you have funding of about \$6.8 million from the AFP to the AIPM, the ABCI and the ACPR. Is there a breakdown of the level of funding between those organisations? If you do not have that to hand, I am happy for you to take that on notice.

**Mr Overland**—We can provide that to you.

**Senator LUDWIG**—Can you briefly again remind me what the ABCI and the ACPR do?

**Mr Overland**—The ABCI, the Australian Bureau of Criminal Intelligence, is again a common police service that has representatives from each of the state police services as well as our own. Its function is to provide a coordination of intelligence across Australia. It also has features such as a national fraud desk, and it does have a link into the AFP's international intelligence capability. The ACPR, the Australasian Centre for Policing Research, is based in Adelaide. It is basically a research institute which researches and provides papers on areas of interest to, and focus for, police commissioners who operate abroad.

**Senator LUDWIG**—Could you give a breakdown of the number of AFP personnel who are on secondment to those organisations or are permanently placed there? Additionally, could I have a breakdown of their staff—whether they are officers, for example—and the number of staff in each of those three bodies? I would also like a breakdown of their salary or remuneration in terms of whether they are in the SES officers band or in the officer stream.

**Mr Keelty**—We can provide that information.

**Senator LUDWIG**—Are staff permanently attached to those three bodies or do they rotate, assuming that some are AFP officers not on secondment? On what basis do they



rotate? In addition, is the AFP conducting any current investigations of any of the three organisations in relation to travel claims or travel allowance incidents?

**Mr Overland**—I can answer that question. There is a current investigation in relation to the Australian Institute of Police Management that concerns travel allowances.

**Senator LUDWIG**—Can you tell us what that is about?

**Mr Overland**—I would like to. It is an active investigation and a brief of evidence has been referred to the Director of Public Prosecutions. I think it is difficult for me to go much further than that in a public forum, given the obvious sensitivities should charges be preferred.

**Senator LUDWIG**—I will have to take your lead on that.

**Mr Overland**—If it is an operational matter, I understand that I cannot really go any further.

**Senator Vanstone**—The sensitivities referred to do not involve AFP personnel; it is up to the DPP. The case may or may not proceed to trial and, when it is over, everyone can talk about it.

**Senator LUDWIG**—I am not seeking to find out anything that I should not.

**Senator McKIERNAN**—I have some questions relating to the survey conducted into the level of client satisfaction, which appears on page 21 of the annual report. To conserve time this afternoon, I will put those questions on notice. I have a couple of short questions regarding the order of merit for the Australian Federal Police Act and whether it is still used to determine promotions within the service. I have another question about the now abolished AFPAS. It may be appropriate for you to respond to those questions at a later time.

We now want to move to two other issues. Earlier today we directed some questions to the DPP about Mr Reith and the telecard affair. I have some more questions on this matter that we seek to direct specifically to the Australian Federal Police. On what date was the Reith matter referred to the Australian Federal Police?

**Mr Keelty**—On 10 May this year.

**Senator McKIERNAN**—Who referred the matter to the police?

**Mr Keelty**—The Minister for Justice and Customs.

**Senator McKIERNAN**—Who was interviewed by the Australian Federal Police in relation to discrepancies in the use of Mr Reith's telecard, and when and where did each of the interviews take place?

**Mr Keelty**—I would like to provide you with that information but, since the matter is under current investigation by the AFP, it would be inappropriate in a public forum such as this for me to provide you with that answer—in the sense that it may prejudice the ongoing investigation.

**Senator McKIERNAN**—Thank you for that response. When did the Australian Federal Police conclude its initial investigation into the matter, and on which date was a brief of evidence provided to the Director of Public Prosecutions?

**Mr Keelty**—There was no brief of evidence provided to the Director of Public Prosecutions in the strict sense of a brief of evidence. An interim brief was provided to the Director of Public Prosecutions on 27 September 2000.

**Senator McKIERNAN**—In light of your response to my earlier question, I have thought about the next question. Nonetheless, I will ask it, but I am asking it in the knowledge of what you responded to earlier. What records do the Australian Federal Police have in relation to the additional evidence provided by Ms Odgers the day after she was interviewed by the police? Was this additional evidence provided to the Director of Public Prosecutions?

**Mr Keelty**—There was no additional evidence provided by Ms Odgers the day after she was interviewed by the Australian Federal Police. There was, however, a phone call made by a person who was a friend of Ms Odgers and who was present during her interview the previous day. That information was by way of a phone call to one of the liaison officers. It was not contained in the interim brief of evidence that went to the DPP.

**Senator McKIERNAN**—How many staff were committed to the investigation of the misuse of Mr Reith's telecard by the Australian Federal Police?

**Mr Keelty**—Two full-time staff, one three-quarter time staff and three half-time staff. Two were used for interviews and two were used to execute a search warrant.

**Senator McKIERNAN**—Over what period of time did the investigation take place?

**Mr Keelty**—The investigation has been under way since 10 May, which was the date of referral. Apart from a brief gap, the investigation is still under way.

**Senator McKIERNAN**—How senior were—or, indeed, are—the police officers involved in the investigation? What is their rank, if you like, in terms of seniority within the force?

**Mr Keelty**—They are all federal agents. If I were to describe it differently, the experience ranges from considerable to high.

**Senator Vanstone**—In other words, they are up to the task.

**Senator McKIERNAN**—I did not doubt that for a moment. What other resources were committed to the investigation, apart from the full-time and part-time interviewing officers and so forth you gave me?

**Mr Keelty**—The only other resources would be things such as travel expenses and record searches. So really the cost of the investigation is broken up into employee expenses, travel expenses and record searches.

**Senator McKIERNAN**—Do you have a cost to date of that investigation?

**Mr Keelty**—As at 10 November, employee expenses were \$68,351.70, record searches were \$372.30, travel expenses were \$3,499.68, the total being \$72,223.68. As I said, that was as at 10 November.

**Senator McKIERNAN**—Are you able at this time to give the committee any information on the further steps taken by the Australian Federal Police since the announcement on 19 October 2000 that the AFP were reopening their investigations into the matter?

**Mr Keelty**—As you understand, I am trying to assist the committee. Without going into specifics, what we have done is look at the public statements made by a number of people, compared those public statements with the interviews that have taken place with those people and sought further corroboration of the gaps, and that has led to the interview of a considerably larger number of people.

**Senator McKIERNAN**—Do you have any indication at this time when the investigations might conclude and therefore the file might be shut on the matter, as far as the AFP is concerned?

**Mr Keelty**—I would like to think that the investigation will conclude by the end of this month. That is based on the current knowledge of outstanding persons to be interviewed before we refer the matter back to the DPP, but that may not be the end of the matter in terms of the AFP's involvement. Should the DPP conclude that other persons ought to be interviewed, then that will be a decision taken at that time.

**Senator McKIERNAN**—Are there any plans for the AFP to make their findings on this matter public upon conclusion of the investigations?

**Mr Keelty**—It would depend on the outcome of the investigation.

**Senator McKIERNAN**—I want to now move to another matter which also has some sensitivity attached to it. I am referring to the search that occurred on the home of the adviser to Mr Brereton, Dr Philip Dorling. The search warrant was executed on 16 September this year. I have some questions in relation to that. In regard to this matter, I made a request to the committee that agents—I will not mention their ranks—Castles, Brook and Brown be brought the committee so that the committee could direct questions to those agents. The majority of the committee did not agree with the request that I had made, on the grounds of the time available for this afternoon's hearings, so the officers were not called here this afternoon. Can you advise the committee who in the AFP authorised federal agents to obtain and execute the search warrant on Dr Dorling's home?

**Mr Keelty**—There was no-one in the AFP who authorised the search warrant that was executed on Dr Dorling's home. The search warrant was authorised by the Deputy Chief Magistrate of the ACT Magistrate's Court.

**Senator LUDWIG**—Who made the request to the Deputy Chief Magistrate? Was it an AFP officer?

**Mr Keelty**—That is correct.

**Senator LUDWIG**—Who was that?

**Mr Keelty**—That was the informant in the matter.

**Senator LUDWIG**—I assume it was agent X, but was that upon his instigation or was it requested by someone that he do that?

**Mr Keelty**—I would not want you to misconstrue what I am saying, but there is an independence in the office of constable. As a senior police officer and in fact the Acting Commissioner, I cannot direct a constable of police to make an arrest or to execute a search warrant. An officer or a constable of police establishes in their mind that an offence has been committed. Based upon their belief, they then take certain courses of action, which they are entitled to undertake by legislation and by the fact that they are sworn members of the Australian Federal Police.

**Senator LUDWIG**—I will make it a little bit more circuitous then. Were they on a team or a task force designed to look into government leaks of some description and, as such, did they come across an apprehension that there may have been a requirement for a search warrant to be executed?

**Mr Keelty**—That is correct.

**Senator LUDWIG**—How many of those teams have been out and about? Are they regularly put out or are they specifically drawn for a purpose? Who then directs that purpose and directs them to come to that task force? You do not have a standing task force in relation to that, do you?

**Mr Keelty**—We have a team of investigators based at our headquarters here in Canberra that are tasked with investigating special references. Special references are those matters referred to us by the government.

**Senator LUDWIG**—All right. Is this one where there was a special reference tasked to you by the government? Can you tell me something about that reference? What was it? How many have you received in relation to leaks?

**Senator Vanstone**—While Mr Keelty is looking that up, I am not, in saying this, making any suggestion that you have crossed the line, Senator Ludwig, although the officers have been named. I just ask you to reflect on the process of pursuing what the officers have done in the course of something that is still operational and in particular naming them when, to the best of my knowledge, there is no assertion that any Federal Police officer has acted incorrectly. Someone who is reading the *Hansard* and sees a name mentioned might draw an inference that there is a query over the work the officer has done. Law enforcement people undertake a difficult job for us. Sometimes it is the dangerous stuff. This investigation of leaks is never easy. Well, it was, actually. I gave a whole lot of stuff back to the Attorney-General's Department once—it was a piece of cake—and they caught the bloke in about three weeks. I should write a book about it, but that is another matter. They are simply doing their job. All I am asking you to consider is that, if there is no allegation that someone has behaved improperly, I query whether they should be named.

**Senator LUDWIG**—Perhaps I can clarify that. I am not making any allegation at all that an AFP officer behaved inappropriately. I did not mention their names. I normally would not have, and I certainly did not. I have not been trying to draw that out of Mr Keelty either, because I refrained from asking him about the officer who sought the warrant. I am trying to move it up a notch at this point in time to understand how the issue came about.

**Senator Vanstone**—I understand that, and I am quite happy for all of that to proceed. I am not trying to stop this questioning; I am just making that point because they have been named in the media as though somehow for police officers to have done their job taints them with some impropriety. As I think I said in the very beginning, I will have a lot more to say about this matter when it is finished. Media coverage of the execution of this warrant will be one of the matters I will be very keen to discuss.

**Mr Keelty**—Senator Ludwig, I just want to make sure in the interests of accuracy that I have got your question right. Could I please ask you to repeat it?

**Senator LUDWIG**—It started out a bit more broadly than I thought. The issue is: how many references, if any, have there been in the last 12 months from government to the AFP about examining leaks? Are there standing AFP officers that investigate these, or is a task force drawn together to investigate them?

**Mr Keelty**—I will just look up whether I have got the number of special reference investigations that we have currently got under way.

**Senator LUDWIG**—I am happy for you to take that on notice if you do not have that available.

**Mr Keelty**—In answer to the rest of your question—while I am just looking for a document—there is a group at our national headquarters that generally is formed to investigate special references. That is not restricted to the group at headquarters; it is sometimes sent out to a regional office if it is more appropriate for the regional office to investigate the matter. It would appear on the figures I have in front of me that we have 32 such cases on hand as of 31 October.

**Senator LUDWIG**—You will have to guide me with that—particularly you, Minister. Is that a matter about which I can inquire and ask for a breakdown of what they were generally? Or is that a matter I cannot?

**Senator Vanstone**—Your question is one that Mr Keelty can answer. I have tried to explain this to the Senate, and I just have to keep repeating it.

**Senator LUDWIG**—I am new.

**Senator Vanstone**—I am not trying to be rude to you; I am just indicating that, other than a general briefing—obviously I know about the matter, because I signed the letter and sent the material off—on matters that are particularly contentious if they are about the hit the papers, I, myself, generally do not know much about operational matters. There are always exceptions, so I cannot say to you that I never do. But, generally speaking, I do not know a lot about the detail. I do not inquire, and there is no reason I should. When it is resolved they will tell me. So even on that question Mr Keelty is better placed to answer than I am.

**Mr Keelty**—Of the 32 matters that are currently on hand, four are undergoing evaluation, 14 are active, two are subject to monitoring, four are with the DPP, two are before the court, one is on appeal and five are awaiting evaluation. In terms of the nature—which I think is the question—of those 32 matters, they can be anything from the leak of a document to a leak of information; they could be an allegation of travel rorts by a politician. There is a whole raft of issues that cover the ambit of what we call special references.

**Senator LUDWIG**—We can have that information when it is finalised or with the DPP. Is that the case? Can we ask for that information prior to that to get an understanding of what is ongoing, at least in relation to this particular issue? I am trying to go from the general to the specific. Although I might be interested in the other 31 matters, at the moment I really want to find out about this possible leak and the issues around it. What can you tell me?

**Senator Vanstone**—It really does depend on what you want to know. There has been a pretty clear understanding for a long time—

**Senator LUDWIG**—Yes, I did not want to cross that; I want to go only where I can go. If you circumscribe where I can go then I will travel down that path quite happily.

**Senator Vanstone**—Mr Keelty is probably best placed to do that. I do not want to stop your questioning if it is appropriate, but it is peculiarly hard. Sometimes people ask a question that they think is quite innocent until one of these gentlemen points out why it might not be. For example, once I was asked in the Senate whether I would say when something had happened. I indicated that even if I had the date in my head I would not give it because that might be of interest to other people who had not yet been spoken to. For example, if you ask, ‘Who have you spoken to up until now?’ that is of interest to people who have not yet been spoken to.

**Senator LUDWIG**—I appreciate that. That is why I prefaced most of my comments.

**Senator Vanstone**—In itself it does not seem a very threatening question, but it can be. That is why they are generally best left until they are finished.

**Senator LUDWIG**—That is why I am not complaining about the answers.

**Mr Keelty**—I can answer your question by saying that there are three investigations currently on hand in the AFP that are broadly to do with what we will call ‘East Timor leaks’.

**Senator McKIERNAN**—Coming back to the specifics of the search warrant on Dr Dorling’s home, who gave the information to the magistrate who issued the search warrant? Was it a member of the AFP?

**Mr Keelty**—Yes, it was.

**Senator McKIERNAN**—Do you know whether the magistrate was advised of Dr Dorling’s employment as an adviser to a member of parliament—a shadow minister in the opposition?

**Mr Keelty**—I believe that that was contained in the information presented before the magistrate—perhaps not in the context you might be thinking of but in the context of the employment of Dr Dorling.

**Senator McKIERNAN**—In the course of that information being provided, would the magistrate have been informed that the AFP had sought access to electronic records of the office of the shadow minister for foreign affairs, Dr Dorling’s employer, which were held in the parliamentary information system?

**Mr Keelty**—I would have to check the information to provide that advice.

**Senator McKIERNAN**—While you are checking that, could you find out whether the magistrate was informed that that request for access to those records was formally denied by Mr Brereton, by the Leader of the Opposition and indeed by the Speaker and President of the parliament?

**Mr Keelty**—It is possible to obtain that information. There is an issue here about what acted on the Deputy Chief Magistrate’s mind and whether that information was relevant to what needed to act on the Deputy Chief Magistrate’s mind in terms of the Deputy Chief Magistrate making a decision to issue the search warrant. This is a difficulty we are getting into by going into the detail of it. What has happened is that a police officer has presented a set of information to a magistrate. Whatever that information was has resulted in the issue of a search warrant. That search warrant was executed lawfully. From our perspective, as far as that action is concerned, that was the end of that aspect of the matter.

**Senator McKIERNAN**—Yes, I am very sensitive to where we are at the moment, but I am also very sensitive to the issue of parliamentary privilege which hangs on this. That might not be something that is uppermost in your minds or in the minds of the various agents of the Federal Police, but it certainly is important to me as a member of parliament and to members of parliament generally. While I am not seeking to second-guess what the Deputy Chief Magistrate will be doing, I think that, from the position I am occupying as a member of this committee undergoing this process, the questions that I am asking are certainly relevant to what we are trying to come to.

**Mr Keelty**—On that, that is why that group is formed at our national head office: they are practised at and conversant with issues such as privilege.

**Senator McKIERNAN**—Without asking the names of the officers, the informant or the person who provided the information on oath to the Deputy Chief Magistrate, would that person necessarily have known of the earlier request for access to those electronic records held by the shadow minister for foreign affairs and, indeed, through his adviser, Dr Dorling?

**Mr Keelty**—Yes, because when that request was denied the option was open: when there is no consent or cooperation provided, then the options open to the investigators are limited. Whilst I cannot speak for the investigators, what no doubt acted on their minds was: ‘What other options do we have?’ And that is when the resort to the search warrant would have been made.

**Senator McKIERNAN**—Do you know if the officers sought legal advice in regard to the matter of parliamentary privilege prior to seeking and then exercising the search warrant?

**Mr Keelty**—Yes, I do. The DPP was consulted as part of this investigation process about the issuing of the warrants and was made aware of the previous attempt to obtain the information by request and by consent. I should add that, since we are raising questions about the integrity of the process here, during the execution of the warrant a legal adviser was present within an hour of the police officers entering the premises. No search was conducted during that first hour and Dr Dorling was allowed free access to speak to a number of people over the telephone, which he did. A friend of the family had in fact arrived prior to the legal adviser. A short time later—about another hour later—another barrister and solicitor arrived at the premises, so we had three legal advisers present at the premises. About 3½ hours after they entered the premises, a phone call was made to a justice of the Supreme Court and a discussion ensued about an injunction. But the search was allowed to proceed and, by consent from us, any material that was obtained was lodged with the Supreme Court in the ACT. That matter was heard on 18 September and the injunction was withdrawn by Dr Dorling’s legal representatives.

**Senator McKIERNAN**—Thank you for that. What time of the day was the warrant executed?

**Mr Keelty**—In terms of the section 3 warrant, the warrant was executed at 11.38 a.m, the technicality being that, by law, the warrant is executed when the people leave the premises. I think the thrust of your question was how long were they there and what time did they go there. They went at 6.55 a.m. and they left at 11.38 a.m.

**Senator McKIERNAN**—Prior to you coming in with that additional information, for which I am grateful, I was asking about the officers obtaining legal advice. You indicated in your response that they had consulted with the DPP. Does that constitute legal advice?

**Mr Keelty**—Yes, it does.

**Senator McKIERNAN**—Was that provided in writing or was it oral advice by the DPP?

**Mr Keelty**—The draft information for the search warrant was provided to the DPP. The DPP made written comments in relation to the draft information for the search warrant. The DPP comments were taken into account and a new information for a search warrant was prepared. That was the information that was placed before the Deputy Chief Magistrate.

**Senator McKIERNAN**—I omitted to ask what day of the week the search warrant was executed. It was Saturday, 16 September at 6.55 a.m.?

**Mr Keelty**—That is correct.

**Senator McKIERNAN**—In question time on 3 October, Minister, you declined to give the Senate the dates of any briefings that you may have received from the AFP about this investigation, but you did undertake to make further consultations. Can you advise whether you were consulted by the AFP on this matter?

**Senator Vanstone**—Following that, I did have a discussion with Mr Keelty, which we have just reminded ourselves about. I am satisfied that, if it was you who asked that question in the Senate, I gave you the appropriate answer. I have been pretty open about this. I was surprised that on one day there was a headline ‘Vanstone admits knowledge’ or something. I would like to see a headline ‘Vanstone admits the sky is blue’, because it was no surprise to me. I think I indicated I had a general briefing. Previous ministers in my position will tell you that a minister is given a general briefing if something is likely to appear in the paper, and sometimes for other reasons, and that is what happened. There are a variety of reasons why it is not appropriate to go into the dates, but I can assure you that ‘general’ means general. There is no obfuscation there. There is nothing for me that hangs on it, but there might be in relation to other matters.

**Senator McKIERNAN**—Do those reasons still exist?

**Senator Vanstone**—Yes.

**Senator McKIERNAN**—They do.

**Senator Vanstone**—Yes, I gave the right answer at the time and it is still the appropriate answer.

**Senator McKIERNAN**—Seeing as you can’t or won’t provide the dates of when the briefings occurred, can the committee be informed of the number of briefings you received on this matter?

**Senator Vanstone**—It is two or three. Mr Keelty has some information that he thinks might be of help.

**Mr Keelty**—We are trying to assist you here, giving due consideration to the fact that—as I said in answer to a question asked by Senator Ludwig—there were three matters connected. One of those matters is currently before the court, so it would be improper for me to go any further into that particular matter. But it is important to understand that there were three matters connected to do with East Timor leaks and specifically leaks from the Defence Intelligence Organisation and the defence security branch.

The reason why the warrant was executed on a Saturday—I am just trying to be careful about the answer for this, but I want you to be under no illusion about the integrity of the operation and why it proceeded the way it proceeded, without any political interference and without any interference at all from the executive, as do all operations—was that one of the linked operations happened to have a senior Defence employee attached to the Olympic Games intelligence area of Defence. A decision was made that, in the interest of protecting the Defence intelligence area of the Olympics, action needed to be taken on all three jobs at the same time, not knowing whether they were going to be linked or otherwise but suspecting strongly that they were linked. That is why it happened on a Saturday morning. The fact that the request for consent to have a look at records here was denied meant in all likelihood that the things we were looking for would be where we suspected we would find them. To be more blunt, part of it would have been at Dr Dorling’s place, his home, his residence. There were very good operational reasons why the thing proceeded when it proceeded and how it proceeded. It proceeded lawfully and it proceeded with a good level of consultation with the DPP, an appropriate level of consultation with the DPP, as do all of these matters that are sensitive to not only parliament but also a number of the departments involved.

**Senator McKIERNAN**—Your statement brings up a number of questions, some of which I immediately dismiss because they are not matters that should be discussed on the public



record. I do not know whether it is appropriate to ask if what you were looking for was actually found in Dr Dorling's home on the morning the search warrant was executed. I do not think I should ask that question,

**Senator Vanstone**—Then don't.

**Senator McKIERNAN**—Mr Keelty's response actually prompts the question.

**Senator Vanstone**—That is one of the reasons why the general principle is often good to follow—that is, don't start because as soon as you start it is like Pandora's box. You open it up and—

**Senator McKIERNAN**—Minister, the box could actually be here and be opened up. The records of the shadow minister for foreign affairs, which included parliamentary briefs, were in fact opened up. Coming from where we come from in the Senate, Mr Keelty, we might have a slightly different position on the whole matter than perhaps has been resolved in the Senate, but that is a matter for judgment on another day. I really am walking on eggshells here.

**Senator Vanstone**—I understand, but you have just said something that I know invites me to invite Mr Keelty to respond. A warrant has not yet been executed on me for anything but, as I understand it, if that does happen they make a list of what is what. Mr Keelty might have something to say to you about that in relation to a remark you have made which has been written in the paper and taken as truth by a large number of people.

**Mr Keelty**—A tape recorder was activated on entry to Dr Dorling's premises. A transcript was made of the entire process that took place while the AFP persons were on Dr Dorling's premises. At no stage during the presence of the AFP personnel on Dr Dorling's premises was any objection made about any of the material that was being looked at. The search warrant is very specific, absolutely specific. It listed the documents by name and by reference number that we were looking for.

It is usual, in searching any premises for anything—whether it be for drugs, money or documents—that other material will have to be not so much examined but lifted or moved as a result of trying to find the things that you are looking for. Hypothetically, if you are suggesting that someone holding such a position as Dr Dorling—and perhaps now we really are getting into the wrong area—ought not be searched because they are above the law, I think we are probably going to have to agree to disagree on that. What happened was lawful and was recorded from the moment the people entered the premises. At no stage whatsoever did Dr Dorling take objection to what was being looked at.

On my instructions no documents of parliamentary privilege were even sighted. It is inappropriate for me to go into the types of things that were sighted, but this is something that would have been at the forefront of the investigators' minds. If they go outside the terms of the warrant, if they go looking for things that are not listed in the warrant, they are acting unlawfully. They did not act unlawfully, and, as I remind you, the injunction taken out on the search warrant was withdrawn.

**Senator McKIERNAN**—I was not implying, and hopefully did not imply, that I thought Dr Dorling was above the law in any shape or form. However, in making my comment under parliamentary privilege I did mention the fact that they were dealing with records which are the property of the shadow minister for foreign affairs. This is where parliamentary privilege really comes into force. I am not here this afternoon to argue about parliamentary privilege and I am certainly not here to argue, as a senator—as distinct from a member of the House of

Representatives—how parliamentary privilege should operate. That is for a different venue—it is for a different forum to argue that through because I suspect the Senate might take a different position from the House of Representatives here, and I am not reflecting on House of Representatives in saying that.

**Senator Vanstone**—I think there is something I know that might help you here. I have just talked it over with Mr Keelty.

**Mr Keelty**—I will clarify one issue for you: on the advice given to me by the searching officers, there were no documents that would attract parliamentary privilege or that were of the nature that you have just outlined looked at by our officers. That was not the purpose of the search.

**Senator McKIERNAN**—I am not questioning what you are doing, and I really do not want to go much further down this track. But, with due respect, I would not think the officers would know the particular documents, be they in electronic or paper form, containing matters that might attract parliamentary privilege. They would not know if in fact they did attract parliamentary privilege until they looked at them. That might concern documents held in a machine, such as we have here, or hard copies of documents, but one would have to look at them in order to see this. In dealing with an adviser for a shadow minister, particularly in a portfolio like foreign affairs, I would have great expectations—I do not know—that any electronic material that Dr Dorling held in his house would have to contain some material that might fall into that category.

**Mr Keelty**—I accept what you are saying in terms of who decides how important a document is or what the document attracts. But, on the advice that I have got, no such documents were upon the premises—and I am conscious of the fact that the issue has been raised once before.

**Senator McKIERNAN**—I cannot recall now whether I have asked this: when taking the legal advice from the DPP, was that legal advice directed to the matter of parliamentary privilege?

**Mr Keelty**—No, it was not.

**Senator McKIERNAN**—Do you know if the officers sought any legal advice on the matter of parliamentary privilege so that they, in executing or seeking to execute the warrant, were informed of the legality of the parliamentary privilege and the provisions of the Parliamentary Privileges Act?

**Mr Keelty**—I do not know. Certainly the correspondence that had gone backwards and forwards over the approach to ‘with consent’ provide access to the parliamentary information system; those documents and the history surrounding the requests and the replies were made known to the DPP.

**Senator McKIERNAN**—Thank you. We got sidetracked from my list of questions, but I think it is nonetheless productive in finding out more about the process that has gone on in regard to those actions in September. Do you know whether any other ministers—we have asked a question about Senator Vanstone—or their officers were briefed by the AFP on the investigations and on the issuance and later execution of the warrant?

**Mr Keelty**—The only other person who would have been contacted after the search warrants were executed, from my recollection, would be the Attorney-General, because it was a matter of national security. Remember what I said before: this was not just one

investigation. I am sorry, I think the Minister for Defence was also advised, and that would have been post the execution of the warrant.

**Senator Vanstone**—We do not have the benefit of immediate playback of what has been said, but I just want to make it clear that it is my understanding that, on the Friday before the execution of the particular warrant in question, Commissioner Palmer spoke to the Attorney in Sydney. They were both there, because that was the day of the opening of the Olympics. I did not ask the Attorney what he was told; I just know from what he said to me that he was given a very general indication that there would be some activity in relation to a number of matters the following day, which made me think he knew more than I did, because I did not know specific days—what is it to me? I think that was nothing more than a passing remark from the commissioner because he happened to be with the Attorney. But, just in case that was misunderstood, I thought I would make it clear.

**Senator McKIERNAN**—Thank you. Mr Keelty said that the Minister for Defence was briefed afterwards; 16 September, I think, was the date.

**Mr Keelty**—Yes. Remembering it was during the Olympics and, from my recollection, the defence minister and the Attorney-General were in Sydney, as was Commissioner Palmer. My recollection—remembering all the time here that there were issues wider than the matter that you might be focused on in terms of Dr Dorling—is that the Secretary to the Department of Defence briefed his minister; he was not briefed by the AFP.

**Senator McKIERNAN**—Who then briefed the secretary?

**Mr Keelty**—Commissioner Palmer briefed the Secretary to Defence.

**Senator McKIERNAN**—I do not want to get into matters which are not the purview of this committee, and Defence certainly does not come in the area. Did the AFP provide briefings to the Department of Foreign Affairs and Trade, to the Department of Defence and/or to Department of the Prime Minister and Cabinet in regard to the matter that is under discussion by this committee now? I want to keep it focused, too.

**Mr Keelty**—I briefed the Secretary to the Department of Foreign Affairs and Trade on the Monday after the Saturday, so that would have been 18 September. As I said, Commissioner Palmer briefed the Secretary to the Department of Defence on Saturday, 16 September. Going back to what Senator Vanstone has just said, in terms of the general conversation Commissioner Palmer may have had with the Attorney on 15 September, I think there was a subsequent briefing on 16 September, given that the Attorney was in Sydney—that is my recollection of it.

**Senator McKIERNAN**—Were any briefings provided to any department by the AFP prior to 16 September?

**Mr Keelty**—I just need to clarify your question: in relation to what?

**Senator McKIERNAN**—The execution of the warrant on Dr Dorling's home. I understand the three matters that were under investigation were linked; I do not think it is the purpose of this hearing to inquire into those wider matters.

**Mr Keelty**—There were briefings given to Defence and Foreign Affairs in respect of the fact that the three jobs were linked. As part of that, there would have been reference in the briefings to a number of entities, Dr Dorling being one of the entities.

**Senator McKIERNAN**—Is it possible at this stage to give a total cost of both staff and resources to the AFP of the investigation?

**Mr Keelty**—The investigation involving this matter—that is, the Dr Dorling matter—as of 10 November cost a total of \$223,181.44. That is made up of employee expenses of \$220,827.52, record searches of \$275.40 and travel expenses of \$2,078.52.

**Senator McKIERNAN**—Thank you. I want to move a different area connected to these questions: the operations of the Telecommunications Act 1997. What arrangements are in place within the AFP governing the disclosure or use of information or documents obtained from telecommunications carriers or carriage service providers under section 282 of the Telecommunications Act 1997?

**Mr Keelty**—I do not have the act in front of me, but I think it sets out the restrictions on records and the limitations regarding to whom material obtained under a telephone intercept warrant can be disseminated. The record-keeping of disseminations and the security of the records are audited twice a year by the ombudsman, who I understand reports to parliament.

**Senator McKIERNAN**—Thank you. How many federal agents are authorised officers—authorised to certify that information is required from carriers or carriage service providers—under the provisions of section 282 of the Telecommunications Act?

**Mr Keelty**—I will have to take that question on notice, but they must be commissioned officers.

**Senator LUDWIG**—Is that a requirement under the act?

**Mr Keelty**—Yes.

**Senator McKIERNAN**—I should know this information—it is probably in the annual report—but how many commissioned officers are in the AFP? You may take that question on notice.

**Mr Keelty**—It will be in here somewhere, Senator.

**Senator McKIERNAN**—I know.

**CHAIR**—I am sure that you will have a moment to search for that information, Mr Overland.

**Senator Vanstone**—Before we move on to another point, I told Mr Keelty and the committee that I understood that the Attorney-General had ‘bumped into’ Commissioner Palmer on the Friday before and received some sort of general briefing. I think I said something about a passing remark. I have been advised that the Attorney-General’s office has told my office that that is correct: the Attorney-General was advised that something was to happen the next day. However, he did not have any knowledge about on whose residence or place any warrant was to be executed. If my understanding is correct, the Attorney-General knew the general nature of the matter—that is, it was one of the leak investigations—and that a warrant was to be executed, but not on whom or where.

**Senator McKIERNAN**—Thank you. How often in the past year have AFP officers certified under section 282 of the Telecommunications Act that the disclosure of information or documents by carriers or carriage service providers was reasonably necessary for the enforcement of the criminal law?

**Mr Keelty**—I will have to take that question on notice.

**Senator McKIERNAN**—Could you also make a comparison with previous years—bearing in mind that the act was amended in 1997?

**Mr Keelty**—I will take that question on notice also.

**Senator McKIERNAN**—You have mentioned the overview by the Ombudsman. Are there any further internal audit procedures in place to monitor the AFP's access to information obtained under section 282 of the Telecommunications Act?

**Mr Keelty**—As I mentioned at the outset of this first series of questions, I did not have the legislation in front of me and I might have misconstrued the section that you were originally referring to. If you are referring to call charge records and reverse call charge records, as I think you now are, that series of records is not audited by the Ombudsman, but they are issued by authorised commissioned officers of the AFP. The existing audit arrangements are through the internal audits of the AFP, which are part of the internal security and audit facilities of the AFP.

**Senator McKIERNAN**—Thank you. I would appreciate it if you would look at your earlier responses and see whether, with regard to the way section 282 operates, there is anything further you would like to add to the information you have given the committee.

**Mr Keelty**—I will, Senator. I will get the figures that you sought and make it part of the answer.

**Mr Overland**—I think the preliminary figure is that 155 officers would be authorised to obtain that information, but I will check that and confirm it.

**Senator McKIERNAN**—Thank you. Does the AFP have the ability within the act to enter into any interagency or interdepartmental agreement, memorandum of understanding, guidelines or other arrangement which govern the disclosure and/or use of information obtained by law enforcement or other agencies under section 282 of the act?

**Mr Keelty**—I will have to take that on notice and look at the section, Senator.

**Senator McKIERNAN**—It might be appropriate for the department to also take that on notice and look at it with regard to other law enforcement agencies which may not be directly connected with the AFP.

**Mr Cornall**—Yes, we will do that, Senator.

**Senator McKIERNAN**—If there is an ability there to enter into such arrangements, as broad as I have put them—arrangement, agreement, memorandum, guideline or understanding—could the committee be provided with a sample copy of those arrangements?

**Mr Cornall**—We will see what we have.

**Senator McKIERNAN**—Thank you.

**CHAIR**—Thank you, Mr Keelty, Mr Overland and Mr Cooney, for your assistance with our deliberations this afternoon. I might just note, Mr Keelty, that when we began this morning we had not selected a date or a time for the return of answers to questions on notice. The committee has indicated a preferred date of 20 December for the return of questions on notice. We have not yet been advised of the next dates for additional supplementary estimates but we envisage that 20 December will enable us to receive answers to questions and then use those appropriately.

[5.40 p.m.]

**High Court of Australia**

**Senator LUDWIG**—I take you to page 80 of your annual report, in relation to your order nisi applications. Just for the assistance of people other than lawyers, can you tell us what they are?

**Mr Doogan**—Are you looking at table 30?

**Senator LUDWIG**—Yes.

**Mr Doogan**—They are matters that have commenced in the original jurisdiction of the court, seeking orders of various kinds. Often they are matters relating to government decisions—migration matters, for example—or some other issue of government administration. Other times they relate to decisions taken by other judicial officers. There is a wide variety.

**Senator LUDWIG**—Perhaps you could give us one or two examples, just for the purpose of helping people other than lawyers to understand what an order nisi application is and the nature of it.

**Mr Doogan**—I mentioned the matter of migration.

**Senator LUDWIG**—In what sense, though? Is it seeking an interlocutory injunction, or is—

**Mr Doogan**—It may be an action, in its broader sense, that is challenging a decision that has emanated from, say, the Refugee Review Tribunal where, for example, someone is seeking to remain in the country, on the basis that they are a refugee, and may have been unsuccessful.

**Senator LUDWIG**—The record shows at table 30 that there has been a rise from some 25 to 173. Can you explain the nature of that increase? Why has that increase come about? Did something of particular note occur in 1999-2000?

**Mr Doogan**—I will take you to an earlier part of the report. At page 7, 'Part III—The year in review', the first item relates to increased workload. You will see paragraph 2, line 2 indicates:

More than 70% per cent of the order nisi applications filed during 1999-00 involved immigration matters.

Further on you will see that 88 per cent of the matters dealt with by single justices involved immigration matters. To answer your question in the broadest sense, most of the matters relate to immigration issues.

**Senator LUDWIG**—Is there a method or a way that you can calculate the time involved in each one of those or the average length of time that a person has taken to proceed through the order nisi?

**Mr Doogan**—Do you mean from start to finish?

**Senator LUDWIG**—From the time it is lodged in the jurisdiction and completed.

**Mr Doogan**—Yes. In the statistical tables at the back of the report there are tables relating to elapsed time for the various categories of matters. If you go to page 77, you will see that table 23 begins with 'Elapsed time for civil special leave applications finalised', and it continues through to page 79, table 28, 'Elapsed time for order nisi and applications referred to full court finalised'.

**Senator LUDWIG**—I will be able to extrapolate out of that what I need. And, of those, we could say from the beginning, page 7, that roughly 70 per cent of those involve immigration

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or are immigration matters? Would that follow through? In other words, in table 28 where there is elapsed time, of those the percentage that would relate to immigration matters would be maintained in the order of 70 per cent or would it differ?

**Mr Doogan**—No, not necessarily. I can tell you that, in relation specifically to migration matters, in 1999-2000 there were 102 immigration matters filed out of a total of 754. That comes out at 14 per cent.

**Senator LUDWIG**—Perhaps you could help me with this: are they judgments that are delivered in relation to the order nisi, are they short judgments delivered, are they from the bench or are they taken away and written and produced later—in relation to the late judgments?

**Mr Doogan**—The judgments, you mean?

**Senator LUDWIG**—Yes.

**Mr Doogan**—No, usually the judgments are essentially of two types. There are, for example, directions hearings and matters coming on before a single judge to, if you like, get the matter ready for hearing before a full bench. They are issues that are dealt with usually at the time. But, in terms of the decision of the court in relation to the matter, it is always in written form and usually is what is described as a reserve decision.

**Senator LUDWIG**—There has also been an increase in respect of—

**Mr Doogan**—I should mention, for the sake of completeness, that it is also possible for a matter to be dismissed on the spot from the bench by a judge. But invariably they are matters that are patently without any substance.

**Senator LUDWIG**—And then, in relation to the directions hearings, they too have increased, though not as dramatically. Could you say that those are migration matters or are there other influences also in relation to the directions hearings that influence that increase?

**Mr Doogan**—A very large proportion of the matters are immigration matters. Again, I come back to page 7, which deals with a summary of the increased workload.

**Senator LUDWIG**—I should have read from the beginning rather than the—

**Mr Doogan**—There are references in there to the increase from 1998-99 to 1999-2000. Matters before a single justice have increased from 25 to 173.

**Senator LUDWIG**—Page 7 says:

The inevitable result of this growth is sustained and growing pressure on both the Judges and the staff within the Court.

How is that being met in terms of additional resources being set aside?

**Mr Doogan**—There are no additional resources in terms of judges, because there are seven judges on the court. The workload in part will grow automatically as the number of judges increases throughout the states and territories and in other federal courts, because progressively, as the number of judges increases, so too will the number of overall decisions increase, as will the number of appeals or applications to appeal that will be generated.

**Senator LUDWIG**—Is there a review being considered to deal with the increased number of matters that are coming before the court? It says here:

This pressure is exacerbated by the need to ensure that matters are finalised in a reasonable period of time without any excessive delay.

I understand from that that there is pressure to have these matters dealt with as expeditiously as possible. Although I cannot speak for them—and I certainly would not even try—I suspect that they would pride themselves on being able to deliver judgments which are duly considered, given the appropriate amount of time and deference. But then, if they are watching this queue grow, surely there must be a little bit of strain starting to creep in. If the department are aware of that, how are they dealing with it now?

**Mr Doogan**—I think the reality is that there is a growing strain. What it means over time is really that the judges have less and less time to themselves, for example at nights and weekends.

**Senator LUDWIG**—Is that the sum answer—that we make them work nights and weekends? I do not know whether they would be too pleased to hear that from either of us.

**Mr Doogan**—Ultimately, it means that delay must creep in in terms of listing cases for hearing, because there is a finite number of judges and a finite number of days that they can sit and consider their judgments.

**Senator LUDWIG**—Have you spoken to the department about dealing with this on a more strategic basis rather than watching it grow?

**Mr Doogan**—No, I have not.

**Senator LUDWIG**—It raises the question: should you?

**Mr Doogan**—I think not.

**Senator LUDWIG**—Perhaps you could explain that.

**Mr Doogan**—The court exists as an independent entity under the Constitution.

**Senator LUDWIG**—Yes, I understand that. That is why I am trying to be very careful with how I am asking the question.

**Mr Doogan**—As such, it is able to determine for itself how it deals with its workload. To illustrate how one part accounts numerically for the largest portion of the workload—being applications for special leave to appeal—a decision was taken by the judges a little over two years ago to reduce the number of judges that sit on special leave panels, whereas, prior to two and a half years ago, the panel of judges sitting on special leave applications was always three. Now, in most instances, it has been reduced to two. Doing that has meant that more special leave applications can be dealt with in the same period of time.

**Senator LUDWIG**—Do you think there is a limit as to the load that can be placed? If so, when do you think that limit will be met? When will you determine it appropriate to speak to the department about how you then deal with the workload? Also, when is that likely to occur?

**Mr Doogan**—I could not predict when it is likely to occur that there would be a need for further judges.

**Senator LUDWIG**—I am not specifically saying that there would be a need for further judges but that we already know that the increase is from 25 to 173. If that rate continues, how will you cope?

**Mr Doogan**—Again, it depends on the nature of the work, and it will be a case of looking at where specific increases occur. I would refer you back to 1903 when the court first commenced its operations. At that time there were a total of three judges, and over time the judges have progressively increased to the current number of seven. Ultimately, at some stage



in the future, there may be a need to increase the number of judges to nine. Alternatively, there may be other ways of dealing with the workload. For example—this is one that is not, I hasten to add, under consideration at the moment—it would be possible, if the need arose at some future time, to reduce the number of oral hearings and deal with more on the papers. I mention that simply as an indication, for example, of how workload increases have been met in similar courts in other parts of the world.

**Senator LUDWIG**—In summary, then, the increase in workload that we are experiencing now basically came from the migration area?

**Mr Doogan**—No, it has not. It is across the board.

**Senator LUDWIG**—Sorry, the migration area and the increasing number of courts that there might have an appeal mechanism to the High Court?

**Mr Doogan**—Yes. There is an increase in the year that we are considering in applications for leave to appeal in civil matters as well. Again, I would say that that can be traced back to a growing workload in each of the courts from which matters spring, such as the state and territory supreme courts, the Federal Court and the Family Court.

**Senator LUDWIG**—Other than the court itself—if we go to the registry—if we go to page 8 of the annual report, at the first dot point under ‘Developments in information technology’, isn’t this one area where, I would imagine, you could speak to the department about increasing resources to ease the burden on the judiciary by allowing them to implement enhanced technology or management systems? That was the earlier comment I made, if you recall. As I understood it, you immediately assumed that I was talking about an increase in the number of judges. As I understand from the comments that are made there—and correct me if I am wrong—there is a workload increase and the registry, because of that workload, has been unable to deal with other areas, such as case management systems, which would alleviate some of the immediate stresses—but not all of them, I suspect—for the judges to deal with the workload that they currently have before them. I know that that is a little bit circuitous, but I think you get my drift.

**Mr Doogan**—I should refer a little to the way the funds are allocated to the court. Whilst there is a one-line appropriation in the Attorney-General’s portfolio, that is largely for administrative convenience. When there is a need for additional funding, direct approaches are made to the Department of Finance and Administration. Where a need is demonstrated for additional resources—for example, that happened recently and further resources are to be made available to the registry—that arises from negotiations with the Department of Finance and Administration. If those negotiations are successful, the end result is that additional funding is allocated to the Attorney-General’s portfolio and suballocated into that single line appropriation for the High Court of Australia.

**Senator LUDWIG**—Mr Cornall, in terms of that it says, ‘The enhancement has been deferred until resources can be diverted to it.’ Are you actively assisting in ensuring that the resources are directed to that area so that the High Court can get on with its important work?

**Mr Cornall**—I am not aware that we have been asked to do that. I am aware that the court has made representations about funding needs to the department of finance, and I understand that those are under consideration at the present time.

**Mr Doogan**—I should add for completeness that there is an excellent working relationship from day to day between the High Court of Australia administration and the Attorney-General’s Department. We do not operate in a vacuum. At officer level there is a close

working relationship so that the department knows what is occurring in the court administration, but at the same time it remains for the court as an independent organisation to seek the funding directly from the department of finance.

**Senator LUDWIG**—Thank you.

**Senator BUCKLAND**—Mr Doogan, you mentioned in response to a question from Senator Ludwig that some matters may be pursued as non-oral hearings. What form would that take? Would it be written submissions?

**Mr Doogan**—Yes. Extensive written submissions are made to the court prior to the hearing, so when the judges come on to the bench they have a considerable detailed knowledge of the matter that is before them. The time at the oral hearing is usually used by counsel to emphasise those aspects of their case which they regard as most important and, on the other side of the bench, by the judges to resolve any queries that have arisen as they have gone through the written material.

**Senator BUCKLAND**—So there would be quite a lot of interlocutory evidence taken prior to this happening?

**Mr Doogan**—If there is a need for that, yes. I should also say that, in the case of applications for special leave to appeal, using that as a category of work, the rules of court provide for limited time, so that extensive written material is provided to the court and, on the day when the special leave application is listed for hearing, the time for the hearing is limited to 20 minutes. In the case of appeals or original jurisdiction matters that have been commenced in the court, there are sometimes very large matters involving, for example, intervention by the states and territories on a constitutional matter. The practice of the court has been to have a directions hearing in advance of the actual hearing and allocate time between the various parties.

**Senator BUCKLAND**—I think you have answered the question I was getting at. If you have not, for my benefit, what is the nature of the cases that could be before the court in a written form rather than oral, or is there an open book on that? Could anything be heard that way?

**Mr Doogan**—Yes, that is so, but to date that has not occurred. There is an oral hearing in all matters. Except to the extent that the applications for special leave have to appeal, the documentation has provision for each of the parties to indicate whether they wish to supplement their written submissions by oral argument or not. On occasion the parties will decide that they do not wish to supplement their written arguments. Often, for example, there may be a self-represented litigant who chooses to simply put in a written case. In those circumstances, often if it is the other side responding—for example, it could be the Commonwealth—that they may choose likewise to simply not advance the oral argument. That is the exception rather than the rule.

**Senator BUCKLAND**—Thank you.

**CHAIR**—As there are no further questions for the High Court, I thank you, Mr Doogan, and your officers very much for assisting with the committee's deliberations.

[6.06 p.m.]

**Attorney-General's Department**

**CHAIR**—I welcome officers from the Attorney-General's Department.

**Senator McKIERNAN**—I have some more questions relating to the Administrative Review Tribunal, dealing with the budget. This year's budget has allocated \$17.6 million, but that was allocated on the basis of a start-up date of 1 February. What budgetary changes have been put in place because of that revised start-up date?

**Ms Leigh**—The revision of costings for the changed start-up date are still being developed at this stage.

**Senator McKIERNAN**—There is a committee hearing on this matter scheduled for a couple of weeks time. Would the additional costings be finalised by that stage?

**Ms Leigh**—It seems likely.

**Senator McKIERNAN**—I have some more written questions which are of the same flavour. I will put those on notice to save time. I also have some questions dealing with salaries and Remuneration Tribunal determinations. There are some other questions written down here which are crossed out because they were answered earlier, so when you receive the package you will understand why some questions are crossed out. I also have a question which I will put on notice about the estimated savings from the abolition of the second-tier review from the SSAT within the ART. Again I have crossed out some other questions on that page which we are not going to proceed with at this particular time. I have a question about how many times the Family Law Pathways Advisory Group, as mentioned on page 53 of the annual report, have met. That question could go on notice, Dr Browne, rather than you answering it here at this time. I also have some questions on the Expensive Commonwealth Criminal Cases Fund, which I will deal with now.

I will be putting on notice other questions regarding the foreshadowed SCAG meetings, the Law by Telecommunication initiative, which is on page 65 of the annual report, the financial assistance guidelines on page 67, the review of community legal centres on page 68, and a matter about questions on notice and the response time to questions on notice. I put all of those on notice. But I want to press some questions on the Expensive Commonwealth Criminal Cases Fund at this time. My questions are: how is the fund administered, and who may apply for the fund—that is, legal aid commissions or the accused persons themselves?

**Dr Browne**—The expensive cases scheme is administered by the department according to a set of guidelines, and applications are made by legal aid commissions to the department in relation to particular cases.

**Senator McKIERNAN**—They are not made by the accused persons themselves?

**Dr Browne**—Not by the accused persons themselves.

**Senator McKIERNAN**—Over what period will the amount of \$9 million be available? Is there a start time and an end time?

**Dr Browne**—Some of it was available last financial year and then the rest will be available over the next four years, including this financial year.

**Senator McKIERNAN**—Are you in a position to say what has been distributed so far?

**Dr Browne**—I could not give you detail on that at the moment. I could take that on notice.

**Senator McKIERNAN**—And, indeed, the number of criminal cases that were funded. Is there a particular criterion which is applied in determining whether somebody qualifies for assistance from the fund?

**Dr Browne**—There are guidelines which govern the decisions.

**Senator McKIERNAN**—Are they publicly available and, if so, where are they available? For example, are they available online?

**Dr Browne**—I could make a copy available to the committee.

**Senator McKIERNAN**—In regard to outcome 2—coordinated security, crime prevention and law enforcement arrangements—how has the Building Safer Communities money been allocated across the years? For example, how much was spent in 1999-2000, and what is the allocation for 2000-01?

**Mr Carnell**—You used the expression ‘Building Safer Communities’. There is a long history here: there was that program, then there was the NCAVAC and now it is the National Crime Prevention program. The amount spent on projects in 1999-2000 was \$3.428 million. In terms of how much is available in this current financial year—

**Senator McKIERNAN**—For 2000-01.

**Mr Carnell**—I do not have that figure with me.

**Senator McKIERNAN**—Could you take that on notice?

**Mr Carnell**—There was discussion of what amount would be rolled over, so I do not have a precise figure, but certainly I can take it on notice.

**Senator McKIERNAN**—If you could on notice, Mr Carnell, also provide me with details of the number of people employed under the NCP program and at what APS level they are, how the NCP program is structured and some detail of what the priority areas are—that is, those priority areas that are identified on the NCP program web site?

**Mr Carnell**—Do you want staff numbers and levels at a particular point? For example, do you want them at 30 June or at a relatively recent date?

**Senator McKIERNAN**—I think a relatively recent date would be more appropriate if you could do that.

**Mr Carnell**—I will not pick a day when the figures are unusually low or high—not that they fluctuate a great deal. I will pick a recent date that is representative.

**Senator McKIERNAN**— I am looking for further detail—you will probably have to take this question on notice—on the number of research projects, pilot projects and prevention activities that have been undertaken in previous financial years within the NCP in its current form and when it wore a different hat. I will provide this question to you in writing. As you can see, I am making dramatic progress.

**Mr Carnell**—Have you set the commencement date for that element?

**Senator McKIERNAN**—The commencement date would be 1995-96. In an earlier question on notice I asked you to provide information about priority areas. The NCP has identified one area of priority: indigenous justice. How many indigenous justice programs have been funded through the NCP over the last two years?

**Mr Carnell**—I cannot tell you off the cuff, I am sorry.

**Senator McKIERNAN**—I will put that question on notice as well. I have several other questions flowing from it, which I will put on notice, that deal with diversionary programs for

juveniles in the Northern Territory. Are the booklets about preventing burglaries—which it was intended to produce and distribute across Australia—an initiative of the NCP or were they directed by the minister?

**Senator Vanstone**—It is not planned to distribute them across Australia. I would describe it as an initiative that was developed jointly through a process that I think—I will check this and correct the facts if I am wrong—commenced before I shifted to the Justice portfolio. Some projects in relation to burglaries were initiated with the Queensland and South Australian governments. Some people say that burglary is not a very exciting crime—it does not have the drama and sex appeal of cyber crime, for example—but it affects citizens on a daily basis. The projects were designed to see what could be done to reduce the re-burglary rate. I was surprised to discover that, if you have been burgled, you should not say, ‘Oh well, it has happened to me once so it will be a long time before it happens again.’ In fact, your chances of being burgled again increase after the first incident. That seems odd, but apparently that is the situation.

Therefore, we have developed a project to see what can be done. Two projects are being conducted in South Australia and Queensland. I think South Australia—I will correct this information if I am wrong—has not yet completed its evaluation and the signs from Queensland were positive regarding what could be done. It is not worth conducting these pilot projects if we do not then do something with what we learn from them—otherwise we would spend our lives funding pilot projects. I think it is important to spread the information, so the next stage is to deliver material to a number of electorates and then evaluate those projects to see whether they have made a difference by making people aware of the sorts of things that they can do to prevent burglaries in the first instance and then re-burglaries.

**Senator McKIERNAN**—You mention that it will go to some electorates throughout Australia. I understand that some five Labor members of parliament—backbenchers—have been approached to sign a cover letter which would then be sent out with the pamphlet that has been developed in conjunction with the NCP.

**Senator Vanstone**—That is not quite the way I would phrase it—‘approached to sign a cover letter’. I indicated to each of the members that the crime prevention project would be mailing into their area partly as a courtesy—it is not unreasonable to do that—and partly to indicate that it was my view that material is better received if it comes from the local member and whoever else is sending it. Therefore, I thought it was a good idea to offer them the opportunity to jointly sign a letter that would go to their electorate, as opposed to me simply writing to their electorate. The envelope and letter were pretty standard and innocuous. I understand that one is happy and the other four wanted to change the letter. That simply becomes too complicated. If it were a letter that was promoting the government I would quite understand, but it is not. It is a letter that basically says that crime prevention is important and there are things you can do, and words to the effect that ‘Crime prevention is not a political issue; both the Minister for Justice and Customs from a Liberal—National government and your local Labor member encourage you to look at this leaflet and see what you can do to protect yourself.’

**Senator McKIERNAN**—You stated that the draft letter said that this is not a political issue; was there a plan to have a bipartisan launch of the project?

**Senator Vanstone**—I indicated to each of the members that I was hoping to provide for them a poster so that they could do a launch of the release in each of their electorates during the week of the postage. As I indicated, I got back only last night. I presume that, as far as the

members who said they do not want to sign the letter are concerned, it is a national crime prevention project and that is that.

**Senator McKIERNAN**—Could you take on notice a question regarding the production and distribution costs of the pamphlet and provide us with information about how the project could be evaluated? What are the performance measures? If it is successful, is it the intention to expand it throughout the rest of the community?

**Senator Vanstone**—I will certainly get whatever information we can in relation to the project. I encourage you, Senator, to speak to your colleagues and tell them that crime prevention is an important issue. Burglary might not seem important to some people, but it is if you have been burgled. I do not know whether you have had the experience—I have. It frightens the hell out of you to think that someone has been rifling through your things. The message would have been stronger if the members had agreed to be a part of it. I thought I was offering them something they would want to be a part of. I am quite surprised, but I have not yet been able to speak to the members to find out what their problem was.

**Senator McKIERNAN**—I have been burgled—it was a time when I was a smoker and my last cigarettes were taken. It hurt badly.

**Senator Vanstone**—It is a good thing that your cigarettes were taken.

**Senator McKIERNAN**—I am not a smoker anymore. This question will conclude the questions to the department, and we could then have the Protective Service people back after dinner. My question relates to some of the responses that we had to questions on notice from the last round of estimates. We found the cleanest way of asking questions was relating them to Budget Paper No. 1. This is in relation to the budget on native title for the Attorney-General's Department. Some \$14 million is allocated to native title (payments to or for the states) in the 2000-01 budget. Which states have so far received payments? How much have they received? What is the basis for the costings?

**Senator Vanstone**—While the person with the answer is coming to the table, I will tell you, Senator McKiernan, that I have inadvertently misled you. As I said, I only got back last night and the communication between me and the adviser handling this area was not clear. I think I indicated to you that four did not want to sign the letter. That is not the clearest advice. I am told that two of them wanted to change the letter and did not want to sign it, one simply did not respond at all by the deadline and the other said he did not want to be a part of it but gave no reason.

**Senator McKIERNAN**—Thank you for that. Do you wish me to repeat the question, Ms Horner?

**Ms Horner**—Yes, thank you.

**Senator McKIERNAN**—I am relating to Budget Paper No. 1, rather than asking a series of questions which we earlier had prepared in regard to the responses we had from questions on notice from the last round. There is some \$14 million allocated to native title (payment to or for the states) in the 2000-01 budget. Which states have received payments? How much have they received? What is the basis for the costings for the payments?

**Ms Horner**—No payments have been made. The money has been set aside in a number of budgets up till now for a program which will provide the states and territories with financial assistance from the Commonwealth. Those payments arise from an undertaking given by the Commonwealth in 1997 to assist states pay for compensation for native title and help them with their native title tribunals, if and when they are set up. Only one state has set up tribunals

so far, and that is South Australia, but we do not have a bilateral agreement in place yet under which those payments will be made. In relation to compensation, again, no bilateral agreements are in place yet and no state or territory has actually sought any financial assistance from the Commonwealth under that offer so far. So the short answer is none.

**Senator McKIERNAN**—In light of your answer, I am not sure where this next question goes, but I will ask it anyway. What are the costs to the Commonwealth of states acquiring native title rights and for the establishment of bodies to deal with native title? I am aware that there is \$14 million in the previous budget. How were these costs worked out—that is, the \$14 million—and can you tell the committee what the proportional costs between the Commonwealth and the states for compensation due to the acquiring of the native title rights will be?

**Ms Horner**—The last bit I will answer first. The offer from the Commonwealth in relation to compensation was 75 per cent of the compensation cost to the states. The \$14 million and the amounts that have been set aside in previous budgets and for out years from now into the future are not based on any true assessment of what the likely cost to the states is going to be, because so far I do not think there is one litigated case in which native title compensation has been determined. There has been at least one agreement, but the issue of the value of native title compensation has not been litigated, so there are no precedents on which any such estimation could be based. So the amounts are set aside in anticipation of states making a request but without any assessment of what the total request might be.

**Senator McKIERNAN**—Thank you, Ms Horner.

**CHAIR**—Are there any further questions in that area, Senator McKiernan?

**Senator McKIERNAN**—No, and I have no further questions to the department as a whole. We do have to come back for APS and then DIMA.

**CHAIR**—I thank Mr Cornall and the officers. We will now break for dinner and resume with consideration of the Australian Protective Service. That will then conclude the Attorney-General's Department.

**Mr Cornall**—Just to be clear: can all the other officers now leave?

**Senator McKIERNAN**—That is the intention. We are appreciative of their assistance.

**CHAIR**—We thank them very much for staying.

**Proceedings suspended from 6.30 p.m. to 7.39 p.m.**

**CHAIR**—I call the committee to order and indicate that we are resuming consideration of supplementary estimates and were to begin at the consideration of Australian Protective Services. Senator McKiernan has some questions from previous discussions to place on notice.

**Senator McKIERNAN**—This morning I asked some questions about the consultancies. I mentioned Community Link Australia, Chris Creswell and so forth, and I was to come back to them when we came to the Attorney-General's. We never actually did get back to them. If I could now, just by way of putting them on notice, revisit it and we will see where we go from there, if I could.

**Mr Cornall**—I did have some of the information that you had asked for, but it was not complete and it was going to take some time to get through, so there did not seem to be much point in wasting time before. In relation to the grants, I had that information, but once again

there was one figure there that I wanted to question, so I did not want to put that on the record.

There was one issue you raised—if I could just get this out of the way—about the audit committee. The department's audit committee met on 22 June 1999, 13 October 1999, 28 March 2000, 27 June 2000, 10 August 2000 and 26 September 2000, so there have been four meetings this year since I took up the position of secretary, and I have attended all of those meetings except the meeting on 10 August.

**Senator McKIERNAN**—Thanks very much.

**Mr Studdert**—You asked a question this morning on index 9 in relation to Focus Publishing, a payment of \$6,000 for the book *The Story of Sydney Airport*. We have done a bit of research on that. There were 2,000 copies of that produced. They were distributed to international and domestic aviation related organisations, airports, airlines. It was kept very much within the aviation community. We had a photograph of APS officers, we had some mention in what they call the gallery of excellence, and we had a fairly significant advertising part within the book as well. So it was seen very much as an opportunity to advertise the organisation's excellence in aviation security, and the spread of it was such that we thought it was a worthwhile investment.

**Senator McKIERNAN**—You are going to supply a copy of the book to the committee?

**Mr Studdert**—I will get you a copy within a week.

**Senator McKIERNAN**—We are dealing with the Australian Protective Services and, unfortunately, revisiting a matter that has been dealt with at, to my knowledge now, three previous estimates committees, and that is the matter of the industrial relations arrangements within the APS. I must say I am disappointed to note that this matter has not yet been resolved, despite assurances—and some very high-level assurances—that have been given on previous occasions. Perhaps you could, in as much detail as possible, within the briefest possible time—because we still have a considerable amount of work to do through the night—bring us up to date as to where things are with the service, the APS and the unions and the employees of the APS.

**Mr Cornall**—Since we last met in this committee, I have taken a very close interest in the negotiations which have been undertaken by the APS. We have had extensive discussions with the Community and Public Sector Union, being both union officials and officers from the APS who were nominated by staff to represent them. We put a number of offers to the CPSU, and it was my impression that, after some considerable negotiation, we had got to a position where they felt that there was an offer worth putting to the members. Their workplace delegates rejected that offer. In constructing that offer, we had obviously had regard to the government's policy parameters on negotiations, the fact that the APS is not a budget-funded agency and it has to fund increases out of its own income, and we looked at every possible avenue of constructing an offer that was going to be affordable by the APS and would meet as many of the demands of the APS staff as we could reasonably meet. We made a point of documenting all of those offers in lengthy letters to the CPSU. There were three letters in particular that we wrote to the union. There were letters of 2 June, 7 June and 16 June, and I would like to give you a copy of those letters so you can see the scope and the range of the issues we discussed.

When we were unsuccessful with the CPSU, we then turned to the TWU. Although the CPSU is the union with coverage and the union with what we think is the most members—although we are not entirely sure—the TWU is well represented, so we then had meetings with the TWU and, once again, we put offers to them. In the meetings with the TWU, there



the TWU and, once again, we put offers to them. In the meetings with the TWU, there was also a representative of what used to be known as the APS Association and is now called more broadly part of the Law and Justice Association, which is an association of officers involved in law and justice agencies—it is not so much a traditional union as an employee body providing superannuation benefits and those sorts of things to people who care to join—and they joined in too. Again we had correspondence setting out the terms of the offers we were prepared to make. Once again I think we got to a point where they were prepared to put the offer to the members, but they were unsuccessful in obtaining their approval.

I think it would be very useful for you to see the letters and to see the scope of the offers we made and the way we tried to construct offers which would be affordable by the APS but, at the same time, produce a significant increase in remuneration for members. It had to be offset, because the organisation has no other funding source but its revenue. So my assessment is that, in the end, the members decided to wait and see the outcome of the industrial action before the AIRC. I think if we present all this information to you—and we will provide you also with whatever correspondence we received from the union so you have both sides of the picture—we will clearly demonstrate to you that we have met all of our assurances by trying extremely hard to settle this dispute.

**Senator McKIERNAN**—Thank you very much for that offer. I look forward to reading the material, and I will curtail further questions on that particular matter until I see the material, and obviously we will revisit it. Hopefully we will not have to revisit it when we come back in the new millennium—and Senator Ludwig is not here to contradict me on that now.

**CHAIR**—I am on your side, Senator McKiernan, on that matter.

**Senator McKIERNAN**—So we have the majority on that matter. We disagree on many others, don't we? As to the levels of industrial activity, is there any industrial activity ongoing? I do not mean at this very moment in time.

**Mr Studdert**—There has been no industrial action at all since 3 May.

**Senator McKIERNAN**—That is quite pleasing to note. In relation to that but not directly associated with that, the recent report into SES wage movements in the Public Service was critical of aspects of salary-setting procedures for SES-level staff in the Public Service. I noticed from the recent annual report of the Attorney-General's Department that there have been significant movements in SES wage level officers within the APS. Can you explain these wage movements, particularly in the light of the fact that you have failed to negotiate a wage agreement with APS officers? Can you also inform us if any performance bonuses have been paid to any SES-level officers within the APS in the course of 1999-2000?

**Mr Studdert**—I can certainly say that there has been no performance bonus paid during that period within the APS to SES officers. I am surprised at your question in relation to movement in SES salary, because there has been no change—certainly no increase—in SES salaries within the APS. Our SES salaries are governed by the broader department SES AWAs, and the AWAs have remained in place for two years now. In fact, they are in the process of being renegotiated now, and so there has not been a change in SES pay rates in that time.

**Senator McKIERNAN**—I accept the contradiction and will not seek to go and explore further within the annual report. I have got some questions relating to the APS counter-terrorism first response team that operates at Sydney airport. I am just wary about asking for information like this. I am seeking information of how many officers are employed at the

airport as part of the counter-terrorism first response team and the type of training that is given. Is that the type of information the service would normally put on the public record?

**Mr Studdert**—I think that is fine in this context. There are approximately 100 operational staff at Sydney airport. I say ‘approximately’ because we are a bit below that at the moment, but we are just about to finish a recruit course that will put approximately 25 additional people there. That will take it up to about the 100 level. The training that they go through relates to dealing with terrorist incidents only so far as they hand over to a resolution force, be it a state police force or a defence force resolution force. So it is very much a first response. It is about containing, it is about moving civilians, if you like, away from the scene, and it is about reporting what has occurred. There is no resolution role. They are armed, of course, but there are very strict limitations and rules of engagement on what they can do with their weapons, and it is very much in response only.

**Senator McKIERNAN**—Are they identified as other than APS officers?

**Mr Studdert**—The APS officers at Sydney airport wear on the right breast of their uniform the Sydney Airport Corporation logo.

**Senator McKIERNAN**—What is the ongoing assessment for the fitness of the officers?

**Mr Studdert**—For the first time in the Australian Protective Service we introduced a fitness requirement at Sydney airport. That requirement is a four-stage fitness test, and the officers were required to pass that fitness test in order to work at Sydney airport. They are required to requalify each year.

**Senator McKIERNAN**—You say that the officers are armed. What weapons and other equipment is available to them?

**Mr Studdert**—The weapons that the officers have are Smith and Wesson revolvers, six-shot revolvers. They are armed with an extended baton that they carry with them, which sits in a little wallet on their belt—it is about that long and extends out to about that long—and they have handcuffs. They are the only weapons that they have.

**Senator McKIERNAN**—When was the last time the firearms were upgraded?

**Mr Studdert**—I do not believe the firearms have been upgraded in the history of the service.

**Senator McKIERNAN**—Are there any plans to look at that? I am sorry: I do not want to pretend to be an expert, but the chairman and I visited the Australian Federal Police last week for a briefing, and at least one of us managed to handle a Glock, which I understand had 10 rounds or possibly even more than that in it.

**CHAIR**—It is just worth noting for the record that the one of us who did was not me.

**Mr Studdert**—The Glock is an automatic pistol, as opposed to a revolver, and it is now used by a majority of police services throughout Australia. In the longer term I think we will probably go that way. I have made the assessment in my time as director that we are not yet ready for that, and there is no requirement for an automatic pistol in our role, either at the airports or at other stations where the staff are armed. I think eventually we will evolve to a Glock.

**Senator McKIERNAN**—I am glad I did not claim to be an expert. Do the officers carry out parking patrol duties as well as the security requirements?

**Mr Studdert**—No, not formally. I think what happens in relation to that at Sydney airport is that, because they are a uniformed presence and they patrol the area, et cetera, if they see somebody who is illegally parked they might say to the driver, ‘You’ve got to move on. You are illegally parked.’ But it is not formally part of their function and there are separate officers employed by Sydney Airport Corporation with that responsibility.

**Senator McKIERNAN**—What is the current attrition rate for the response team?

**Mr Studdert**—At Sydney airport?

**Senator McKIERNAN**—Yes.

**Mr Studdert**—Of the 63 new recruits that we put there on 13 December I think we have now lost 10. The reason I say ‘think’ is that I knew it was eight and I think two went on the Monday just gone.

**Senator McKIERNAN**—If you need to clarify that answer, you can do that at a later time, if you would not mind. I just want to move to a different area. I am sorry if the question is a bit lengthy, but I am not necessarily understanding it myself, so I would like to put it to you. It is in relation to a question on notice that Senator West put to Minister Vanstone on 16 August 2000. It was question No. 2751. Senator West was asking about the closure of the analog network around Australia from 1 January 2000 and asked the minister to advise if the APS was responsible directly or indirectly for alarm systems that were dependent upon access to the analog network at 31 December 1999. She went into details of how many sites.

What I want to ask relates to the minister’s response. She informed the committee that the APS had 13 alarm security systems on the analog network at 31 December 1999 and that they were going to be progressively upgraded. They were located in the ACT, New South Wales, Victoria and South Australia. She then went into the detail of when the upgrade was going to take place, starting on 24 March 2000 and progressing through to the last one on 11 September 2000. What were the arrangements for those premises, if indeed there were premises, where these security alarm systems were operating? What were the arrangements in place between the closure of the analog system and the upgrade that was going to happen, for example, firstly on 24 March 2000? Are you understanding the question?

**Mr Studdert**—I understand your questions. I certainly do not have any depth of knowledge into that issue and I would like to take it on notice, if possible.

**Senator McKIERNAN**—I gave you the reference on the question, but I can supply you with a copy of the question and the response, which might help in providing further information. The upgrade was going through to 11 September 2000. One would suspect from the information contained here that there was no system operating within those premises at that time following the closure of the analog system.

**CHAIR**—I thank Mr Studdert and Mr Cornall for their assistance with our consideration of supplementary estimates. Mr Cornall, if you could convey our thanks to all officers of the department who have assisted us throughout the day and who stayed past 6.30 this evening, I would be grateful.

**Mr Cornall**—Thank you, Madam Chair.

**CHAIR**—That concludes consideration of the Attorney-General’s supplementary estimates.

[8.00 p.m.]

## IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

**In Attendance**

Senator Vanstone, Minister for Justice and Customs

**Immigration and Multicultural Affairs Portfolio****Departmental Executive**

Mr Bill Farmer, Secretary

Mr Andrew Metcalfe, Deputy Secretary

**Refugee Review Tribunal**

**Outcome 1: Contribute to ensuring that Australia meets its obligations pursuant to the convention relating to the status of refugees**

**Output 1.1: Independent merits review of decisions concerning onshore applicants for refugee status**

Dr Peter Nygh, Acting Principal Member

Mr John Godfrey, Deputy Principal Member

Ms Jill Toohey, Registrar

Ms Sophie Kuchar, Manager, Finance and Property

**Migration Review Tribunal**

**Outcome 1: Contribute to ensuring that the administrative decisions of Government are correct and preferable in relation to non-humanitarian entrants**

**Output 1.1: Independent merits review of certain decisions concerning applicants for non-humanitarian entry and stay**

Ms Susanne Tongue, Principal Member

Mr Noel Barnsley, Acting Registrar

**Department of Immigration and Multicultural Affairs**

**Outcome 1: Lawful and orderly entry and stay of people**

**Output 1.1: Non-humanitarian entry and stay**

**Output 1.2: Refugee and humanitarian entry and stay**

**Output 1.3: Enforcement of immigration law**

**Output 1.4: Safe haven**

Mr Abul Rizvi, First Assistant Secretary, Migration and Temporary Entry Division

Mr Todd Frew, Assistant Secretary, Temporary Entry Branch

Mr Bernie Waters, Assistant Secretary, Business Branch

Mr Chris Smith, Assistant Secretary, Migration Branch

Mr Robert Illingworth, Assistant Secretary, Onshore Protection Branch

Mr Vincent Giuca, Acting Assistant Secretary, Humanitarian Branch

Ms Elizabeth Truman, Acting Director, Humanitarian Settlement Section

Ms Sallyann Ducker, Director, Asia and Pacific Section

Mr Dominic English, Director, Middle East and Africa Section

Ms Philippa Godwin, First Assistant Secretary, Border Control and Compliance Division

Ms Nelly Siegmund, Assistant Secretary, Border Protection Branch

Mr Dario Castello, Assistant Secretary, Entry Branch

Mr Peter Vardos, Assistant Secretary, Unauthorised Arrivals and Detention Branch

Ms Lesley Daw, Director, Detention Operations Section

Ms Linda Webb, Executive Coordinator, Detention Strategy

Ms Mary-Anne Ellis, Assistant Secretary, Detention Strategy Group

Mr Des Storer, First Assistant Secretary, Parliamentary and Legal Division  
Mr John Matthews, Assistant Secretary, Legal Services and Litigation Branch

**Outcome 2: A society which values Australian citizenship, appreciates cultural diversity and enables migrants to participate equitably**

**Output 2.1: Settlement services**

**Output 2.3: Australian citizenship**

Mr Peter Hughes, First Assistant Secretary, Multicultural Affairs and Citizenship Division  
Mr David Page, PSM, Assistant Secretary, Settlement Branch  
Mr Rodney Inder, Assistant Secretary, Citizenship and Language Services Branch

**Internal Products**

Mr Vincent McMahon, PSM, First Assistant Secretary, Corporate Governance Division  
Mr Steve Davis, Assistant Secretary, Resource Management Branch  
Ms Louise Archer, Director, Budget Strategy Section  
Mr Scott Lyddiard, Director, Accounting Policy and External Reporting Section  
Mr Douglas Walker, Assistant Secretary, Visa Framework Branch  
Ms Karen Stanley, Acting Assistant Secretary, Ministerial and Communications Branch  
Mr Hamish Lindsay, Director, Parliamentary and Ministerial Services Section  
Mr Ed Killesteyn, Executive Coordinator, Business Solutions

**CHAIR**—I call the committee to order and welcome the Department of Immigration and Multicultural Affairs. The committee will consider the portfolio in the order which appears on the circulated agenda, beginning in this case with the statutory tribunals. At the conclusion of this hearing, a date will be set for receipt of answers to questions taken on notice and additional information.

The committee has authorised the recording and rebroadcasting of its proceedings in accordance with the rules contained in the order of the Senate dated 23 August 1990. I have been requested to remind committee members that the Finance and Public Administration Legislation Committee is continuing to monitor the format and contents of the portfolio budget statements. If you have any comments you wish to make about these documents, please place them on the public record during these estimates hearings or direct them at a later stage to that committee.

I have also been requested to remind everyone present that mobile phones should be turned off while in the hearing. I welcome the minister and officers of the department and associated agencies. Officers will, of course, not be required to answer questions relating to policy or the advice they have given in the formulation of policy.

[8.03 p.m.]

**Refugee Review Tribunal**

**CHAIR**—I invite Senator McKiernan to commence. Welcome Dr Nygh, Mr Godfrey and Ms Toohey.

**Senator McKIERNAN**—Welcome. This is the last time we are going to have you in front of the committee. It will be the last opportunity to interrogate you, according to the report, or can we look forward to a third coming, Dr Nygh?

**Dr Nygh**—A qualified third coming. I have just been advised that the minister has extended my appointment until the end of February. That is a date of my choosing, I hasten to add. I will attend to other commitments overseas next year.

**CHAIR**—If you are very lucky, Dr Nygh, we may have estimates again before that.

**Dr Nygh**—Well in that case, I shall have the pleasure of appearing before you again in February. If you are going to have estimates in February, I shall be here.

**Senator McKIERNAN**—We are not sure on that, but can I on the record—and certainly on behalf of those on my side of politics—extend our best wishes to you in whatever career path you choose after this. We have enjoyed working with you and commend you on the work that you have done within the tribunal as well. Even though we may not necessarily have agreed with each and everything that has been achieved over the period of time, it has been a pleasure.

**Dr Nygh**—Thank you, Senator. Thank you indeed.

**Senator McKIERNAN**—With the niceties out of the way, can we get down to—

**CHAIR**—No more of that, thank you.

**Senator McKIERNAN**—How many cases has the tribunal currently got backlogged?

**Dr Nygh**—How many cases are backed up? I think my statistical authority is the one to answer that one.

**Mr Godfrey**—In the vicinity of 5,700.

**Senator McKIERNAN**—Is there progress being made on removing or reducing that backlog?

**Mr Godfrey**—At the moment, in fact, the backlog is increasing slightly. We are getting a higher than anticipated number of applications in and the number of decisions out so far this year is a little down on the rate that we were doing them last year.

**Dr Nygh**—They are also down, I should add. I think our full complement ought to be about 50 full-time members; we are down to 45.

**Senator McKIERNAN**—That has had an impact. What is the other reason for the increase in the backlog, or are there any other reasons that you can put your finger on?

**Mr Godfrey**—The processing time at the moment is taking a little longer because at the beginning of this financial year we took a decision to deal with some of the more complex case loads—countries such as, for instance, Burma and the Russian Federation—which had been in the system for some time and which had not been dealt with because of the other priorities that we had. Those cases are reasonably time consuming and we knew that by constituting those cases and dealing with those cases that we would have this temporary downturn in terms of productivity.

We have now substantially completed those cases. We are now moving on to, shall we say, slightly less complex case loads and we expect that productivity will pick up dramatically between now and the end of the financial year.

**Senator McKIERNAN**—What numbers are you getting from detention centres from unlawful non-citizens? I am thinking particularly of those who arrived by boat. Is that creating special difficulties for the tribunal?

**Mr Godfrey**—It is not creating special difficulties for us. The flow-on rate to the tribunal has not been that high, but it is increasing. As the case load at primary is decreasing, we are now starting to see an increase in the numbers that are coming on to the tribunal. That is because we are now seeing more people from countries other than Iraq and Afghanistan, which are primary, who are getting approved in higher numbers and we are seeing more cases

from countries such as Iran where there is a higher rejection rate of primary. So we have only had so far this financial year 199 cases lodged—boat cases, that is—with the tribunal. But that does represent something of an increase.

**Senator McKIERNAN**—In regard to the more remote detention centres, are you still undertaking visits to those detention centres—to those places where the detention centres are located rather than to the detention centres themselves—to undertake hearings or are you doing that generally by way of video or other electronic means?

**Dr Nygh**—I am very happy to say that I spent last week in Port Hedland undertaking a circuit. Of course, I also did the initial circuit to Woomera in June. We have a mix, I think. If there is a sufficient build-up of cases—in other words, eight hearings to be conducted—we prefer to send a circuit. However, we cannot have a circuit every week and in other cases, of course, we do it by way of video link; otherwise we would unduly delay the hearings. So it is a mixture of both, but I personally as a matter of general policy consider it very important to have face-to-face hearings.

**Senator McKIERNAN**—Was your visit in any way connected with the disturbances that were at Port Hedland last weekend?

**Dr Nygh**—I hope I did not cause them. It happened after I left, but since I announced no decision during my visit there, I do not think that anyone would have had cause to do any harm either to themselves or to the buildings.

**Senator McKIERNAN**—I am glad to hear also that you said that you had the pleasure of being in Port Hedland last week.

**Dr Nygh**—The weather was excellent—much better than in Sydney.

**Senator McKIERNAN**—Not everybody who goes to Port Hedland thinks that it is the nice place to visit, I might add. There are a number of people who are quite critical of the place which, as you know, is within my electorate. I wanted to ask a few questions on the proposed merger with the ART and the transitional measures that have been put in place to deal with that merger. And perhaps you could comment on the merger of the RRT with the current MRT and the establishment of the migration division within the MRT.

**Dr Nygh**—Certainly. Let me say at once, of course, that there are still some important aspects in relation to which as yet I do not know what is going to happen. But, basically, the discussions that I have had with the department of immigration have proceeded on the principle that there ought to be what is called a seamless transition. In other words, assuming that the ART comes into being on 1 July, the RRT would be able to work right up to the death knell of the tribunal and then through the appropriate legislation—and I have seen the transitional provisions in the bill, which are very elaborate—it would simply be possible for the IRD division of the ART to keep on going. In other words, one could set down a case for a decision the next week, as it were, while in the RRT, and then the ART could simply carry on without any interruption. From that point of view, I think there are adequate arrangements in place.

So far as the merger with the MRT is concerned, of course bodies that have grown up separately develop separate cultures and separate practices. My own feeling is that that is going to be a very important task of whoever becomes the first executive member of the IRD, to meld two quite different streams together into one body. I am not saying that it cannot be done, but it will take time. My advice certainly would be that one does it gradually. In other words, one does not jump a new regime on either the ex-MRT members or the ex-RRT

members at once. I think it is best, in other words, if it wants the case flow to continue, to assure people that at least initially there will not be too radical changes.

**Senator McKIERNAN**—Provision has been made for a rollover of the membership of the RRT for a further 12 months to be part of the IRD division of the ART. Can you say anything on behalf of the tribunal members in regard to whether that is satisfactory to the members of your tribunal or not? I do not want to put you in a difficult position—

**Dr Nygh**—You do not put me in a difficult position at all. Again, I think the problem which we have had is that lately our members have been appointed or reappointed to very short terms. At the moment, members whose appointment expires in July of this year have got an appointment until 31 January. Now, again, they are going to get an appointment initially until 1 July. I have had to go through the reappointment process of preparing recommendations to the minister twice in one year. I am very anxious on behalf of the members that they are given an assurance that if they are to be reappointed as at 1 February they can then look forward to a substantial term. Frankly, I would have hoped that that period might be longer. But the rollover, in my view, is quite essential to assure members' safety. Again, as I have mentioned, we are five equivalent full-time members short. We cannot go into the market and say, 'We've got an appointment for you valid until 1 July 2001.' We have got to be able to offer at least 18 months. I would like to be able to offer more.

**Mr Godfrey**—Do you want to add something about the conditions?

**Dr Nygh**—Of course, that is another very important point, as my deputy advises me. Certainly, of course, when I said earlier that we did not know all of the details of it, we do not know what the terms and conditions of appointment are going to be, in other words how much people are going to get paid, in the ART or any other emoluments. At the moment, for instance, full-time members of the RRT are entitled to a motor vehicle—they have a motor vehicle allowance. Full-time members of the MRT do not have that. It makes a substantial salary difference, as you can imagine, whether one gets a motor car or not. Consequently, therefore, there is that uncertainty as well.

**Senator McKIERNAN**—I would like to explore further those matters that we have been talking about, but I am very conscious of the time and the amount of business before this committee before we conclude our business tonight. Without being seen to be prompting you or anybody else on either of the tribunals, I just remind you that the committee is conducting an inquiry into the ART bill and the consequential bill. We will be taking evidence on that bill, I think it is planned for one week on Monday and some time later in December in Sydney. I think the committee might benefit from some further words on those matters we have just talked about from members of either tribunal. I do not know how else I can go out and advertise our services.

**Dr Nygh**—With your encouragement, I will certainly discuss that with my members. I am not sure what the date in Sydney is at the moment.

**CHAIR**—It is 12 December.

**Dr Nygh**—I will be overseas on 12 December. But I am sure we can arrange for some representation to you.

**CHAIR**—There is always 4 December in Canberra. We have several options available.

**Dr Nygh**—Yes.

**CHAIR**—If Senator McKiernan is trying to extend the time of hearings, I am always happy to oblige.



**Senator McKIERNAN**—No, thanks.

**Dr Nygh**—If these are matters that are of interest to the committee, then certainly I am very happy to talk to the committee about them.

**CHAIR**—That would be very helpful.

**Senator McKIERNAN**—I think the committee would benefit from that inside knowledge. It would help the committee to develop a better understanding of the bill itself. As you would probably be aware, the consequential bill is the largest ever such bill to come before the parliament of the Commonwealth of Australia. We are now nearly 100 years old. It is something of a record, and something of a challenge, I might add, to members of the committee, who have to—

**Dr Nygh**—But the terms and conditions, of course, will not and cannot directly appear in the bill itself.

**Senator McKIERNAN**—I understand that. I understand from earlier evidence today that the remuneration tribunal is looking at certain aspects of things as well. But they are matters that I believe are properly within the consideration of the committee even with the hat we are wearing now. But we do not have the time to pursue it further at this particular time. We have probably talked about this, but are you aware of proposed changing of staffing and resourcing within the RRT following the merger?

**Dr Nygh**—Not immediately. We do not expect that. Of course, part of the proposal is to save money by common infrastructure and relocation. Again, I sincerely hope that that will be undertaken gradually. The point—and again this may be a point that the other committee may be interested in hearing further about—is, of course, that we rely extremely heavily on IT and library facilities for country information. It would be quite disastrous if the idea were bruited about—and it has not been suggested so far—that all that should be centralised and we had to go through some sort of common library/IT facility over the ART as a whole. And, of course, again in funding we have special needs to be taken into consideration.

**Senator McKIERNAN**—Dr Nygh, I look forward to seeing you before the estimates committee in the new millennium.

**Dr Nygh**—Thank you.

**CHAIR**—That concludes questions for the Refugee Review Tribunal. Thank you very much, Dr Nygh.

[8.19 p.m.]

### **Migration Review Tribunal**

**CHAIR**—I invite officers of the MRT to the table. The committee welcomes Ms Tongue and Mr Barnsley to the table. Senator McKiernan will begin questions.

**Senator McKIERNAN**—I am a great fan of green, but I think in the annual report it actually does not work. I do not know what went wrong with the proofreading, but at this time of night, at the end of two very long weeks I find it very difficult to read. That is only a comment in passing; you can seek to defend it if you choose—but it was a difficult one to get through. I see there is no comment. Can I just start with the questions on the MRT and the proposed ART which, of course, is mentioned in your report as well. The MRT is at somewhat of an advantage to what the Refugee Review Tribunal was in terms of amalgamation, because you have just recently come through that process with the MIRO. It was not, I do not think it could be said, a seamless transition. At the end there were some problems the kind of which

we have explored at the earlier estimates committee hearings, and I am not seeking to revisit them. But a certain amount of intelligence would have been gained from that merger with MIRO. It should be able to be put in place in the event of the bill passing through the parliament sometime next year and coming into force on 1 July next year, as is currently proposed. Are you putting in place any specific arrangements at this time pending the establishment of the ART?

**Ms Tongue**—We do know roughly what to expect with the ART. The key issue that is undecided at this stage is the location of the principal registry of the ART, which will have an impact, we expect, mainly on our corporate staff. As Dr Nygh said, the expectation is that the corporate areas will be merged. So we expect that those will be our main staff affected. We would expect our operations in Sydney and Melbourne to continue pretty much as they are into the ART.

**Senator McKIERNAN**—Will there be any impact, as you can see it, upon the work of the MRT with the reduced numbers of senior members that will be in the new ART as opposed to what is now currently in existence within your tribunal and some of the other tribunals?

**Ms Tongue**—We have three senior members at present. The ART plan is to have 10 per cent of its membership as senior members. We do not yet know which divisions those senior members will be in. Given our workload in particularly Sydney and Melbourne, we would be hopeful that there would be a senior member dedicated to general migration review.

**Senator McKIERNAN**—Has a decision been made on that?

**Mr Barnsley**—I am not aware of a decision having been made at that level of detail yet.

**Senator McKIERNAN**—Evidence was given earlier today about the savings that are going to be gained by the establishment of the ART—I think we were told this morning that the staff levels within the combined tribunals would be reduced something in the region of 15 per cent from what is currently in place across the four tribunals that will be merged into the one come 1 July next year. Have you had any indication from an MRT perspective that any of the employees currently within the MRT will be affected by reduced numbers or will not be offered continued employment in the new tribunal?

**Ms Tongue**—At this stage, we are expecting the members and staff of the MRT to be carried across to the ART. However, it seems that if corporate areas were merged the corporate staff might be affected. But we have no firm indications on that.

**Senator McKIERNAN**—I repeat what I said to Dr Nygh and his personnel area about the work of the committee—and it is indeed this committee on the bill: we would benefit from hearing from others who have not necessarily political views about the bill but an operational view of how the new system is proposed. I do not know what other ways I can do it but by giving information to create more work for myself and for the committee as a whole. Have you got any indication at this stage of how many cases would be transferred to the new immigration division of the ART, or are we too early?

**Ms Tongue**—As few as possible. At the moment we have 7,935 cases on hand and we would hope to have that significantly reduced by the end of June next year.

**Senator McKIERNAN**—I think 7,900 is an increase from what is in the report before us. The number I have in front of me rather than from the report is 7,552.

**Mr Barnsley**—Despite having finalised almost 2,000 cases since 1 July, unfortunately, like Dr Nygh said, the application rate has been higher than expected and we have received 2,286 cases coming in, leading to a net increase in the number of cases on hand. Although I would

say that the increase is slowing, we hope that over the remaining eight months of the year we will start cutting into the backlog significantly. Again, we are at the mercy of what happens in terms of the number coming into the tribunal, which we of course cannot control.

**Senator McKIERNAN**—I think it might be useful if, rather than asking a question on notice, I put you on notice for our additional supplementary estimates of next year, for which no date has been set yet. One would expect that these will occur in February. Rather than asking for details of the number of cases on hand at the moment, could I ask you if, in preparation for those hearings in February or whenever they are to be held—and those decisions will be taken by others and not by the committee itself—at that time you could bring the details of the number of cases on hand to that hearing? That would give the committee an opportunity to gauge how the transition to the new tribunal might occur. It might help the intelligence process for the committee's deliberations at that particular point. By then this committee should have finished our deliberations—or be required to have finished our deliberations—on the bill itself and will have presented our report. Maybe things might be clearer as to where the bills might be going from there.

**Mr Barnsley**—Certainly.

**Senator McKIERNAN**—Rather than asking for the information as of now. Dr Nygh mentioned the difficulties of appointment of people in this transitional period which we are in at the moment. Is the MRT experiencing any similar difficulties with the short-term employment that is able to be offered to people in the same context that Dr Nygh spoke of earlier?

**Ms Tongue**—When the members of the MRT were appointed, they were appointed until the end of January in expectation that the ART would start on 1 February. Everyone's appointment ends at the end of January. The department, I think, is talking to the minister about possible appointment to the end of June.

**Senator McKIERNAN**—No decision has been made or no announcement has been made on that? I actually thought it had happened.

**Ms Tongue**—No. At this stage all the members' appointments end at the end of January.

**Senator McKIERNAN**—And they have the option of being offered an additional four months of employment. Is there a rollover provision being continued in the consequential bill to allow for MRT members who are in a position at 30 June next year to continue in the position until 30 June 2002, which is my retirement date incidentally?

**Ms Tongue**—Yes, that is contained in section 2 of schedule 16 of the consequential—12 months.

**Senator McKIERNAN**—Yes. I am impressed by referencing into the consequential bill. I will curtail my questions at this particular point and look forward to seeing you in the new millennium

[8.31 p.m.]

#### **Department of Immigration and Multicultural Affairs**

**CHAIR**—Welcome, Mr Farmer, and officers of the Department of Immigration and Multicultural Affairs. Mr Farmer, do you wish to make an opening statement at this point?

**Mr Farmer**—No, thank you.

**CHAIR**—We will turn to the portfolio as it appears in the agenda, beginning with outcome 1—

**Mr Farmer**—Excuse me, Senator.

**CHAIR**—Yes, Mr Farmer?

**Mr Farmer**—Are you going to break down output 1 into 1.1, 1.2, 1.3 and so on?

**CHAIR**—Yes, to the extent that the questions allow for that, yes.

**Mr Farmer**—Thanks very much.

**CHAIR**—I am happy to start with output 1.1.

**Senator McKIERNAN**—I have some questions in regard to outcome 2, which is to do with migrant aged parents. I am sorry, somebody has put the wrong number on it; it is 1.1. They will be dealt with. The parliament recently discussed the provisions that the government sought to bring into operation by way of regulation regarding parents coming into Australia. In the course of debates explanations were sought of how the figures for the health care bond were arrived at. There were some explanations given by way of answers to questions, I think, directly in parliament and possibly on notice as well. I know I personally made some comment about the methodology of collecting the information, but I am wondering if it would be possible to break down the figures further.

I do not want to play a partisan role here at this time of night in estimates committees, but the challenge was laid down for Labor or for the opposition to come up with alternative suggestions even though we were not consulted on the second round of initiatives to allow more parents entry to Australia. I do not want to get into a partisan political debate here at the moment, but I am rather seeking information and detail of what went into the figures that were arrived at. I am asking for details on medical costs, the pharmacy costs, the hospital costs and other health services, remembering that these were costed over a period of 20 years or so that the aged person might have an expectation of living within Australia.

**Mr Rizvi**—Would you like us to focus on the health costs?

**Senator McKIERNAN**—It is the health costs solely that I am particularly interested in at the moment.

**Mr Rizvi**—The figure for health costs comprises, as you are already aware, a figure of \$6,000 per annum per person, which is then multiplied through by the 20-year life expectancy to come to the aggregate figure of \$120,000 cost. The \$6,000 figure was obtained on the basis of advice from the department of health and my understanding is that it covers costs associated with Medicare, it covers costs associated with hospitals and hospital costs, and it includes pharmaceuticals and residential aged care.

I will just break down those figures here. In terms of Medicare, the advice that we have received from the department of health is that the per person cost is estimated at \$750; in terms of hospitals, the per person cost is estimated at \$2,575; in terms of pharmaceuticals, the estimate is \$780 per person; in terms of residential aged care, the figure is \$2,235. All of those added together comes to a total of \$6,340, and the figure of \$6,000 is a rounding of those individual items.

**Senator McKIERNAN**—I will leave it at that because we do have other matters to get into. Staying with 1.1, can I address the matter of electronic travel authorities and ask how many have been issued during the last financial year.

**Mr Rizvi**—In 1999-2000 the number of ETAs issued was 2,719,140, which represented 82.56 per cent of total visitor visa grants in 1999-2000.

**Senator McKIERNAN**—How many applications from those in that figure within that period of time have applied for a three-month extension?

**Mr Rizvi**—A three-month extension onshore?

**Senator McKIERNAN**—Onshore.

**Mr Rizvi**—I could give you the number of persons on ETAs who subsequently sought an extension onshore during the year 1999-2000. They would not be exactly the same persons because—

**Senator McKIERNAN**—I understand that, yes.

**Mr Rizvi**—If you bear with me a moment, I will find it. I am sorry, but I cannot seem to locate that number. I may have to take that on notice, but we do have it. I do not have it with me.

**Senator McKIERNAN**—Okay. Do you know the number of ETA overstayers—that is, the number of people who were on electronic travel authorities who overstayed their visa within that same period of time?

**Mr Rizvi**—Senator, are you after overstay figures or non-return rate figures?

**Senator McKIERNAN**—Explain the difference.

**Mr Rizvi**—An overstayer is someone who remains in the country without a valid authority. The non-return rate is inclusive of those people as well as persons who have sought an extension of whatever sort onshore. I have overstay figures for ETA countries—that is, taking into account all ETA countries with more than 5,000 arrivals, which would be the vast majority of ETA countries. We have an overstay figure of 6,450, which comes to an overstay rate of 0.24 per cent. That was the figure for 1996-97. In 1997-98, the figure was still 0.24 per cent. In 1999-2000, the figure was 0.31 per cent in respect of ETA countries, only including those countries with more than 5,000 arrivals. I suspect the overall ETA figure would not be significantly different.

**Senator McKIERNAN**—Thanks very much. Is there a breakdown readily available by country of origin of those overstayers? Is it mainly people from the United Kingdom who fall into this category?

**Mr Rizvi**—I have those figures here. Would you like me to go through those?

**Senator McKIERNAN**—Yes, provided they are not too extensive.

**Mr Rizvi**—There are only 31 ETA countries, so it will not take too long. Would you like the numbers or the rates?

**Senator McKIERNAN**—Perhaps the numbers of the major countries. Let us not go through each of the 31.

**Mr Rizvi**—I will go through the larger ones. Japan had 272 overstayers in 1999-2000, which is 0.04 per cent; the United Kingdom had 2,488, which is 0.47 per cent; the United States had 1,162, which is 0.31 per cent; Singapore had 397, which is 0.21 per cent; Germany had 432, which is 0.29 per cent; Malaysia had 633, which is 0.46 per cent; Taiwan had 107, which is 0.08 per cent; and Korea had 711, which is 0.6 per cent. Every other country had less than 100,000 ETAs and generally less than 500 overstayers.

**Senator McKIERNAN**—Are there comparative figures available for persons with visas from non-ETA countries?

**Mr Rizvi**—Yes, I have some prominent non-ETA countries. Are there any particular ones you would be interested in?

**Senator McKIERNAN**—There are, but perhaps you might just deal with the larger ones in terms of numbers rather than the size of the country.

**Mr Rizvi**—For all non-ETA countries, the number of visitor visas issued is significantly less than the number of ETAs issued for the large ETA countries. So we are not really comparing equivalent sizes. Nevertheless, in relation to the larger non-ETA countries, the People's Republic of China had 631 with an overstay rate of 0.77 per cent, which is in fact a significant decline from the previous two years where the overstay rates were significantly higher; India had 174 with an overstay rate of 0.48 per cent; the Philippines had 856 with an overstay rate of 2.56 per cent; and Fiji had 257 with an overstay rate of 1.27 per cent. They are the major ones.

**Senator McKIERNAN**—Thanks for that. How many overstayers fitted into the high risk profile?

**Mr Rizvi**—All of those countries I just mentioned are currently profile countries. I can give you figures for non-profile non-ETA countries to contrast that if you wish.

**Senator McKIERNAN**—Yes, it probably would be useful if you could do that.

**Mr Rizvi**—Indonesia had 334, which is 0.65 per cent; Thailand had 315, which is 0.63 per cent; South Africa had 173, which is 0.4 per cent; and Argentina had 40, which is 0.55 per cent.

**Senator McKIERNAN**—We are not dealing with huge numbers, are we? Has the public criteria for high risk countries changed in recent times?

**Mr Rizvi**—No, it has not, but we are in the process of undertaking a detailed analysis of these figures. We will be advising the minister shortly and the outcome of that detailed analysis could lead to a change.

**Senator McKIERNAN**—Thanks for that. There was a visitor category introduced in June this year which required sponsorship from Australians—in some instances, Australian relatives—in the form of a bond. How is this new visa class working? What information can you provide to the committee on that at this time?

**Mr Frew**—The sponsored visa category was introduced on 1 July. As at the end of October we have had a total of 1,549 grants. We have had an overall total of 3,574. Of those 1,549 grants, there have been 158 bonds taken. That is to say that the balance of the 1,549 were based on the sponsorship. To date we have had a total of seven people who have failed to abide by the conditions of the visa. Out of interest, two of those seven have since left Australia, which leaves us with five.

**Senator McKIERNAN**—It is still very early in the scheme. Would I be correct in assuming that the majority of those people coming in on those visas would have been on three-month visas or would the visas be for lesser periods of time?

**Mr Frew**—It is a three-month maximum with a no further stay condition.

**Senator McKIERNAN**—But could the visas be issued for one month or a matter of weeks, or would it normally be for three months?

**Mr Frew**—It is a three-month visa.

**Senator McKIERNAN**—Have there been any dramatic changes in the total number of overstayers within Australia in recent times? I have seen some figures from the Olympics, but I think they referred particularly to the Olympic family rather than the number of visitors who came in at the same time as the Olympics.

**Mr Rizvi**—I actually do not have the total overstay statistics at this time. I understand that there has been a slight increase, but nothing significant.

**Senator McKIERNAN**—You normally supply a breakdown of the number of overstayers by nationality as well, don't you?

**Mr Rizvi**—We can produce that.

**Senator McKIERNAN**—I return to the parent category. How many people are currently in the overall queue for aged parents in the aged dependent relatives category?

**Mr Rizvi**—The pipeline at 31 October 2000 was: offshore, 15,627; and onshore, 4,560, coming to a total just over 20,000 altogether.

**Senator McKIERNAN**—So there is no major movement. It is a pretty stable figure, I think, over recent times.

**Mr Rizvi**—That would be right.

**Senator McKIERNAN**—How many applications in this character is the department receiving on a monthly basis?

**Mr Rizvi**—My recollection is that we are receiving at the moment, on average, between 100 and 150 per month. But I can take that on notice and give you more exact figures.

**Senator McKIERNAN**—Do we have any knowledge of the amount of money that is now being held on behalf of those 20,000-odd applicants—and I understand it is not being held within the department—for their initial application fees and possibly, in some instances, health levies and social security assurances bonds? Do we know the total amount of money that is held there?

**Mr Rizvi**—Yes. I think we provided earlier the figure in terms of application fees, which we calculated based on the number of people in each application, in that we only receipt application fees in respect of a total application, which could include more than one person. In terms of the health service charge and the assurance to support bond, the general practice that we follow is that that is not requested until we are ready to grant the visa. That is the last step that is taken. Hence, in terms of the pipeline, we would not be holding very much money in terms of bonds or health services charges, because those would not have been requested except in respect of those persons who are reaching the front of the queue and are ready for a grant.

**Senator McKIERNAN**—How many have been processed and are awaiting next year's quota? Have you any figures on that?

**Mr Rizvi**—The allocation that we have this year is a combined allocation. It consists of 500 places in the normal parent queue, plus about 750 will be granted in the one-off designated parent category, giving 1,250 altogether who will be granted a visa this year.

**Senator McKIERNAN**—When was the last time or the most recent occasion when applicants, or indeed their sponsors or relatives, received communication from the department, and what format did that communication take?

**Mr Rizvi**—I think, as a follow-up to the earlier committee meeting, we provided details on the various instances in which letters are provided. Most recently, we are currently in the process of advising parents and their sponsors, following the recent decision coming out of the parliament on the parent bill, and we are updating each applicant and sponsor on the situation following that. That process is currently ongoing. Obviously, it will take some time to get all the letters done.

**Senator McKIERNAN**—It is six months since we met as an estimates committee and since we got that earlier response from you. Covering that time frame that has elapsed since we last met when you provided me with that information, can you identify a particular group—either on a national basis or onshore/offshore or whatever—who have been formally communicated with in regard to the decision? I am obviously thinking also of the decision of the Senate to disallow the regulation that was brought into place. Has the department communicated with people in regard to that particular decision?

**Mr Rizvi**—We are in the process of doing precisely that. As you will appreciate, there are 20,000-odd people in the pipeline, and it will take time to produce letters for all the posts and all the regional offices to all of those people, but that process is currently ongoing.

**Senator McKIERNAN**—Thank you for that. I think that is all I have in that particular category of 1.1.

**CHAIR**—Before we move out of 1.1, Senator Harradine has some questions to be placed on notice which fall largely within output 1.1 and partly 2.3, which pertain to intercountry adoptions and a number of citizenship matters. Senator Harradine will place those on notice now, and they will be forwarded to the department.

[8.56 p.m.]

**CHAIR**—We now move to output 1.2 on refugee and humanitarian entry and stay.

**Senator McKIERNAN**—The special assistance category which was in existence has now been closed, and the question is: has that been closed in all areas in which it used to operate?

**Mr Giuca**—From 1 November, it has been closed. In all categories or all the countries that it was operating in, there will still be cases processed until the ceiling is reached in each of the programs.

**Senator McKIERNAN**—Would the expectation be that that ceiling would be reached during the term of the current financial year, or even the current calendar year?

**Mr Giuca**—I would expect it would be during the current financial year in most cases. There might be one or two where it could be finalised in this calendar year, but I think most will be in the financial year.

**Senator McKIERNAN**—Thank you. I am not too sure if this is the right area to ask this question in. The minister has been proactive in visiting and undertaking negotiations with a number of countries in an attempt to address the issue of people smuggling and illegal immigration. It is probably more properly dealt with in 1.3 than 1.2, but we will formally move to 1.3 now if you like, because the next question is 1.3 as well. But before we get into the minutiae of the detail, I think maybe it is—

**Mr Farmer**—On the international aspects, some of that might fall under 1.2, so we could perhaps start that and see if—



**Senator McKIERNAN**—Right. The minister, as I said, has undertaken various negotiations in a number of countries on the matter of people smuggling and illegal immigration to Australia. How many countries have we formally entered into treaties or cooperation agreements or understandings with at this time, or have we entered into any formal arrangements with any nation?

**Mr Farmer**—We have an agreement with China. We signed a memorandum of understanding earlier this year. Sorry for the delay. We have a memorandum of understanding with China about cooperation in law and order matters. That was signed earlier this year during the visit to Australia of the Chinese Vice-Minister for Security. That is the most recent one. We are negotiating a memorandum of understanding with Indonesia, and a joint statement in support of mutual cooperation in combating illegal immigration and trafficking in women was signed on 14 September with Vietnam. We have also, I believe, gone quite a way down the track towards reaching a number of understandings with Iran. We had a senior visit from the Iranian government here a couple of weeks ago and that has followed on a number of visits to Iran. So we are hopeful of progress there. We are also actively engaged in discussions with Syria, Jordan and Pakistan.

**Senator McKIERNAN**—Thank you. This is more properly a question directed to the minister. Let me put it on the record anyway and ask it to be taken on notice. Could I be supplied with the detail of all of the overseas visits that the minister has undertaken as the Minister for Immigration in the period of time that he has held that office. The countries that he has visited and the length of stay in each country over the time that the minister has been in office would be appreciated. I am not so sure if we are actually asking it under the proper heading; nonetheless, as we have started on this overseas negotiation in addressing people smuggling, it is a useful follow-on from what we have done, anyway. I think the other questions that I have got here certainly come into the category of output 1.3, on enforcement of immigration law, which is probably an area that we have quite a deal more questions on rather than output 1.2 or output 1.1. I understand, Mr Farmer, that you want to update the committee on a range of events that occurred under this subheading since the committee last met in May of this year.

**Mr Farmer**—With your indulgence, Madam Chair.

[[9.04 p.m.]

**CHAIR**—Mr Farmer, we will now move to output 1.3 on enforcement of immigration law, hear your statement and then proceed to questions.

**Mr Farmer**—Thank you very much. We will just have a change of officials. There have clearly been a number of issues that relate to program 1.3 that have arisen since we were last before the committee and we thought it might be useful to comment on some recent developments. Can I say by way of background that in the period from 1 July to 20 November this year, 16 unauthorised boats have arrived in Australia carrying 819 passengers, and that compares with 39 boats carrying 1,814 passengers in the corresponding period last year.

I think that it is too early to suggest that this downward trend will continue, but it is encouraging and we think that the reduction could be attributable to a range of factors, including the anti people-smuggling campaign, the level of cooperation between Australian, Indonesian and other overseas authorities and a reduction in pull factors. There are currently about 1,800 people in detention across all of our six centres, and in historical terms this is high, although much lower than the all-time high of 3,791 people on 3 April this year.

I am sure you will recall that in June this year there were break-outs of detainees from the Woomera, Port Hedland and Curtin centres. All in all, 848 people broke out. All were returned over the ensuing 48 hours and a number of prosecutions were pursued for escape from lawful custody. The key complaint of those who broke out was about the length of time it was taking to finalise their applications for visas. The size and speed of the increase in unauthorised arrivals from last year onwards clearly stretched our capacity in both detention and processing terms, not least because many of the arrivals destroyed their documents and because of our insistence on maintaining the integrity of the processes so as to protect the Australian community.

This had two impacts. First, the need to expand our detention capacity very quickly resulted in facilities which were adequate but not optimal in some respects. Once the basic accommodation facilities were completed to meet the increased arrival rate, our attention was able to turn to improvement in the amenities and ancillary facilities at Woomera. Second, it took time to expand our processing capacity to match the arrival and application rates. Processing times did increase.

Nonetheless, there have been regular visa grants across all centres since June of this year. The detainee population at Woomera has fallen from the high of over 1,400 at the time of the break-out in June to 272 as at 20 November. In all, 2,524 people have been granted temporary protection visas and released from detention since June and of the some 4,000 boat arrivals before 1 July this year, only some 600 remain in detention: 285 of those in primary processing, 184 in review, and 142 are awaiting removal.

Over the past year we have put considerable effort into enhancing the protection process and the time taken to progress through it. Current processing times are now in the order of 14 weeks to primary decision in the great majority of cases. The visa grants have been made following a rigorous assessment of individual protection claims and a decision that a temporary protection visa is warranted. The integrity of the process—and we believe this is crucial—has not been diluted.

Following the break-outs, there was an examination of the security framework in place at all centres. Before that review was completed, there was a major incident at Woomera in August where between 80 and 100 detainees rioted. Six buildings were totally destroyed by detainees and over 30 ACM and APS officers were injured. No detainees escaped and none sustained serious injuries. The damages bill is expected to exceed \$1 million. Prosecutions are being pursued and cases will shortly go before the courts.

Since the incidents in June and August, there have been a number of security enhancements at the three centres. In particular, we are finalising the strengthening of the perimeter fence at Woomera; internal fences at all three centres have been improved; contingency plans for dealing with major incidents are being enhanced; we are continuing to place emphasis on education, recreation, sporting and cultural activities for detainees; and we have appointed a panel of security advisers.

As senators will know, over the past few weeks there have been a number of allegations about child abuse at the Woomera Detention Centre and about the handling of those alleged incidents by our detention services provider, Australasian Correctional Management—ACM. First, I state quite categorically that the department takes very seriously its duty of care obligations to all persons in immigration detention, in particular, children. Second, in relation to the allegations which have been made, we want to be assured that everything that should have been done was, in fact, done. If there is an incident, we want to know about it so that we

can deal with it and ensure that it does not happen again. If there are systemic issues arising from any incident, we want to deal with those.

Issues relating to the processes in place for dealing with and following up allegations of child abuse and the manner in which these processes were followed in cases during the past year will, as you will know from an announcement by the minister today, form the subject of an inquiry to be undertaken by Mr Philip Flood, AO. The department will give Mr Flood every cooperation. In the meantime, we will continue to cooperate fully with the South Australian authorities, Family and Youth Services and the police, as they continue their examination of issues within their responsibility. In addition, the department has sought urgently a report from ACM on this issue and how it has been handled. Last week we engaged an independent consultant to review detainee record keeping and file management practices at Woomera. For its part, ACM is also seeking to establish whether its handling of the case has been appropriate and has appointed a senior officer not previously involved in any way with this case or the management of the Woomera facility to investigate their handling of the matter.

Finally, I would like to make some comments on the issue of mandatory detention of unlawful non-citizens. There have been some renewed calls for an end to mandatory detention and some of those have focused on the cost of maintaining mandatory detention. Maintaining that framework is not a low-cost choice, but alternatives that may be considered are not without very significant costs themselves. If all unauthorised arrivals were to be released into the community while their applications were considered, they would require some form of financial support while awaiting the outcome of their applications. Given the possibility of pursuing avenues of appeal, this could take some years. This would involve a significant expansion of the asylum seekers assistance scheme and possibly extra calls on state governments, charities and others.

We would also anticipate a significant increase in compliance costs as failed asylum seekers who become liable for removal disappear into the community in order to frustrate removal. Over time we would expect to see a significant increase in the number of people unlawfully in the community. An end to mandatory detention would also play into the hands of people smugglers. They would undoubtedly use this as a selling point to potential customers, adding significantly to the attractiveness of Australia as a destination for unauthorised arrivals. In time, we could see the offshore humanitarian program decline significantly in size as the number of places available was taken up by those arriving unlawfully. So an important part of Australia's refugee and humanitarian program could in effect become hostage to the activities of criminal people smugglers. We are aware that in a number of other countries, including Canada and the United Kingdom, governments are contemplating or taking further measures to develop or enhance their detention capacity in response to the global people trafficking phenomenon. Thank you very much for allowing us the time to make these opening remarks.

**CHAIR**—Thank you very much, Mr Farmer, for putting those statements on the record. Senator McKiernan, did you wish to begin these questions?

**Senator McKIERNAN**—Yes, I do. Regrettably, I do have some further questions on 1.2, which are in a different part of my folder and I will return to them later now that we have established ourselves on 1.3. Can I cover the area of most concern? I will start with the matter of Woomera and the child abuse that is alleged to have occurred there. Firstly, when did DIMA first become aware of the alleged incident of the boy being raped by his father and farmed out for sex?

**Ms Godwin**—There have been some allegations in circulation since about July that we were aware of at that time, and an investigation process was undertaken then in consultation with Family and Youth Services in South Australia. One of the matters which has subsequently emerged is whether in fact there was information earlier than that, and that is the matter that Family and Youth Services South Australia is now examining.

**Senator McKIERNAN**—When are these events or incidents supposed to have occurred, that is the rape and being farmed out?

**Ms Godwin**—The earliest indication that we are now aware of dates from about mid-March.

**Senator McKIERNAN**—What has been the response of the department on becoming aware of these allegations?

**Ms Godwin**—As Mr Farmer mentioned in his opening statement, we have asked ACM urgently for a report on its handling of the matter. Last week, one of the issues that was being raised in newspaper reports was that there were some irregularities with the file keeping. There were some suggestions, I think, that there may not have been all of the documents on the files. We engaged a consultant at that time to examine the file keeping/record keeping/detainee record keeping at Woomera.

**Senator McKIERNAN**—Who initiated the investigations by the South Australian authorities in July which you have informed the committee about?

**Ms Godwin**—There were a couple of things that happened simultaneously. An ACM officer employed at the centre reported an allegation—I am not sure if it was just this allegation—to FAYS and simultaneously made known the fact that they had reported a matter to management of the centre. As a result of that, we were alerted in central office and officers from the detention operations section were then in discussion with Family and Youth Services about the fact that we understood a notification had been made. We then talked about how FAYS would want to take forward an investigation into that notification.

**Senator McKIERNAN**—We are talking about July. There have been allegations since. I am not sure of the time frame which these allegations cover. Can I clarify that when you talk about management of the centre you mean DIMA, or do you mean ACM?

**Ms Godwin**—No. The ACM officer drew it to the attention of ACM management at the centre but, as is a requirement under the contract, ACM management then drew it to the attention of the DIMA manager and they alerted us in central office.

**Senator McKIERNAN**—So on a formal basis DIMA was aware of allegations in July but you were aware earlier than that of rumours?

**Ms Godwin**—No. I will clarify that. There were a number of matters that were notified. They ranged from issues which were ultimately regarded as not relating to child abuse. There was a notification that a child had broken its arm. It turned out a child had broken its arm playing sport. So there were a number of issues that were notified to FAYS at that point. As we worked through that notification with FAYS, one of the matters that was involved in that group at that point was subsequently identified as this same case. I cannot comment that we were aware of rumours. Sorry, I think you said that we were aware of rumours prior to then. I cannot confirm that we were aware of rumours prior to July.

**Senator McKIERNAN**—Right. Do you know if the boy was examined by doctors at that time when the complaint was lodged in July when those investigations were instituted by FAYS, the South Australian authority?

**Ms Godwin**—I cannot comment on the investigations that FAYS undertook. They are the competent authority, and the investigations that they undertook at that time were a matter for them.

**Senator McKIERNAN**—Mr Farmer, in your commentary to the committee earlier you said that the department was acutely aware of your duty of care obligations to the child. Can I put the same question to you in the context of the department's duty of care to the boy? Do you know if that child was examined at the time the South Australian authorities became involved on a formal basis?

**Mr Farmer**—What we know is that the South Australian police and Family and Youth Services have a responsibility to undertake their inquiries, and they do that in their own way. It is not our prerogative to intervene in what they do.

**Senator McKIERNAN**—I understand. Nonetheless, do you as a department have a duty of care to the child—to the person who is in your control? Do you know if that child was medically examined at that time?

**Mr Farmer**—Do you mean during the inquiry by the South Australian authorities? I personally do not. I do not know whether we have details of the procedures that those state authorities went through.

**Senator McKIERNAN**—I am again repeating it from the position you put to the committee earlier, which I always understood was the position: the department had a duty of care to the child. Who is responsible for that duty of care? Is it management at the centre, is it the senior officer, is it ACM, is it you as the chief executive officer of the department or is it the minister?

**Mr Farmer**—The department has the responsibility. We have arrangements for managing the centres. I have said and I repeat: we take those very seriously. The responsibility for examining allegations or instances of child abuse rest with the South Australian authorities.

**Senator McKIERNAN**—As the custodian of the child—I think that is the proper term to use—

**Mr Farmer**—Yes.

**Senator McKIERNAN**—are you aware if that child was medically examined by the relevant authorities at that time in July?

**Mr Farmer**—I personally am not. Our responsibility is to ensure that any allegation or instance is brought to the attention of the responsible authorities, and we take that very seriously.

**Senator McKIERNAN**—I am not asking for the results of the inquiry or anything like that, but I would have thought that, as a part of the duty of care the department has to the child, you would know whether or not medical personnel were granted access to the child or whether they were hindered in being granted access to the child. I am very disappointed that we are not able to get that information on the record at this time.

**Mr Farmer**—We would grant the South Australian authorities—those responsible; that is, Family and Youth Services or the police, given their respective responsibilities—whatever access they required and whatever facilities they required. That would extend to access and entree to their personnel.

**Senator McKIERNAN**—Do you know if the child has since been medically examined—since that period of time in July?

**Ms Godwin**—I cannot confirm what exact inquiries FAYS are progressing. It is certainly true that they have renewed their investigations into the case and that they are seeking to undertake a further assessment of the case and of the child. But whether that will involve a medical examination is a matter for them.

**Senator McKIERNAN**—In regard to that last comment, where do the custodial responsibilities of the department start in relation to a child held in detention? Where do those responsibilities start and end in situations such as we are going through at the moment?

**Mr Farmer**—There are some basic responsibilities we have for shelter and sustenance, and they are set out in the detention standards that we have. We also have responsibilities where there is an instance or an allegation of a serious matter. There is a list of areas where we have protocols, and we have responsibilities to pursue those either with the appropriate authorities, with the centre management, or otherwise.

**Senator McKIERNAN**—As we speak, where is the child now?

**Ms Godwin**—The child has been transferred to Adelaide in order that FAYS can progress their assessment. They indicated to us it would be more convenient for them to undertake whatever assessment they believed was appropriate if the child was in Adelaide. We agreed with that and the child was transferred, but the child is in immigration detention.

**Senator McKIERNAN**—Has there been a transfer of the custody arrangements or the duty of care?

**Ms Godwin**—No. As I just mentioned, the child remains in immigration detention. The child is in Australia with his father, so the father has the formal custody of the child.

**Senator McKIERNAN**—Has the child been released with his father? Is the father with the child as we speak?

**Ms Godwin**—They are both in Adelaide, but they are not at the same location. They are both in immigration detention, so they have not actually been released from detention. They are just not in the centre.

**Senator McKIERNAN**—Under whose care is the child, then, if he is not under parental supervision? Under whose care is the child as we speak?

**Ms Godwin**—As I say, the child is in immigration detention. There is a detention officer and an interpreter with him and FAYS, I guess, are supervising him. But they have not taken on care of the child.

**Senator McKIERNAN**—If something happens to the child now—I am not wishing it on him—whose responsibility is that? Is there a foster parent or like person or a custodian in law with the child at the moment?

**Ms Godwin**—As I said, FAYS are supervising the child. The child—

**Senator McKIERNAN**—Do they have formal legal custody of the child?

**Ms Godwin**—Not that I am aware of.

**Senator McKIERNAN**—So the department of immigration has that legal custody of the child still, even though the child is not in immigration detention. Is there an immigration officer—

**Ms Godwin**—The child is in immigration detention.

**Senator McKIERNAN**—Is an immigration officer with the child?

**Ms Godwin**—There is a detention officer with the child and an interpreter.

**Senator McKIERNAN**—What is the difference between a detention officer and an immigration officer?

**Ms Godwin**—They are officers for the purposes of the Migration Act, but it is an ACM officer. In other words, it is not a DIMA departmental officer. The person is appropriately authorised under the Migration Act, but it is an ACM detention officer.

**Senator McKIERNAN**—So FAYS does not have the formal legal custody of the child at the moment?

**Ms Godwin**—They requested the transfer of the child to Adelaide, and we have facilitated that, but he remains in immigration detention.

**Senator McKIERNAN**—And the father has been transferred to be close to the child? Is that what you are saying? If that is not the case and it is a different answer that should not be put on the public record, do not put it on the public record.

**Ms Godwin**—The father also remains in immigration detention and he has been transferred so that he can be accessible to assist the boy and also to assist FAYS.

**Mr Farmer**—But they are in different places.

**Senator McKIERNAN**—I had understood that, but I was just being careful in case some other matter was afoot. When was this alleged incident first reported to the minister?

**Ms Godwin**—The fact that there were allegations reported, as I said, in July and the processes that were being undertaken at that point. The fact that there was an earlier piece of information was reported to the minister this week.

**Senator McKIERNAN**—Was the minister informed on a formal basis in July when FAYS were first brought in to inquire into the allegations?

**Ms Godwin**—I cannot recall whether there was a formal briefing at that point. I would have to take it on notice.

**Senator McKIERNAN**—I am disappointed that you would have to do that tonight in the circumstances that we are in. Considering the amount of attention that has been drawn to this matter, I would have thought that that material should be readily available to the department, to senior officers like yourself, at this time. When you consider that another state agency has been brought in to investigate very serious allegations that concern the department, you are not in a position to inform the committee that the minister was or was not informed of those allegations way back in July?

**Mr Farmer**—Can I say that an extensive reporting function occurs in the immigration detention centres. There are very many incident reports that we receive. Some obviously are minor and some of them are serious. It is not a practice to report all of those to the minister.

**Senator McKIERNAN**—I cannot dispute that with you, Mr Farmer. But the question was: when was the minister formally advised of the allegations? I would have expected a more clear-cut answer to that question, bearing in mind the amount of attention that has been given to it.

**Mr Farmer**—Our attention has been focused on the way in which things have been done with a focus on the child to see whether what should have been done in relation to the child was done. That has been our focus.

**Senator McKIERNAN**—When did you acquire that focus?

**Mr Farmer**—We have a number of focuses over the—

**Senator McKIERNAN**—I am talking about the particular one you mentioned just now, of what your focus is. When did you acquire it? Let me be more precise. When was the child removed from the detention centre?

**Ms Godwin**—The child was transferred to Adelaide yesterday.

**Senator McKIERNAN**—So the focus happened yesterday?

**Mr Farmer**—No. In a general sense our focus is always on the welfare of the individual detainees. During the last week or so we have been looking to see what needs to be done with the child, what has been done, what should have been done and whether there have been any matters that have been left undone with a view on the child. I am simply saying that our focus has not been on looking through our records to see when the minister was first advised of any particular matter. I am just explaining as a matter of fact what the situation is.

**Senator McKIERNAN**—The more recent accusations occurred on page 3 of the *Australian* newspaper on 15 November last week. Apart from the story about the child, which was the subject of the headline, there was a further allegation contained in that newspaper article of a female who alleged that she had been sexually abused in the immigration detention centre. Has the department undertaken any inquiries—any investigations—about the contents and details of that accusation?

**Ms Godwin**—There is one case that we are aware of involving an adult female. I do not know when it first came to our attention but, in any event, as a result of that information coming to our attention the case has become the subject of charges and I think has been prosecuted in the courts.

**Senator McKIERNAN**—When were the prosecutions lodged?

**Ms Godwin**—Do you mean was it as a result of the newspaper article of last week?

**Senator McKIERNAN**—That was going to be my next question.

**Ms Godwin**—No, the incident that I am referring to was one that came to our attention, I think, some months ago. It has already proceeded to the point of charges and prosecution.

**Senator McKIERNAN**—Are you confident that the incident that is referred to in the *Australian* on 15 November 2000 is the same incident in which charges have been laid?

**Ms Godwin**—We have not been able to establish any other incident that seems to refer to that sort of an allegation. As I say, we are aware of the adult that I already mentioned.

**Senator McKIERNAN**—In the matter dealing with the incident for which charges have been laid on an individual, has the victim been granted the visa application that the individual was applying for?

**Ms Godwin**—I do not know what the status of that person is. Sorry, I am being advised that she has subsequently been granted a visa.

**Senator McKIERNAN**—That helps me with my confidence that we may be talking about the same case. There has been further reference to that particular case in later reports—I can recall reading some, but I do not want to dwell on them here tonight. But I would—if you could take it on notice—seek to confirm that we are, in fact, talking about the same matter.

**Mr Farmer**—We will do our best to answer that question, but it is not always easy, as you know, to look at a press report and identify what is meant by it. I think you will have observed the minister a number of times during the period saying in effect that, if anyone has any



allegation, any matter that they think requires investigation or analysis, they should take it to the appropriate authorities.

**Senator McKIERNAN**—I am aware of those comments, but I am also aware of the comments by some other people who have been involved in this incident with the little boy. If what they say is true, one could not be confident that reporting it to the appropriate authorities is necessarily going to remove the danger or the hazard.

**Mr Farmer**—If people wish to report things to the appropriate authorities, in South Australia it would be the police or Family and Youth Services. In the case of rape it would obviously be the police in whatever state was involved. In that regard they would be in the same position as other members of the community. It is quite appropriate that matters should be referred to the authorities for appropriate attention. It can be difficult. As I said, we will in good faith look at the article and see whether we can line up the cases and assess whether they are one and the same. I hope you would agree that over the last two weeks we have lived in an allegation-rich zone and I think we have seen a number of people reporting allegations or making allegations which I think in some cases have not been first-hand, second-hand or even third-hand.

**Senator McKIERNAN**—Yes, I am aware of that. Again, I do not want to be in a position where I am necessarily judging what the allegations were or were not. What I do feel obliged to do is to test those allegations, particularly where a child is involved and particularly where the allegations have been around for considerable periods of time. Also, the allegations were strong enough to invite an outside authority in to do some investigations on it and then from that we get further allegations of files going missing and people being pressured not to complete the full files. I am sure you will do the best the department can do, but I really do hope it is a little bit better than what we are getting from some of the officers tonight. I am disappointed that we are not getting those precise detailed dates of when the matters were referred to the minister. I am talking now very specifically about the allegations as to the child. We will allow the investigations to continue. No doubt a committee such as this will revisit it at a further time, but I do have a considerable amount of other questions to ask on this matter. I do not know if you wanted to respond.

**Mr Farmer**—Senator, I do feel obliged to defend my colleagues. They have been working with the focus that I have mentioned to you—namely, to assess the way in which the processes that were laid down were or were not followed and a focus also on working with the South Australian authorities when they renewed their interest in the matter. That has been our focus during this last week.

**Senator McKIERNAN**—I understand, but I am also aware of media comment by the minister as well. I could go through the detail of his appearance on the *PM* program last Friday and pick up points with regard to that. We should remember that that was Friday of last week; it was not Wednesday of this week. Let us face it, things have dramatically changed in that period of time. I suggest that the minister is probably singing a slightly different tune tonight than he was on *PM* last Friday night. Again, that is for another day. I respect you defending your colleagues here tonight. There have been allegations—and this goes back to the *Australian* article on 15 November—of files going missing. Has there been any investigation into that by the department at this stage?

**Ms Godwin**—As I mentioned in an earlier comment, when we saw that allegation in the newspaper we took steps to engage an independent consultant to examine file keeping practices at Woomera. That examination is in hand, but we have not had a report back from

the consultant yet. In addition, that will presumably be one of the matters that Mr Flood will turn his mind to.

**Senator McKIERNAN**—Following the *Australian* report on 15 November, the ABC program *The World Today* on the same date did a program which I suppose was titled ‘Claims of child abuse rife in Australian detention centres’. It mentioned the *Australian* article. It then went on to mention that the allegations were not limited to Woomera, that there were allegations of two male detainees at the Curtin Detention Centre in Western Australia who had been charged with offences and then went on to interview Mr Nick Poynder, a Sydney barrister, who had lodged a formal complaint to the UN human rights committee. Mr Poynder went to some lengths to detail how a client of his had been carrying his child, said to be a four-year-old child, whilst the client was in handcuffs and removed from Villawood Detention Centre to Port Hedland where he and the child had been held in what Mr Poynder describes as solitary confinement for 12 days, during which time his client says he did not see daylight at all; that it was a single solitary cell; that there was a toilet, a washbasin and a bed but no windows and nothing else; and that his child, the four-year-old, was held with him for a period of 12 days in the cell. Have these allegations also been investigated by the department?

**Ms Godwin**—They have. Perhaps I can give you some background to the case and then refer to the specific elements that go to the issues in Port Hedland. The detainee referred to in that allegation was a detainee who was involved in a fairly lengthy protest at Villawood. A number of children were also involved in that protest. There were mounting concerns at the extent to which the children were involved, particularly the question of whether or not the children had adequate access to food, drink and so forth. Because those concerns were mounting, we at that time consulted with the youth and community services department in New South Wales to discuss issues relating to the best interests of the children who were participating in the protest because of their parents’ involvement. As I say, we became increasingly concerned. ACM took action to bring that particular protest to a conclusion. Bringing it to a conclusion included breaking the group up. A number of the people who had been participating moved to the Port Hedland Detention Centre.

The detainee in question was one of the group that was moved to Port Hedland. It is true that he had what are referred to as flexicuffs, a light plastic restraint, when he was moved from the vehicle that took them to the airport onto the plane because the detainee had been fairly aggressive and abusive during that process. Immediately he was on the plane the flexicuffs were removed and he then travelled to Port Hedland without any further restraint. The child occupied the seat beside him. The child was in no way restrained. As I say, the father was not restrained either after he was on the plane.

When they got to Port Hedland they were moved into an accommodation area known as J block. As senators are aware, the blocks at Port Hedland are named by letter. J block is just one of the accommodation blocks. They were placed in that accommodation block with other family groups. The first night they arrived each of the family groups was kept in a separate room, but immediately the next morning after their arrival they then had the full run of that particular accommodation area, including ablutions and an external area that they could go into. There were a number of children there, not just the child of this particular detainee. The children were permitted to move around at will, to play and all those sorts of things.

There was a time when they were in that accommodation block where centre management, ACM officers, were concerned because the detainee seemed to be keeping his child in and not permitting the child to play with the other children. Steps were taken to encourage the children to play and participate in activities around the centre and to move outside and so

forth. He was not in solitary confinement. He was not otherwise constrained. He was subsequently moved back to Villawood because he is pursuing an appeal. That seemed appropriate in order to assist him to continue to pursue his appeal.

**Senator McKIERNAN**—Thank you for that fulsome explanation. I understand that the allegations were repeated on the *Lateline* program last evening.

**Ms Godwin**—They were.

**Senator McKIERNAN**—With regard to these particular accusations or complaints, do they trigger within the department any particular investigation, or is it reliant on the collection of the evidence, for want of a better word, from the various officers who would have been involved in, firstly, the riots, the disturbance, at the Villawood centre, the removal through the airport and then talking with the officers in Port Hedland?

**Ms Godwin**—There are a number of layers to how we would examine these sorts of complaints. First of all, as you are aware, we have a DIMA manager on site at each centre. We would normally, in this sort of situation, consult with our DIMA manager and ask them to consult with ACM about details of the complaint. We would also have a view to the incident reports which are provided on a regular basis. Mr Farmer, I think, has mentioned that we get incident reports very regularly. They range in number from about 10 a day to 15 a day and cover all sorts of different aspects. We also have a process of quarterly reviews of ACM performance, and we would look at all of the incident reports and the reports from DIMA business managers in making those quarterly assessments. This year we have put in place, as Mr Farmer mentioned in his opening statement, an independent panel of advisers to provide us with advice in respect of more serious incidents. So where we think there is an incident that is beyond just the sort of normal day-to-day activities in the centre, the sorts of things that can happen, we would be able to refer that now to one of those panels.

In reference to the major incidents that have occurred this year at Woomera and the other centres, two things have happened. There has been a security review—again, something Mr Farmer mentioned in his opening statement—and we have also engaged a consultant to provide us with advice on whether or not those incidents were properly managed by ACM and, indeed, whether there were any aspects of DIMA's involvement in the management of the incidents that is worthy of comment. We have not yet had that final report.

**Senator McKIERNAN**—In regard to this particular incident or the allegations contained in this particular incident, I have access to a four-page statement by the father of the child. I understand that the parent did engage in what he described as a hunger strike for some period while he was detained in Port Hedland. What happened to the child during that period that the father was on the hunger strike?

**Ms Godwin**—I cannot comment on whether this particular detainee continued his hunger strike. It is true that some of the detainees who were transferred continued a hunger strike for some period, although not the full time that they were at Port Hedland. But where an adult is participating in a hunger strike we obviously monitor that very carefully, because of our duty of care to the detainee, but where a child is involved we take particular steps to ensure that the child has access to food and water regardless of what action their parent might be taking. I cannot comment specifically; as I say, I do not know whether this particular detainee did continue his hunger strike, but in any event the welfare of the child would be monitored very closely in that sort of situation. If there was any question of risk to the child, we would consult with the relevant youth services agency, as we have done in the past in these sorts of circumstances.

**Senator McKIERNAN**—There are a number of other allegations contained in both the media interviews that Mr Poynder undertook on behalf of this person and also what he has in this four-page statement that has been provided to me. I think it would be helpful if those allegations were responded to. I will not, as is normal and my normal behaviour in committees such as this, formally table the document, because it does contain names, and I think that individuals need to be protected in these circumstances—not only the parent but certainly the child, and the child could be identified if the parent is identified. But the allegations go to the child being held in a solitary cell for 12 days; the child being fed only once a day; the access to toilet and personal hygiene being restricted for the child; the access to play, to education, to contact with other children being restricted.

I think it would probably be the best way of handling the matter if these were provided to the department directly rather than through the provision of a tabled document, and hopefully we can get some responses to them in the context of what we have been talking about of the duty of care to children who are held in detention facilities. These allegations have been on the record now for a week, and some particular questions were directed to senior officers of the department. Regrettably, the concerns that I have—and I am only speaking as an individual—have not been put to rest by the responses that we have received to the questions. I will just leave that for the record. All one can do in these circumstances is form personal opinions at this time but give you the opportunity of responding in detail to the submissions that I made.

**Mr Farmer**—Thank you. I have listened to that very carefully, and I think my colleagues have set out the circumstances of the particular matter that is the subject of the allegation. Would you like us to, in effect, produce a written reply among the answers on notice? Is that what you would like us to do?

**Senator McKIERNAN**—Yes, I think so. There is a range of other questions that I still have to go through, and I am very conscious of the clock ticking over.

**Mr Farmer**—We will certainly do that. Could I say something about allegations? First, I just repeat the point the minister has made, and we all would make, that if people have matters that they believe should be drawn to the attention of the authorities that they do it—they make those details available to the authorities, whether to the department, to the police, to Family and Youth Services, depending on the circumstances. I would also just ask for your understanding in one matter. It is that we are dealing, in the case of detention, with people—I am not talking about the detainees but people in the Australian community—who, for their own reasons, have very strong views about detention one way or the other, and we see a variety of allegations made about what happens in the detention centres. I would refer you to the Ombudsman's annual report, where he looked at an allegation made about matters alleged to have happened in the Maribyrnong Detention Centre. The Ombudsman's findings there were very clear. They were a very clear comment on the allegations. That is not unusual, I would say, in our experience. But, having said that, I repeat that if there are any instances or allegations of serious matters happening in the detention centres, we believe they should be followed up, and we take very seriously the matter of following them up.

**Senator McKIERNAN**—Thank you for that advice. Might I just, in very brief response, also put on the record that the attitude that you just expressed to the committee has also been an attitude that I have also expressed, and not only expressed; it is a practice and a procedure that I have followed. Without going into the detail of it, there has been one occasion where I have received direct information from a person from within a detention centre who was making certain allegations whom I directly referred to the law enforcement officers—and it is

an advice that I have given to many others, both individuals who are contained in detention and also advocate groups that operate outside the centres. However, we have some serious allegations that have been made and repeated and regrettably, one week after those allegations have been made and received high publicity, the finite detail of the department's investigations into those matters is not able to be put on the public record.

The other matter relating to those allegations—when we come back to the Woomera incident—is a matter of intimidation of persons who do make allegations, and not only of the detainees themselves but of others who provide services to the detainees. I am now referring to some of the allegations of a nurse who did not fulfil her responsibilities by reporting an alleged incident to the authorities in South Australia, and the reason for that non-reporting is said to be because she was intimidated by some personnel who are in the Woomera detention facility.

**Mr Farmer**—That, of course, is a very serious allegation. You will have seen comments by the minister during the course of today and possibly yesterday—I do not recall exactly—where he made very clear his view about the professional responsibilities of people being exercised and the serious view he would take if anyone attempted to prevent someone exercising their professional responsibilities, in this instance reporting an instance of child abuse. I think the minister has been very clear about that.

**Senator McKIERNAN**—Because I have been otherwise engaged during the course of the day I have not seen all of the media comment. I certainly have not seen the terms of reference for the inquiry to be conducted by Mr Philip Flood. Will the terms of reference of the inquiry that Mr Flood is going to conduct include Mr Flood examining allegations of intimidation in the instances that have been referred to in the questions that I have put? I have not seen the terms of reference so it is—

**Mr Farmer**—That is not surprising. They do not exist yet. We have not yet put final advice to the minister. We will be hoping to do that tomorrow, and I imagine that the minister will be taking a decision on the terms of reference in the next day or so.

**Senator McKIERNAN**—An inquiry has been raised and the person to conduct the inquiry has been selected?

**Mr Farmer**—Yes.

**Senator McKIERNAN**—The terms of reference of that inquiry are not yet in place and you would expect that to occur within the next few days?

**Mr Farmer**—That is so.

**Senator McKIERNAN**—Has there been any initiative to ask the South Australian Department of Human Services to provide training to ACM staff on the handling of allegations of child abuse?

**Ms Godwin**—Yes, there has. As a result of the discussions that took place between us and FAYS during July when the report was made to them, one of the things that was discussed was the need to ensure that all of the officers working in the detention centre were aware of their reporting obligations, how to go about it and so forth. FAYS have agreed that they will conduct that training on a regular basis in the centre.

You may be aware that detention officers in the centre rotate on about a six- or 12-weekly basis. It has been agreed that with each group, as they come on for their rotation, the issue of mandatory reporting and how to go about it will be incorporated into their induction briefing and training. FAYS will work with ACM in the provision of that training.

**Senator McKIERNAN**—When is that proposed to commence?

**Ms Godwin**—We think it may already have commenced, but we would have to take that on notice just to confirm.

**Senator McKIERNAN**—Is similar training being given at other detention facilities that the department is responsible for?

**Ms Godwin**—There are two aspects to that. Child protection and reporting issues are matters that are covered in the detention officer's inaugural training, so all of the detention officers will have had some access to training on child protection and reporting issues. We are also in the process of consulting with each of the state child welfare authorities—variously named in each of the states—to put in place for each of the centres appropriate protocols according to their requirements, although the bottom line is that any incident must be reported. Whether it is reported to the police or direct to the child welfare authorities varies from state to state, and the specific requirements are known at each centre. But, as I say, we are in the process of looking to establishing specific protocols which would also go to the question of training for each of the centres.

**Senator McKIERNAN**—If the department has officials who are monitoring and ensuring that the provider, that is ACM, is meeting contract conditions, what breaches of the contract terms have been reported by DIMA officials and whom are they reported to?

**Ms Godwin**—As you know, the contract has been in place now for almost three years, so we have had lots of quarterly assessments—probably 11, if my arithmetic is correct. The reports that our centre managers provide are provided to the detention operations section in central office. They are specific reports that are required on a quarterly basis and we examine those in addition to the incident reports that we receive on a daily basis from each of the centres.

**Senator McKIERNAN**—I must put on the record apologies from my colleague Senator Cooney, who did have questions in this area and was very eager to put his questions on the record and would have been vigorously pursuing those questions had he been able to be here. Regrettably, he is not able to be here and he apologises for not being able to be here, but he has previously asked questions regarding the confidentiality of the contracts and he has done that with a lot more rigour and a lot more force than I have done in following a similar matter. I do not want to pursue that matter of the confidentiality of the contract here tonight because of the limitation of time. But isn't it possible that—in the event of there being complaints or allegations of the nature we have been talking about tonight—within the terms of that contract those complaints, inquiries and allegations could impact negatively on the provider, ACM, with that being put forward as one of the reasons why the allegation of intimidation on the nurse's reports—or the fact that there was non-reporting or even the tearing up of files—has occurred?

**Ms Godwin**—I am certainly aware that that allegation has been made. Without going to the precise financial arrangements in the contract, perhaps if I could explain in general terms. There is a component in the contract which goes to the question of what is referred to as a performance linked fee arrangement, and the performance assessment is essentially a points assessment. Negative points attach to certain incidents, or performance issues, and positive points attach to other aspects of performance. It is true that assaults of any sort—not just sexual abuse—on or by detainees attract negative points, but so does a failure to meet obligations under the contract for reporting of incidents. The way in which the quarterly assessment works is that we look at all of the incidents which attract negative points, we look

at all of the incidents which attract positive points and an assessment is made of whether there is a net negative or positive.

So while there are certainly, as I say, performance linked arrangements for things like assaults, there is no direct correlation between an individual assault and a financial penalty under the contract. It depends on the outcome of the overall quarterly assessment. As I say, in any event there is an equal incentive to report because if the contractor does not meet the reporting obligations under the contract, that attracts negative points just as the assault would.

**Senator McKIERNAN**—Is it the department's view that the accommodation, health, education and social welfare obligations that ACM has as the service provider are being met?

**Ms Godwin**—As I have said, we have had three years of the contract and we have had a number of quarterly reports and there have been various things that we have commented on throughout those quarterly reports. One of the things we focus on in our assessments each quarter is the extent to which programs are being provided, the extent to which programs are properly attuned to the needs of detainees and the like. I do not have in my mind all of the possible things that may have been commented on over the life of the contract, but I think it would be fair to say there have probably been a number of times where we have been very positive about performance, and there may well have been times where there have been particular examples of performance in areas of programs or other ancillary services where we have not been so pleased and we have drawn that to the attention of the contractor.

But your question was: are we satisfied? I guess what I am saying is that it is an issue that we continually monitor and it is something that we comment on in each quarterly report. It is not something where we have just formed a view and that is the view; it is something that we keep under close consideration.

**Senator McKIERNAN**—When an allegation is made to centre management, is it ACM that investigates those allegations?

**Ms Godwin**—It would depend on the allegation. If it is a reportable offence—as Mr Farmer has already made the point—we expect those sorts of offences, or suggestions of such offences, to be properly reported. If it were a criminal offence—for example, an assault, theft and those sorts of things—we would expect that to be referred to the proper authorities, for example the police. Other incidents go to tensions between detainees, people's dissatisfaction, for instance, with food or the amount of bedding that they have available. Those are matters that we would expect to have addressed quickly within the centre.

**Senator McKIERNAN**—In the event that a complaint was made to ACM, which may have spanned the range of those offence types that you have so described, and ACM determined to investigate it itself—whether it was a reportable offence or a less serious offence—does the department have access to those reports that may be produced by ACM in those circumstances?

**Ms Godwin**—Yes. They are part of the incident reporting framework that the contractor is expected to provide to us.

**Mr Farmer**—I think the answer is that we should, but if we look at the three-year history of the contract there have certainly been many instances where we get an inquiry, for example, from the Human Rights and Equal Opportunity Commission. We ask for incident reports. They are there. They give us a basis for responding to the inquiries. But I certainly recall that there have been one or two instances where we have had to say, in the quarterly meetings or elsewhere, that our centre managers did not get a report and we have made it

clear to ACM that we expect that reporting to be done. So I believe the answer is that we should get a report on any serious matter. There have been instances where that has not happened and we have taken steps to remind ACM of their obligations and they, in turn, have reinforced that obligation on their centre managers.

**Senator McKIERNAN**—A quick glance at the transcript of today's doorstep by the minister—I am sorry, I just cannot identify which media it is from, but the time is 9.15 this morning and Mr Ruddock is quoted—sorry, I have lost the point that I was going to make in regard to the incidents that we have been talking about earlier, or whether there had been, in fact, any reports or any inquiries by the service provider and, indeed, from that whether annual reports have been made to the department and from that whether any reports had then been made to the minister. Regrettably, I cannot pick up the point that I was going to raise in regard to what I thought Mr Ruddock had said in that media comment. Maybe it was something that I recall from his appearance on the ABC television news tonight with regard to what Mr Flood will be seeking to do during the course of the inquiry that he has been appointed to conduct. As I understand it, from memory of what the minister said, that is one of the matters that Mr Flood will be required to investigate and report back to the minister on.

**Mr Farmer**—I think Mr Ruddock's media release this morning said that Mr Flood will be asked to examine and report to the government on the processes in place for dealing with and following up allegations or instances of child abuse and the manner in which these processes were followed in cases during the past year. Mr Flood will also be asked to make recommendations on any area where he believes processes need to be improved.

**Senator McKIERNAN**—That is the bit that I was actually looking for and could not find. Thank you. What information, copies of reports and documents or results of earlier investigations by the department, rather than by the Ombudsman or HREOC, or various inquiries that have been conducted as a result of allegations, can be supplied to the committee to further inform ourselves of what actions have occurred in the past when serious allegations have been made that have resulted in inquiries being undertaken and reports being made? What further information can be given to the committee in regard to that? I expect that is a question you would want to take on notice.

**Mr Farmer**—Yes. There would obviously be some privacy aspects in it relating to individuals. That is something I know you are very proper on. Put it this way, I do not want to stand in the way of giving you information about processes that would be of interest to you. If you want to be more specific about your interests, we could try to assess what we might do.

**Senator McKIERNAN**—What I would really like is copies of inquiries that have been conducted by the service provider and then perhaps later investigated by the department itself or perhaps even an outside force, so that one could test the rigour under which the original investigations by ACM had been undertaken. I cannot, whilst I am sitting here, identify any particular individual or specific allegation that I could directly request you to provide me the results of, because I am aware, as you have indicated before, that there have been many, many allegations made over a considerable period and many of them in more recent periods where there has been a degree of unrest within the various detention facilities within Australia. So I have asked it in the general sense rather than the specific, for the reasons that I have already enunciated.

**Mr Farmer**—Could I make a suggestion which you can take or not as you like. You have talked about one specific case, the transfer from Villawood to Port Hedland involving the father and the child. We said that we would give you some details there on notice. We can



undertake to make that reply as full as we can in relation to talking about the incident reports and the view of those reports that was taken by the department.

**Senator McKIERNAN**—Yes, I think for the moment I will be happy with that. The only difficulty I have with that is that I am not so certain that ACM was required to undertake any inquiries or investigations as the service provider in regard to that allegation. So perhaps you might look at what I said earlier and see if you can accommodate me on the way through in regard to that.

Yesterday, 21 November, I understand that on the ABC's *World Today* program a nurse indicated that she had in her possession a 22-page report. Are you aware of the report that she is referring to?

**Ms Godwin**—I do not believe so. We certainly have not been provided with that report.

**Mr Farmer**—We are aware of the media comment.

**Ms Godwin**—But the 22-page report, no.

**Senator McKIERNAN**—But you are not aware of what she was referring to?

**Ms Godwin**—No, sorry.

**Mr Farmer**—The point we made earlier would apply here. If that person has information or a report that she believes touches on a reportable matter, then I think it would be appropriate, and I would encourage her, to approach the appropriate authorities, whether it is the police, Family and Youth Services or someone else. If she wanted to give us a copy, we would be very keen to look at it.

**Senator McKIERNAN**—There is obviously a further series of questions that have to be asked in regard to matters which are receiving publicity at the moment. Some of them I have detailed. I would seek to speed things along and hopefully conclude our deliberations by the agreed and appointed time, although we may need to go a few minutes over if we are going to accommodate everything. That is not necessarily our fault, because a lot of events have occurred through the course of the day which have been outside of our control. When we gave our estimations that we as an estimates committee would be concluding our deliberations tonight, we obviously were not in possession of all of this. We were not aware that this matter was going to arise and would require so much scrutiny. So I apologise for that.

Nevertheless, I think we can still pretty much achieve the deadline by placing questions on notice. I am not expecting immediate responses, although I have no doubt that some officers might be in a position to provide immediate responses. I think by putting the questions on notice we can facilitate things and get the same result that is required. As I read through them, if you, Mr Farmer, or any of your officers care to interrupt and want to put the matter on the public record at this time, I think it is only fair that you should have the opportunity to do so, if you are agreeable.

**Mr Farmer**—Thank you.

**Senator McKIERNAN**—What is the government's determination of the legal status of children or juveniles who are detained with their parents because of their illegal entry into Australia? I addressed some questions to that earlier and we do have some responses on the record. It is a matter of whether you want to elaborate further on those responses now or take the matter on notice and provide the response in more detail.

**Mr Farmer**—In one sense a person in that category would be an unauthorised arrival. Andrew, what is the term for an unauthorised non-citizen?

**Mr Metcalfe**—A person, regardless of age, who arrives in Australia without authorisation is regarded as a person who does not hold a visa and, pursuant to the act, must be detained.

**Senator McKIERNAN**—Is this position consistent with Australia's treaty agreements—for example, the Beijing rules on the rights of children in detention?

**Mr Metcalfe**—We may supplement this on notice, but this committee and other committees have had extensive evidence provided to them that in general terms Australia's legal requirements relating to detention of non-citizens comply with relevant human rights instruments.

**Senator McKIERNAN**—I accept what you said about supplementation. What qualification and experience does ACM as an organisation have in regard to the management of children and juveniles?

**Ms Godwin**—Do you mean in general terms or specifically? It is a requirement under the contract that ACM ensures that its staff are properly trained and attuned to the needs of detainees who are children and other detainees with special needs. All of the detention officers go through about a four-and-a-half or five-week training program and have refresher training and induction programs, as I have mentioned before. I am not sure if that covers the issue you are raising.

**Senator McKIERNAN**—I think I am probably looking for more detailed information in regard to it. I am aware, obviously, from previous inquiries and previous questions before this committee specifically, as an estimates committee, that questions have been directed to ACM's qualification and experience for doing it. I would ask you to look at the question further on notice and see what more you can come back with to the committee specifically on that matter.

**Ms Godwin**—Sure.

**Senator McKIERNAN**—We asked some questions earlier on training—you have just referred to it yourself—that is, the training that the guard staff had in dealing with children and juveniles, both male and female, taking into account the different cultural backgrounds that the children have. What training is put in place to deal with the difficulties that arise in those circumstances? What training has been given to staff to handle and manage negative behaviour from children or juveniles who are suffering as a result of the trauma that they experienced as a result of their departure from their home or that they experienced in transit in coming to Australia? If there are any special programs in existence, we would be pleased to receive more detail on that.

**Ms Godwin**—We will give you as much detail as we can on the training programs covering all of those issues.

**Senator McKIERNAN**—Thank you, Ms Godwin. What are the specific rules, practices and procedures dictating the rules of force to be used by guard staff or Protective Services staff when dealing with the negative behaviour of children or juveniles whilst they are held in the care of the department in detention facilities?

**Ms Godwin**—The question of use of force is dealt with in the contract and the detention standards. Again, we can take this specifically on notice and refer directly to the requirements in that, but in general terms the requirements about use of force are that it be used to the minimum extent possible and as a last resort. I think those are almost essentially the words in the contract and the detention standards.

**Senator McKIERNAN**—Are these consistent with the Beijing rules on the rights of children held in detention?

**Mr Farmer**—Yes. We are confident that, the standards were developed in consultation with and taking into account extensive comments by the Ombudsman.

**Senator McKIERNAN**—Thank you, Mr Farmer. Is there an official visitor system operating to allow an outside party to advocate or investigate allegations of abuse either of an adult or of a child? There are systems operating in the Australian prison systems. Are you aware of those systems and are any such systems in operation in any of Australia's detention facilities?

**Ms Godwin**—We do not have a formal official visitor program in the way that prisons do. But that is largely because we have departmental staff there on site permanently. Clearly they are not there 24 hours a day, but they are there pretty much seven days a week. We have taken steps over the last few months with the increase in numbers in detention to also increase the numbers of our staff—DIMA staff—in detention. They have a clear function to focus on both DIMA business in the detention facility and on performance of the contractor under the contract. Generally speaking, this is an issue we have, in fact, discussed at some length with an adviser who has been looking at security issues in detention facilities generally since the major incidents in the middle of the year. Generally speaking, in correctional facilities where there are official visitor programs, it is because the management of the facility has complete control of the facility and there is no other, in a sense, dual responsibility or other public official there. So the official visitor plays a part of the function that, in fact, our detention centre managers play.

**Mr Metcalfe**—I will just supplement that answer by saying that in addition to those departmental officers in the facilities, as I know you are aware, there is a statutory ability for both the Human Rights and Equal Opportunities Commission and the Commonwealth Ombudsman to respond to complaints. As I know you are aware, they receive complaints and they spend a considerable amount of time dealing with those issues. Indeed, one of the major functions of the detention support area within central office of the department is responding to and working with HREOC and the Ombudsman on these issues. So in addition to the department's own officers engaged on these issues at the various centres, there is, I dare say, a robust process of external scrutiny in relation to any such matters.

**Senator McKIERNAN**—Thanks, Mr Metcalfe. Mr Farmer, you mentioned in your opening comments when we entered this part of the program the cost of detention. I cannot recall if you provided us with a cost per detainee. Is that figure available? Is there such a cost?

**Mr Farmer**—We make available in the PBS statements the overall costs of detention. But the per diem amounts are part of the commercial-in-confidence details of the contract.

**Senator McKIERNAN**—I just want to go to a slightly different area—

**Mr Farmer**—Sorry, I think we can be helpful to you in a way that does not breach the in-confidence provisions of the contract. I will ask Ms Daw to say something about that.

**Ms Daw**—The detainee day cost for IRPCs, for the boat processing and reception centres, averages out across the 1999-2000 year at \$102 per day and at IDCs and other places of immigration detention at \$120 a day. Combining those two it is about \$105 across the entire detention case load.

**Senator McKIERNAN**—In relation to the new detention facilities in Brisbane and Darwin, is there any updated information that can be given to the committee in brief in regard to those initiatives that were part of the budgetary process?

**Mr Farmer**—We could certainly give you a run-down on where we are in considering them.

**Senator McKIERNAN**—Could I also ask for an update on the refurbishment at Villawood as well?

**Mr Farmer**—Would you like that now or on notice?

**Senator McKIERNAN**—It depends on the length of it. Perhaps it could be given in brief, because there are a few more areas of questions and not only do I not want to keep the officers of the department here too long after 11, but I do not want to be here myself.

**Ms Webb**—There is a small update on Darwin in that the completion date for Darwin has now been amended in the revised estimates to 2002-03. That is to reflect the time it will realistically take to build such a centre. There has been some revision of the costings of the centre to adjust for the cyclone conditions. There is no particular advance from when it was reported to the committee last time on Brisbane, nor on Villawood.

**Senator McKIERNAN**—You mentioned the completion date. Has the site of the Darwin facility been selected yet?

**Ms Webb**—No. The position there is as reported last time. Our current thinking remains that a selection of the site will be part of the tender and it will be the tenderer who will have to find the site.

**Senator McKIERNAN**—In regard to another proposal of a detention facility, that is the media comment about the possibility of having a facility or a processing centre on an island in the Java Sea—and there has been some media comment in regard to that—can the department confirm that Australia, through our ambassador, has asked such a question or made such a proposal to the authorities in Indonesia?

**Mr Farmer**—I thank you for the question. No, there has been no Australian proposal about converting an island or anything like that in Indonesia into a detention centre. I can say that on occasions over the last 18 months, generally speaking from immigration officials in Indonesia, we have had inquiries about our potential readiness to assist them in renovating or upgrading some existing facilities that they have. We have not had a specific proposal from the Indonesians. We have said via the International Organisation for Migration that, if there is a proposal that the Indonesians wish to pursue via the IOM and the IOM has an interest in involving us or other countries in it, we would be ready to look at that. But the press report I think is a very long way from what I just described.

**Senator McKIERNAN**—Is the government negotiating with any country to set up such a processing centre anywhere within our region—probably would be narrowing it down?

**Mr Farmer**—We can go global. The answer is no. In saying that, I go back to what I said in answer to your last question. We have expressed a readiness to the International Organisation for Migration to look at any proposals that it might put, but the discussions we have had have really been about minor upgrades to existing facilities. They are the sorts of inquiries that have been put to us over this last 18-month period and the sorts of inquiries that the IOM, I believe, has received. But we have not had any specific proposal from the IOM or from Indonesia.

**Senator McKIERNAN**—In regard to the temporary protection visas that have been granted to date, are you in a position to provide details of the number that have been granted so far, the nationality of the persons who have been in receipt of them, the gender of the persons who have been so granted and their destination upon release from detention, once they have acquired the protection visa?

**Mr Giuca**—I can provide some of those details. Offhand I do not have the ones on gender—the split—but I do have details of the number who have been released, their ethnicity and their location. Would you like me to read them out or would you prefer me to provide them to you separately?

**Senator McKIERNAN**—Yes, please.

**Mr Giuca**—Read them out?

**Senator McKIERNAN**—No. If you are not in a position to provide them now, you could provide them on notice.

**Mr Giuca**—I will read them out. In terms of releases, to 3 November, 3,304 TPVs have been released. That is since the TPV regime came into existence last year in October. So we are talking over 12 months. And this does include releases from Villawood and Maribyrnong for people who arrived in an unauthorised manner. So in that sense it includes Sydney, with 149, which is predominantly people released from Villawood; Melbourne, 513; Brisbane, 761; Adelaide, 752; Perth, 880; Canberra, 77; Darwin, 75; Hobart, 51; Launceston, 23. And there have been some people granted TPVs who are in prison or in custody at the moment for a range of reasons, which is why the figures released to the actual locations do not add up to 3,304. In terms of the ethnicity, 1,254 have been Afghans, 70 Iranians, 1,837 Iraqis, 38 from Somalia, one Pakistani, one Sudanese, 19 Turks, eight from Syria, five from Somalia, 10 Palestinians, and one from North Korea. We do not have the identity of 60 others.

**Senator McKIERNAN**—I am grateful for that information. I will not develop it further because of the lateness of the hour at the moment. But in regard to the temporary protection visa, there is a regulation that has just come into force that extends the provisions of the temporary protection visa beyond what was originally agreed to at the time when the legislation was passed to bring the new regulation into force. I have not had the opportunity to check this, but I believe I am talking about regulation No. 866.2.1.213, which deals with the permanent protection visa subclass 866. Am I correct in saying that the provisions that currently apply to the temporary protection visa covered people who entered Australia without any lawful permission to do so, and that those provisions will now, by virtue of this regulation, apply to persons who do legally enter Australia and who later apply for protection in Australia; and that they, in turn, can only be granted a temporary protection visa by way of this regulation?

**Mr Illingworth**—The new regulations were designed to pick up a very small anomaly which became apparent after the TPV regulations were originally introduced. And that consists of cases where a person essentially passes through immigration clearance using fraudulent or forged documents and then subsequently applies for protection in Australia. Comparing the situation of somebody who, dare I say, as is normally the case for an unauthorised arrival by air, presents with no documents, they would be refused immigration clearance and would be eligible only for a temporary protection visa in the first instance. A person who, possessed of perhaps a better standard of documentation, is able to pass through immigration clearance, even if detected instantly after that, would have been entitled to access

the permanent protection visa. So the new regulations are focused on cases where a person enters Australia and gains immigration clearance using fraudulent or forged documentation.

**Senator McKIERNAN**—Forged or fraudulent—thank you for that clarification, which is slightly different from the information that I was quoting from. I regret and apologise that I have not had time to check that myself. I have a few more brief questions—hopefully—in this area before we revisit 1.2, which regrettably I went over the top of before.

Senator Cooney, whose absence I apologised for before, asked me to provide the department with a copy of a letter which had been provided to him by a fellow Senate colleague for investigation and response. I now just note, having dug up that letter that he asked me to provide, that it refers to the same case that I provided that four-page document on before. Again, this letter contains names. As is normal, I do not want to table the document, but I will just provide it to the department and ask that a response be prepared and provided to Senator Cooney. If my recollection is correct that we are referring to the same person mentioned in that four-page document that I provided earlier, you can match the two together and I will fulfil my promise and commitment to my dear friend and colleague.

I want to ask the following question without going into the detail of the individuals: there has been some commentary in the media recently about some Somali nationals who were previously held at the Port Hedland detention facility and who had requested of the department that their application for protection in Australia no longer be proceeded with, or in the case of one of them a complaint to the UN committee on torture no longer be proceeded with, and that they in fact be allowed to return to Somalia. There has been some more recent publicity on these individuals. I am just asking where that particular case is at. Again, I have some names here, which I do not want to put on the public record, but I do believe that you might be aware of the cases that I am talking about. Can you provide any information on the record at the moment in regard to these particular individuals?

**Ms Godwin**—I can give you a general comment. As you are probably aware, if somebody asks to be removed we are obliged at law to assist them to do so as soon as we possibly can. These individuals did request to be removed and they confirmed that with their legal advisers and withdrew any remaining applications and, as a result, they were removed from Australia last Saturday.

**Senator McKIERNAN**—To their stated home in Somalia?

**Ms Godwin**—Pardon me?

**Senator McKIERNAN**—To their stated country of origin, or country of nationality, which was Somalia?

**Ms Godwin**—They are being assisted to return to Somalia, yes.

**Senator McKIERNAN**—Thank you very much for that. Again, forgive me because of the lateness of the hour, but is it appropriate under this subheading to ask questions in regard to the operation of the ministerial discretion in section 417 of the act or do I do it at a different—

**CHAIR**—Do it now.

**Senator McKIERNAN**—It probably is a question on notice. I am obviously aware from other inquiries that I have been involved in over the years of the operation of the ministerial discretion and the fact that the current minister, Minister Ruddock, is much more proactive in the exercising of his discretion than perhaps some of his predecessors were. I am not saying anything that is not already on the public record in regard to that. However, from the tabled information, it is difficult to get details of the actual effect of the exercise of the discretion. It

is not easy to determine, from the information that is tabled in the parliament, the reasons why the minister has chosen to exercise his discretion. Not all was uniquely done in an area where an individual was looking for protection and has failed in protection applications or even in court procedures afterwards. Is it possible to provide some further detail of the number of times the discretion has been exercised and the areas where it has been exercised—for example, maybe the grant of a spouse visa to a person who wants to remain with their Australian national spouse or partner, or even in the case of a protection visa—and provide a breakdown of the nationality of the people to whom the individual visas have been issued by virtue of the exercise of the discretion?

**Mr Farmer**—We have some details but I think it would be best to try to, in effect, reflect on what you said and try to do something that would be as helpful as possible in a written answer.

**Senator McKIERNAN**—Thank you. I bet I am missing something, but I am getting to the end of it. I think now I might seek to return, if I could, to 1.2 and cover those questions that regrettably I overlooked before we moved into this category, if that is okay with you, and then for the sake of the other officers who are present to allow them to leave. The only questions I have remaining are in regard to the operation of the onshore spouse cases, visa class 820, and hopefully some brief questions and brief responses under 2.1, settlement services. I think that the other officers whom I have not mentioned or who are not covered by those questions can leave—I will leave that to you, Mr Farmer.

**Mr Farmer**—I hardly know how to tell you this, but the officers who deal with the onshore spouse issues have already left because they were the 1.1 people.

**CHAIR**—I do not think that this is the best time to tell him.

**Mr Farmer**—We could do two things: either take the questions on notice or, in view of our delinquency, we could come back to you very quickly bilaterally if there was a particular issue that you had. I am in your hands.

**Senator McKIERNAN**—There is a particular issue—I apologise. In regard to the new method for handling onshore spouse visas—that is 821, temporary visa applications—I received some information that there is in place a trial scheme for the management and handling of these classes and that, in fact, these are being done outside of the department on a trial basis.

**Mr Farmer**—From the puzzled looks that you are seeing, I think that we have struck the jackpot.

**Mr Waters**—Whilst this is not my area, I am aware that there is a trial being undertaken under which migration agents who have prepared temporary visa spouse applications can, in fact, lodge applications with our offices. For example, in Parramatta where I know that this is occurring, they advise our office that they have completed all of the documentation fully, an appointment is made with our office and we try to make a decision on the spot. It usually takes a couple of hours but it is done by departmental officers and it is certainly not outsourced.

**Senator McKIERNAN**—The allegation, if I can use that word, is that an agreement had been entered into with a certain migration agent, who is operating in the Parramatta region of Sydney, and that special files were being generated and created with the instructions on how to put the documents on file, that the clients were interviewed early in the piece, and it was almost a *fait accompli* that the visa was being granted. I accept what you are saying, Mr

Waters, that it is not your area and perhaps in that case the question is better directed to Mr Farmer. Could you take a question on notice for the committee to be provided with some further detail of the pilot program, if it is so described, and what the program itself contains? I know that you have provided us with some more information, but it is probably that the information is not widely dispersed enough. That is the reason why, when I was given some detail of the allegations, I took it to this hearing tonight, even though I did ask the wrong question in the wrong section. But I must say on the record that I do not bring all queries of this nature to committees such as this.

**Mr Farmer**—We will give you further information.

**Senator McKIERNAN**—I will deal with business visas. Newspaper reports—but the one that I am particularly quoting from is from the *West Australian* in June of this year which is headlined ‘Business hits visa problems’—complain that applications for business visas, particularly from areas of Asia, were not being properly and thoroughly processed. The article that I brought here tonight, and there have been others, is quoting the West Australian Trade Minister, Mr Hendy Cowan, who is quite disparaging and saying that he had often heard of poor treatment from Australian immigration authorities when people were travelling to Australia. I do not know if there is anything you want to put on the record about the issuance of business visas and the processing of business visas from the Asian regions.

**Mr Waters**—The only issue that I really want to put on the record at the moment is to say that the department has had some difficulties in processing business visas in Jakarta with the combined turmoil within Indonesia and, of course, the Asian economic downturn. That led to an enormous increase in the number of business applications, both for temporary business entry and for permanent business entry to Australia. It has taken us quite some time to in fact address that backlog of applications. We are doing so. We have processed a very large number of applications, and we have taken some quite unique steps to try to process all of them as quickly as we can. That said, by any measure, we have been having some problems in doing so, purely as a result of the vast number we received.

**Mr Farmer**—I might just add something that I think would be of interest to you, because it relates to Perth. Our Western Australian office is embarking on a trial for processing onshore some of the backlog of offshore business applications, I think, in the business owner category. That is something that might, depending on how the trial goes, see a lot of the offshore business work centred in Perth. We believe that that will very quickly get through the backlog in that category.

**Senator McKIERNAN**—Thank you very much. In regard to these questions which deal with the regional established business in Australia—the REBA—and other like visas, I am aware and conscious of another inquiry going on by the Joint Standing Committee on Migration and the collection of information by that committee. I am conscious not to duplicate the work of the committee. Whilst no decision has been made by that committee to talk further with the department in regard to the inquiry that they have conducted, I think it would be beneficial to this committee if we could receive up-to-date details of the number of visas that have been issued under the various regional business visa classes that are in existence.

Whilst in producing the work for questions on notice for this committee, that could also be used by the other committee, and I daresay, without necessarily pre-empting what the other committee might do, that similar requests might be made by personnel who serve on that committee as well. So could I put on notice a series of questions which is asking for an update



of information that has already been provided to that other committee, and perhaps there is some additional information contained in these questions about whether or not people remain in the areas they say that they are going to remain in. Also on this list there are some questions in regard to student visas and the numbers that are issued. If I could put those questions on notice, it would speed up the process somewhat tonight, and then we can move on to the final area I want to address some questions to.

In looking to the brief that I have been given, they are entitled under 2.1, 'Settlement services', but the first series of questions relates to temporary protection visas, and in that sense I am not certain that these are provided in the right subprogram area. In that sense, I think probably the easiest thing to do is to again put these questions on notice to the department, and you can respond and comply with the questions contained in them. They go to a range of questions about what services are provided to those people who hold temporary protection visas after the grant of them. Of course, I am aware that there are some limitations on the services that are provided, but it also goes to some extent to how state governments have responded to the situation they are faced with. I think I have about had it, quite frankly. I am very pleased that, as far as I can recall, there are no more questions in my brief. It has been quite a long, tiresome day.

**CHAIR**—It has been 'tiring' rather than 'tiresome'. You will be pleased to know that I do not have any questions, and I do not think Senator Buckland has any questions. In closing, might I note that the committee resolved 20 December as a return date for answers to questions on notice placed this evening. We have not yet been advised of the date for additional supplementary estimates, but we envisage that that will give us time to address any responses which are received before those estimates.

In closing, I thank you, Mr Farmer, and your officers most particularly for remaining with us until this late hour of the evening. I thank the minister very much for her assistance today. Most particularly, I also, on the record, thank the Legal and Constitutional Legislation Committee secretariat, because we have an enormously heavy workload at the moment, and to add estimates to that has been a particularly challenging process. Of course, I also record our thanks to Hansard for their efforts today. I declare this meeting of the Department of Immigration and Multicultural Affairs supplementary estimates closed.

**Committee adjourned at 11.11 p.m.**