



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

ENVIRONMENT, COMMUNICATION, INFORMATION
TECHNOLOGY AND THE ARTS LEGISLATION

Consideration of Supplementary Estimates

THURSDAY, 30 NOVEMBER 2000

CANBERRA

BY AUTHORITY OF THE SENATE

SENATE

**ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY
AND THE ARTS LEGISLATION COMMITTEE**

Thursday, 30 November 2000

Members: Senator Eggleston (*Chair*), Senators Bartlett, Bishop, Bolkus, Calvert and Tchen

Senators in attendance: Senator Eggleston (*Chair*), Senators Bishop, Ray, Schacht and Tchen

Committee met at 5.04 p.m.

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

In Attendance

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

Department of Communications, Information Technology and the Arts

Neville Stevens, Portfolio Secretary

Australia Post

Gerry Ryan, Corporate Secretary

Rowland Hill, Group Manager, Corporate Public Affairs

Australian Broadcasting Authority

Giles Tanner, General Manager

Andree Wright, Director, Policy and Content

Fred Gengaroli, Director, Engineering

Australian Communications Authority

Tony Shaw, Chairman

Geoff Luther, Senior Executive Manager, Radio Communications

John Haydon, Acting Senior Executive Manager, Telecommunications

John Grant, Executive Manager, Spectrum Marketing Group

National Gallery

Alan Froud, Deputy Director

CHAIR—I declare open this public hearing of the Environment, Communications, Information Technology and the Arts Legislation Committee in consideration of the supplementary budget estimates. Unless otherwise stated, responses to questions placed on notice at today's hearing should be sent to the committee secretariat by close of business on Friday, 22 December. We will begin with Australia Post and then continue with the Australian Broadcasting Authority, followed by the Australian Communications Authority, and conclude with the National Gallery. As is standard in these hearings, departmental officers will not be asked to comment on the reasons for policy decisions or the advice they may have tendered in the formulation of policy, or to express a personal opinion on matters of policy.

[5.06 p.m.]

Australia Post

Senator MARK BISHOP—I welcome you to this late edition of estimates. The first thing I wish to talk about is the [Postal Services Legislation Amendment Bill 2000](#). When will this bill be scheduled for debate in the Senate?

Mr Stevens—I do not have the answer at the moment. We will see if we can find it for you. We will take it on notice if we have to.

Senator MARK BISHOP—Is there any reason other than the government's legislative timetable for the delay in debating the bill?

Mr Stevens—Not that I am aware of, but I am not really across this issue. I would have to take it on notice.

Senator MARK BISHOP—Mr Ryan, what is the estimated cost to Australia Post in forgone revenue and profit if the bill is enacted?

Mr Ryan—As you know, we have given evidence on that matter to another committee that was inquiring into the bill. I am happy to deal with it here as well. As a preface to my answer, I would like to make the point quite clearly that Australia Post does support the bill and continual reform and progressive reductions in protection. I think it is important to get that point on the record again. As to the revenue and profit impacts, the other threshold point I would like to make is that we believe that, after the bill progresses through the parliament and about three years of operation within the market, we will still generate an acceptable rate of return, albeit at a little lower rate than would have occurred had there been no change.

I will deal firstly with revenue losses. It is difficult to be precise because there is an interplay of factors but I will give you an estimate. The factors that interplay in determining the level of revenue loss are: lost business, where competitors pick up new business that has been deregulated by the bill; lower prices, where we reduce prices to meet the competition that is coming into the newly released area; and a change in the mix of mail that will result from the bill. Certain companies that presently pay a full rate for mail will have their mail aggregated by an aggregator and then will attract lower rates of postage from us. We will gain some efficiencies as well. Those three factors contribute to lower revenue.

The previous evidence that we have given another committee was that revenue forgone could amount to—and I would emphasise these words—up to \$200 million versus a no change scenario. It is important to realise too that the \$200 million is against a total revenue for the business of \$3.74 billion. We would work very hard to try and ensure that the \$200 million was a lot less than that. You asked about the profit impact. I think that once we are looking at profit we need to factor in the plus side of this equation as well.

Senator MARK BISHOP—Before you do that, with both revenue and profit would the non-enactment of the bill affect your revenue?

Mr Ryan—The non-enacting of the bill would save some of that \$200 million because, even if the bill does not proceed, aggregation of mail will be permitted by administrative means. Aggregation will result in some reduction in revenue, but it will also create some savings for us because work that we would normally do in processing that mail will be done by the aggregator. So even if the bill does not go through there will be some reduction in revenue.

Senator MARK BISHOP—Do you have any idea of that figure? I suppose the easiest thing would be to do it on a monthly basis, if you have that.

Mr Ryan—I do have a figure that we used in the last appearance. It is around \$40 million reduction in revenue from aggregation.

Senator MARK BISHOP—That last committee was back in August?

Mr Ryan—May.

Senator MARK BISHOP—When did that \$40 million apply from? Is that a whole of year figure?

Mr Ryan—That is a whole of year figure. It is two or three years out, so we are assuming that the opportunity has been fully picked up by the market.

Senator MARK BISHOP—So a six-month or 12-month delay in the passage of the bill is not going to affect those figures?

Mr Ryan—First of all, if the bill does not pass at all, there will still be an impact from aggregation.

Senator MARK BISHOP—Yes.

Mr Ryan—If there is a delay of six to 12 months, there would be a delay in respect of the remaining revenue that we would lose. We would lose that more slowly, obviously.

On the profit side, we think there are probably three factors that are going to offset, to a very large degree, that revenue loss. The first is organic growth—the normal growth that we would expect in the next two to three years in our letters business, our parcels business and in express services. The second growth area will be new business growth through some new e-commerce offerings that we are making and new Internet fulfilment services that we are offering. We expect revenue growth from those initiatives of around seven to nine per cent overall.

Senator MARK BISHOP—Seven to nine per cent of total revenue?

Mr Ryan—Yes—seven to nine per cent on top of the \$3.74 billion. The third element that comes into profit impact is cost reductions. We are continuing with a number of programs there: the FuturePOST program and our sorting programs, which are new equipment in our delivery centres. On the indirect cost side, we are doing a lot of work on procurement activity that is going to drive down our costs in that area. So there will be balancing of lost revenue against new revenue and reduced costs. We think that, at the end of all of that process, we are still going to have a return on revenue that will be an acceptable level. It will be lower than what we have at the moment.

Senator MARK BISHOP—What do you call an acceptable level? Do you have internal benchmarks?

Mr Ryan—Yes we do. We are certainly looking to get more than we might get out of the assets employed if we invested that on the money market. So there is an absolute minimum.

Senator MARK BISHOP—I would assume so.

Mr Ryan—Obviously, or there would be no point having the business, from a commercial perspective; there might be from a social perspective. Our return on assets is the figure I have got here. The return on assets would be in the range of 12 to 13 per cent, which is still quite an acceptable level.

It is very easy to talk of those figures and to be glib about it. This legislation, nevertheless, would represent a major challenge to us. We did say at the time of the announcement that it would stretch the corporation. But we are confident that, with new business growth, organic growth and cost reductions, we will be able to meet that challenge. The ultimate assurance I want to give you is that we do not believe that this bill will lead to reductions in service in rural and remote Australia. We have made that commitment from the start and we will stick to it.

Senator MARK BISHOP—Although date of implementation may be later, you still say revenue forgone will be around \$200 million and you anticipate growth revenue, for a variety of reasons, of between six and nine per cent?

Mr Ryan—Seven to nine per cent.

Senator MARK BISHOP—Which is something in the order of \$250 million to \$300 million. When do you expect a crossover point, so to speak—the balance point?

Mr Ryan—That is difficult to say. Some of those things are happening all the time. We have organic growth occurring, we have new products coming on line and we are halfway through that cost program. All of those benefits are probably going to precede the highest impact of the bill, because it takes a little time for the industry to take up the opportunities it has.

I would like to correct one thing. I think you said that I had estimated that it would be around \$200 million. I am emphasising that it could be up to \$200 million; I am not saying that it is around \$200 million.

Senator MARK BISHOP—You did say that, sorry. Obviously the timetabling of the parliamentary debate on the bill is a matter for the government, particularly in the Senate. Has the government indicated to Australia Post any reason for a delay in debating the legislation?

Mr Ryan—No, Senator.

Senator MARK BISHOP—Is Australia Post aware of any change to the government's policy position with regard to postal deregulation?

Mr Ryan—No, we are not.

Senator MARK BISHOP—Earlier this month you announced a range of e-commerce initiatives, and you put out a press release on 1 November 2000. Can you explain in more detail the services that these initiatives will enable you to provide?

Mr Hill—I can answer that to some extent. We don't have the specialist people here to provide detailed answers, but are offering four services. They cover POSTlogistics, which is our—

Senator MARK BISHOP—I have a copy of your press release, and I have read it, so if you are just going to just run through the four dot points there, it would be a waste of time.

Mr Hill—What specific information did you want beyond that? I will see if I can help you.

Senator MARK BISHOP—I wanted more detail, Mr Hill. If you don't have anything to add to your press release, you might take it on notice.

Mr Hill—We are happy to do that. We can give you more detail about the services, but essentially it is an integrated service that offers people the things that are outlined in the press release.

Senator MARK BISHOP—Will those services be available at all Australia Post outlets?

Mr Hill—It is not a matter of offering them at outlets. This is a service that we will offer to partner organisations. If we take POSTlogistics, for instance, it is for businesses that choose to partner with us to offer a warehousing and fulfilment service. POSTbillpay is available to anybody who wants to use the Net to pay their bills. There is not a simple answer that you can give to this. There are different permutations in the way it would be answered.

Mr Ryan—If someone wishes to pay at an Australia Post outlet for a purchase they have made on the Internet because they choose not to place their card details on the Internet, then they will be able to do that at all of our corporate and licensed post offices.

Senator MARK BISHOP—What is the time frame for the implementation of these services?

Mr Hill—They have commenced.

Senator MARK BISHOP—What is the projected cost of implementing those services in the various outlets.

Mr Hill—I cannot give you an outlet cost, but the development of the service has a number of components. The software development was in the order of \$20 million. That included a licence fee that went to the licensees that we bought the software from. There is another component of about \$8 million that is the cost of warehousing, buying and developing warehouses. All up, it is in the order of \$28 million.

Senator MARK BISHOP—I think you said in your press release that the services will ‘open new opportunities for businesses in regional Australia and customers everywhere’. How does that apply?

Mr Hill—What the web does is open up markets for producers no matter where they are. You could be a producer of a service or a good in Central Australia and you could make that available to anybody anywhere who orders on the web.

Senator MARK BISHOP—So it is really accessing the utility of the Net, isn't it?

Mr Hill—That is right. The facility that we are offering those people who are in remote locations, or even metropolitan locations, is the full management of all the facility that sits behind their production. So we do all the management of the inventory, the filling of the orders and the billing of the customer. All of that sits behind our offer, and that is why I said it was an integrated, seamless offer; it covers all of those services.

Senator MARK BISHOP—Are you essentially extending into the warehousing/transport business?

Mr Hill—We have always been in transport.

Senator MARK BISHOP—You have always been in transport for mail and parcels.

Mr Hill—We have been in warehousing as well. Of course, with a business as big as ours, for a long time we have had warehouse capability that we have developed to service our own needs. In recent years we have been extending that and offering that service to external customers, and this again is a further extension of that service using an online service to access the service.

Senator MARK BISHOP—How would those services reduce companies' costs?

Mr Hill—It reduces the paperwork. It is like everything else to do with the web. You reduce all the paperwork that now sits behind ordering, inventory control, tracking orders and billing. All of that is reduced by the facility that is offered by the web.

Senator MARK BISHOP—Is that the principal savings to customer companies or the sole savings to customer companies?

Mr Hill—Like any other business, we are pursuing online solutions for our own ordering. We see the electronic capability certainly reducing our costs, but we also see it reducing customer costs as well. And, in that regard, customers are both those people who partner with us and those people who use the facility to order goods. So there are savings for everybody.

Senator MARK BISHOP—Thank you. At the public hearing into the postal deregulation legislation in May, Post indicated that as a result of the GST it would suffer a net loss of revenue in the order of \$90 million to \$100 million. I recall that we had a discussion on that. Has this estimate of revenue loss resulting from the GST proven accurate over the last five months since the GST was introduced, Mr Ryan?

Mr Ryan—Yes, our latest estimate based on our experience to date is that the impact of absorbing the cost of GST on the basic letter rate and then flowing that absorption down into our cheaper discount rates will cost us in the order of \$90 million.

Senator MARK BISHOP—So your forecast was almost spot on?

Mr Ryan—Yes.

Senator MARK BISHOP—Is there any reason to depart from that over the remaining seven months of the financial year?

Mr Ryan—No suggestion of?

Senator MARK BISHOP—Do you think that that projection will continue in the same way?

Mr Ryan—Yes, we think our experience to date is pretty much indicative of the volumes that we are expecting through the rest of the year, and it is really a volume driven cost.

Senator MARK BISHOP—How much impact will increased fuel costs have on your revenue?

Mr Ryan—We are looking at that very carefully. I can give you a range guesstimate—something in the range of \$10 million to \$12 million, possibly up to \$15 million, for the year, depending upon what happens with prices over the remainder of the year.

Senator MARK BISHOP—Does that presume prices remaining at close to current levels?

Mr Ryan—Yes.

Senator MARK BISHOP—Somewhere between \$10 million and \$15 million, full year.

Mr Ryan—Yes.

Senator MARK BISHOP—What has been the cost in forgone revenue to Australia Post of the GST resulting from the absorption of the GST on the standard letter rate?

Mr Ryan—Our estimate for the year is \$68 million. That is \$68 million of the \$90 million that I referred to earlier.

Senator MARK BISHOP—That is almost 80 per cent of the \$90 million, but we are only five months in.

Mr Ryan—Sorry, I may have misunderstood. I was giving you a full year estimated impact on the 45c stamp, which will be \$68 million.

Senator MARK BISHOP—It will be \$68 million for the full financial year?

Mr Ryan—For the full year, yes.

Senator MARK BISHOP—On the same basis, then, what dividend will be forgone by the Commonwealth as a result of this decision?

Mr Ryan—The formula that we have to meet is to provide the Commonwealth with 60 per cent of our profits, after tax and abnormals. So had we got that revenue, about half of it would have gone in tax and that would have left around \$50 million. We would have had to pay 60 per cent of that in a dividend, so it would be about \$30 million.

Senator MARK BISHOP—There is no suggestion that that dividend formula will change?

Mr Ryan—No suggestion that it will change, no. I think, though, that when this decision was taken it was made clear that the government has decided to provide a benefit up-front to our customers, by way of absorption of the GST, rather than providing a benefit subsequently out of the broader budget process, where our dividend moneys would have gone and then those dividends would be used for whatever purpose the government decided. So it is really an up-front benefit, rather than an end process benefit.

Senator MARK BISHOP—Will Australia Post incur any additional costs as a result of the introduction of the new GST free international stamps?

Mr Ryan—I am not quite sure of the question. There would be a minor additional production cost. We would be producing stamps that we would not have normally produced, so there would be some production costs. I would expect that would be relatively small, but I could get that for you if you wish.

Senator MARK BISHOP—Were international stamps always going to be GST free?

Mr Ryan—I believe they were, but I would need to check that.

CHAIR—The committee is adjourned for a division.

Proceedings suspended from 5.27 p.m. to 5.32 p.m.

Senator MARK BISHOP—What additional costs will Australia Post incur as a result of the introduction of the new GST free international stamps? That really goes to an issue of forgone revenue.

Mr Hill—I understand there will be no forgone revenue. When the GST was introduced, exports were GST exempt, so we sought a ruling on international mail being an export to have it exempt as well. The tax office agreed to that. As a result, we have produced a series of stamps that are GST free for international services, the purpose being to provide a benefit to customers of a GST free service and enable us to offer prices to match our competitors.

Senator MARK BISHOP—So you say the only cost is really the production cost?

Mr Ryan—Yes.

Senator MARK BISHOP—Mr Ryan, could you take that on notice and provide us with the details of that cost?

Mr Ryan—Yes, certainly, Senator.

Senator MARK BISHOP—You would be aware that the Commonwealth Ombudsman has initiated inquiries into Australia Post's complaint handling systems, particularly the operation of centralised call centres and the provision of mail redirection services. Can you outline to the committee the precise matters of concern that have been raised by the Commonwealth Ombudsman with Australia Post?

Mr Ryan—I think his report has been probably the only mention that we have. I think there was one other issue in his report about our redirection service, including some complaints about that service and the fact that we were conducting a review of that service to see how it might be enhanced. He was looking forward to the outcome of that review which is ongoing. I cannot off the top of my head recall other issues that he specifically referred to in his report beyond the issue that you alluded to on our customer care centres.

Senator MARK BISHOP—The advice that I have is that there was a 40 per cent jump to 1,004 complaints to the Ombudsman in the year 1999-2000 about the national postal service.

Mr Ryan—I now understand where you are coming from. I do not have a break-up of those complaints by cause. Our understanding is that there were primarily two causes. One was a fall-off in delivery performance as we moved from the old processing system to the new system called FuturePOST where we had some transitional difficulty particularly with equipment. Associated with that we had an industrial dispute in Victoria that led to a couple of days where mail was not delivered. Those two factors had quite a significant impact on our delivery performance and led to quite an increase in complaints on that specific issue. The second issue upon which there were complaints, as I understand it, related to our customer care centres and whether those centres were dealing adequately and quickly enough with complaints that were coming to them.

Senator MARK BISHOP—You changed the location of the places where you complained, didn't you?

Mr Ryan—No, we did not. We have seven centres. Until recently, if a customer had a concern about the delivery of a parcel, for example, that customer would look up the phone number of a post office that was close by where they expected they would get some information. They would ring the post office. Quite often people ring not only because something is late but because they want to find out where it is in the system. That led to a problem at post offices because of a lot of people coming in. It exacerbated a queuing problem where staff were handling those requests or queries. So we removed from the white pages the telephone numbers of post offices and put in there the call centre number instead. We had quite a few complaints from customers who were saying they could no longer—

Senator MARK BISHOP—Get to complain.

Mr Ryan—get to the post office that they thought could help them with the advice. In fact, the call centre is in a position to check right through the network far more efficiently than an individual post office at the end of a processing line can do. We did have some problems. They were not across Australia but largely in Victoria and Tasmania. There was a transition problem for a time. I think it is important to put on the record that I had a letter from the office of the Ombudsman in April this year. In that letter the office indicated that the staff

were continually expressing their satisfaction with the performance of the customer care centre, with fewer complaints involving matters that had not been satisfactorily resolved, after either being raised directly by the complainant with the centre or referred to the centre by the office of the Ombudsman.

Yes, we had a transitional problem. It was largely confined to Victoria and Tasmania. I have subsequently had advice that they feel that the performance levels have improved. Notwithstanding that, they did comment about our customer care centres in their annual report. They are conducting what is called an own motion inquiry into our complaint handling processes generally, not just customer care centres. I think the important point to make there is that we are the fifth agency that is the subject of such an examination. It is part of what we regard as a routine exercise and an important exercise by the Ombudsman to evaluate customer care and general complaint handling processes.

Senator MARK BISHOP—The complaints were made. You have identified the cause. There is this ongoing evaluation process by the Ombudsman. Are you satisfied that you have implemented the necessary changes to overcome those two sources of complaints?

Mr Ryan—Certainly, firstly, our delivery performance is now up at 94.2 per cent which is a very high level. It is back at the highest levels we have ever been able to achieve with record volumes. Yes, I am satisfied that has been dealt with. In terms of the customer care centres themselves, the fact that the office of the Ombudsman wrote to me in April recognising the improvement that occurred is an independent indication that the problem has been well taken care of. If the Ombudsman's review of our complaint handling processes comes up with further recommendations to improve that we will look at them carefully.

Senator MARK BISHOP—I want to turn now to Bunbury mail centre. Is it true that mail for distribution in Bunbury is no longer sorted in Bunbury but is sent by contractor to Perth for sorting?

Mr Ryan—I would have to check that for you. I am sorry, I do not know that offhand.

Senator MARK BISHOP—All right, take that on notice, if you will. Could you also take these following questions on notice, if you cannot answer them: is it true that this is causing delays in the delivery of mail within Bunbury of up to three days? The complaint is that the relocation of the work by contractor to Perth is resulting in delays of up to three days. If you could cause an inquiry and give us a written response, it would be appreciated. Also in that context, we are informed that it has led to the loss of five jobs—four through redundancy and one through redeployment. Can you confirm that for us and advise us why that decision was taken and the cost of that decision to Australia Post.

Mr Ryan—Certainly, we will take those on notice.

CHAIR—I thank the witnesses for being here today. I now call the Australian Broadcasting Authority, in continuation from the previous session.

[5.42 p.m.]

Australian Broadcasting Authority

CHAIR—Welcome, ladies and gentlemen.

Senator MARK BISHOP—When we were last here, Mr Tanner, we were discussing this problem of interference, et cetera. I want to go back to that issue and bed it down. I have had a look at the *Technical Planning Guidelines* for 2000, un-numbered—in particular, part 7, the

Draft Digital Broadcasting Interference Management Scheme. Does the draft interference management scheme apply to the issue of digital TV signals interfering with reception for TVs tuned through a VCR or pay TV set-top box?

Mr Tanner—Yes.

Senator MARK BISHOP—What feedback have you had on the draft interference management scheme?

Mr Tanner—Quite a bit on that draft, if you have the most recent draft.

Senator MARK BISHOP—I have a draft which we downloaded from your web site, dated 10 November 2000.

Mr Tanner—Yes. We have received feedback from a number of industry players, particularly from commercial and national broadcasters, on a number of elements of the scheme.

Senator MARK BISHOP—Do you mind outlining the substance of those comments.

Mr Tanner—Many of the comments are actually quite minor or technical, but a predominant theme would be a basic acceptance of the requirement for minimum standards for handling interference. There are some concerns that the current draft represents a slightly oppressive, one-size-fits-all design for channels or situations where there is likely to be some disruption but are perhaps not flexible enough to deal with channels or situations that are likely to be uncontentious. That is a fairly frequent theme.

Senator MARK BISHOP—What demands do they say are a little bit inflexible?

Mr Tanner—For example, I recall that there is a requirement in there that we would in all cases send out a brochure to all homes. It was argued, and the ABA accepts, that there will be many circumstances where that would represent overkill—where it would simply create apprehensions where there is really nothing to apprehend. However, the ABA's concern is that there will be situations where that is a perfectly appropriate response. The task for us in industry is to agree on something which recognises that we expect a responsible level of response that is appropriate to the level of risk of disruption. That is the tenor of nearly all the comments. They are simply saying, 'This is a difficult task, but you are trying to prescribe something which is about good management of a multitude of different situations.'

Senator MARK BISHOP—I turn to paragraph 134 on page 11, which says:

If a digital licensee determines that the interference that was experienced by the complainant was unacceptable interference, but is being caused to an ancillary device or to another device or service that has not given protection under this part, the digital licensee shall give the complainant advice about: (a) retuning devices; (b) appropriate cabling methods for connecting TVs and ancillary devices; and (c) the contact information of persons who may be able to assist with these tasks.

Is this intended to mean that the consumer pays for any service men he or she might be required to call out?

Mr Tanner—It would have, if those words alone were adopted into law. Because of the level of issues that have been raised, the ABA believes it is appropriate to go out again with another draft of the interference guidelines before they are finalised. That draft is currently being finalised and is likely to go out for quick comment in the course of next week. We want to have this all in place in time for 1 January. On this issue, the ABA has foreshadowed that it would not regard the mere provision of information as enough in all circumstances with

ancillary devices. That is, in the case we are looking at with VCRs in particular, the ABA would expect that industry would also provide assistance where the provision of information fails. That will be included in the next redraft of these guidelines, which will also include a fair bit more flexibility along the lines that industry players have quite reasonably asked for.

Senator MARK BISHOP—So the next draft, that is put out next week and is intended to be the final draft for quick comment, will impose a cost on industry for a service person or technician who is called out to attend to problems with ancillary devices?

Mr Tanner—Last time we spoke, we discussed at some length how a very similar problem was handled at La Trobe. That was well handled by the industry, as far as we can tell, to the satisfaction of people who were suffering disruption. A feature of that was that, in a small minority of cases where it was simply not possible to guide people through steps, there was direct assistance given. The ABA cannot see how you could, in fact, provide a lower level of service to people in that situation. The feeling in the ABA was that to push that on would be contrary to the public interest.

Senator MARK BISHOP—Just to pin that down, will it be spelt out in the new set of draft regulations that industry will bear that cost?

Mr Tanner—It will be spelt out. How we put this is obviously going to be quite an important point. I am not sure what exact terminology we are using, because I have not seen that part of the draft as yet. I think the tenor of it is that industry would be expected to provide assistance, where appropriate. I am not sure we go into a lot more detail than that, but that is an issue that will be going out for comment on.

Senator MARK BISHOP—The reason I asked is that we had that discussion last time we met, and there have been one or two newspaper articles—principally out of Brisbane—since that time. I have had some discussions with Mr Branigan's organisation as well about this issue of cost, and I have seen the document they circulated. When I read paragraph 134 and then 135, it appeared clear to me that it was not intended to be a cost impost transferred from consumer to industry.

Mr Tanner—That is a correct reading of that provision. The ABA has clearly signalled that it proposes to toughen that provision—that is, to mandate that the minimum standard would include assistance in that situation.

Senator MARK BISHOP—Stop me if I am pressing too far at this stage, but when you mandate assistance, can I interpret 'assistance' to be the industry providing a technician or service man, or the cost being recompensated?

Mr Tanner—I guess one of the reasons for imposing a general obligation is that the range of solutions will depend entirely on the particular situation and wishes of the viewer. There are certainly going to be viewers—and I will be one of them if I am in that situation—who will take one look at their brochure and will run off and get an AV lead. That is my own business. So there are going to be many different fixes for many different potential problems for many different types of people. That is why it is quite difficult to be prescriptive or say that one size fits all. The key thing is the spirit—it is the responsible and timely management of any disruption to the satisfaction of viewers.

Senator MARK BISHOP—I understand that.

Mr Tanner—I would have to go back and look at the draft to see whether or not the exact term used will be 'assistance'. That is an issue which the ABA will be very focused on.

Senator MARK BISHOP—That will be on your web site in due course, won't it?

Mr Tanner—Certainly. This has been a public process but, until the recent media interest, it has been of very little wider interest. We have been putting these on the web site and will certainly put the new draft on.

Senator MARK BISHOP—That is fine. I think we have probably driven that as far as we can. What is the expected impact on analog reception in Brisbane where the SBS will be using a UHF channel which will interfere with videos?

Mr Tanner—In Latrobe, SBS is using one of the three channels which is fairly extensively used as the default tuning channel for VCRs. We are expecting that the tests will disclose quite substantial—though we do not know how large—numbers of people complaining of interference that will have to be fixed. We expect those tests to proceed from early to mid December. The way the tests should be done should be to disclose the extent of the problem in a way which can be managed. Just to give you an indication, I would expect, for example, that an initial test might take a short period so that only a small number of problems are disclosed which can then be fixed in a manageable way. This is how it has been done in the past.

Senator MARK BISHOP—So you intend it to be an incremental build?

Mr Tanner—That is right. It is not about turning on a transmitter and, good heavens, half the people in the town cannot see their television anymore. It is about finding out where the problems are so that the public know what to expect. They have had some warning and they know who to turn to and to telephone if something does happen. Then the tests begin in a way which is intended not to swamp the call centres and leave people frustrated but to actually map out the entire extent of the problem and fix it as quickly as possible. That is what I envisage would be occurring in Brisbane.

Senator MARK BISHOP—Understood. Is the time frame for the turning on of the digital TV in other cities yet determined?

Mr Tanner—Basically, the requirement for the mainland metropolitan markets is that incumbent broadcasters will be on air at 1 January. In order for that to be the case, a great deal of work and testing is required. The SBS test is actually a very late one in that context. A lot of the VHF channels have been tested for months or even years. A fair amount of work has already been done to make sure those can operate at a good power from day one. I would say that the great bulk of testing has already been accomplished and that means that any disruption that arose from those has been managed.

Senator MARK BISHOP—In terms of the other capital cities, excluding Brisbane, does that mean that on 1 January we do not anticipate anything but minor problems?

Mr Tanner—I think that would be fair. I would not want to go beyond the minor problems because every time you turn on a transmitter there is an element of uncertainty about what that will disclose. For that reason, a management strategy is required. But we are not anticipating more than minor problems in any other centres.

Senator MARK BISHOP—Do you characterise the problems up in Brisbane as minor?

Mr Tanner—No, in terms of the logistics of turning on channels, that is quite serious disruption, obviously. It requires a lot of management. To mail out information to all homes in an area initially ahead of something because you feel that something may be fairly widespread is pretty major.

Senator MARK BISHOP—Thank you for that. I want to try and turn now to the issue of audio-video streaming. Minister Alston, you will recall, made a decision on whether streaming is a broadcasting service, and he made that decision, from memory, via press release in late October this year after passage of the bill. Mr Tanner, can you tell us what advice the ABA gave the minister as to the inclusion or otherwise of streaming video and audio in the definition of broadcasting services under the BSA Act?

Mr Tanner—I am not sure that we gave formal advice. The situation in the month leading up to that announcement was that the ABA was doing a fair amount of work, which it was keeping the department in the picture about, on the status of streamed audio and audiovisual material on the Net in terms of the broadcasting definition. That is, we were trying to get an absolutely definitive and authoritative legal view on whether it was or was not broadcasting. This is a very difficult question, because the definition of broadcasting was written in 1992. It is very difficult to reconstruct what parliament's intention might have been with those words, but it does not really seem to be very clear on the state of Internet services. It has some exemptions—for example, for a dial-up service or for a point-to-point service—and, depending on how you read those words or the intention behind them, one could argue either that an Internet service is intended to be excluded or that it is intended to be included. It is a difficult legal question. It is also a legal question that I think requires quite high level technical advice on the nature of an Internet service. The ABA was doing a fair bit of work on that. However, it had not reached a concluded view that had gone to the board before it was overtaken on the road by a decision that, whatever the current law, the minister was going to make this determination that Internet stream services were not broadcasting.

Senator MARK BISHOP—So, subsequent to the passage of the act, that issue was discussed in the debates, as you recall. You were doing a review. You were of the view that it raised quite significant technical issues and you were taking serious legal advice. Prior to the minister's announcement, had you come to a concluded view?

Mr Tanner—No. The ABA has always had a view—which it has expressed in several publications, notably one of its early online reports, three or four years back—that it thought a streamed audiovisual or audio service probably was broadcasting. That was a fairly hypothetical issue four years ago. We felt this year that it was not acceptable for the broadcasting regulator to be unclear so we were commissioning this very high quality legal advice to be absolutely authoritative about it. As I say, the ABA had not actually reached a view. We never developed a final advice and got it up to the board to determine that it was or was not.

Senator MARK BISHOP—But you had commissioned legal advice?

Mr Tanner—Yes, we had certainly done some legal work on it.

Senator MARK BISHOP—Who from?

Mr Tanner—Until six months ago we had done internal work, but we had a QC or a senior counsel brief this time. I forget whom.

Senator MARK BISHOP—Can you just take on notice who it was?

Mr Tanner—I will be happy to do that.

Senator MARK BISHOP—And can you also take on notice a request for a copy of the set of instructions that were given to that barrister and provide it to the committee.

Mr Tanner—Certainly.

Senator MARK BISHOP—You have thought through the issue, you needed to come to a firm view, you have done some in-house work and then you have decided it was necessary to go to senior counsel for authoritative advice. Prior to getting that advice, Minister Alston makes his decision. Is that the sequence of events?

Mr Tanner—Certainly the decision overtook that advice on the road, yes.

Senator MARK BISHOP—Before I come to Minister Alston's decision, when you were saying you were looking at the technical aspects and you were getting legal advice, who did you consult with in those preliminary investigations?

Mr Tanner—We used internal staff and member expertise. I understand or I recall we had been looking at approaching external experts, but I am not sure we actually developed a consultancy before the work got overtaken. That is Andree's recollection as well, so it must be right.

Senator MARK BISHOP—What was the ABA's involvement in the making of the decision that Internet streaming does not come within the definition of broadcasting services in the act? Did you have any involvement in that decision?

Mr Tanner—Only indirectly. You might recall there was a bit of history in that the second reading speech on the datacasting legislation, back in May or June, mentioned that there would be a policy referral for the ABA. We were very active in working with the department to ensure that we turned around very quickly anything that we were given. That issue about the actual legal status of a streamed service under the legislation is clearly an initial question for that review, so we had been looking at the question and working alongside the department to make sure we were ready to take on any policy challenge. The issue about the referral to the ABA got lost along the way, but we were still left with a real practical need to decide ourselves whether or not it was broadcasting. For us, it is not an issue of policy; it is a pure legal issue. The ABA is the agency that is responsible for giving opinions on the type of service that a particular person wishes to provide under section 21, for example.

Senator MARK BISHOP—Was there any other involvement in the making of that decision that Internet streaming does not come within the definition of broadcasting services in the act?

Mr Tanner—I recollect that the only involvement was that, because the department also has expert lawyers who have expressed opinions on the status of broadcasting, we were quite open with the department at various stages about our internal thoughts on the meaning of the legislation.

Senator MARK BISHOP—For the sake of the record, let's accept that the minister's decision was made on 25 October—it was thereabouts; I do not recall the exact date. When did you have advice that that would be his decision?

Mr Tanner—I cannot recall. I would have to take that question on notice.

Senator MARK BISHOP—Was it one day beforehand, two days beforehand?

Mr Tanner—There certainly has been discussion. I should explain that it is well known to all players that the minister has a power to exempt a type of service or a class of services. The issue of whether or not that discretion should be exercised is one that has been regularly discussed with the department from time to time, whenever the issue of the status of streamed Internet services comes up. So in the context of discussing the meaning of the law, it would be natural for us to also discuss with the department the possibility that you might simply respond by exempting streamed audio services. I am not sure that it was a secret from us that, within the portfolio, there was thought being given to this, but I really cannot recollect.

Senator MARK BISHOP—We all had a look at the bill; we accept that the minister had that power. There was an opposition amendment accepted or passed—I cannot recall which—which provided for a statutory review and report on this issue, I think within 12 months, to the parliament. What I am asking you is: when were you informed that the department or the minister did have a final view and that was it?

Mr Tanner—I would have to take that on notice. We certainly were aware beforehand that that was likely or imminent, but I would have to look back at the details. I am not even sure that we would necessarily have a record, to be honest, but I can certainly take that question on notice.

Senator MARK BISHOP—You are not telling me the first thing you knew of his decision was when the press release came out from the department, are you?

Mr Tanner—No. We were certainly aware that this move was in contemplation.

Senator MARK BISHOP—And there is a difference between preparation, planning and contemplation, and a decision being made, isn't there?

Mr Tanner—Yes, potentially.

Senator MARK BISHOP—We are all aware that there would be the discussions, the reviews and consideration of consequences. What I am driving at is: when was the decision made and when was the ABA informed, formally or informally, in writing or verbally?

Mr Tanner—I will take that on notice.

Senator MARK BISHOP—I take it that the statutory review is now finished. There will not be any statutory review, will there?

Mr Tanner—If you are referring to the policy review that was mentioned initially, no.

Senator MARK BISHOP—I am talking about the statutory review passed as an amendment in the digital bill, going to audio video streaming and its status. The minister having made a decision, I presume that issue is now finished.

Mr Tanner—Yes. The ABA has not been asked to undertake any review, statutory or otherwise, on that topic.

Senator MARK BISHOP—Have you been directed not to proceed with that particular statutory review?

Mr Tanner—No. The ABA regards itself as quite free. If it wishes—for whatever reason—to look into those issues itself, it will. Its concerns are going to be less of a policy character; it is going to be looking into it as the agency responsible for implementing the law, and with a proper role in advising the minister on the operation of the law. We are certainly

keeping a watching brief and taking a great interest in the implications of audio streaming, but our interest is not a broad policy interest, it is the implementer's interest.

Senator MARK BISHOP—I understand that. Turning to AFL television rights, you would be aware that the AFL is currently renegotiating its free to air and pay TV broadcasting rights, and that Channel 9 and Foxtel have launched a joint bid in competition with the current rights holders. Is the ABA aware of any request to reduce or modify the antisiphoning regime as it applies to the AFL?

Mr Tanner—These officers are certainly not aware of any such thing. If you would like me to take the question on notice, I can answer for the whole ABA, but I can only answer for myself and I am not aware of it.

Senator MARK BISHOP—And the other officers are not aware?

Mr Tanner—No.

Senator MARK BISHOP—Perhaps you could take that on notice as well. If the answer is yes, could you please provide the following information: when was the request received, who was it from and what was the nature of that request?

Mr Tanner—I think there is a definite answer shaping up: there has not been such a request.

Senator MARK BISHOP—Does the ABA believe that the antisiphoning regime is adequate to ensure that there is no erosion of the current free to air live and delayed telecast broadcasting arrangements in relation to the AFL?

Ms Wright—Earlier this year, we did some work on antihoarding, and we submitted a report to the minister on that. It may be after consideration of that report that the antisiphoning issue may be looked at again, but we have no information at this stage.

Senator MARK BISHOP—You have no information as to whether the current antisiphoning regime is adequate to ensure there is no erosion—is that what you are telling me?

Mr Tanner—That is a policy view; I am not sure that we would have such a view.

Ms Wright—My comment was that I am not aware that at this stage we are being directed to look at that, but we know it is a possibility after the antihoarding report is considered. But that does not necessarily, in our view, imply that we have any criticisms of the antisiphoning regime at this stage.

Senator MARK BISHOP—Is that antihoarding report you referred to private or confidential—can we have a copy of that?

Ms Wright—It is a report to the minister.

Senator MARK BISHOP—So it is a report to you, Minister Alston?

Senator Alston—I will take that on notice.

Senator MARK BISHOP—Minister—I do not know if you heard—we have been having a discussion on the renegotiation of the free to air and pay TV broadcasting rights between Channel 9 and Foxtel, and then we went into a discussion on the current antisiphoning regime and antihoarding regime. I was seeking some advice from the ABA as to whether there had been any requests to change, alter or reduce the antisiphoning regime. The officers have answered that.

Senator Alston—There are always people wanting to change it, of course.

Senator MARK BISHOP—Yes. But my question to you is: will the government guarantee that there will be no erosion of the current free-to-air live and delayed telecast broadcasting arrangements in relation to the AFL as a result of the current renegotiation of the free-to-air and pay TV broadcast rights?

Senator Alston—I think I can say that. I presume the current negotiations are proceeding on the basis that there will not be any change to the regime.

Senator MARK BISHOP—To be specific, our concern is that, particularly for the outlying states, when the two Western Australian teams and the two South Australian teams are on the east coast there are direct live broadcasts; that for particular games all through the weekend period there are live broadcasts in the outlying states; and, when the outlying state teams play in their home states, there is a fairly set arrangement as to when it is broadcast on Channel 7 in those areas. I am looking for you to give a guarantee that those arrangements, as we understand them, will not change in this current renegotiation.

Senator Alston—I am a bit loath to give guarantees in the sense that it might be broader than intended. There is no distinction drawn in the current regime between home games and away games. All AFL games are listed and, therefore, there is an obligation that they continue to be shown on free-to-air. As a general principle, I do not think we are wanting to move away from that. But if you are asking me whether any changes at the margin might be contemplated, I am not aware of any, but I can perhaps give you a more considered response, but—

Senator MARK BISHOP—That would be appreciated.

Senator Alston—I do not know of any.

Senator MARK BISHOP—I am not really talking about what you have just characterised as changes on the margins. I am really talking about—

Senator Alston—We have never suggested for a moment that we want to fundamentally change the protection for a number of major listed events. The whole purpose of the antisiphoning list is to ensure that those events which people traditionally see on free-to-air remain at least on free-to-air. The debate is often between whether or not they should be exclusive or split with the pay networks. But that does not affect the fundamental principle that, as long as the networks have the opportunity, they should be guaranteed the ability to show those events on free-to-air. We have not proposed any significant changes to the regime that would touch on that.

Senator MARK BISHOP—I accept that the government would not be proposing those changes. What I am concerned to ensure is that the contractual parties do not change the nature of the current regime to perhaps delay the live telecast of events on the east coast into South Australia and Western Australia, for example.

Senator Alston—You mean you would not have the live coverage that you have now?

Senator MARK BISHOP—No, we would seek to maintain the live coverage as we have it now so, if a game starts at 2.10 p.m. at the MCG and it is on at 12.10 p.m. in Perth, the broadcast starts at 12.10 p.m.

Senator Alston—You want to see it live. You do not want to see it at 2.10 p.m. in Perth.

Senator MARK BISHOP—Yes, that is what we are looking for.

Senator Alston—I had better get some instructions and see if there is any suggestion of that occurring. I think the general view would be that live coverage on free-to-air is what people have grown to expect and, therefore, that is what they ought to get. I think I have to be a bit careful about what might be proposed. If there was some change at the margin it may be possible, but I am not aware of it.

Senator MARK BISHOP—Would you mind seeking that formal advice and responding in writing?

Senator Alston—Yes. I would be interested myself.

Senator MARK BISHOP—The current antisiphoning regime ends on 31 December 2004. Presuming you are still in government, can the government guarantee that it will maintain the current level of protection for the AFL beyond that date?

Senator Alston—The negotiations that are going on now would probably extend well beyond that date. Aren't they normally five-year deals, at least? I do not think any new regime would cut into contractual rights.

Senator MARK BISHOP—When does the new regime start?

Mr Tanner—The rights regime?

Senator MARK BISHOP—Yes.

Mr Tanner—In 2002, I think. Next season is already covered under the current arrangements, as I understand it.

Senator MARK BISHOP—In relation to online services regulation, I want to go firstly to the six monthly report that was tabled in the parliament, I think on 30 September, pursuant to that resolution of the Senate earlier this year. My memory of that report is that it was prepared by NetWatch. Is that correct?

Ms Wright—It was prepared by the department, coordinating input from the ABA and from NetAlert.

Senator MARK BISHOP—Was the author from the department?

Ms Wright—Yes, in the sense that they had carriage of the document, presumably. However, it is the minister's document, but they would have drafted it with input from the two bodies.

Senator MARK BISHOP—When I spoke to the report on the day it was tabled, I said I was of the view that it was deficient in a couple of respects in that it offered little, if any, analysis of the effectiveness of the act. Could you tell us now what your conclusions are to date on the effectiveness of the act from the information in the report? Would that go to you, Mr Stevens?

Mr Stevens—I think it is probably the department's, Senator. I would have to seek more expert advice than mine on that one. I do not think I have an officer here who can really give the details.

Senator Alston—These are matters of judgment but, if you asked me, I would say that it has been pretty effective. As I recall, there were something like 90 take-down notices, and the bulk of them related to paedophilia. It seems to me that whatever progress you make on that front is worth while. You are always going to have difficulties offshore; nonetheless, you are out there trying. The industry has made a serious attempt to ensure that there is widespread

awareness of the availability of software filter packages. I spoke to someone recently who told me that the Community Watch organisation in the UK, on which we based our NetWatch, had expressed the view quite recently that they were surprised how effective our system was.

Senator MARK BISHOP—Who expressed that view?

Senator Alston—The UK prototype body on which we based NetWatch had expressed the view that the Australian regime was working much better than they had expected.

Senator MARK BISHOP—That may well be the case. What intrigued me when I read the report was that the author identified an apparently rising degree of awareness and also increased Internet access, and I accept both of those points. But the number of complaints was on a significant downward trend line.

Ms Wright—That has changed.

Senator MARK BISHOP—I ask why that was the case.

Ms Wright—Probably the best light to shine on it is to talk about what has happened subsequently because we received 201 complaints during the first six months of operation. In the subsequent four months, between 1 July and 1 November, we received 246 complaints. So we have already exceeded, in four months alone, the number that we had in the first six months. Also, the profile has continued to follow the trends of more complaints about internationally hosted material and, if it has prohibited content, it is likely to be child pornography or paedophilia—those types of images. Australian hosted material tends to be less complained about. When we do get complaints, we investigate them and the material tends to be not prohibited.

We found that the number of referrals that we made to the police on the type of material that we are getting, in the four months between 1 July and 1 November, have already well exceeded the number of referrals we made in the first six months of the scheme. In looking at the complaints that we have had, we also compared it to the number of complaints received by the Internet Watch Foundation in 1996-97, in the first year of its operation in the UK. We are lineball with that. They, too, noticed that it started to increase in the second half of the year and, in subsequent years, increased quite sharply. So far, we are following their curve on the graph and, because our number of complaints are going up—in October, it substantially increased—we are watching to see whether it continues to follow the UK model.

Senator MARK BISHOP—Do you have any conjecture as to why there was an initial decline for the first five or six months and then a reverse?

Ms Wright—One can only hypothesise. In the first couple of months of operation of the scheme, when we tended to receive more complaints about Australian hosted content, there seemed to be an element of people checking out the system to see what it really meant, what the benchmarks were. Perhaps some Australian industry players wanted to make sure that their competitors did not have a spicier product or whatever. However, by the time we reached March, that seemed to have abated. I think that what we have found subsequently, for the sharper increase in the later period, is that we have been targeting—in a promotion of the hotline—not only libraries and schools' parents associations but we have also done work through health associations and community groups that take a stand against child pornography and paedophilia. I think it is the input from them and their networks in the community that have probably contributed to the increase since that time.

Senator MARK BISHOP—So you have tapped into broader networks?

Ms Wright—That is right.

Senator MARK BISHOP—Are you aware of any discussions between the Australian government and the United States government on the issue of Internet content, in the context of the level of prohibited content sourced out of the US?

Ms Wright—Yes. The ABA has a number of connections which I can speak to. The ABA presented evidence to the Child Online Protection Association commission that was reporting to Congress, and did so about a month previously. They expressed particular interest in our scheme, and the way that we were dealing with that type of material and in the areas around the world that it was sourced from. We also have links with the equivalent of a USA hotline, which is the Centre for Missing and Exploited Children. We receive their reports and exchange reports with them almost weekly. On occasion, we refer material to them.

Senator MARK BISHOP—I was not really talking about contacts at officer level or at operational level. I will be more specific. Are we engaged in any negotiations with the appropriate arm of US government that would seek to, in some way, regulate or control the type of material that you are discussing that is sourced out of the US into this country?

Ms Wright—No. Apart from the COPA commission, I am not aware of any others. I would say that it tends to be more in Europe that those types of negotiations are initiated. In fact, the Europeans seem to show particular interest in them. In the USA, very much the philosophy of freedom of speech overriding all other issues has dominated until quite recently. I think that may be a reason for a lack of initiation from their side.

Senator MARK BISHOP—Is the ABA aware of any sites previously located on an Australian server which hosted RX and RC material that is now hosted on an offshore server?

Ms Wright—During the first two months of operation of the scheme, which was perhaps the period when people might have been testing the system, we received a complaint which we investigated. We issued take-down notices in relation to 17 aspects of that particular site. The content host complied immediately with the take-down notice but then shifted the site offshore. We then followed the second limb of the way we would deal with that and passed that on to the filters. But there has been speculation in various quarters that that was all part of testing the system, either by that particular host or by somebody else.

Senator MARK BISHOP—Is that the only instance of that type of behaviour you can refer us to?

Ms Wright—That is the only one where we have done an investigation and been aware of that outcome.

Senator MARK BISHOP—Are you aware of any sites hosted on offshore servers that contain RX or RC material that claim to be Australian sites?

Ms Wright—Not as such. But it is quite easy, regardless of your geographical location, so I am told, to have your material uplifted from any part of the world, and often reasons of cost, as opposed to censorship, play a role there.

Senator MARK BISHOP—But you are not aware of any example of that?

Ms Wright—No.

Senator MARK BISHOP—Take this on notice: could you give us an up-to-date account of all complaints received by the ABA under the act, and the action taken by the ABA in respect of each of those complaints.

Mr Tanner—Is that online complaints?

Senator MARK BISHOP—Yes, we are still on the online environment. Table 3 at page 65 of your annual report, under the heading ‘Action taken in relation to prohibited and potentially prohibited content’, says that there were issued 51 matters referred to as being refused classification. Is it true that all of those matters could have been referred to the AFP or the relevant state police force and action taken to remove the material from Australian based services prior to the act coming into force?

Ms Wright—Are you asking if, prior to the scheme, that material could have gone directly to the police for investigation?

Senator MARK BISHOP—Correct.

Ms Wright—I would say yes and no. In the MOUs that we have with police, at certain times and given certain resourcing constraints there are particular areas of the RC category that are probably a higher priority, especially child pornography and sometimes things that would be related to bomb making. It is possible that there is a level of content that is offensive in itself but does not have a crime underpinning it, which is usually where the police would follow up.

Senator MARK BISHOP—Where it has a crime underpinning it, yes. But all of those 51 matters were RC, refused classification. Prior to the operation of the act, they could have been referred to either the Federal Police or the relevant state agency to have the material removed from Australian based services, couldn’t they?

Ms Wright—They would not have been able to take the action of having the material removed. I think their interest is more in following up the crime behind—

Senator MARK BISHOP—Why not? If you had what we now call RC material, refused classification, because it is extremely offensive, why couldn’t a complaint have been made to the AFP or the relevant state police force under pre-existing law to have the material—

Ms Wright—Are we referring to complaints that include both overseas hosted and Australian hosted? If they are overseas hosted, they would not be able to control the removal or the filtering of that material.

Senator MARK BISHOP—No, we are talking about Australian based services where the appropriate police agency would have jurisdiction.

Ms Wright—In theory, yes. In practice, it might have been a little bit more difficult, because of complaints from the Australian public. Prior to the scheme, there was a task force formed, which included membership from Crime Stoppers and various agencies, including our own. One of the issues that came up is that, with eight enforcement agencies, people did not necessarily know where to go. There was not always referral from one body to the other. People did not necessarily know, if they were complaining about material, whether it was Australian hosted or, if so, in what state. So often it was very difficult for them. It was put to us at those meetings that people wanted a clearer point of entry—from what could be reflected from the experiences that we were hearing about—and some method of streamlined flowthrough, because they were finding it difficult to find a point of entry. Also, there was a belief in the community that the police were more likely to be actively involved in solving murders and those sorts of crimes, rather than worrying about material that people find offensive, which may or may not be illegal material.

Senator MARK BISHOP—I wish to talk briefly about data casting. When is it proposed that the data casting spectrum will be put to auction?

Mr Tanner—We are cooperating closely with the ACA, which is the body that has responsibility for auctioning that spectrum, so I would be inclined to refer that question to the ACA.

Senator MARK BISHOP—And the process that has been determined—is that a question for the ACA as well?

Mr Tanner—The allocation process is also a question for the ACA. Really, the ABA simply supplies the channels and whatever information about the use of those channels that is within its remit to the ACA.

Senator MARK BISHOP—Would you be able to tell me what outstanding issues need to be determined and when they will be determined, or is that again for the ACA?

Mr Tanner—The key outstanding issues are, basically, that the ABA has not made available under section 34 the channels that are needed. That is able to be done now in most cases, but in the cases where we are still finalising digital channel plans—as I think we discussed last week—that is scheduled at present to occur on 21 December. That is the main practical input that we are still waiting on, and that is on schedule.

Senator MARK BISHOP—Do you know yet how much spectrum will be available and how many licences will be available?

Mr Tanner—Looking at the digital channel plans, in all the metropolitan areas—mainland and on the group of other regional markets—we are looking at two channels in each market.

Senator MARK BISHOP—Separate licences for each channel?

Mr Tanner—We believe that would be appropriate, but in the end how that is packaged is a choice for the ACA, which has run a number of options. I do not think it has proposed having a single licence for the two channels, no.

Senator MARK BISHOP—Going back to the AFL issue, Minister, I am advised that the new rights will go from 2002 to 2006. As we know, the antisiphoning regime ends on 31 December 2004. Hence, the regime will not apply to contractual arrangements for the last two years, the 2005-06 financial years. Therefore, what is government policy post the 2004 operation of the antisiphoning regime in the context of the current commercial negotiations?

Senator Alston—I still say that, if they enter into negotiations based on the current arrangements, then any changes we make would operate upon the expiration of those contracts. So in that sense, you might have a regime for new contracts, but you would be grandfathering existing ones.

Senator MARK BISHOP—Which takes us out to when?

Senator Alston—It takes you to the start of any new regime we put in place after 2004, but if there are contracts that go beyond that date then those contracts would not be impaired.

Senator MARK BISHOP—So that theoretically means there could be a change in the broadcasting practice post 2004?

Senator Alston—Yes, if you put a new regime in place, but you would not override existing contracts.

Senator MARK BISHOP—I thought you were suggesting that the contracts might provide for the maintenance of the status quo until 2004, and then a new regime in terms of delivery times.

Senator Alston—No, there is nothing that says they cannot go beyond the expiry date, and that makes commercial sense. There is a bit of a marketplace reason why you would not want to lock yourself in for a longer period. If they go to 2006, then they will be able to honour those agreements, whatever changes we might make in the meantime.

Senator MARK BISHOP—Thanks, Minister.

CHAIR—I thank the officers for appearing.

Proceedings suspended from 6.35 p.m. to 7.18 p.m.

[7.18 p.m.]

Australian Communications Authority

CHAIR—I welcome the officers from ACA.

Senator MARK BISHOP—Welcome, Mr Shaw and gentlemen. The first thing I want to raise with the ACA is this ongoing issue of spectrum sales. Could you offer me some advice as to whether the ACA provided the government with advice on the valuation of the four lots of spectrum to be auctioned this financial year, prior to this year's budget? If so, what was that advice, and did the ACA agree with the \$2.6 billion increase in the valuation of the spectrum at that time?

Mr Shaw—Senator, at the last Senate estimates I think we talked about this issue for 45 minutes or so. I am very happy to work through those issues again, but our answers would be the same. My colleagues in the ACA did obviously provide—and worked with their counterparts in the department in providing—advice, but the estimates are actually estimates undertaken by Treasury, not by the ACA.

Senator MARK BISHOP—So you did not offer any advice on the valuation of the four lots of spectrum?

Mr Shaw—As I indicated at the last hearings, we did talk about the issue of valuations with our department, but we did not provide any formal advice on valuations for the four auctions that we are planning to conduct this year.

Senator MARK BISHOP—Were the discussions you had in the nature of formal advice, but not in writing?

Mr Shaw—Just as we consult with various departments on all sorts of things, so too do we consult on what possible values might be placed on spectrum. Whether or not the discussions and the comments that might have been made by my staff were in any way reflected in the Treasury's estimates, I do not know.

Senator MARK BISHOP—Did the ACA have a view at that time?

Mr Shaw—No formal view was ever formed on what the value of those aggregate sales might be.

Senator MARK BISHOP—Was any view formed on what the value of those aggregate sales might be?

Mr Shaw—Views are formed. I form views about things, as do my colleagues, on everything. As we talked about at the last hearing, we have views on things. We talk with our colleagues on all sorts of matters relating to the areas under our responsibility. Those views are comments that contribute, in this case, to the government deciding on a figure to put in the budget estimates. I do not know who they consulted or what they actually went through to arrive at the final figure.

Senator MARK BISHOP—When you say ‘they’, who do you mean?

Mr Shaw—The government.

Senator MARK BISHOP—No, I understand that. I am talking about from the perspective of your agency, the ACA.

Mr Shaw—We do not have a view on specific returns from spectrum.

Senator MARK BISHOP—And you did not have then?

Mr Shaw—No. We obviously contribute to debates about whether spectrum might be worth a dollar or \$100 billion in terms of the factors that might influence spectrum sales, which we talked about last time, as I recall, but we do not have any particular decided view on what any particular auction might bring.

Senator MARK BISHOP—That is fairly clear.

Mr Shaw—I can add to that. I think I mentioned last time that, at the end of the day, it is the auction process that is the final determinant. Our role is to run the auction against the objectives that are set out in the act, which make it pretty clear what we are required to do, to run it in a hopefully very professional way, and to fulfil the requirements that parliament has laid down in terms of our activities in that area.

Senator MARK BISHOP—Did the ACA provide advice to the government prior to the release of the midyear economic and fiscal outlook on the valuation of the spectrum?

Mr Shaw—Again, I am not aware of any discussions that were undertaken between my staff and their colleagues in the department. Again, there was no formal request for advice, nor did we provide any form of advice.

Senator MARK BISHOP—Do you have a view on the valuation of the spectrum licences?

Mr Shaw—I have a view on the factors that might affect what the result might be from the auction sale.

Senator MARK BISHOP—Like the price you will accept from the auction process?

Mr Shaw—Again, the way the auction process works, we effectively set a starting price; it is up to the bidders to make bids against that starting price and then to compete, we hope, very vigorously. What the final result will be is a matter for those participants.

Senator MARK BISHOP—We know that the 3.4 megahertz spectrum realised \$112 million. Are you able to advise whether this was more or less than the estimate originally included in the budget figures?

Mr Shaw—No, I am not able to provide that advice. I do not know whether it is more or less.

Senator MARK BISHOP—Will the 27 gigahertz spectrum now be allocated for a predetermined price rather than auctioned?

Mr Shaw—We actually held the auction for the 27 this week. The result was, I think, a final bid of \$37.5 million for 500 megahertz.

Senator MARK BISHOP—That is a bit light, isn't it?

Mr Shaw—Again, it is a question of the bidders on the day. What is light? And what is heavy, I suppose, which is the opposite?

Senator MARK BISHOP—What did you informally anticipate?

Mr Shaw—We did not informally anticipate anything, except in setting the starting prices.

Senator MARK BISHOP—What starting price did you set?

Mr Shaw—They vary by lot. I can ask Mr Luther to explain that in detail if you would like. In setting the prices, knowing that there is only one bidder likely to be active in certain lots, then, by default, you are effectively predetermining the outcome of the auction depending on how much spectrum the particular bidders decide to bid for. In this case, Optus bid for approximately half the total spectrum that was available.

Senator MARK BISHOP—And they offered \$37.5 million?

Mr Shaw—That is correct.

Senator MARK BISHOP—Do you have anything to offer, Mr Luther?

Mr Luther—The way the process works is that we do, as Mr Shaw said, set a starting price which in effect acts as a reserve price for the spectrum. In this case we put up a total of one gigahertz of spectrum across Australia; we only received bids on approximately half of that. So, when you say \$37.5 million was fairly light, in fact it was pretty much in line, on a per megahertz basis, if you like, with what was received for very similar spectrum when we sold that just over a year ago.

Senator MARK BISHOP—You say it was in line then?

Mr Luther—Yes. In 1999 we sold 1.15 gigahertz for \$66.2 million; in this case we sold 500 megahertz, which is less than half, for \$37.5 million. In fact, it is slightly higher on a per megahertz basis.

Senator MARK BISHOP—What was the budget estimate for the 27 gigahertz spectrum option?

Mr Shaw—I do not know.

Senator MARK BISHOP—You do not know. When is it proposed that the 3G and a data casting spectrum will be put to auction?

Mr Shaw—You would have noticed the government's announcements last week about the competition limits. As a result of those competition limits now being set, we propose that the authority will meet early next week to finalise the details of the auction package. On the basis of the auction package being finalised, we will then call for applications.

Senator MARK BISHOP—So you do that at the end of next week. When will the actual application process conclude?

Mr Shaw—With the intervening Christmas period, we would expect early February for the applications to close.

Senator MARK BISHOP—What happens then?

Mr Shaw—There are a number of steps that legally need to be taken after that, but we would proceed to auction sometime later in February or early March.

Senator MARK BISHOP—So late February, early March.

Mr Shaw—Yes.

Senator MARK BISHOP—That is for both the 3G and a data casting spectrum?

Mr Shaw—No, that is just for the 3G.

Senator MARK BISHOP—What about for the data casting?

Mr Shaw—As to data casting, as you discussed with the ABA just prior to the dinner break, there are a number of issues that need to be settled on the technical side. There are also a number of issues, such as competition limits, which need to be settled by the government. Once we have all that information together, we will hold the auction as soon as practicable.

Senator MARK BISHOP—When do you think both the technical and the government policy issues will be resolved?

Mr Shaw—That is obviously a matter for the government on the one hand and the ABA on the other. I could not give you a definitive answer on that. But clearly we have always said we would like to hold the auction as soon as it is practically possible, and I anticipate that would be in the first half of next year.

Senator MARK BISHOP—Those competition issues that the government needs to resolve—do they require lengthy and detailed consideration?

Mr Shaw—I am not sure what deliberations the government would go through, but clearly there are some issues about whether people would be allowed to bid for all the data casting spectrum that is available, or only a proportion of it. They might vary from market to market, as has happened with the competition limits placed on the 3G spectrum.

Senator MARK BISHOP—Have you offered any advice, or do you intend to offer any advice, to government about the maximum spectrum allotment in the 3G auction?

Mr Shaw—The decisions have already been made on that issue. The government's announcement last week effectively—in consultation with instruments made by the minister previously—predetermined the amount of spectrum that will be available.

Senator MARK BISHOP—How much is that?

Mr Luther—Basically, there are two by 60 megahertz of spectrum available in total, plus a small amount of unpaired spectrum of about 20 megahertz. The minister has announced that there will be a cap which effectively limits any one buyer to buying two by 15 megahertz out of the two by 60 megahertz.

Senator MARK BISHOP—A number of the companies have been seeking that the auction should be delayed—Onetel and Hutchison, and perhaps a couple of others joined them at one stage. I am aware that issue has been under discussion—has it been resolved?

Mr Shaw—The issue has been resolved and the auction time frame is as I described before.

Senator MARK BISHOP—I want to talk about this ongoing problem area we have of mobile telecommunications facilities, particularly the towers in the suburbs and all over Australia. Does the ACA have a view on the draft industry code for mobile telecommunications facilities currently being developed by ACIF?

Mr Shaw—I think that the code is a very good initiative. It is out for public consultation at the moment and there is a proposal that it be registered with the ACA. We would consider it in a formal sense in the fullness of time, once it has been through those public processes and it is presented to us. But having said that, our staff have been involved with industry in working on that code and, as I said, I think it is a very good initiative.

Senator MARK BISHOP—A good initiative to try and have the code?

Mr Shaw—To have a code. As long as the provisions that are finally contained within it do a satisfactory job, are sensible and clearly consistent with the law, then I think it is a very worthy activity.

Senator MARK BISHOP—Does the ACA have any concerns that carriers might be seeking to pass off high impact facilities as low impact facilities?

Mr Shaw—From time to time there are obviously issues that come to our attention about facilities that may or may not be low impact. Our role is quite clear in that situation. If we believe that a facility is low impact then we are obviously concerned to make sure that the code is being satisfactorily followed during the construction of such facilities. But if in our opinion it is not low impact then it is really a matter for the courts, ultimately, to decide whether it is high impact or low impact.

Senator MARK BISHOP—You would obviously receive complaints and correspondence on this issue, as my office does from time to time, either from individuals or from some councils. Are you satisfied that in the generality the correct characterisation is being made on low impact facilities?

Mr Shaw—Yes, I am. Clearly there are issues that come to our attention. Compared with the amount of activity that is going on in this area they are relatively small compared with the number of facilities that are being constructed. I hope that the code the industry is working on under the auspices of ACIF will give some commonality to the way in which carriers approach construction of these facilities as well.

Senator MARK BISHOP—Is it fair to say that a particular company is a particular offender in this regard?

Mr Shaw—There are some companies which I prefer not to name whose names pop up from time to time more than others. We certainly are aware of those companies and go out of our way to make sure that they are fully informed of the legal situation regarding construction of facilities. We do follow up also in areas where we think the code has been breached. I would prefer not to name the company but this week I sent a letter to a company under our formal information gathering powers seeking information that will allow us to determine whether the code has been breached or not. We are very serious about making sure that the government's intention here, as set out in the law in the code, is actually met.

Senator MARK BISHOP—But in the final analysis you view the adoption of the code as perhaps solving this problem into the future?

Mr Shaw—An industry code will give certainty to all players about what is expected. This is for councils, consumer groups, members of the public and carriers and service providers about what their respective obligations, either formal or informal, are in constructing facilities.

Senator MARK BISHOP—Does the ACA offer advice of a technical nature on what may or may not be a high impact or low impact facility?

Mr Shaw—We do have an interest in what is high impact and low impact because, if a facility is low impact, it is our role to ensure that the code has been complied with. But our view about whether something is high or low impact is worth about the same as that of anybody else walking down the street. It is a view and nothing more. It has no legal meaning in that sense. To the extent that there is a difference of opinion about what is high or low impact the only place to resolve that is in a court of law.

Senator MARK BISHOP—I accept that modest comment you are making there. But if there was a dispute between, say, a local council and a carrier as to the appropriate determination of a particular facility, you would not seek to become involved and to some extent mediate or arbitrate that matter?

Mr Shaw—No, Senator, we would not. We would satisfy ourselves that it was on one side or other of the fence so that we could make sure we had fulfilled our obligations under the act.

Senator MARK BISHOP—Having satisfied yourself what then do you do with that information?

Mr Shaw—As an example, if there is a facility which in our opinion is not low impact we would say to the council, the carriers and anyone else involved that it is a matter for them under the law to decide whether appropriate construction arrangements have been fulfilled. There are also some provisions that relate to environmental issues which would be within our purview. But if we believe that such a facility is low impact we would then take an interest in making sure that the law relating to the construction of low impact facilities was complied with, which means the code that was put in place in 1997.

Senator MARK BISHOP—Are you aware of some concerns emerging that there is an untoward proliferation of low impact facilities as opposed to carriers multilocating perhaps on one high impact facility?

Mr Shaw—That issue is raised from time to time and there are various provisions in the legislation relating to co-location. I understand that one of the subcommittees of the industry group that is working on codes is actually looking at how co-location can be achieved in a

more coordinated way as well, but it is a double-edged sword in some ways. Proliferation may or may not create some visual effects, depending on whether it happens to be all on the one tower, and indeed might create some concerns about electromagnetic radiation as well.

Senator MARK BISHOP—I know a bit about that now.

Mr Shaw—It is not necessarily a situation where one answer fits all.

Senator MARK BISHOP—Do you have the power to advise local communities on whether the proliferation of low impact facilities, if co-located, would constitute a high impact facility?

Mr Shaw—The answer is the same as I gave before. We would obviously want to have our own view on those issues, which would then trigger other activities.

Senator MARK BISHOP—Do you think it is appropriate that you have that capacity to offer that advice?

Mr Shaw—I am aware of some press releases that have been put out by various members of parliament suggesting that it might be appropriate for the ACA to have those sorts of powers. That really is a matter for government.

Senator MARK BISHOP—Do you have a view?

Mr Shaw—Not a personal view. Like all policy decisions, there are pluses and minuses. To my mind, the issue here is what the appropriate role for regulatory bodies is, as opposed to courts.

Senator MARK BISHOP—You would be aware of the concerns expressed by the Property Council of Australia about the current immunities enjoyed by carriers in respect of cabling within these premises. What is your view of those concerns, Mr Shaw?

Mr Shaw—This is cabling within buildings?

Senator MARK BISHOP—Yes.

Mr Shaw—There are obviously some concerns that I am aware of. There is also a process for dealing with the concerns, and the concerns, as I understand them—

Senator MARK BISHOP—Is that the TBAR thing?

Mr Shaw—TBAR is the group that has been formed to look into this issue. I understand that progress is being made.

Senator MARK BISHOP—Is being made, or has been made?

Mr Shaw—Is being made. It is early days, but I understand that there have been some fruitful discussions. Whether or not the issue will be resolved to the satisfaction of all players remains to be seen.

Senator MARK BISHOP—Does the ACA have a seat at that table?

Mr Shaw—I will ask Mr Haydon, but I do not think we do.

Mr Haydon—The ACA does not have seat at the TBAR table, but the ACA is a participant in an ACIF working committee which is developing a code of practice associated with the

administrative arrangements for the provision of cabling in buildings. As to the differentiation between the two, TBAR is addressing the matter at a policy level and whether the rights of the various players should exist at the level they do, whereas the working committee is addressing the administrative arrangements to deal with the legislation as it stands.

Senator MARK BISHOP—You would obviously again support the development of an industry code in this area wouldn't you?

Mr Haydon—Most certainly.

Senator MARK BISHOP—I want to talk about the amateur radio community a bit. Did the ACA acquire the 420 to 430 band or any other band previously used by the amateur radio community for Olympics-related or other purposes?

Mr Shaw—I will ask Mr Luther if he would answer that question.

Mr Luther—Yes, the band 420 to 430 megahertz was used during the Olympic Games under an agreement reached in advance with the amateur community.

Senator MARK BISHOP—Was that an agreement for consideration? Did you pay for it?

Mr Shaw—No. Some of the spectrum used for the Olympic Games was paid for in the normal course of events but there was, for some of the broadcasters, a fee exemption for the short period of time that the games actually took place.

Senator MARK BISHOP—So it was acquired for broadcasters to use during the period of the Olympic Games; is that correct?

Mr Shaw—I am not sure of the precise purpose, but it was to support radiocommunication services, of which there were many, during the Olympic Games. The budget estimate was over \$1 million and was paid by the Sydney Olympic Games Organising Committee to the government for the use of spectrum, but within that spectrum there were some areas where fees were not charged. But they were relatively limited.

Senator MARK BISHOP—Was the amateur radio community ever informed that this band would be returned for its use after the Olympics were over?

Mr Shaw—I know there were very lengthy discussions undertaken with their association at the time. I do not know what the precise words were but, as far as I am aware, in the Sydney situation they are secondary users at any rate of this band and there was an agreement, effectively, that their members would not use the band during the Olympic Games.

Mr Luther—In fact, I believe some of it has been handed back to the amateurs for their use subsequent to the finishing of the games and the Paralympics.

Senator MARK BISHOP—How much of it has been returned?

Mr Luther—I am not sure of that detail. I could take it on notice.

Senator MARK BISHOP—Could you take it on notice, because my understanding, Mr Shaw, is somewhat different from yours. My understanding—and it could be wrong—is that the amateur radio community was informed that the band would be returned for its use after the Olympics were over. Could you take that on notice and examine your records, and confirm or deny that for us?

Mr Luther—Certainly the understanding was that it would be returned for the use of the amateurs after the games and, as I have said, a large proportion of it—I am not sure of the exact amount—has already been.

Senator MARK BISHOP—I am sorry, I thought Mr Shaw was saying something different.

Mr Shaw—No. But they are secondary users of this band and the ACA's policy in terms of use of bands changes over time and decisions have to be taken regularly about what the most appropriate use of spectrum is—and 3G is a classic example. In some of these bands over time there is a need to consider what the appropriate use is so that the objects of the Radiocommunications Act are met in relation to the most efficient use of spectrum. With some of these bands that are being used by amateur broadcasters, there is consideration being given to their use for other purposes, and we have taken some decisions in relation to bands in the past.

Senator MARK BISHOP—What other purposes would the band be used for?

Mr Shaw—A good example is for, say, providing emergency service and police type services so that there can be state networks. That is a very good example of what would operate in these bands.

Mr Luther—In fact, what you may be alluding to is that the ACA actually has agreed to allow the Western Australian police force to use part of this band in the Perth region, precisely, as Mr Shaw said, to provide some emergency communication services, high speed data and mobile services for police.

Senator MARK BISHOP—But going back to your earlier comments, Mr Luther, you say that most of that band has been returned to the amateur people, consistent with the understanding that was reached prior to the Olympics?

Mr Luther—I believe so. I did say I would take that on notice just to check.

Senator MARK BISHOP—You could just take that on notice and confirm it or otherwise. I have some detailed questions here on telecommunications and law enforcement which I think are best placed on notice.

Mr Shaw—Certainly, Senator.

Senator MARK BISHOP—I want to talk now about biomedical telemetry transmitters. We have had some discussions in previous estimates on this issue. Has the ACA implemented plans to set aside dedicated radio frequency spectrum for biomedical telemetry devices which will no longer be able to use broadcasting spectrum when digital broadcasts commence?

Mr Shaw—I will ask Mr Luther if he could answer that question.

Mr Luther—I have to say I am not an expert in biomedical telemetry systems. My understanding is that, since the only equipment that tends to become available for use in Australian hospitals is imported from overseas, we are pretty much bound by what frequencies are made for overseas. I believe that they are almost exclusively in the television broadcasting bands.

Senator MARK BISHOP—Yes.

Mr Luther—No, we have not actually gone about it because we cannot force the manufacturers to shift just for Australia. We had not gone about trying to find new and particular bands for that.

Senator MARK BISHOP—Do they still use the TV spectrum?

Mr Luther—Yes.

Senator MARK BISHOP—You don't anticipate a scenario in which that can change because of the manufacturing content, do you?

Mr Luther—That is the way it is looking at the moment. We have made some representations to the Federal Communications Commission in the United States asking them to consider the future of medical telemetry in broadcasting bands because it tends to be the United States which sets the market for these products.

Senator MARK BISHOP—That is an issue for the future then. That means that owners of the relevant medical telemetry equipment know what frequency they will be able to operate their equipment on when digital broadcasts commence, don't they?

Mr Luther—Yes, I believe so. There has been a lot of work by the ABA, in particular, in helping them to know which frequencies they may be able to use.

Senator MARK BISHOP—To migrate to new frequencies?

Mr Luther—Yes, where migration is necessary.

Senator MARK BISHOP—When we switch to digital can it be guaranteed that there will be no interference with the devices that are using that spectrum? Is that a matter for you?

Mr Luther—I do not think anyone is prepared to make any guarantees about anything in a radiocommunications environment. The nature of radiocommunications is that it is very difficult to always predict where there will be interference. However, we believe that the work that the ABA and the ACA together have been doing in this gives a good path through the current situation. But, as I said, I do not believe anyone can give any guarantees in any area of radiocommunications.

Senator MARK BISHOP—What progress have you made on the information package on the new spectrum arrangements for the biomedical telemetry systems that you mention on your web site?

Mr Luther—I believe that we have made a new class licence which provides some further opportunities for a number of short range radiocommunications applications, including support for biomedical telemetry equipment. That new class licence was made in July of this year. The new arrangements support the operation of those telemetry transmitters in a VHF TV band, without any deployment constraints, and a UHF TV band, subject to their operation being outside the analog TV service areas. There are two different paths you can take.

Senator MARK BISHOP—Have the new class licences been issued now?

Mr Luther—I believe so.

Senator MARK BISHOP—My press release is dated 2 August.

Mr Luther—I can take that on notice. The advice that I have in front of me was made in July but I will take that on notice to check.

Senator MARK BISHOP—I have it on your ACA release, which is updated to 2 August 2000. The paragraph reads:

The ACA is developing an information package on the new spectrum arrangements for biomedical telemetry systems. This is intended to be released later this year following on from the introduction of the new class licence.

It also talks about health, information, et cetera.

Mr Luther—That does not actually say, though, that the class licence had not been issued.

Senator MARK BISHOP—No, at that stage it had not been. Have they been issued?

Mr Luther—I believe so, but I will take it on notice just to check that.

Senator MARK BISHOP—Is the information package available as yet?

Mr Luther—I do not believe it is as yet.

Senator MARK BISHOP—When will that be available?

Mr Luther—I am not sure.

Senator MARK BISHOP—Could you take that on notice and provide us with a copy when it does become available?

Mr Luther—Certainly.

Senator MARK BISHOP—Do you have any idea of the proportion of devices that will not be able to be converted to the new frequency—that is, devices that will no longer be useable?

Mr Luther—I will have to take that question on notice. I certainly do not have any information which would enable me to provide you with an answer at this time.

Senator MARK BISHOP—It hasn't been put to you by any of the users of the equipment that their current equipment will become unusable?

Mr Luther—Certainly, a number of hospitals have expressed concern about this, but—as I was outlining—we have now come up with a strategy which enables two paths to be followed in VHF and in UHF. But, no, we cannot guarantee that they will all be able to be used.

Senator MARK BISHOP—That is the advice that I have received: an amount of the equipment in the health system will not be able to be used. Could you take on notice whether you have had any inquiries as to that matter from owners or users of the equipment, the dates of those inquiries and the response of the ACA to those persons who inquired, because our advice is that it is a significant problem and there are major concerns out there.

Mr Shaw—I am sorry we do not have an expert in this area with us tonight; otherwise we could deal with it now.

Senator MARK BISHOP—That is all right. Mr Shaw, did the ACA monitor the ongoing activities of the Besley inquiry?

Mr Shaw—Yes, we certainly did. As I indicated during the last hearings, we had one of our staff seconded to the inquiry as well.

Senator MARK BISHOP—What was the purpose of that person's secondment?

Mr Shaw—To provide a bridge, in many ways, between the ACA and the Besley inquiry, so that information could be passed. I understand that the information we did provide was also made available to this committee.

Senator MARK BISHOP—Was he or she involved in the writing of the report?

Mr Shaw—He was just part of the team. I presume that he did what he was asked and directed to do by the secretariat.

Senator MARK BISHOP—Mr Besley had concerns in respect of three matters: timely installation repair and reliability of basic telephone services, mobile phone coverage at affordable prices, and reliable access to the Internet and data speeds generally. Do you share Mr Besley's view that they were the primary findings?

Mr Shaw—From my understanding of the findings, they would certainly appear to be ones that were highlighted within the report.

Senator MARK BISHOP—Let me rephrase the question: were they the principal concerns that were identified by consumers and witnesses?

Mr Shaw—I was not privy to the meetings that were held. I do not know what passed between the three committee members and others. I have obviously read several submissions, but I do not know whether they are reflective of the total views that were put to the committee.

Senator MARK BISHOP—What about the officer who was on secondment from your department?

Mr Shaw—As I said before, he would have been working as directed by the secretariat. I am not sure which meetings he went to or what views he put. He was there to assist the inquiry in a wholesome way, not to represent the ACA.

Senator MARK BISHOP—Does the ACA have a view on the adequacy or otherwise of telecommunication services in rural, regional and remote Australia?

Mr Shaw—Our work on performance measures and related issues, including the way in which consumers perceive some of the services they are getting, suggests that service is reasonable overall. Having said that, clearly there are some areas where performance can be improved. Some of those areas were outlined in the Besley inquiry, and we have from time to time identified through our performance measures areas where performance is clearly not adequate. In the past we have had inquiries, one completed almost 12 months ago, into some areas that we had concerns about. Ensuring that there are adequate service standards is clearly an ongoing issue, and I would like to see our performance measures developed further so that we can identify areas where—

Senator MARK BISHOP—More particular areas?

Mr Shaw—At a more disaggregated level, and also areas where there is a recurrence of the same problem.

Senator MARK BISHOP—Are you doing any work on putting together those new tests or guidelines?

Mr Shaw—Yes, we are. We are working in that very area. It is an area where the Besley report suggests that some work needs to be done. In anticipation of that recommendation being accepted by the government, we have been considering how we can best move to get

more disaggregated performance data and extend the areas on which we are collecting data so that we can better monitor the types of services that we think people are concerned about, with a view, at a very minimum, of identifying where the problems are.

There is another question about what the appropriate response might be to service levels. Where there are systemic problems in relation to the customer service guarantee standards, we have some specific powers that we can use to rectify those problems. But where service levels are outside those areas—the CSG standards—we do not have any specific powers for requiring an improvement. One would hope we could use our moral persuasion to convince the service providers that they do need to improve their service capability.

Senator MARK BISHOP—If you got the tick from government to go further down this path of disaggregation and into new areas, when would you be ready to start doing that work?

Mr Shaw—As I indicated before, we are already trying to work through how we could collect better information in a sensible way. I have mentioned the Radiocommunications Act and some of the objectives there; we have similar constraints imposed on us in the Telecommunications Act, which relate to undue financial burdens on the industry. We need to move sensibly in terms of what information we collect and do it in a way that is genuinely serving the public interest.

Senator MARK BISHOP—Have you given any consideration at all to each of the 17 recommendations made by Mr Besley?

Mr Shaw—I have read them and, yes, I have talked to my staff about the issues. Most of them actually relate to government decisions and are government policy issues. Until the government has finalised its action plan that it has said it will put in place in relation to those recommendations we are in the same boat as any other person.

Senator MARK BISHOP—The reason I ask is that I had a lengthy discussion with the representatives of Telstra the other evening. They gave me a relatively concise verbal response to each of the recommendations and undertook to give a more detailed written response at a later date. Are you able to do that?

Mr Shaw—I think it would be inappropriate for a statutory body to do that. Indeed, if we were to work through each of those recommendations, the answers would be, ‘On the one hand and on the other, and we are awaiting the government response,’ so I do not think it would be particularly fruitful. Naturally, as individuals, we have views on what is sensible and what is not. But, really, this is a policy issue for the government. Responding to those recommendations will no doubt require the ACA to do a number of things, which we will carry out professionally.

Senator MARK BISHOP—Let me ask the question a different way. Has the government asked you for a policy response to each of Mr Besley’s recommendations?

Mr Shaw—No, they have not but my staff have been consulting with their colleagues in the department about the way in which some of those recommendations might be given effect or what the issues might be lying behind them so that some of those issues can be sensibly considered in preparing the government’s draft response for the minister to consider.

Senator MARK BISHOP—So you would expect to give a formal response to the government on each of the recommendations in due course?

Mr Shaw—No, I would not be proposing to give a formal response at all. It is a matter for the government to respond just like with reports of Senate committees or other committees. The government said it will respond and we are waiting for that response.

Senator MARK BISHOP—But the government does not respond in isolation.

Mr Shaw—That is right. But as part of that process my staff are working with their colleagues in the department to assist the department in advising the minister in relation to those recommendations.

Senator MARK BISHOP—So you are having input in that fashion?

Mr Shaw—Yes.

Senator MARK BISHOP—Mr Shaw, in 1998 the ACA recommended the abolition of the extended CSG time frame where no infrastructure is available. Do you still support that recommendation?

Mr Shaw—We did report to government on a number of CSG matters in a report around that date which is presumably the one you are referring to.

Senator MARK BISHOP—Yes, it is a public document.

Mr Shaw—I would not want to chance my arm on saying that any of the recommendations in that report are right or wrong at this point of time because the world changes. We have different carriers. We have different levels of competition. There is more information in some areas. There are different service levels. Informing a view about any of those matters now would need a look at contemporary information.

Senator MARK BISHOP—Have you had cause to reconsider the views you put to government in 1998?

Mr Shaw—No, the government did respond with a revised direction to us which has now been implemented. You would be aware that in the Besley inquiry one of the recommendations was that the ACA reviews the CSG standards again. They were thinking further out. I think they talked about a multi-platformed environment. I am not sure what they actually meant. Clearly good public policy says that there should be continual review of all these types of arrangements at appropriate times.

Senator MARK BISHOP—Did you do any estimation of the costs to carriers of complying with the 1998 recommendations?

Mr Shaw—I do not believe so. The advice we provided to government was released publicly. Any information we had would have been in that report.

Senator MARK BISHOP—It did not have any reference to costs?

Mr Shaw—I do not believe there was a fully fleshed out examination.

Senator MARK BISHOP—Can you then take it on notice? If there was one could it be provided to us?

Mr Shaw—Yes, I can certainly do that, but I do not believe there was that work.

Senator MARK BISHOP—That is fine. Thank you, Mr Shaw and gentlemen. That concludes my questions to the ACA.

Senator SCHACHT—You may remember that there was some controversy in 1996-97 about the rollout of overhead cables by Telstra and Optus in various cities of Australia. In

South Australia now, something like 3½ years on, there are still many streets in Adelaide that have the continuing wire, the wire that the actual cable hangs on, strung down literally hundreds of kilometres but no cable has been attached. There are other areas where the cable has been attached but clearly not properly connected and is just hanging there unused. Has anyone raised with the ACA just what is happening with all of the cable and these unused wires?

Mr Shaw—It has not come to my attention. I can ask my colleague, Mr Haydon, if it has come to his.

Mr Haydon—No, it has not been raised with our organisation.

Senator SCHACHT—I do not know whether this is a question for you, Mr Shaw, or Mr Stevens who is not here. It is very unusual for Mr Stevens not to be here.

Senator Alston—Mr Stevens had another commitment.

Senator SCHACHT—I am not criticising Mr Stevens. He is a habitual attendee.

Senator Alston—A very diligent fellow normally. He is attending his own farewell from the National Library.

Senator SCHACHT—Under the present legislation, if any of the carriers chose to add the communications cable to that wire, would they have to get the approval of the council?

Mr Shaw—That is a very fine detail of law. There were time limits, as you may recall.

Senator SCHACHT—Yes, I can remember the time limits and the debate about them.

Senator Alston—It is whether they had commenced.

Mr Shaw—It is whether they had commenced. I am sure that there would be a number of legal issues that would have implications for what carriers and councils rights would be here and I would not chance my arm on that.

Senator SCHACHT—They have put the wire up to hang the cable. Is that a definition of commencing?

Mr Shaw—One interpretation perhaps could construe it that way.

Senator SCHACHT—Do you think it is reasonable that people would have expected, now 3½ years on, that they would get around to completing it?

Mr Shaw—What is reasonable and what is not probably would not have much sway in a court of law, which would be the ultimate determinant, I imagine, of where the rights lie.

Senator SCHACHT—Do you know whether the councils have the right to charge a fee of any sort subsequently for further cable being put up?

Mr Shaw—You would recall there is a provision about non-discrimination, but I do not think there is an absolute prohibition on any such fees.

Senator SCHACHT—The hanging wire, which the cable that is not there yet would hang to: are they able to charge or get some fee back from the carriers for that?

Mr Shaw—People could try all sorts of things. Whether they were successful or not would remain to be seen. There are two issues: there is the commercial matter of what carriers might be prepared to contribute to a council or any other party, and there is the legal question as to whether they are obliged to contribute. On the second point, I would have thought that, again,

there would be a lot of dispute about whether they were required to meet any fee suggested by council.

Senator SCHACHT—You may not recollect this but Optus suddenly cancelled the rollout in midstream in South Australia.

Mr Shaw—I do recall that.

Senator SCHACHT—They sacked 150 people overnight, left the wire hanging and have done nothing since. There are many streets with not even a continuing wire, or whatever it is called. Where there is a street that runs off a street with a cable, can the carrier put a cable down that street on the basis that they are continuing the rollout that was allowed for before the deadline, or would that be a new cable?

Senator Alston—I think Mr Shaw has made it pretty clear that, even if he did have a view on it, it is not going to carry any weight with anyone. We are just having an interesting discussion, but what is the purpose of it?

Senator SCHACHT—It is the law of the land. I thought the regulator might have some idea about the law of the land and the definition of what—

Senator Alston—No, the regulator does not interpret the law.

Senator SCHACHT—Someone must in the department. Someone wrote the law.

Senator Alston—Yes.

Senator SCHACHT—Your government wrote the law. Someone must have an idea of a definition. If Optus said, ‘We want to roll out another 200 kilometres of cable in streets in Adelaide, we believe we can do this’—

Senator Alston—If Optus think they can do it and if someone else thinks they cannot, then someone else will do something about it.

Senator SCHACHT—I see. You are going to take the typical hands-off attitude. As usual, Minister, you are useless, but I will leave it go—I am not going to waste Mr Shaw’s time.

Mr Shaw—I could add that in this case, if there were a dispute, it would be a high impact facility and, again, it would be a court of law that would need to resolve it, rather than the ACA.

Senator SCHACHT—It is just that as I drive around the suburbs of my city I keep noticing this clothesline that is the longest in the history of the world, going nowhere and doing nothing except hanging there.

CHAIR—Thank you, Senator Schacht. That concludes the hearings with the ACA. I thank the officers for attending and I call the National Gallery.

[8.15 p.m.]

Department of Communications, Information Technology and the Arts

CHAIR—We are going to proceed with some questions to the minister rather than the National Gallery.

Senator MARK BISHOP—Thank you, Chair. Minister, when will the [Postal Services Legislation Amendment Bill 2000](#) be scheduled for debate?

Senator Alston—As soon as we find time in our busy program, I suppose.

Senator MARK BISHOP—This year?

Senator Alston—It is not looking good, is it?

Senator MARK BISHOP—No.

Senator Alston—I would be surprised.

Senator MARK BISHOP—When we come back next year?

Senator Alston—One would hope so.

Senator MARK BISHOP—So you want to proceed in February?

Senator Alston—I would not say that, but we have certainly got to—

Senator MARK BISHOP—So you would say that?

Senator Alston—I would not say that necessarily. It is a matter of priorities, and obviously we will determine those when we look at all the other competing bids. But we are still keen to progress it. We will be highlighting the fact that you are obstructing it, and we will do what we can.

Senator MARK BISHOP—We are going to oppose it.

Senator Alston—I know; you have your riding instructions. We know that.

Senator MARK BISHOP—How high a priority is it?

Senator Alston—I have been getting good mileage out of it already.

Senator MARK BISHOP—Is it a high priority, or is it something that is slipping right back?

Senator Alston—No, it is important to the government.

Senator MARK BISHOP—Will we have it when we come back next February?

Senator Alston—I am not the Manager of Government Business; you will have to speak to Senator Campbell.

Senator SCHACHT—But he is your parliamentary secretary. You have got a fair chance to break his arm and bring it on if you want to.

Senator Alston—He is an independent operator; he is the Manager of Government Business.

Senator MARK BISHOP—Does the government have any plans to include parcel deliveries within the USO for postal services?

Senator Alston—No. I am not aware of that being under consideration.

Senator MARK BISHOP—Is there any consideration of guaranteeing a weekly mail service to property gate for remote customers?

Senator Alston—I thought we offered people—what did we offer them? It was some years ago now.

Senator SCHACHT—Don't ask us; it is your government.

Senator MARK BISHOP—You do not guarantee a weekly service in remote areas of Australia to the farm gate?

Senator Alston—I thought we conducted a survey to see what people wanted, and the surprise was that a lot of them did not want any additional services because they thought it would expose them to the risk of theft if they did not go down and visit the pick-up point more frequently, which they were not inclined to do. As I recall, we made an offer to have more frequent deliveries, and I cannot recall to what extent that has been put in place.

Senator MARK BISHOP—But the government does not have any current plans?

Senator Alston—No.

Senator MARK BISHOP—I am going to put the other questions there on notice for the department because I do not think you would have the knowledge—with respect.

The auction of the 3.4 gigahertz spectrum raised \$112 million—we discussed it earlier with Mr Shaw. Can you tell us if this was more or less than the estimate originally included in the budget figures?

Senator Alston—We did not specify the breakdown in the budget. We simply said \$2.6 billion to cover spectrum at 27 gigahertz, 3.4 gigahertz and two gigahertz and datacasting.

Senator MARK BISHOP—Was the \$2.6 billion the total figure?

Senator Alston—Yes. We do not give a breakdown for the obvious reason that—

Senator MARK BISHOP—Do you have a breakdown?

Senator Alston—I think we do, yes.

Senator MARK BISHOP—Would you make it available to us?

Senator Alston—No—for the obvious reason that, if people know what they are expecting to get, they are more likely to tailor their bids accordingly. At the end of the day, I do not think they will; they will do it on the basis of their level of interest and demand. But it has been government practice not to disaggregate those sorts of figures.

Senator MARK BISHOP—Understood. I will ask the question this way, then: was the \$112 million consistent with the disaggregated figure that you had leading up to the budget process?

Senator Alston—I am not sure that I can recall precisely but I think it was in the ballpark.

Senator MARK BISHOP—The same question in respect of the \$37½ million you got for the 27 gigahertz on the broadband wireless access?

Senator Alston—I cannot remember what the figure was for that.

Senator MARK BISHOP—Can you take it on notice and advise us whether the realised figure was consistent with the disaggregated figure in the budget process?

Senator Alston—You are most unlikely to get an answer to it, you realise, for that same reason.

Senator MARK BISHOP—You just gave me an answer—

Senator Alston—I am saying that I cannot recall precisely but I think it was in the general ballpark. Beyond that, you are not going to get us saying it was pretty much what we expected; otherwise you are effectively disaggregating.

Senator MARK BISHOP—Where is the government search up to for an alternate provider of Australia Television? Where are we at on that? Do you know?

Senator Alston—No, I do not know offhand. I think there might have been seven applicants, but I do not think I have any greater knowledge than that of where it is at.

Senator MARK BISHOP—All right. Can you take on notice who are the applicants, when is the process going to be concluded, what guidelines the government is going to apply in making its decision, when will the decision be made and when will the licence be let?

Senator Alston—Yes.

Senator MARK BISHOP—Do you have any idea of the planning for when the service will go to air?

Senator Alston—No, I cannot recall offhand.

Senator MARK BISHOP—Take that on notice. What is the cause of the delay in finding an alternate service provider?

Senator Alston—I am not able to say there is a delay.

Senator MARK BISHOP—It has taken a fairly long time, hasn't it?

Senator Alston—It may, but often things take longer than some people would like, but that does not mean that it is behind schedule.

Senator MARK BISHOP—Is it on schedule?

Senator Alston—I cannot remember.

Senator MARK BISHOP—It is not my understanding.

Senator Alston—No-one has asked me about it before. I have never turned my mind to it. It has not been an issue. I have just been aware of a number in the background. No-one has suggested to me that it is behind schedule, but I will find out.

Senator MARK BISHOP—All right. Can you take that on notice as well?

Senator Alston—Yes.

Senator MARK BISHOP—What would be the cost to government to fund the ABC to provide the service? Have you done those sums?

Senator Alston—If the ABC were to win the bid?

Senator MARK BISHOP—Yes.

Senator Alston—I think they put in a bid as part of a consortium, but I do not recall—

Senator MARK BISHOP—As part of a consortium, not on their own?

Senator Alston—I think that is right. I do not think that they have asked us for money for it, but, again, I will check.

Senator MARK BISHOP—The decision on the audio video streaming that you brought down on 25 October, or whenever it was, was a ministerial decision, wasn't it?

Senator Alston—The gazettal?

Senator MARK BISHOP—The decision—when you decided it was not within broadcasting.

Senator Alston—October? It was earlier than that. It was about three months ago, wasn't it? I thought it was in the first half of the year, back in May or something.

Senator MARK BISHOP—May?

Senator Alston—Maybe we announced the decision then and the formal gazettal was—

Senator MARK BISHOP—We passed an amendment in the digital bill.

Senator Alston—The amendment that you passed required the minister to determine whether streaming ought to be regarded as a broadcasting service.

Senator MARK BISHOP—That is right.

Senator Alston—I think we made an announcement about that view many months ago. It may be that that took quite a while to translate itself into a gazetted announcement.

Senator MARK BISHOP—You made that decision on or about 20 July.

Senator Alston—Yes, that sounds about right.

Senator MARK BISHOP—That was a decision you announced on behalf of the government. Who did you consult in making that decision? What advice did you rely upon?

Senator Alston—I would have to take that on notice, I cannot recall now, but we gave it careful consideration.

Senator MARK BISHOP—Who is we?

Senator Alston—Those who were advising me.

Senator MARK BISHOP—Who were they?

Senator Alston—All the usual suspects.

Senator MARK BISHOP—Who are the usual suspects?

Senator Alston—The department, presumably my broadcasting adviser, maybe my chief of staff and a few others.

Senator MARK BISHOP—Just the people within your ministerial office?

Senator Alston—No. As I say, I think we got advice from the department. I cannot recall whether we got advice from others as well but—

Senator MARK BISHOP—You recall getting advice from the department.

Senator Alston—I am saying the ABA may well have been consulted. No, I do not have a precise recollection now, some months later, of who I actually consulted but I recall we gave it some pretty intensive consideration and presumably took account of all the advice that was available.

Senator MARK BISHOP—Did you get any formal written—

Senator Alston—Outside legal advice?

Senator MARK BISHOP—No, I did not say that. I said ‘formal written advice’.

Senator Alston—I cannot recall now.

Senator MARK BISHOP—You cannot recall.

Senator Alston—We may have done.

Senator MARK BISHOP—You would recall that.

Senator Alston—Why would I?

Senator MARK BISHOP—It is a fairly interesting matter, I suppose.

Senator Alston—It was, but you are asking me about some minor process aspects of it. But the merits—

Senator MARK BISHOP—No, I am not asking you some minor process matters. You were going to hold an independent statutory review to decide the issue, then out of the blue came a press release announcing that a decision had been made and that was the answer. What I am asking you is who you took advice from, who you consulted with and whether it was written advice, or whether it was just something that you thought was a good idea at the time.

Senator Alston—I am sure we thought it was a good idea at the time. The issue is whether we still think it is a good idea, and we do. I think a careful reading of that provision made it plain that we did not need to conduct a formal inquiry and, given that you would otherwise have a period of prolonged uncertainty, we thought it best to arrive at that decision as quickly as we could.

Senator MARK BISHOP—So, there was not any formal inquiry.

Senator Alston—Not formal in the sense that we commissioned the ABA, for example.

Senator MARK BISHOP—No. Did you commission anyone?

Senator Alston—I do not think so, no.

Senator MARK BISHOP—So, you did not commission anyone.

Senator Alston—I do not think I was required to and therefore—

Senator MARK BISHOP—No, I am not saying you were. I am just asking.

Senator Alston—we would have wanted to cut through that process.

Senator MARK BISHOP—I am trying to inquire into what the process was that led you to come to that particular view on or about 20 July, because it had not been your view all through the digital debate. The EM had an at best ambivalent attitude. In the discussions we had in the bill process in the committee stage, you told me that you did not have a firm view and it was something that you were going to look at in the fullness of time and, ‘We will let you know, sunshine, when you need to know.’ And then, on 20 July, we got a fully informed, made decision.

Senator Alston—I suppose there comes a time when you get around to making a decision, and we did.

Senator MARK BISHOP—Good. You made decision.

Senator Alston—Obviously, we took account of all the advice that was available at that time.

Senator MARK BISHOP—That advice: who did it come from again?

Senator Alston—I do not recall.

Senator MARK BISHOP—You do not recall. Can you take that on notice.

Senator Alston—Yes.

Senator MARK BISHOP—Do you recall whether it was written advice?

Senator Alston—No, I do recall that either.

Senator MARK BISHOP—Can you take that on notice.

Senator Alston—Yes.

Senator MARK BISHOP—When you put out the press release, was there also a written report that gave reasons for your decision?

Senator Alston—No, I do not think so.

Senator MARK BISHOP—Were there reasons for your decision?

Senator Alston—Yes, there were good reasons for my decision.

Senator MARK BISHOP—What were those good reasons?

Senator Alston—I do not think it does justice to the decision to try and have an imperfect recall months after the event. We are not obliged to provide reasons. The press release may have spelled out some reasons. I cannot recall. Beyond that, I do not think we would have prepared a formal schedule of reasons because there was no requirement to do it—people wanted the decision made, we made it and moved on.

Senator MARK BISHOP—Was there any other schedule of reasons or report prepared for you to sign off on apart from the press release?

Senator Alston—No, all I am saying is that the press release may have been the only place in which we gave reasons publicly. That is not to say that there were not good reasons that led to the decision, but we did not feel obligated to make them public.

Senator MARK BISHOP—I will ask it a different way. Did you have a formal recommendation from your advisers to that effect?

Senator Alston—You have asked me that three times and I do not recall whether there was any formal advice, if you mean in writing.

Senator MARK BISHOP—I mean in writing, in a properly argued brief coming to a set of recommendations—something saying, ‘Minister, you should recommend (a), (b) and (c).’

Senator Alston—I cannot recall now.

Senator MARK BISHOP—All we have got is a one-page press release.

Senator Alston—We do not normally give you the briefs.

Senator MARK BISHOP—No, but normally when you make a decision like that there is a report or the results of an inquiry.

Senator Alston—Not necessarily. The act requires you to make a decision. It assumes you will give it proper consideration. You do your best. You make a decision and you announce it. It does not seem to me to be—

Senator MARK BISHOP—Didn’t the act require you to organise an independent statutory review?

Senator Alston—No, that was my point. I think at an earlier stage we thought that it might be a good idea to let the thing go to the ABA and they could conduct an inquiry at their leisure. Given that there were people jumping up and down and saying that they wanted an urgent decision, we did not want to see months of uncertainty in the marketplace. We looked at it and came to the view that it did not require any third party advice or an inquiry. It was simply a matter of the minister forming a view, which he did.

Senator MARK BISHOP—We think there are reasons for the view but we are not sure—

Senator Alston—I can assure you there were reasons for the view. What you are asking me is whether I had any formal recommendations and I cannot recall that.

Senator MARK BISHOP—Thank you, Minister, for your attendance. That concludes my questions of you.

CHAIR—We will now deal with the National Gallery.

[8.32 p.m.]

National Gallery of Australia

Senator SCHACHT—Mr Froud, thank you for coming back this week. I understand that the director was available last week but is overseas this week.

Mr Froud—He is not available this week. He is overseas.

Senator SCHACHT—Obviously on positive business for the gallery.

Mr Froud—Yes.

Senator SCHACHT—I suspect that some of the questions I may ask about the director's performance you might have to take a raincheck on or take on notice, and that is fine. I may have to put a number of questions on notice, anyway, in view of the fact that the director is not available, and I would not expect Mr Froud to be able answer all of the questions that relate to the director's personal performance.

CHAIR—Thank you, Senator Schacht. I am not sure whether it is appropriate to question Mr Froud about the director's personal performance.

Senator SCHACHT—That is what I am saying. I am not; I cannot. I will put them on notice if I have questions of that nature.

CHAIR—I am sorry, I did not quite understand what you said.

Senator SCHACHT—I am trying to be very kind.

CHAIR—I am appreciative of that.

Senator SCHACHT—I would say some of these things even more strongly if the director were here because some of the issues that I think I would have raised directly relate to a number of controversies he has been involved in. I asked a number of questions last time and will ask some more this time. As a supporter of the National Gallery as our major institution in Australia collecting and maintaining art on behalf of the Australian people, I do not want to raise matters in a way that damages the long-term interests of the National Gallery and its performance as a national gallery with an international reputation. So there is always a difficulty with balancing questions about performance without actually raising things that may do some long-term damage. I hope I get the balance right, but away we go. You will remember, Mr Froud, that at the last estimates I asked a series of questions about the airconditioning system at the National Gallery.

Mr Froud—I do remember.

Senator SCHACHT—Who could ever forget? It must be the most famous airconditioning system in Australia—some of us would say for some of the wrong reasons, not the best reasons. I want to ask a number of questions about the answers you gave and, of course,

subsequent events that have occurred since last May. Since then you have had the Hennessy inquiry or report—an independent review. Is that correct?

Mr Froud—Correct.

Senator SCHACHT—And the gallery has accepted the recommendations and the thrust of the Hennessy report?

Mr Froud—Indeed.

Senator SCHACHT—I notice that you put out a press release on 11 October which, amongst other things, welcomed the report and said basically that most of the substantial and worrying criticisms that had been raised—some of them during estimates hearings—had been given a clean bill of health and that:

neither legionella nor Q fever were detected in the water samples.

I was greatly relieved to hear that, Mr Froud, because panic would have set in if it had been the opposite. The press release also stated:

... concerns about the use of hydrogen peroxide as a cleaning agent were not substantiated ...

and that:

... air quality results were within acceptable occupational health standards.

It goes on to say that there is a working party which:

... will be jointly chaired by the Gallery's Head of Planning and Facilities and the General Manager, Collection Services. They will be assisted by key building management and conservation staff.

Could you provide to this estimates committee the full membership of that?

Mr Froud—I could.

Senator SCHACHT—For the record, who is the National Gallery's Head of Planning and Facilities?

Mr Froud—That is Mr Phil Rees.

Senator SCHACHT—Oh, yes, Mr Rees performed before us last time.

Mr Froud—That is right.

Senator SCHACHT—You are not concerned, are you, that most of the people who had complaints made about maybe their performance with the airconditioning are now the ones implementing the Hennessy report?

Mr Froud—No, I am not concerned at all. The process that we have established was to look at the people who are most appropriately qualified within our organisation to consider the issues raised and to follow a process to ensure that the matters were adequately and properly considered and dealt with. So, in addition to the staff within the gallery we also have some external consultants that provide advice to that group as well.

Senator SCHACHT—Could you inform us who those consultants are?

Mr Froud—Certainly.

Senator SCHACHT—Now?

Mr Froud—We have mechanical engineers that have been working with us on the building refurbishment plans that have been under consideration for some time. Steensen Varming is

the mechanical engineering firm that have been doing that. We also have Mr Hennessey, of course. One of the recommendations made in the report was that there should be an independent audit and review of the work that was done and the actions taken as a consequence of issues raised. Mr Hennessey is also available to assist with that. He has already visited the gallery once, on 9 or 10 November as I recall, and, as the report recommends, he will make a further visit towards the end of January to assess progress three months on from the issue of the report.

Senator SCHACHT—Is he paid extra to do this consultancy work now, compared with the money he was paid for performing the review itself?

Mr Froud—Correct.

Senator SCHACHT—And what was the firm you named?

Mr Froud—Steensan Varming.

Senator SCHACHT—You mentioned that they had done previous work for you.

Mr Froud—Yes.

Senator SCHACHT—In the airconditioning area?

Mr Froud—Yes, they are mechanical engineers who have given advice.

Senator SCHACHT—In view of the fact that there has been a problem with the airconditioning, to say the least, is it appropriate that the people who provided that previous assistance and service are now employed to carry out the implementation of the Hennessey review?

Mr Froud—I think so. I understand—

Senator SCHACHT—There may be a conflict of interest.

Mr Froud—I understand the point of the question but, clearly, they also have a thorough knowledge of the gallery's operations. I recognise that the Hennessey report has identified a number of issues that the gallery needs to focus on. However, the report also confirmed, as you pointed out, that the—

Senator SCHACHT—That is what the press statement said.

Mr Froud—Okay. Sorry. What the press statement you quoted said—which was the findings from the report that Mr Hennessey made—was in fact that those allegations about those issues were not substantiated. As you are aware, the gallery has consistently made the point that it does not necessarily share the concerns that some do about the operations.

Senator SCHACHT—It was very clear from the director at the last hearings that you were not concerned—

Mr Froud—No, it is not to say that we are not concerned. We are concerned and obviously we want to act responsibly, but we think that the people who have been looking after the system have done a very good job in the circumstances. We are talking about plant that is approaching 20 years of age. I think we have done very well to have it operate and function as well as it has. There have been some elements of the system that have been repaired and replaced. There are other elements that require attention. That is certainly part of our plans and will be implemented over the next two years. We will certainly be giving a priority to addressing those airconditioning issues identified by Mr Hennessey in his report as soon as we possibly can.

Senator SCHACHT—The Hennessey report, in a number of ways, was reassurance on some of the real concerns some of us have raised here. When the Hennessey report was made available, was a copy of it sent to every employee of the gallery?

Mr Froud—No.

Senator SCHACHT—Who got copies of it?

Mr Froud—A copy, as I recall, was made available to the Occupational Health and Safety Committee and, through that, access to the staff in that representational sense. In fact, it might have even been made available more broadly. Can I take that on notice just to be clear about how it was—

Senator SCHACHT—Not only take it on notice but, may I suggest that, in view of the fact that the staff live in the airconditioned building and have every right to have some interest in the air that they are breathing, as well as our concern about the protection of the collection itself, it would not be a bad idea to send each staff member a copy of the Hennessey report. Could you take that suggestion on notice and respond?

Mr Froud—I will. We may well have done that, actually.

Senator SCHACHT—If you have done it—congratulations, well done. I would think that was a very good move. But, if you have not done it, I would suggest very strongly—

Mr Froud—As a consequence of issues raised at the last Senate estimates hearing, we have actually made a point of keeping staff informed and giving staff the opportunity to express views and concerns. I have to say that, generally speaking, the staff have been satisfied with the operations of the airconditioning system and the performance of the building. I, along with 270 others, trot up every work day—and we are open 364 days a year—and there have not been concerns expressed about the conditions on an ongoing basis by the staff.

Senator SCHACHT—I note what you say, Mr Froud. It has been suggested to me—and again it is only hearsay—that, in fact, there is an atmosphere of intimidation within the gallery and that some of the staff are not willing to step forward because they may get abused or they may think that their career is going to be affected. As I say, it is pure gossip, but an allegation that I would, in an estimates committee, think is reasonable to put on the record as maybe why you are not being flooded with people coming to your door saying that they are concerned. That is why I suggest you give everyone a copy to take home and read. If they really are concerned, they can have a chance in their own time to see the report. If they still have concerns, they can take it up with their occupational health and safety officer, with their union and, above all, with you, Mr Froud, and with Dr Kennedy. I think that transparency would be very useful.

Mr Froud—I think we actually have done a reasonable job of doing that, to be honest. I think that the staff of the gallery will have a view about what process has been followed. We have gone to some trouble to obviously address issues that were identified in the report about perceptions. We certainly have invited staff to comment about any issues that they thought were relevant. We have invited those views through the occupational health and safety committee, through managers, through union representation and through representatives to our gallery consultative committee. All of these forums have obviously discussed the airconditioning issue, and we have been quite deliberate in trying to encourage—and, I

believe, have been quite sensitive—any comments that anyone may have raised about related issues.

Senator SCHACHT—It is very encouraging to hear that you are sensitive. I notice on a page 64 in the annual report that there is a list of people who are guides to the gallery. Are they the full-time hospitality, curatorial and conservation staff?

Mr Froud—Those listed on page 63 and 64 are volunteers.

Senator SCHACHT—They are all volunteers?

Mr Froud—Yes. They volunteer in different areas.

Senator SCHACHT—Do you have a list of the full-time staff in the document?

Mr Froud—Yes.

Senator SCHACHT—Would you point out which page that is to me?

Mr Froud—Pages 35 through 37.

Senator SCHACHT—It is a large staff, as it should be. You would have no objection if I decided, as a senator, to run off copies of the transcript of the May hearings of the estimates for the National Gallery and for this hearing and mailed a copy to every one of these full-time employees so that they could read the transcript and see what is being said about their gallery.

Mr Froud—Yes.

Senator SCHACHT—I think I might do that actually, Mr Froud, so that there is full disclosure to the staff. Some might say I am an old style Maoist, I suppose, in worker control, but maybe that is a bit out of date these days. I think that would be a useful thing to do and I will organise to do that. Thank you for having no objection.

Mr Froud—Could I suggest that, as this was the staff listed at 30 June—

Senator SCHACHT—You will send me the updated one.

Mr Froud—I think it might be better.

Senator SCHACHT—Absolutely. I would be very pleased to do that. What I will do though, Mr Froud, is, if they have any queries about what was said, I will refer them to you rather than to me.

Mr Froud—Thank you.

Senator SCHACHT—But if they do want to take it up with me I suppose they will. Can I just go back to the issue of the airconditioning. I have to say at this stage, Mr Chairman, I could be here for three hours on some of these questions, which I do not want to be, so I will put a lot on notice. I noticed that the press release of the Hennessy report suggested that the use of peroxide was reasonable. Can you give me an idea why so much biocide and peroxide was used if there is no problem with the biological growth? As I understand it, there is material available about the purchase of one-third of a tonne of peroxide. That is a large amount.

Mr Froud—One-third of a tonne?

Senator SCHACHT—One-third of a tonne, I am told, was purchased on one docket. This amount was, and is, used every four months from the beginning before the first Comcare inspection. Is that correct?

Mr Froud—I would like to check the specifics, to be honest.

Senator SCHACHT—A third of a tonne of peroxide is a lot. I am no chemical person. I just thought peroxide was what Marilyn Monroe used on her hair with a couple of drops here and there.

Mr Froud—We were using peroxide in a concentration of one per cent for cleaning purposes. We have two 5,000 litre tanks, one 1,200 litre tank and another of 1,006 litres. In the four airconditioning tanks that we have within the system we would be using one per cent hydrogen peroxide on that cleaning basis. It does not sound like a third of a tonne to me.

Senator SCHACHT—That is why I raised it. I may have this wrong. I can assure you I am always cautious about information supplied.

Mr Froud—You did make the point that it was prior to the Comcare investigation.

Senator SCHACHT—What has happened since the Comcare investigation?

Mr Froud—We did change the cleaning regime—and we might have mentioned it at the last hearing—in that period February and March which coincided, to some extent, with the Comcare investigation, but was quite independent. The decision had been taken before that inspection to make that change to a system whereby we use a product that has a 50 per cent hydrogen peroxide component. We no longer purchase hydrogen peroxide and bring it into the building. We have changed to a contract arrangement where the contractor actually brings in the cleaning agent and undertakes the cleaning task.

Senator SCHACHT—Does he still use peroxide?

Mr Froud—Yes.

Senator SCHACHT—And there is still no concern that this amount of peroxide might damage the material of the paintings?

Mr Froud—No, and as the Hennessy report identifies from the independent testing that occurred, there is no difficulty with that. That, in fact, an appropriate cleaning process to follow and is used in many buildings thought to be state of the art.

Senator SCHACHT—And art galleries?

Mr Froud—State of the art.

Senator SCHACHT—State-of-the-art art galleries? I do not have the Hennessy report with me, unfortunately. Does Hennessy name those state-of-the-art art galleries using peroxide?

Mr Froud—No, he did not. I am saying that it is an accepted practice.

Senator SCHACHT—I am a reasonable man. Take it on notice that you will inform the committee which galleries around the world do use peroxide as a reasonable cleaning agent.

Mr Froud—We can ask galleries what cleaning agents they use. I would not necessarily see that that would inform you that hydrogen peroxide is or is not the most appropriate cleaning agent.

Senator SCHACHT—If someone told me that none of the other major galleries in the world that have similar collections use hydrogen peroxide, I would at least query it.

Mr Froud—The gallery had an extension opened in March 1998. We do not use hydrogen peroxide in cleaning that system because it is a different system, so it has a relationship also to the design, the age of the equipment and its operations.

Senator SCHACHT—I would still like you to take on notice: what other galleries, whether or not they have a similar airconditioning system to ours—and for their sake I hope they do not—use hydrogen peroxide.

Mr Froud—I will certainly take it on notice and ask the question.

Senator SCHACHT—I am sure that, with your good international contacts, Mr Froud, that would not be difficult to find out. Could you also find out which other art gallery in the world of the standing of our national gallery has an airconditioning system similar to the one we have. Do you know of any others that have the same system that we have operating now—that is over 20 years old and has problems of age if nothing else?

Mr Froud—I will ask the question as to the age of the equipment in different museums.

Senator SCHACHT—I understand from the previous hearing that in 1974 when the gallery was built—

Mr Froud—It opened in 1982.

Senator SCHACHT—When it was being built, Gough Whitlam announced the plans—

Mr Froud—The act of parliament that established it was during that period, but the planning and construction followed on.

Senator SCHACHT—So it is 18 years old. The planning to put the airconditioning in is 20 years old. Obviously, that was the state of the art at the time to achieve what it was.

Mr Froud—That is right.

Senator SCHACHT—Obviously none of us would disagree that it ain't the state-of-the-art anymore.

Mr Froud—Correct.

Senator SCHACHT—That then leads me to the question, which you referred to, about the high cost of maintenance. Where is the gallery at on the position of seeking to put a new airconditioning system in?

Mr Froud—Within the building refurbishment plans that I alluded to earlier, just on \$2 million would be the cost of the upgrade required within the building, given that there are some elements of the airconditioning system that have been the subject of attention over time. There are some others that require some attention now. There are some elements that will not require attention on an ongoing basis. This is the advice that has been given. I am not a mechanical engineer, but this is the advice that experts have provided. We would be looking at expending \$2.1 million—the estimate that we have received from our cost planner. Our intention is to expend this sum on the work that has been identified in the 2000-01, 2001-02 financial years. So, over the next 18 months to two years, this work would be undertaken.

Senator SCHACHT—At the end of it, would you still have to use hydrogen peroxide?

Mr Froud—We may well still use hydrogen peroxide as the cleaning agent because it is regarded as an acceptable agent to attend to that purpose.

Senator SCHACHT—We are not sure that any other gallery of a like size with a new system uses hydrogen peroxide.

Mr Froud—In saying a new system, we would not necessarily be replacing—

Senator SCHACHT—You are not going to put in a new system. You are going to upgrade and renovate the existing system.

Mr Froud—Yes, on the basis of the best technical advice that is available, having regard for the operations of the building and its purpose.

Senator SCHACHT—Mr Froud, in the Hennessy report there were a number of photographs taken. These were taken after there had been some effort to clean up the place and the airconditioning system. But, for example, photo 101 shows fresh air sponges left over from a previous maintenance contractor. There were spots on them. Does anyone know what those mouldy spots are? Are they a concern? You may take that on notice.

Mr Froud—I would need to.

Senator SCHACHT—I know. I just draw your attention to—

Mr Froud—Page 101?

Senator SCHACHT—Photo 101, photo 288—observations of dampness and possible mould on the wall in the gallery. Photo 106 shows a green stain on the coils. Does that indicate that some mould may be growing? Photo 280 is an observation of damp on the wall in the conservation area. There is clearly some mark on the wall. I am someone who has grown up in Adelaide where there are problems of salt damp in old buildings and I certainly know about how to recognise something going on on your wall, even though I am a non-technical person.

Mr Froud—We have plenty of water difficulties within the building, obviously, not necessarily related to the airconditioning system, but given the nature of the building and the construction. It is a solid concrete mass. Given the temperature extremes, particularly in winter in Canberra, we observe, and have observed ever since we opened the building, that we have significant difficulties with moisture inside the building, because of the relative humidity conditions that we maintain internally.

Senator SCHACHT—So, because of the higher humidity level than normal—

Mr Froud—Correct.

Senator SCHACHT—that creates—

Mr Froud—There is no vacuum. It is a solid concrete construction.

Senator SCHACHT—Fine. I understand, with the wisdom of hindsight, that there may be a design problem—too much concrete and the problems of dampness and so on. It is a pretty concrete-looking building, if I remember correctly. Photo 104 and photo 105—they are just samples that I think give a cross-section from the Hennessy report and I would like your response to those.

About the dampness or the issue of humidity, which I understand you have to maintain at a level for the protection of the collection: surely all galleries around the world of a similar nature also have to have similar levels of humidity to preserve collections. Do they have the same problem with mould on the walls?

Mr Froud—I would not necessarily know.

Senator SCHACHT—Or dampness?

Mr Froud—Dampness? I think not. I think that what we have is a combination of things in terms of the internal dampness in our building, which has been obviously identified over a number of years and has been the subject of a number of studies. In fact, one of the issues that Mr Hennessy proposes is that, with regard to condensation issues within the building, we look to pursue solutions that have been identified by other experts previously, which is something that is obviously ongoing.

I think what is particularly important to recognise is that we have some unique circumstances with that particular building. There are climatic issues for us because of the temperature extremes. These issues of dampness tend to be of concern to us only in the deep of winter. As I understand it, it is when the external temperature drops below seven degrees Celsius that the conditions internally and externally combine to create a moisture problem for us. The stains that might be seen on walls and so on are a product of that period of time. It is something that we are doing things about. We received some funding a couple of years ago to address some of those water ingress issues and we have been active in addressing some of those condensation issues over a couple of years now.

Senator SCHACHT—On page 32 of the Hennessy report he comments:

During the course of our investigation we were advised by a number of NGA personnel that there was a perception that reporting building related problems might reflect badly on themselves, and that even when problems were reported, they would often not be properly investigated.

It goes on:

With regards to the problem investigation allegation we were unable to determine the validity of this, due in part to the lack of a proper building complaints documentation system.

I have two questions. Firstly, how do you respond to the perception that if staff report problems it might reflect on, obviously, their future career or their standing within the gallery? Secondly, have you implemented, or are you implementing, a decent building complaints documentation system?

Mr Froud—Taking the former, certainly perceptions need to be managed. That was an issue for us when reading that report. Whilst I do believe—and the report indicates this—that there was no evidence that issues reported were not addressed, there was this perception that there may be a difficulty in reporting matters. That obviously is a matter of significant concern to us and is something that we wanted to address. The working party has already addressed each of the issues identified by Mr Hennessy. Maybe I could start by summarising. We have 36 action items that have been identified—six of which have already been completed, 18 are in progress and 12 need further work. On that particular issue, with regard to establishing that central database—which is what has been suggested—we have already commenced investigations into developing a simple database and an electronic request form that will have 360-degree obligations. So that there is a report back to the person who raises it, identifying what has been done by whom and, when the action is complete, whether it has been investigated and found to be significant and something is being done or, if there was no substance to the concern—or not so much to the concern, but to the issue identified—

Senator SCHACHT—Have you explained this to the staff already, that there will be this transparent, open building complaints documentation system?

Mr Froud—Yes. One of the ways that we have been dealing with this is through our gallery consultative committee and the occupational health and safety committee. Those two committees obviously have been established to assist communication. They have particular responsibilities—associated with relations between gallery management and staff, in the case of the consultative committee, and associated with environmental issues or issues associated with the environment of the gallery, in the case of the occupational health and safety committee. Yes, they have been advised of actions that have been taken. This is something that we will continue to work on. We actually have our IT people and building services people looking at it. The solution is not immediately available so as to run down and buy a shelf system and implement it. We are looking at how we can best address this and introduce it within the platform and the framework of our IT internal structure. That is certainly being looked at at the moment.

Senator SCHACHT—But it has not actually been implemented yet?

Mr Froud—No.

Senator SCHACHT—It is not working yet?

Mr Froud—No, it is not working yet, but what we have done, and what we did have in place before that, is a security fitness report form. We actually had a reporting mechanism that enabled issues to be identified, even though this was, in fact—

Senator SCHACHT—That is good to hear. Just out of curiosity, in view of the ongoing controversy about the airconditioning, can you tell me how many of those security—what did you call them?

Mr Froud—Fitness report forms.

Senator SCHACHT—How many of those were lodged in 1999 and how many have been lodged so far in 2000?

Mr Froud—I will take that on notice, if I may. I do not know.

Senator SCHACHT—When people lodge them, they describe what they are concerned about and what they have seen, sign off as to who they are and put it in to?

Mr Froud—To the security control room, which is manned 24 hours a day, 365 days a year, or 366 in a leap year, so that is a constant point of reference. Given that an issue might be identified at any time by a number of different sources, that was seen to be the most logical place for notification. That can be by somebody ringing up, the report is taken and recorded at that point, and then the message is then passed on to the appropriate officer. That system was in place and has operated for some time.

Senator SCHACHT—Why, then, would he say that when problems were reported they would often not be properly investigated? Obviously that system was not working.

Mr Froud—Sorry, what page is that?

Senator SCHACHT—Page 32 of the Hennessy report. It is halfway down, under the subheading, 'Reporting of building related problems'. Clearly he is concerned that the present system that you just described is not working.

Mr Froud—Correct, so we need to do better than the present system. We know that.

Senator SCHACHT—So what you have just described to me was not working?

Mr Froud—Agreed.

Senator SCHACHT—Why wasn't it working?

Mr Froud—I do not know. You are talking about a perception—

Senator SCHACHT—A perception? People might have been afraid to fill it in?

Mr Froud—I would have assumed that the system was working. If I ever reported something—

Senator SCHACHT—But you are the deputy director—

Mr Froud—Correct.

Senator SCHACHT—If you report something—

Mr Froud—It would be a bit crook if it did not happen.

Senator SCHACHT—you are in a better position than most of us poor rank and file members to get a good outcome.

Mr Froud—I understand that. But I have to say that this report about this issue, about perception, is obviously something that we really want to address, that we take very seriously and we are addressing.

Senator SCHACHT—You will take on notice how many of those were lodged in the last couple of years and you will also take on notice how you are consulting with the workforce about the adoption of the new system?

Mr Froud—Yes.

Senator SCHACHT—By the time we meet again at an estimates hearing, which will be in mid-February, you may have given us an update on the recommendations of Hennessy—there were 32, weren't there?

Mr Froud—Thirty-six.

Senator SCHACHT—How many have been implemented; what course of action has been taken? It would be very useful to have those lodged, say, three or four weeks before we actually meet. I do not want to get ambushed on the night.

Mr Froud—Okay. We have Mr Hennessy at this stage—

Senator SCHACHT—In fact, you can bring Mr Hennessy to the hearing—that would be most useful.

Mr Froud—We will put that suggestion to Mr Hennessy. He might have another view.

Senator SCHACHT—We have no objection to Mr Hennessy appearing, and I hope the Gallery has no objection to Mr Hennessy appearing.

Mr Froud—We expect Mr Hennessy will be back with us in January.

Senator SCHACHT—As he is being paid he should perform.

Mr Froud—He will need to provide his report to us. I imagine that that would probably be early February, so it might be most useful if, in fact, his report was the document that was made available to the committee before the hearing.

Senator SCHACHT—Okay. At the moment I will not ask that you bring along the mechanical engineers whose name I cannot pronounce, but we will wait for that. I have a couple of other questions on this matter of the airconditioning, but I will be putting a series of

questions on notice because I do not want to take up your time now and also the time of the committee. Mr Chairman, can I have until close of business on Monday to lodge questions? Tomorrow is going to be a hectic day in the Senate, so could I have until five o'clock on Monday?

CHAIR—Of course, no problem.

Senator SCHACHT—Thank you. I raised at the last meeting—and I do not want to labour this point—the reasons Mr Brian Cropp was not appointed. You commented that you did not think it was appropriate to comment about the personal details of a private nature about—as you described—‘a former contractor’. That is in the answer to my question. I said that Mr Cropp had spoken to me and he had no concern about the matters being raised with his name. I have been advised by Mr Cropp that he informed, on 10 November, the director of the gallery that he has no objection. This was originally in an email to Mr Kennedy, signed by Mr Cropp and addressed ‘To whom it may concern’. Do you accept that now?

Mr Froud—Yes, I do.

Senator SCHACHT—The only thing I wish to raise is that Mr Cropp was certainly recommended by the selection panel. That is correct?

Mr Froud—Yes.

Senator SCHACHT—His appointment was rejected by Mr Rees, who is the head of planning and facilities. Is that correct?

Mr Froud—In fact, I was the delegate who took the decision. It was my decision to take. Mr Rees did provide advice, along with the selection panel.

Senator SCHACHT—So this is your comment, is it? It says:

I have a concern that, due to events in recent weeks in relation to HVAC systems, Brian’s ability to work effectively as a member of the HVAC team has been compromised and is irreconcilable. He has said to me that he believes our HVAC system is, in effect, in a very poor condition, even dangerous. I believe his belief would render it unwise to involve him in the HVAC maintenance. As head of the department, I find myself in the position of not being able to support the recommendation of the selection panel in this instance.

Is that you or Mr Rees?

Mr Froud—That is Mr Rees.

Senator SCHACHT—And you supported that?

Mr Froud—No, that was the advice that he gave to me. What I did was consult—it was an unusual recommendation, I must say.

Senator SCHACHT—Unusual? I am pleased you used that word.

Mr Froud—Normally, selection panels make recommendations and there is no contrary view. On this occasion, this was an unusual circumstance, and I was invited to obviously take a decision with advice, firstly, from the selection panel and, secondly, from Mr Rees. I did, in fact, ask the selection panel and Mr Rees to meet with me prior to the decision being taken. That afforded me an opportunity to talk to the selection panel and to have regard for the advice that was before me. Given that I was acting within the authority that had been delegated to me by the gallery council to take decisions of this kind, I did take the decision and, in the circumstances, agreed to the appointment of a person other than Mr Cropp.

Senator SCHACHT—I notice from the information I have been provided that in the selection criteria assessment from the committee Mr Cropp got on criterion 1 an overall rating of A, on criterion 2 an overall rating of A, on criterion 3 an overall rating of B and on criterion 4 an overall rating of B. It says:

Mr Cropp's application was very well written and effectively detailed his employment history and very good claims against the criteria. At the interview Mr Cropp demonstrated an excellent knowledge against those criteria. The committee considered that Mr Cropp is a highly skilled tradesman with an exceptional knowledge of exhibition display work and building maintenance. Mr Cropp's referees confirmed the committee's assessment that he be rated as highly suitable for this position.

You mentioned Mr Rees—he is the bloke who wrote that. Is he available—is Mr Rees in the room?

Mr Froud—Yes.

Senator SCHACHT—Could he come to the table and answer this question?

Mr Froud—Actually, I took the decision.

Senator SCHACHT—But I want to ask him—

Mr Froud—It is my decision to take advice. You are quoting from a selection report, and I must say that—

Senator SCHACHT—I had the permission of Mr Cropp to do that.

Mr Froud—Yes, that is fine. But I have available—

Senator SCHACHT—In fact, I can see why he wanted it published, because it gives him a good pat on the back, and I do not blame him.

Mr Froud—Absolutely. But I had available to me, in taking the decision, information about all of the applicants. Mr Cropp had worked for the gallery over a number of years in a contract capacity. He is well regarded as a very competent fitter. His capacities are not in question at all. He did some excellent work for us. He is an extremely innovative and creative person. The issue raised was about the most appropriate decision for the National Gallery in terms of appointing somebody who would work within our environment, with our team, to do the job that was needed.

Senator SCHACHT—Congratulations, Sir Humphrey—a wonderful answer.

Mr Froud—Thank you.

Senator SCHACHT—I have to say that is brilliant. I am forwarding that to Christopher Jay for the next episode of *Yes, Minister*. That is a wonderful answer, but it does not respond to the fact that Mr Cropp was clearly the best candidate by the selection committee—a selection committee made up of people who had knowledge of what the position required. Out of the blue, over the top of the selection panel, because he apparently has a disagreement about the operation of the airconditioning system and has concerns about its maintenance, Mr Rees makes this comment:

I believe his beliefs would render it unwise to involve him in HVAC maintenance.

I would have thought he was the first bloke you would have employed. He actually has a commitment to making sure it is safe, not the other way round.

Mr Froud—I resent the inference that the staff that are actually doing the job do not have that commitment.

Senator SCHACHT—You have endorsed the words of Mr Rees, and I admire the fact that you have accepted responsibility for them and have not automatically passed it down and kicked Mr Rees and said it was all his fault. You have accepted responsibility, and I admire that. But I have to say it is an extraordinary thing for him to do. Next, I want to ask: was Mr Cropp informed of this assessment by Mr Rees that you have endorsed—that it would be unwise to involve him?

Mr Froud—I am not sure precisely what advice Mr Cropp received, but Mr Rees did speak with Mr Cropp following my decision. In fact, that was not the only reason. There were two issues that I was particularly concerned about in taking this decision. You made the point that the selection advisory committee had expertise to make assessments; so did Mr Rees and so did I. A judgment needed to be made, and I put my hand up. That was my judgment, and my judgment is the one that is on the line. I believe it was the right decision for the organisation.

Senator SCHACHT—I admire you for defending it unequivocally, but I have to say that it gives an impression that the person was not appointed because he had concerns about the operation of the airconditioning in terms of the gallery's collection and the occupational health and safety of the other staff.

Mr Froud—That really is not the issue. The issue that was raised for me was that Mr Cropp's ability to operate and contribute as a team member was an issue of some significance. We are a relatively small organisation, and we rely on groups of people working harmoniously. There were two issues that were under review regarding the recommendation that had been made by the selection advisory panel. I have indicated to you that I did invite the selection advisory panel to come and talk to me. We did talk through the issues, and then I took the decision.

Senator SCHACHT—When you discussed this with them, did they still stand by their recommendation?

Mr Froud—I believe they were supportive of my decision.

Senator SCHACHT—Were most of the selection panel subordinate employees of the gallery?

Mr Froud—They were all employees of the gallery.

Senator SCHACHT—In positions lower than you and Mr Rees?

Mr Froud—Correct.

Senator SCHACHT—The perception we have, recognised by the Hennessy report, is that some people would probably have been nervous about standing up and arguing with their superiors on such an issue. It may be true that Mr Cropp is an argumentative person. He may have a personality that creates some dissension. That may be true. But, on the fundamental issue of technical expertise, he seems to be ahead on points. I have to say that he did not get the job for the wrong reasons. That is my perception now.

Mr Froud—I understand your perception. You have made the point. I have to say a decision was taken and the decision was taken on information available. I believe it was the right decision.

Senator SCHACHT—We will just agree to disagree. I think I have raised the point. I want to turn to the issue of the employment of Mr Jason Robinson. I asked questions about whether he had been involved in electrical work when he is not a qualified electrician.

Mr Froud—Yes.

Senator SCHACHT—The answer you gave on notice implied that:

Following the recent resignation of the trade's assistant, the structure of the HVAC maintenance cell has been reviewed. The position of a trade assistant has been deleted and a position of HVAC office has been created. The occupant of this position possesses appropriate trade qualifications ... He was not required or directed to do any work requiring formal electrical qualifications in switchboards.

I have had information given to me that for the exhibition 'From Russia With Love' he was involved in using the scissors lift, which he did not have a licence for; and he had also been involved in doing work on 240-volt and three-phase 410-volt electrical work. Do you have any evidence of that, Mr Froud?

Mr Froud—No.

Senator SCHACHT—It has been brought to my attention that during the installation of the exhibitions *Beauty and Desire in the Edo period* in June 1998, and *Wall to Wall* in early October 1999, people observed Jason Robinson working on the 240-volt lighting system under the direction of Tava Sitauti. The person who observed this remembers the *Beauty and Desire* installation well because of the abusive language Tava was using in directing Jason and others. Is Mr Sitauti still employed?

Mr Froud—He certainly is, and doing a great job.

Senator SCHACHT—Can you ask him to confirm or comment that Jason was doing the 240-volt lighting system under his direction without electrical qualifications?

Mr Froud—We will gladly check that.

Senator SCHACHT—Was it true that at one stage, which even the Hennessy report found, carpets were stored in the airconditioning duct?

Mr Froud—Yes.

Senator SCHACHT—Isn't it a strange place to store carpet?

Mr Froud—Yes, I think so.

Senator SCHACHT—Why was it stored there?

Mr Froud—I certainly do not know why it was stored there. It is certainly not there any longer.

Senator SCHACHT—How long was it there for?

Mr Froud—I do not know.

Senator SCHACHT—Can you find out?

Mr Froud—I certainly can. Can I just explain one issue about the gallery's airconditioning system? The return air spaces are very large spaces.

Senator SCHACHT—We had that discussion last time.

Mr Froud—So there are infinite numbers of carpet and other material, like the carpet in this room, that is part and parcel of the return air duct.

Senator SCHACHT—I do not think that is the point. The point that was made to me was that the carpet was actually in a duct that should have nothing else in it.

Mr Froud—I do not believe it was a duct. I believe it was a return air area.

Senator SCHACHT—Do you mean a return air area has a room with carpet and chairs?

Mr Froud—No. I believe it was a roll of carpet that we are talking about.

Senator SCHACHT—It does seem sloppy when something as sensitive to an art gallery as its airconditioning system has a dirty rolled up carpet put in an area where the air that is circulating is going to go through it or past it. It just seems odd to me. Has anyone found out who put it there and why?

Mr Froud—No.

Senator SCHACHT—I suggest you might go and check. Is Mr Hennessy's report dealing with these issues?

Mr Froud—It was identified by Mr Hennessy.

Senator SCHACHT—And, as a result, have we now put in procedures so that people will not use what you call the passageways for the air—they will not be used as storerooms?

Mr Froud—I must say my immediate response was something similar to yours. It was to say, surely these objects have now been removed and we don't have materials of this kind within the return air passage.

Senator SCHACHT—Good.

Mr Froud—But I have been advised that we have to understand the way in which the gallery operates.

Senator SCHACHT—That is what we are trying to understand and that is what we are a bit alarmed about.

Mr Froud—Indeed. But I am happy to take on notice the issue you have raised.

Senator SCHACHT—Could you also check whether any staff member complained about the storage of the carpet before Mr Hennessy said it should be removed?

Mr Froud—I would be happy to do that, too.

Senator SCHACHT—Just check whether even the dreaded Mr Cropp complained about it.

Mr Froud—Yes.

Senator SCHACHT—Are there any issues relating to asbestos that Mr Hennessy identified?

Mr Froud—Not to my knowledge.

Senator SCHACHT—No asbestos related material in the airconditioning system?

Mr Froud—No.

Senator SCHACHT—Are you sure?

Mr Froud—I would be happy to check.

Senator SCHACHT—I would appreciate it if you would. There will be further questions on the airconditioning system but time is moving on and I have to get to some other issues. I have some notes here about asbestos. Page 23 of the Hennessy report says:

We did note instances where carpet was being stored and the external fibreglass installation (on a supply air duct) was being exposed to the air streams. *Materials should not be stored in return air tunnels, so all carpets etc should be removed, and procedures instigated to stop future instances. Damaged fibreglass insulation on ductwork etc located within the return air tunnels should be properly sealed/repaired.*

Mr Froud—So it is not asbestos. You are talking about fibreglass.

Senator SCHACHT—Okay, not asbestos. My mistake. When people are building fibreglass boats, when I have been at those places, they seem to wear a lot of protection equipment, masks et cetera. That would be correct wouldn't it?

Mr Froud—That would be right, yes.

Senator SCHACHT—Indicating that fibreglass is a dangerous substance if the particles are floating around in the air. Would that be correct?

Mr Froud—I have done some fibreglassing myself.

Senator SCHACHT—Then you appreciate this. You will take that on notice?

Mr Froud—On the issue you raised about fibreglass, there are, in fact, two inquiries that Comcare conducted with the gallery. One of them actually does relate to fibreglass, so perhaps it is covered by that inquiry.

Senator SCHACHT—So that is covered by that inquiry—not by the Hennessy report?

Mr Froud—No.

Senator SCHACHT—The working party set up for Hennessy is not dealing with the issue of fibreglass?

Mr Froud—There are two matters that are the subject of a Comcare investigation that is still continuing, and on those issues, of course, we await the advice from Comcare.

Senator SCHACHT—I turn to another matter altogether, Mr Froud. You provided me with an answer about legal expenses. In 1997-98 they were \$91,000; 1998-99, \$99,000; and in 1999-2000, \$222,000.

Mr Froud—Correct.

Senator SCHACHT—That is two or three good paintings of a well-qualified, well-noted Australian artist you could purchase for the collection, I would have thought, rather than putting it into lawyers' pockets. Maybe I am biased against lawyers but I do not think they add much to the cultural activity of Australia. Why the big jump?

Mr Froud—The principal issue, as we identified in the information provided with the questions on notice, was that there was an action that the gallery was involved in in defending or responding to action taken by a former employee which related to the dismissal of that employee.

Senator SCHACHT—And they got a settlement of \$110,000; is that correct?

Mr Froud—No, the \$110,000 did include a settlement sum but also for legal expenses incurred. In fact, on that particular matter, at all stages the National Gallery followed the advice that we received from our lawyers. We were advised that it was appropriate—

Senator SCHACHT—But lawyers always advise you to keep suing, keep fighting, because they get a percentage of whatever you are spending.

Mr Froud—Indeed, and—

CHAIR—I think you should give Mr Froud the opportunity to reply.

Senator SCHACHT—I am sorry, Mr Chairman. My enthusiasm is contagious at times.

CHAIR—Yes, but let us hear the answer.

Mr Froud—I must say that, despite the encouragement from our legal advisers, the gallery finally took a decision that we did not want to continue with this matter and therefore settled it.

Senator SCHACHT—Phew! Thank you. So you saved yourselves some money, maybe?

Mr Froud—Maybe.

Senator SCHACHT—That is the first one listed. The second one is, ‘Settlement of proposed action against NGA by employee: \$35,000.’ Is that the same action: you tried to fight it and then gave in?

Mr Froud—No, this was a different situation. This was an employee who was aggrieved about some issues and was planning to take action to a number of forums. We felt that we did not want to become involved in an action and a process that would run on for some time and, particularly informed by the outcome of the other matter, we settled that matter in discussion with the other employee, who is now a former employee.

Senator SCHACHT—Do these things reflect the fact that there were an extra large number of separations and people leaving the gallery in the last 18 months? It was a pretty substantial turnover, wasn’t it?

Mr Froud—It is interesting. The gallery has had a pretty significant turnover of staff, although, in fact, we have had a significant turnover of staff over a number of years—I think it is the nature of the organisation.

Senator SCHACHT—But not as much as you have had recently. Is that true, Mr Froud?

Mr Froud—No, that is not the case actually. We anticipated that there might be some interest in that, so we have recently looked at separations and looked at the numbers of people who have left the organisation in the last couple of years. We have looked comparatively at years past and, whilst the numbers are significant, they are no different to the previous period.

Senator SCHACHT—I think you supplied the evidence last time—and perhaps you should take it on notice—which showed a substantial increase in people leaving.

Mr Froud—No, I do not believe so. I believe that what we were saying was that we were providing some comparative information which indicated that it was similar to the previous period that we were looking at.

Senator SCHACHT—Perhaps you had better take it on notice then. I do not think that is how I saw it.

Mr Froud—I will provide you with that information as well.

Senator SCHACHT—What is this, ‘Advice regarding tenders and licence for catering: \$34,000’? What happened, did something go wrong with a tender?

Mr Froud—We went to a new arrangement—a different catering licence arrangement—and the costs associated with the advice received and for establishing the contract with service level agreements and the like was that sum. But I think it will be a good contract over time and I think it will be in the interests of the gallery in the fullness of time.

Senator SCHACHT—So, we will get good pies and pasties down at the National Gallery?

Mr Froud—We will get a good return in terms of the return from the licensing arrangement that has been struck.

Senator SCHACHT—And the consumers will get good pies, pasties, sandwiches and cups of coffee?

Mr Froud—Consumers will get good quality food across the board.

Senator SCHACHT—Very good. Did the national art gallery assist in any way any financial settlements that Mr Kennedy has had since he has been in the job?

Mr Froud—I am not quite sure that I understand the question.

Senator SCHACHT—Quite simply, has Mr Kennedy, on any issue that has come up since he has been involved as the director, called on and received the assistance of the gallery in paying his legal costs?

Mr Froud—I do not believe so but I would like to take it on notice to be clear.

Senator SCHACHT—Thank you. Is it true that this year alone the following people have left: the head of exhibitions, the head of Australian art, the head of security, the head of registration, the head of publication, the head of personnel and the head of finance?

Mr Froud—Most of them are right.

Senator SCHACHT—Which one wasn’t?

Mr Froud—I think you said the head of registration.

Senator SCHACHT—That person did not leave.

Mr Froud—That person was promoted within the organisation.

Senator SCHACHT—But the others left?

Mr Froud—To be honest, you moved a bit quick for me.

Senator SCHACHT—I will go through them: the head of exhibitions—I do not know whether I have this right.

Mr Froud—Head of exhibitions, yes.

Senator SCHACHT—Head of Australian art?

Mr Froud—Yes.

Senator SCHACHT—Head of security?

Mr Froud—Yes.

Senator SCHACHT—Head of registrations you have just explained. Head of publication?

Mr Froud—Yes.

Senator SCHACHT—Head of personnel?

Mr Froud—Yes.

Senator SCHACHT—Head of finance?

Mr Froud—Yes.

Senator SCHACHT—They are pretty senior positions. In the last 10 years, have that many heads left the art gallery in one year?

Mr Froud—As I said before, I would be happy to provide information about the departures, and you can certainly analyse them. I have to say that an organisation like the National Gallery encourages people who have done a very good job in our organisation. We do not stand in their way if they want to be promoted to other organisations. That is in fact the case with most of those people.

Senator SCHACHT—That is a good policy to have. I hope it does not completely wreck the institutional memory of the organisation. I understand the points that you make. I think in one year that is a pretty big change. That leads me to the position of the head of Australian art. Is that Mr McDonald?

Mr Froud—Correct.

Senator SCHACHT—He was appointed 12 months ago and, I have to say, with some considerable controversy.

Mr Froud—Indeed.

Senator SCHACHT—There were letters to the editor, petitions and so on. I just accepted that as part of the vigorous debate in the Australian art community—no matter whom you appoint there is always going to be someone out with an axe to knock them over or have a disagreement. So I just took that as part of the debate and so on. Mr Kennedy strongly defended his appointment at the time. Now, about 12 months later, I find that there are press stories appearing that he is leaving the position as head of Australian art but will continue in some capacity with the *Federation* exhibition. Is that correct?

Mr Froud—That is correct.

Senator SCHACHT—Will he be paid the same salary to be in charge of the *Federation* exhibition for, I presume, all of next year, which is our Federation year?

Mr Froud—Yes, and into the year 2002—the touring of the exhibition.

Senator SCHACHT—So he will tour.

Mr Froud—It is associated with the national tour of the exhibition. The answer to your question is: no, he won't be paid.

Senator SCHACHT—It will be at a different rate?

Mr Froud—Correct.

Senator SCHACHT—When will the gallery call for applications?

Mr Froud—It has.

Senator SCHACHT—For head of Australian art?

Mr Froud—It has and the applications have been received and the interviews are in fact scheduled for the week after next.

Senator SCHACHT—As I say, I do not pretend to have a complete knowledge or understanding of the art world or the controversies and the passions that go around, but you would have to think that it was a bit odd that he only lasted a year.

Mr Froud—It was Mr McDonald's decision to move on, and sometimes that is the way it goes; that is the way it works. I think it was the right appointment. I believe that the gallery took the right decision in offering the position to Mr McDonald. It was Mr McDonald's decision half-way through this year. He thought with the benefit of experience gained that he wanted to do other things after concluding his involvement with the *Federation* exhibition. Certainly in terms of the preparation of the exhibition for display at the National Gallery—it opens on 8 December and looks like being a very good show—

Senator SCHACHT—We certainly hope so.

Mr Froud—You bet. He will remain involved with and be available to assist us with the national tour of the exhibition.

Senator SCHACHT—When he tendered his resignation, did he give any reason for his resignation after only a year?

Mr Froud—Yes, he did indicate that. In fact, there was a public statement, as I recall, made at the time that he wanted to pursue other interests and other activities, including a commercial venture that he was looking at at the time.

Senator SCHACHT—Has the council itself discussed the range of this quite significant increase in people leaving the gallery—in particular, Mr McDonald's appointment which they supported and 12 months later are faced with him leaving? Has the council sought a view from Mr McDonald of why he is leaving after only 12 months?

Mr Froud—I believe the matter has been discussed by the council, yes.

Senator SCHACHT—Just take these on notice, because they are matters, sometimes, of confidence and of people's personal reasons: can you get the council to supply us with their views about the appointment lasting only a year, and do they have any knowledge of why or reasons to express concern that after only a year the most significant appointment came to an end?

Mr Froud—I do not know whether the views of the council have been documented in any gallery records or whether, in fact, the council are prepared to provide information regarding their views.

Senator SCHACHT—That is their privilege.

Mr Froud—Exactly. What I can say is that, obviously, the gallery was disappointed that things did not work out as well as we hoped they would, but I think there is a resignation and acceptance of the fact that that is the way it goes sometimes.

Senator SCHACHT—Did Mr Kennedy express sorrow or disappointment that the person who he appointed with great fanfare lasted less than 12 months?

Mr Froud—I believe he did. It was not less than 12 months, by the way. He actually started in September, so it was just over 12 months.

Senator SCHACHT—He got 13 months. There are press speculations that in the end Mr Kennedy and Mr McDonald did not get on. Is there any evidence of that in the record of his resignation letter?

Mr Froud—No, I do not believe so.

Senator SCHACHT—It is a question that in February I might pursue with Mr Kennedy directly—so he can be forewarned. The next issue is the *Book of Kells* exhibition. In May, I had a discussion with Mr Kennedy about the letter he wrote over the *Sensation* cancellation where he admitted that a letter he had written to his minister—and I think he might have used a phrase which some of us mere politicians had trouble getting a grip on—was ‘infelicitous’ or something. Does he now believe that the letter he wrote to the Irish minister for the arts was ‘infelicitous’?

Mr Froud—I could not comment on that.

Senator SCHACHT—You might put that on notice: when Mr Kennedy appears in February I will ask these questions. Does Mr Kennedy think it is about time he had someone tell him to count to 10 before he puts pen to paper and sends a letter off?

CHAIR—I do not think you can ask Mr Froud to speculate about Mr Kennedy’s views.

Senator SCHACHT—I accept that, but every time Mr Kennedy writes a letter the gallery seems to end up in controversy and then there has to be an abject apology.

CHAIR—But I do not think you can ask Mr Froud to read Mr Kennedy’s mind.

Senator TCHEN—I believe he is actually ‘Dr’ Kennedy.

Senator SCHACHT—‘Dr’ Kennedy, goodness me. I do not think Mr Kennedy is going to be too upset. In fact, last time he said to call him ‘Brian’. I do not expect everyone to call me ‘Senator’. Anyway, it is Dr Kennedy, for those of us who are pompous. I just want to put those questions on notice, but I take the point that they have to be asked of Mr Kennedy. In the handling of the *Book of Kells*, did the Irish government and its organisations—I forget the name of the one that had the *Book of Kells*—at any stage express concern about the way the *Book of Kells* as an exhibit was handled, protected and guaranteed?

Mr Froud—No, I do not believe so. They were very happy.

Senator SCHACHT—Just going from memory of press reports, there was an item from a gallery of some note from Papua New Guinea that went to Egypt. I forget the name of it; I should have made a better note.

Mr Froud—Are you talking about the Ambum Stone?

Senator SCHACHT—Thank you very much, Mr Froud, you have been most helpful so that I do not make more of a clown of myself. The Ambum Stone was sent where?

Mr Froud—It went to France—to Marseilles.

Senator SCHACHT—I understand it was damaged.

Mr Froud—Correct.

Senator SCHACHT—Has the gallery conducted a review of its procedures to ensure that in the future such a valuable exhibit or item is not put at risk by mishandling by a gallery or an organisation in another country.

Mr Froud—In the specific case of the Ambum Stone there was a request for the gallery to lend this object. It is an object of some significance that we are very concerned to protect. During the period that that object was in the possession of the borrowing institution it was damaged. We had the director of the museum visit us here in Canberra recently, and apologise

for and explain the circumstances associated with the damage. The work has been the subject of careful conservation assessment and it has been restored by our conservation staff and is back on public display. I must say it looks rather splendid still. Nonetheless, it is an issue of concern.

To address the question, yes, we have looked at what should we do about these issues. We are looking very carefully at any significant works and whether they in fact should be loaned. We probably will, as a consequence of this, be more conservative with our lending, particularly of those more precious and fragile objects.

Senator SCHACHT—When the item was sent to France, was it accompanied by representatives from the National Gallery who have the curatorial skill and ability to understand how it should be handled, displayed and prepared for display?

Mr Froud—It was actually accompanied by a courier, not from the National Gallery but from another institution.

Senator SCHACHT—Which institution?

Mr Froud—Allow me to check. It was a Sydney based institution.

Senator SCHACHT—Something to do with the art world, I hope?

Mr Froud—Indeed, and there was more than one object loaned by Australia for this exhibition. We agreed because the conservators who would normally accompany this work were already overseas engaged in other activities on behalf of the gallery. It was unusual for us to agree to that, because we usually insist on only our own staff to courier and escort a work. But I have to say that the work had been received, had travelled satisfactorily, had been installed and was seen to be in its display case and in final display mode when the courier felt that they had satisfactorily and professionally discharged their obligations and then left. It was the following day, under the authority of the director, that an employee of the museum opened the display case to do something within the case to another object that was also on display. He apparently had a pair of pliers on his belt and unwittingly—

Senator SCHACHT—His name was Groucho Marx, I suppose?

Mr Froud—clipped the work and it fell on the floor and was broken. But I do not believe, even if the National Gallery's conservators who we had identified had accompanied that work to that institution, that anything would have been different. It had safely travelled, it had been signed off as being on display in an appropriate manner and the understanding was that the case would not be reopened.

Senator SCHACHT—Were you short of conservators because a number of them had resigned and left the gallery?

Mr Froud—No.

Senator SCHACHT—You had a full complement of conservators?

Mr Froud—Yes we do. The object's conservators would normally be the people who looked after that, but I believe it was at the time our Aboriginal art exhibition was in Russia and, as I recall, our conservators were engaged in matters associated with that exhibition and its collection for return.

Senator SCHACHT—I would like a comment about what practice you are going to put in place in the future. I accept that you might say that the damage took place after the

conservator would have left anyway, but I am a bit concerned that a very valuable object travelled without a conservator or an employee of the gallery being present. I would have thought that, when we are dealing at the international level, that would be something that would have been reasonable to do.

Mr Froud—We implore lenders to exhibitions in our country to agree to, and be accommodating in, allowing, say, a courier from one institution to represent the other and so one courier travels with a number of objects. We encourage others. In the business which we are in, reciprocal arrangements are, in fact, a large part of what we do. I think we did not act improperly with the arrangements. The fundamental question is: should the work have been loaned?

Senator SCHACHT—I think you have covered the point, and I will leave it there because we are running out of time.

Mr Froud, I want to conclude on another aspect concerning the National Gallery. When Mr Kennedy took over he gave a very persuasive performance at his first estimates hearing. I and others were quite impressed that he had a very definite view about the collection policy and exhibition policy. In particular, he created some controversy by criticising the previous collection policy of what might be described as ‘take a shot at anything that flies past, and we will collect it. We ought to be more focused on high quality particular items.’ I am not going to get into the argument about what my taste is and your taste is, or someone else’s. When I look at the annual report, I see a long list of various items that have been purchased and I wondered whether all of these fit the policy that Mr Kennedy outlined to us in his very first estimates hearing, because it does seem to be a pretty wide-ranging, diverse collection of items, paintings, memorabilia et cetera. If the policy really has not changed, I would like to know why, or can you explain—and take it on notice—how this does fit what he explained to us in his first hearing before this committee. Again, I may be completely wrong—not being an art expert—but when I look at these pages of purchases it is a pretty broad range. I am not in any way decrying the individual artist, but it is a pretty broad range. I wondered whether that is still in accordance—

Mr Froud—Sure. I wonder if I could respond. The works of art that were acquired in 1999-2000 were 299 in number. I have a graph before me and I have to go back to 1968 to find a year in which fewer works were acquired. So very much the gallery’s policy has been, as expressed in the corporate plan that was released in 1998—I am happy to provide a copy—to provide fewer, more focused acquisitions. Certainly, that is the case.

Senator SCHACHT—This list fits with that policy that Mr Kennedy outlined.

Mr Froud—Correct.

Senator SCHACHT—It does not fit with the fact that there may be less funding available for purchasing.

Mr Froud—The funds that the government provides for acquisition of works of art has remained constant certainly over the 10 years that I have been at the National Gallery. The support that we have been able to obtain from the private sector in the last year has been greater than we have been able to obtain for the purchase of works of art, than probably any other year that I can recall.

Senator SCHACHT—Are details of the funds the gallery has received from the private sector for purchasing artworks in the annual report?

Mr Froud—Yes. In the main, donations of cash are channelled through our foundation, and the National Gallery Foundation's information is only available in that you see the difference between figures that are shown as 'NGA' and 'consolidated'. The difference between NGA and consolidated represents the foundation's contributions. In terms of gifts to the gallery itself, I think it is \$3½million.

Senator SCHACHT—And is that better than last year and the year before?

Mr Froud—In terms of gifts of works of art, that was \$3½ million.

Senator SCHACHT—The actual works were \$3½ million.

Mr Froud—But the actual cash that was donated—

Senator SCHACHT—Is better than last year and the year before.

Mr Froud—Correct.

Senator SCHACHT—And how much was that?

Mr Froud—I do not have the foundation annual report before me. It is about \$2 million.

Senator SCHACHT—And that is better than we had last year and the year before?

Mr Froud—Correct.

Senator SCHACHT—So, despite the controversies that have been noted within the art world about the gallery, the contribution from the private sector—

Mr Froud—Has been very strong and, in fact, increasing.

Senator SCHACHT—Thank you. The last question I have is: apart from the *Federation* exhibition, as I understand it, you have to plan two or three years ahead. To organise any exhibition of note—of weight—that has to be organised and be available in Australia, you are organising these things two or three years out. What exhibitions does the gallery have on the drawing board or have contracts or commitments to have over the next four years say?

Mr Froud—Firstly, I wonder if I could remind you that our *Monet & Japan* exhibition that will follow the *Federation* exhibition will be an absolute stunner. We have confirmed that we will actually have 38 Monets along with, I think, 85 Japanese works in this exhibition.

Senator SCHACHT—When was the organisation of that particular exhibition started? How long ago would that have begun?

Mr Froud—Lead time on that exhibition, some years.

Senator SCHACHT—Five years? Two years?

Mr Froud—No, more like five, than two. I think three or four.

Senator SCHACHT—So that started before Mr Kennedy arrived?

Mr Froud—Yes, I think it was probably mooted. When Dr Kennedy arrived, we did obviously look at the exhibition program and review the exhibition program. Some of the ideas that were in that formative stage were supported. Others were not.

In terms of what we have in store for the next few years, we have the *Monet & Japan* exhibition from 9 March to 11 June. We will follow that with an exhibition of *Modern Australian Women* which has been put together by the Art Gallery of South Australia and touring nationally, and we will participate as a venue for that. Also an exhibition of works by Frida Karlo will be with us from July to October, and Joy Hester's exhibition. We will follow

that with a Rodin exhibition. I am talking about major exhibitions here. We actually have a number of collection exhibitions. We have children's gallery exhibitions and so on.

Senator SCHACHT—You are saying of the Monet level—king hit ones that people cheer you on about.

Mr Froud—We are looking at undertaking substantial refurbishment work and building refurbishment. That will impact on the building. It will impact on our ability to display and, as a consequence, we are looking to have a period where we will not be displaying major exhibitions of the Monet style for probably six or eight months.

Senator SCHACHT—There are 30 Monet paintings?

Mr Froud—Thirty-eight.

Senator SCHACHT—And how many Japanese?

Mr Froud—Eighty-five.

Senator SCHACHT—Does it take up the whole gallery to show off 120 paintings?

Mr Froud—It will take up certainly all of the exhibition wing, yes.

Senator SCHACHT—All the exhibition wing for that one—

Mr Froud—You bet.

Senator SCHACHT—The rest of the gallery will not be suitable to hold a similar exhibition?

Mr Froud—Oh no, that is not the case. Before we had our new wing in 1988 of course we used other areas within the building. Although I think to make the point, the building was designed for a static collection. The exhibition wing that has now been added is, of course, designed for the changing nature of the temporary exhibitions. We will have a period where—

Senator SCHACHT—How long will that period be when there are no major exhibitions?

Mr Froud—That is looking at about seven months.

Senator SCHACHT—That is next year or the year after?

Mr Froud—It will be the year after because that will be the time at which—

Senator SCHACHT—2002?

Mr Froud—Yes, that is correct. And in 2002 as the construction phase gets to a point that it has an impact on the building, we would be pulling back from our major exhibitions. In the years beyond that, there are exhibitions and exhibitions that are planned to 2004. We have not made any public announcements about those at this stage, so I would rather—

Senator SCHACHT—No, I do not want to create an accidental scoop against you that you told a mundane estimates committee what your big hits are coming up. That is understandable for commercial promotion et cetera. But I suggest that you take it on notice that at the next hearing in February I would like to have a more detailed exposition of what the Director's program is over the next five years for major exhibitions, taking account of the fact that there is a gap for refurbishment, and what the themes are—this is Mr Kennedy's strength: artistic merit. I look forward to hearing from him how that is going to be proceeding.

Mr Froud—Can I also say that another factor that will no doubt impact on our forward program for major exhibitions is the appointment of the Head of International Art. We have

been looking for a Head of International Art for some time. That international search and that appointment, in fact, will result in our Head of International Art starting tomorrow at the gallery, Dr Jorg Zutter, who comes to us as a former Director of the Fine Arts Museum in Lausanne.

Senator SCHACHT—I hope he lasts longer than Mr McDonald. It is now 10 o'clock, Mr Chairman.

CHAIR—We have reached our closing time, Senator Schacht.

Senator SCHACHT—I knew I timed myself correctly. Can I just finish with the asbestos and the notes I have found here in my folder. A manager, Mr Cox, apparently tried to remove asbestos from the workshop in July 2000. It may be totally untrue but you should have a look at that.

Mr Froud—I know—

CHAIR—Sorry. We have now really reached the end of the hearing.

Senator SCHACHT—I know. Mr Froud, could you take that on notice. As I say, I welcome the invitation I got the other day from Mr Kennedy to look at the gallery and I will be taking that up in December.

Mr Froud—Thank you.

CHAIR—Thank you Mr Froud. I would like to thank the committee staff, Hansard and the officers who have appeared, as well as the ministers. With that I close these estimates. Thank you.

Committee adjourned at 10.01 p.m.