



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION
COMMITTEE

Consideration of Additional Estimates

TUESDAY, 12 MARCH 2002

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SENATE
LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
Tuesday, 12 March 2002

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

Senators in attendance: Senators Cooney, Ludwig, McKiernan, Payne and Scullion

Committee met at 7.05 p.m.

**IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS
PORTFOLIO**

Consideration resumed from 22 February.

In Attendance

Senator Ellison, Minister for Justice and Customs

Department of Immigration and Multicultural and Indigenous Affairs

General Questions—Indigenous Affairs

Departmental Executive

Mr Andrew Metcalfe, Deputy Secretary

Mr Peter Vaughan, Executive Coordinator, Office of Aboriginal and Torres Strait Islander Affairs

Aboriginal and Torres Strait Islander Commission (ATSIC)

Mr Geoff Scott, Acting Chief Executive Officer

Mr Patrick Batho, Office of Evaluation and Audit

Mr Les Turner, Manager, National Programs

Mr Paul Barrett, Acting Chief Finance Officer

Mr Joe Mastrolembo, Acting Registrar of Aboriginal Corporations

Mr Ian Parmeter, Manager, Commission and Ministerial Support Office

Office of Aboriginal and Torres Strait Islander Affairs

Outcome 3: Sound and well-coordinated policies, programs and decision-making processes in relation to indigenous affairs and reconciliation

Output 3 Indigenous Policy

Mr Peter Vaughan, Executive Coordinator, Office of Aboriginal and Torres Strait Islander Affairs

Including:

Internal Products

Mr Steve Davis, Acting First Assistant Secretary, Corporate Governance Division

Ms Louise Gray, Acting Assistant Secretary, Resource Management Branch

Mr Des Storer, First Assistant Secretary, Parliamentary and Legal Division

Mr Matt Kennedy, Acting Assistant Secretary, Ministerial and Communications Branch

Ms Cheryl Hannah, Acting Chief Information Officer, Business Solutions Group

CHAIR—Good evening, ladies and gentlemen. The committee will now resume this public hearing of the Senate Legal and Constitutional Legislation Committee with the examination of the proposed expenditure for the Immigration and Multicultural and Indigenous Affairs portfolio. On 14 February 2002 the Senate referred to the committee the particulars of proposed additional expenditure for the year ending on 30 June 2002 for the Attorney-General's portfolio and the Immigration and Multicultural and Indigenous Affairs portfolio. The committee will only be considering the portfolio in relation to indigenous affairs as outlined on the circulated agenda, beginning with general questions and then moving on to ATSIIC and outcome 3 for the department.

The committee has authorised the recording and rebroadcasting of its proceedings in accordance with the rules contained in the order of the Senate dated 31 August 1999. Keeping in mind budget estimates in May, the committee has agreed to the date of 16 April 2002 for receipt of answers to questions taken on notice and additional information for indigenous matters. The committee previously set the date of 2 April 2002 for receipt of answers to questions taken on notice and additional information for the Attorney-General's portfolio and for those that fall within immigration and multicultural affairs, so we have extended that date for this component of the portfolio.

I welcome Senator the Hon. Chris Ellison, Minister for Justice and Customs and Minister Representing the Minister for Immigration and Multicultural and Indigenous Affairs, the deputy secretary of the department and associated agencies. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. I draw to the attention of witnesses the resolutions agreed to by the Senate on 25 February 1988, 'Procedures to be observed by Senate committees for the protection of witnesses,' and in particular resolution 1.10, which states in part that, where a witness objects to answering any question put to the witness on any ground, including the ground that the question is not relevant or that the answer may incriminate the witness, the witness shall be invited to state the ground upon which objection to answering the question is taken. Also resolution 1.16 states that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister.

Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege. I also remind witnesses that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. Minister, do you or Mr Metcalfe or Mr Vaughan wish to make an opening statement?

Senator Ellison—Madam Chair, I do not have an opening statement, nor does the department.

CHAIR—Thank you very much. We will begin with questions as indicated in the program. [7.05 p.m.]

Department of Immigration and Multicultural and Indigenous Affairs

CHAIR—We will commence with general questions in the indigenous affairs area, beginning with Senator McKiernan.

Senator McKIERNAN—I have some questions of a general nature regarding what became known as the outback cash card scam. It is a matter that has come to recent attention.

Our media in Australia has exposed what was not a particularly good practice and a practice that probably should not have been allowed to exist in the first instance. The minister for indigenous affairs, Mr Ruddock, was reported in the *Australian* newspaper on the 14th of this month in an article headed 'Ruddock vows to end outback cash card scam'. Can the committee be brought up to date as to what is being done to end this practice?

Mr Vaughan—Yes. The minister recently, jointly with the Parliamentary Secretary to the Treasurer, released the report that had been done by the Australian Securities and Investments Commission concerning this particular issue. The report is called *Book up: some consumer problems*. It reveals a fairly complex situation in that there are some circumstances in which such a facility offers benefits, but it is also open to abuse and misuse.

The minister, in his statement, indicated that he would be progressing discussion of that issue through a number of forums and opportunities. One is the Ministerial Council for Aboriginal and Torres Strait Islander Affairs, which meets this Friday. Part of this issue deals with licensing, for instance, in the case of publicans, which is under the control of the states and so forth, as is a lot of consumer protection legislation. There is also to be a workshop in Alice Springs which ASIC and the ACCC are organising in April, which Mr Scott may wish to comment on, and a conference being organised by Reconciliation Australia in May about indigenous banking issues.

So, combined with an information kit which ASIC is preparing for people in communities, that is the way that the minister has indicated that he is hoping to progress that matter at this stage. Obviously, a lot of the legislative and the policy levers on this issue are mixed between the Commonwealth and the states and territories.

Senator McKIERNAN—Thank you for that very comprehensive answer, Mr Vaughan. If the practice is happening today, could it be said that such acts are illegal within the law and, if so, which laws would be being breached? Would they be state laws or Commonwealth laws, if indeed any laws are being breached?

Mr Vaughan—My understanding is that to give your card and PIN to another person is particularly imprudent but it is not illegal.

Senator McKIERNAN—Then what would be the involvement of the ASIC—I think you mentioned this on the way through—and their investigations? If it was not an illegal act, what would their involvement be?

Mr Vaughan—It is in a sense, because it relates to the question of credit—people using this facility to run up credit and then the card being the storekeeper's or the shop owner's security; a method of ensuring payment of the debt. I think that is where their legislative remit comes into it.

Senator McKIERNAN—But I understood that it was actually a cash card scam—to use the colloquial term—rather than a credit card. Are you indicating now that perhaps credit cards are involved in this as well as the cash cards?

Mr Vaughan—If you have someone's card and PIN and you know that they are going to have regular deposits into their account, say through Centrelink's social security system, then you can allow them to run up credit during the fortnight, say, leading up to the credit and then use your ability to get cash from the card to repay yourself. So it is tantamount to a credit facility.

Senator McKIERNAN—So the credit might be with the merchant, the publican or whatever the case may be, rather than being on the card itself?

Mr Vaughan—Yes.

Senator McKIERNAN—This matter was exposed some weeks ago and it caused some consternation in the community at the time. Could the practice still be continuing despite the publicity that is surrounding it? You indicated in your earlier very comprehensive response that the ministerial meeting was going to occur this Friday.

Mr Vaughan—Yes. Because the practice is not illegal it is not possible to legally stop it except through indirect means. For example, the Western Australia government used its licensing powers, but otherwise there is a fair amount of public education involved in this to alert people to the dangers, while in some ways it can be a convenience for them, particularly in places where there is a lack of cash facilities—although that is not always the case. We had reports in the press last week that it was happening in Darwin—there is no need for someone in Darwin to use a store as a cash access facility.

Senator McKIERNAN—The practice was first reported to be happening in outback Western Australia and now you have mentioned Darwin. Is it a nationwide practice?

Mr Vaughan—I do not think we know the extent of it. It would be almost impossible to ascertain the national extent of it. You can certainly identify or locate instances that come to public awareness where a publican, for example, or a shopkeeper admits to having 200 cards and PIN numbers behind the register but in the absence of that sort of selective anecdotal information, or incidental information, you would not know whether someone's card was being used by another person.

Senator McKIERNAN—But do you think that the department will be in a position to provide a more comprehensive update on the happenings at the next round of estimate meetings in late May-early June?

Mr Vaughan—At that stage we would certainly have the benefit of those other consultations, forums and discussions that are happening. Given the lapse of time between now and then, even in the absence of them, I would hope so, Senator.

Senator McKIERNAN—I might put you on notice for that, Mr Vaughan. Thank you very much.

Senator COONEY—I am not sure that I have got what has been said. As I understand it, what is being proposed is that customers are buying goods on credit and the guarantee is the card. Is that the general idea?

Mr Vaughan—There are two ways of doing it. If you have already got money in your account there is no need to resort to credit, so to speak. The shopkeeper or publican can simply put the transaction through on the day concerned. If, however, you do not have money in your account but the supplier knows that you will have money in your account later in the week or on a certain day the following week, then it would be up to them whether they wanted to extend you credit knowing that they had the security of your card and PIN number to access your account on the given day.

Senator COONEY—Isn't this that you are simply picking up your goods? Probably before you were born, one could go around to the corner grocer and he would write down two pounds of sugar and you would pay for it at the end of the fortnight. Those good old days have gone. Is it any different from that?

Mr Vaughan—I suppose, if one wanted to use those terms, in the good old days you would have a sign behind the cash register saying, ‘Don’t ask for credit as refusal may offend.’

Senator COONEY—Yes.

Mr Vaughan—Nowadays, if you like, you can hand over a card with a PIN number and say, ‘There is my security and guarantee. You will get repayment.’ But the question is if someone is dealing in an unequal situation, perhaps a publican dealing with someone whose judgment is impaired or who is in an extreme situation, it creates a situation where their own judgment can be impaired and the unequal relationship can be exploited. There are also risks that you are relying upon the honesty of the supplier of the goods to bill accurately.

Senator COONEY—You would say that the mind of the purchaser is not fully informed and the purchaser is subject to exploitation in a sense that there is an unequal ability to bargain?

Mr Vaughan—In some circumstances one could imagine that could be the case. That also applies if you have cash in your pocket in some circumstances too.

Senator COONEY—I was just trying to identify the vice in the whole thing. The vice seems to be—and please correct me if I am wrong here—that vulnerable people are being subject to undue pressure.

Mr Vaughan—You have probably also got a situation where none of us would like to put our financial affairs in the hands of a stranger, which is what you are doing by giving them access to your bank account.

Senator COONEY—But you might put your financial affairs in the hands of somebody who is capable and who is ostensibly trustworthy. What I am trying to do is get to the actual problem here. It seems to me that the shopkeepers or the suppliers, either of goods or services, are the ones who suggest this method—is that correct?

Mr Vaughan—Once one person does it with a supplier then who knows where the suggestion comes for five or 20 other people to do it.

Senator COONEY—If you are going to remedy the vice I am just wondering how you are going to remedy it. When I say ‘you’ I mean how the system is going to remedy it; whether the part of the system to call upon is the legislature or the administrator or what. Has any thought been given to that?

Mr Vaughan—You are straying beyond my expertise into financial regulation. It would not be impossible, obviously, for the legislature to outlaw someone using another person’s card. Whether the downsides of that, whatever they may be, might outweigh the intended benefit I do not know. That is a complex question.

Senator COONEY—It seems to be prevalent enough to cause concern.

Mr Vaughan—It is certainly a cause of concern where you have people dealing in an unequal situation whose judgment is under pressure and who may be dealing with a total stranger whose scrupulousness they do not know.

Senator Ellison—Also, I suppose there is the question of verifying the purchase. If you pay cash, you pay \$4.50 and you get the article. You have paid for it but if you are putting it on ‘tick’ so to speak—I think that is the old expression—then you might think you have bought three articles and you are getting charged for four. There is no verification of that at the time, so that when it does come in there could be an element or an avenue for abuse, if

you like. Well, it is fraud if someone is billing you for four items and you only wanted three—and I guess that is the potential misdemeanour here. It is very hard to stop people from giving their PIN and credit card to someone else in a free society, but you might make requirements that there be evidence of the purchase, such as a note of some sort or receipt at the time to ensure that at least there is not that fraud perpetrated. That is something that springs to my mind.

Senator COONEY—Yes. Thank you for that.

Senator LUDWIG—Firstly, I am wondering where the ‘r’ word has gone in your heading ‘Indigenous Affairs’?

Mr Vaughan—The ‘r’ word comes in in the title of the minister which is Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation, and we support the minister in that capacity.

Senator LUDWIG—In January this year, the minister stated in an interview with the *Australian* that you were planning to mainstream urban indigenous services. Would you like to just detail your plans in that area?

Mr Vaughan—The minister was referring, I believe, to the election platform of the government in which the government had foreshadowed its intentions in this area. He did not use the phrase ‘mainstreaming indigenous programs’ but he did talk in that interview and at other times about making sure that mainstream services were available, and properly available, to indigenous people.

Senator LUDWIG—Perhaps if the minister did not use it, it was certainly in the document. It said:

Urban Aborigines would be forced into mainstream welfare programs and specific funding concentrated on regional and remote communities in a sweeping review of indigenous affairs outlined by Aboriginal Affairs Minister Philip Ruddock.

That was by Megan Saunders in the *Australian* on 18 January this year. Are you saying that is not the case now?

Mr Vaughan—The minister’s actual words were:

What we have been seeking to do in relation to these matters is to work on getting the very considerable resources carefully targeted and more effective in producing outcomes.

The other thing he said was:

I don’t think it is desirable that in a community where you are wanting to bring people together that all of your service provisions for indigenous Australians is separate from and isolated from the service provision generally. It is a question of ensuring that they are properly served by the mainstream services and supplementary addresses the past disadvantage.

They are the only words quoted from the minister in that interview.

Senator LUDWIG—All right. So do you disagree that the concept is mainstream?

Mr Vaughan—No. I refer you, Senator, to the government’s election platform in which it said it had a commitment ‘To target resources in line with the findings of the Commonwealth Grants Commission.’ It also said:

Improving access to mainstream programs and services in urban and regional centres thereby freeing up more resources for remote Aboriginal communities.

That is what the election platform said, so he has used that word ‘mainstream’ in that way.

Senator LUDWIG—So we have gotten over that problem. Can you detail the plans that you have been instructed by the minister to carry out in respect of that issue—and I will use the phrase carefully; it is as detailed in their platform—of mainstreaming welfare programs and specific funding concentrating on regional and remote communities?

Mr Vaughan—The government and the minister have not been any more specific at this stage, but they have foreshadowed that the issue will come into focus in the government's response to the Commonwealth Grants Commission report, which was released last year and which goes very much to this question. The government has not yet decided on its response to the Grants Commission. So as yet there is not, if you like, a policy directive to this effect except insofar as, for example, when the government appropriated extra money for Aboriginal housing and infrastructure in last year's budget it stipulated that that was earmarked for remote areas. Prior to that, as part of the COAG decision in late 2000, there was a clear attempt and intention expressed to make sure that mainstream services were more responsive to Aboriginal needs. So the theme has been running through the policy debate going back to the government's 1998 election platform when it announced it would ask the CGC to undertake this sort of inquiry.

Senator LUDWIG—So it is fair to say that you have not turned your mind to any detailed plans in this area to date?

Mr Vaughan—That is correct, Senator.

Senator LUDWIG—You are aware of the concerns for services such as Aboriginal medical services and indigenous family violence services in this regard though, are you not? You are aware that there exists concern about the effect that mainstreaming would have on the Aboriginal communities, particularly the remote and regional communities?

Mr Vaughan—There is concern from a number of stakeholders in this area, including state governments as well as non-government providers. That is, I think, the reason that the government has made it very clear that any strategy of shifting the focus of the indigenous-specific resources to remote areas that do not have mainstream services must be dependent upon making the mainstream share its part of the burden in the areas in which it operates. It is also against the background of the finding of the Commonwealth Grants Commission that relative Aboriginal needs are more pronounced in remote areas.

Senator LUDWIG—So would it be fair to say that before you then undertake the investigation into the scheme you would embark on a process of consultation first?

Mr Vaughan—Indeed, the whole Grants Commission exercise was a very extensive consultation exercise. There were four commissioners especially appointed—two of them indigenous. They held public consultations around the countryside.

Senator LUDWIG—I understand that, but more particularly in relation to the initiative that would, I suspect, flow from the policy and that which was announced in the *Australian* by Minister Ruddock. You then said that to date you had not developed any detailed plans in that regard because you had not had an instruction—

Mr Vaughan—That is right.

Senator LUDWIG—but the question was that when that does occur you would, as of course, undertake a process of consultation? I understand that is the way your department would work, but perhaps you could tell me if you wouldn't?

Mr Vaughan—There is, in effect, at a personal level by the minister a process of consultation afoot at the moment insofar as he has been meeting with indigenous people and this issue is coming up. He met a few weeks ago with NACCHO—the National Aboriginal Community Controlled Health Organisation—who expressed their views on this issue to him. I think it has come up in discussion between him and the ATSIC board and the issue is being publicly debated in the press. The minister is already involved in that consultation process and has been since the release of the Grants Commission report and, in effect, since the election platform.

Senator LUDWIG—If there were to be money directed to the budget on urban services, where would the money come from? Would it be within the current budgetary moneys that you have or would you, in terms of the current urban services, such as the legal services and CDEP—the community development employment program—alter that or how would you fit it in? At the moment I know it is a little bit more difficult. But what I am trying to ascertain is: you have a minister who has, by way of press, announced certain directions; at this stage, you are saying you do not have any specific instructions but we can assume they are going to come or do you think not? If they do come, how are you going to afford them?

Mr Vaughan—In a sense the issue does not present any new challenges or novel situations to what one is always struggling with in government in terms of determining priorities from year to year, project to project, program to program, budget to budget. Part of the flexibility that is always there is, firstly, if you have an expanding program, an expanding appropriation base, you have obviously got capacity as to where you direct the additional resources. Secondly, if you are dealing with a capital works program, which is, if you like, new each year, you can decide each year where those capital resources will be spent. Thirdly, you often have naturally terminating projects that have a limited life span or funding is otherwise discontinuing for some reason. So you have always got a margin of flexibility at any time to accommodate a new scenario, a new need—whether you are talking about this one that we have been talking about or the normal year-to-year and day-to-day budget management issues.

Senator LUDWIG—So there has been no direction to cut budget spending in urban services such as those that I have mentioned—such as legal services and the CDEP—from the ATSIC budget to allow the other work to be done? You can categorically say that that has not occurred and you have not got any instructions to that effect?

Mr Vaughan—I am certainly not aware of any, Senator. I will let Mr Scott answer for ATSIC.

Mr Scott—The minister has been in discussions with the board about the very matters that we are discussing tonight. The issue there was just to raise these concerns and some specific reference to the CGC report—the Commonwealth Grants Commission. The view from the ATSIC board is that they are very aware of the limited resources that are available to meet the needs of indigenous people around the country and how we allocate those resources is a major ongoing concern. In terms of diverting funds from the current distribution— not just to urban and remote and rural communities—there has been no strict direction on that.

Discussions have been continuing, but the board's position has been that when they acknowledged that there were insufficient resources, that the specific funding and the funding from ATSIC is supplementary to some extent to what the responsibilities of the states and my agencies are—they made it quite clear that their position is that any movement in funding should have a minimal impact on the communities themselves. There is a push here and a

very definite view from the board of commissioners that line and state agencies are not doing enough in terms of providing the resources that are required.

Senator LUDWIG—Mr Scott, you have heard the conversation that we have had with Mr Vaughan in relation to mainstreaming and it has been indicated that there has been no direction on work undertaken in that regard by the department to date. Has there been consultation with you in respect of this issue of the Aboriginal people being forced into mainstream welfare programs and specific funding?

Mr Scott—There have been discussions about the implementation of the recommendations from the Commonwealth Grants Commission, but there are no directions about where the funding should be directed. At this stage it is just initial discussions about the options that we have.

Senator LUDWIG—If I could take Mr Vaughan to page 1 of the annual report and go to a different issue. In the secretary's review it states that DORATSIA, that is your old name—

Mr Vaughan—Yes.

Senator LUDWIG—absorbed most of the functions of the Office of Indigenous Policy, the OIP, if I can call it that. Can you tell me how much staffing is left in the OIP and the PM&C? You are aware of—

Mr Vaughan—When DORATSIA, or what was the Office of Indigenous Policy was separated from PM&C into a separate department this time last year, or slightly earlier, all of the staffing resources that we previously had went, but PM&C then re-established a small unit of two or three people from its own remaining resources to handle the indigenous issues which they become involved in from time to time.

Senator LUDWIG—What would that be? I am just trying to get a distinction. What indigenous matters would they then handle and how many people are there? What role do they have?

Mr Vaughan—Prior to the establishment of DORATSIA, when the Office of Indigenous Policy was part of PM&C, all the support work in relation to the Prime Minister—his briefing, correspondence and so forth—on indigenous issues was handled by the Office of Indigenous Policy. With the Office of Indigenous Policy and its resources moving out of PM&C, the PM&C had to find another set of resources, if you like, in order to continue that support role for the Prime Minister, because that support role for the Prime Minister remained with PM&C. What DORATSIA took with it was the support role for Minister Ruddock.

Senator LUDWIG—So how many people are left in the OIP?

Mr Vaughan—It is no longer called the OIP, but the indigenous cell in PM&C has two or three people in it. It varies a little bit. There is a branch head, who covers not just indigenous issues but employment issues and some other matters as well. Then there are two or three non-SES staff who are dedicated to indigenous issues.

Senator LUDWIG—Who funds that?

Mr Vaughan—That is funded from PM&C's own resources.

Senator LUDWIG—So your department does not fund anything in PM&C anymore?

Mr Vaughan—No, although we are still in a sense funded by PM&C in that we have got free rent there at the moment. But that will come to an end.

Senator LUDWIG—Perhaps you can tell me about that. What is that?

Mr Vaughan—It is in the annual report itself as well. When DORATSIA was set up, because we remained located in the Prime Minister and Cabinet building, we remained joined into a number of their services—IT services, telecommunications services, cleaning services, office accommodation services, those sorts of things. That is what I was referring to there.

Senator LUDWIG—And when does that end?

Mr Vaughan—That will come to an end around mid-year when we relocate to join the rest of our new department—what is a new department for us—in mid-year.

Senator LUDWIG—Let me just see if I can understand this. The OIP is no longer called the OIP; it is now called the—

Mr Vaughan—OIP has ceased to exist entirely. It has been replaced, if you like, by the Office of Aboriginal and Torres Strait Islander Affairs within the Department of Immigration and Multicultural and Indigenous Affairs—after having transited through the separate department status. It is also replaced in part by the two- or three-person cell in PM&C, which is not called the Office of Indigenous Policy; it is just part of a branch within the Social Policy Division.

Senator LUDWIG—And you no longer fund the one in PM&C but you do in relation to the one within your department now?

Mr Vaughan—That is right. We took our resources with us from PM&C and they are now part of the larger department's resources.

Senator LUDWIG—Is that a duplication of the role of what is in PM&C? You do the same work?

Mr Vaughan—No. Our work that we previously did when we were in PM&C in effect comprised two elements. One was looking after and supporting Minister Ruddock and the other part was looking after and supporting the Prime Minister to the extent that he was involved in indigenous issues. That latter function of supporting the Prime Minister has remained with PM&C but the role of supporting and advising Minister Ruddock has gone with us.

Senator LUDWIG—What does it mean in terms of who is there and who is not there? You said that there were a couple of people in PM&C. How many people are in the new office in the new department?

Mr Vaughan—About 30 at the moment. That is what it has averaged over the past year, more or less.

Senator LUDWIG—That is funded out of your annual budget?

Mr Vaughan—Yes, it is funded out of the money PM&C originally had when we were part of PM&C. We took that bit of the budget with us.

Senator LUDWIG—And when will that funding cease?

Mr Vaughan—That is an ongoing source of funding, if you like. It is an annual appropriation. So that appropriation in effect has been transferred from the PM&C portfolio to the Immigration and Multicultural and Indigenous Affairs portfolio.

Senator LUDWIG—All right.

Senator COONEY—Mr Metcalfe, have you and Mr Farmer now taken this over in the sense that it is intramural to your department now?

Mr Metcalfe—That is correct in the sense that the former Department of Reconciliation and Aboriginal and Torres Strait Islander Affairs has now become part of the Department of Immigration and Multicultural and Indigenous Affairs. In a sense Mr Vaughan, as executive coordinator in the former Department of Reconciliation and Aboriginal and Torres Strait Islander Affairs, has continued a similar role. It is now that he is a division head with the title of executive coordinator in DIMIA. In practice Mr Vaughan works directly to Mr Farmer, the departmental secretary.

Senator COONEY—Is that all it is—just a transfer of a set of functions from one department to another? Do we have to ask any further questions other than that? Is that really what has happened?

Mr Metcalfe—Mr Vaughan can probably talk about what happened before and what happens now.

Mr Vaughan—It is largely a transfer of functions and there is no change in minister and secretary, as Mr Metcalfe has indicated. I guess there are some synergies and economies or advantages in a sense in the new arrangement in that, being part of a larger organisation, we have other areas of expertise and resources to draw upon if need be, whether for instance we are talking about legal advice, information issues, financial management issues whereby the larger organisation has a depth of expertise in those things which, being part of a small organisation, you could not replicate.

Senator COONEY—That gives me the picture that before you were getting over your legal and accounting problems by a particular mechanism. Has that changed?

Mr Vaughan—I am comparing the situation for that 12-month period when we were a separate department of 30-odd people where we were, in a sense, totally relying upon our own resources. The situation we are now in is more akin to when we were in PM&C, prior to that 12 months interregnum when, as part of a larger agency, you do have that sort of depth of expertise to draw on if need be.

Senator LUDWIG—Moving on to a different issue, on page 25 of the annual report you refer to three SES positions—two apparently ongoing SES employees who moved to the then DORATSIA and a third SES position who joined the then DORATSIA in June 2000. Are these three positions still in existence? Where are they now and what are their functions?

Mr Vaughan—They are still in existence. Their functions are essentially unchanged from what they were as part of DORATSIA except insofar as some of the duties of the executive coordinator position, which I look after, have changed insofar as we do not have the corporate management responsibilities of being a separate department to anywhere near the same extent now that we are part of a larger department. Aside from that aspect, the sort of work done by the three people is little changed.

Senator LUDWIG—What is it? Is it administration of indigenous policy? Perhaps you could give us a snapshot of what they do.

Mr Vaughan—There is an organisational chart, if you have the annual report, on page 8—and I am not referring to the picture on the bottom of the page—which gives you a snapshot of how the office was structured at that stage. That restructure is fairly similar to what it is today in that we have two branches, a Land, Legal and Economic Development Branch and a Social Programmes and Reconciliation Branch with a number of sections under each, some of which are more or less self-explanatory, some of which are a bit more bureaucratically

opaque, I suppose, or of a very generic kind. The actual work that is done there is elaborated on elsewhere in the report.

Essentially, if I could simplify it, there are a number of issues on which this and the previous government have found the need for an independent source of advice. In some of these issues it is difficult for ATSIC to provide the advice to the government because its primary obligation is to its indigenous stakeholders. As an example, I give Aboriginal Land Rights (Northern Territory) Act.

Senator LUDWIG—I did not want to actually cut you short, but I thought my question was a bit more specific about what these people do. You have given me a run around the department. I was hoping that you were going to get to it in a circuitous way. Now you are going to give me a ‘for instance’. Can we get back to the three people?

Mr Vaughan—Sure. If I just run you through the work—

Senator LUDWIG—It is only a snapshot I need.

Mr Vaughan—Neither an example nor a 100 per cent answer; I understand. There are various land and resources issues for which we have responsibility—for example, policy changes to the land rights act, negotiations over uranium mining in the Northern Territory—those sorts of things. There is litigation against the Commonwealth in relation to indigenous affairs for which we are the instructing agency—things like the separated children litigation. There are a number of portfolio management issues that span across the entire portfolio which we handle, like appointments to various bodies within the portfolio. There is the normal sort of coordination of things that are spread across a number of portfolios, like housing, health, education and employment. That is a fair amount of work in that. There are specific, particular issues like family violence that the government is interested in that we have had to provide backup, advice and support for. It is a range of matters—some of it is legislative, some of it is administrative in the legal sense, like appointments, and some of it is advice on day-to-day policy issues.

Senator LUDWIG—The remuneration they receive—they are SES positions. Are they in excess of \$100,000 per annum?

Mr Vaughan—The report here says that, because of the requirement of the way the report is done, in the five months in which the department was operating nobody was paid more than \$100,000. That is in the footnotes at the back of the SES report. On an annualised basis, there would be people paid \$100,000 or more. There are people paid \$100,000 or more.

Mr Metcalfe—The three officers in question as SES officers, when you take into account salary, superannuation, car, would be in excess of \$100,000.

Senator LUDWIG—The only purpose was that—and I think you have perhaps hit the nail on the head—on page 54 it says the number of executives who received or were due to receive total remuneration of \$100,000 or more is zero. I am just trying to tie that up.

Mr Metcalfe—That sounds like an accounting treatment because it is part of the financial year as opposed to an entire year. For the year—

Senator LUDWIG—I just read it as ‘were due’ or ‘were due to receive’. That is why I discounted the idea of someone being in a financial year or the department being only open for five months. If they are due to receive more than \$100,000—

Mr Metcalfe—I think it is in the course of that financial year, and because the department only came into existence halfway through the year, in that financial year they were due to

receive less. On a whole year basis they would receive more than that. The accounting treatment, I assume, for this transitional year as well is a similar issue. Next year in a full year it will be more straightforward in terms of reporting.

Senator LUDWIG—We might leave that then. On page 27 you refer to the then DORATSIA as aiming to create and nurture opportunities for indigenous people to meet their aspirations and state, ‘DORATSIA also supports the principles of equity, access and fairness in its own working environment’ and you give the example of a workplace diversity group having been formed to ensure this. Is that working group still in existence?

Mr Vaughan—That was part of a range of corporate responsibilities that we had when we were a stand-alone department. Now that we are part of a larger department, we do not need to necessarily replicate those things like a lot of those staffing policy issues in detail on our own the way we did before.

Senator LUDWIG—As part of a larger department you still retain your identity within that department as ‘Indigenous Affairs’, as I understand it. Or is there now not a subset or a separate agency?

Mr Vaughan—We are not legally distinct in any way and we are, for administrative, everyday purposes, just like any other part of the department, except obviously we specialise in indigenous issues and we do not have anything to do with some of those other matters.

Mr Metcalfe—For example, Senator, the department has a division that deals with citizenship and multicultural affairs, which is program 2. Obviously it works closely with other parts of the department and receives services from the department. The secretary and minister have styled the division responsible for indigenous affairs as an office and Mr Vaughan has a title of executive coordinator, but for all intents and purposes it is a division of the department but it specialises in indigenous policy issues.

Senator LUDWIG—Do you target for indigenous employment within the office or is it an overall part of the department now? I was just wondering if you had any specific policies—like a recruitment policy—in relation to indigenous employees within the office, if I call it that, or rather broadly within the department.

Mr Vaughan—Most of our positions, when they are advertised externally, are advertised in the indigenous press. All of the selection criteria have a subject matter, if you like, knowledge or skill associated with them. We usually make sure that where we have indigenous applicants in particular we have an indigenous member on interview panels, selection advisory panels—those sorts of things.

Senator LUDWIG—That is helpful, but do you have a policy?

Mr Vaughan—Our staffing policy when we were DORATSIA as expressed here was to recruit and retain the best indigenous and non-indigenous staff.

Senator LUDWIG—Do you still have that policy?

Mr Vaughan—As an office we still operate on that—

Senator LUDWIG—Is it written down anywhere? Is your recruitment through your office or through you, Mr Metcalfe? This is what I am trying to get to.

Mr Metcalfe—I understand where you are coming from, Senator—

Senator LUDWIG—I know you do.

Mr Metcalfe—Mr Davis, who is head of our corporate division, may be able to talk to you in more detail about the department's practices generally. I think Mr Vaughan raised an important point in that there is particular attention paid in the office because of the particular subject matter, but the office is part of the department. Like all departments, we have a particular focus on indigenous employment and in fact employment of persons from language backgrounds other than English.

Mr Davis—In a general sense I need to take the matter on notice as to what the words are for our policy, but certainly we do have policies committed to targets relating to cultural diversity in particular, and indigenous employees are part of that, as I understand. We certainly have targets in our current program for employment of indigenous cadets in particular, to bring people into the department and seek to provide more opportunities for people from indigenous background. For the specifics of the wording of that policy, I am afraid I would have to take that on notice and provide more detail to you.

Senator LUDWIG—One of the things you might want to take on notice as well—perhaps you can answer it—goes back to the question I originally asked, I guess. What I was seeking from you was how you are going to meet the indigenous people's aspirations in that the office now is part of the overall department. How are you going to progress the principles of equity, access and fairness in that working environment to assist indigenous people? As I understand it, you are telling me that you have an overall department and it has its own cultural diversity policy. I accept that, but I want to know how it will then interface with the office, which, to my mind, unless I am mistaken, is part of assisting indigenous people and originally, as part of DORATSIA, it was more focused on ensuring that indigenous people met their aspirations and 'DORATSIA also supports the principles of equity, access and fairness in its own working environment'. That is where it came from. How are you going to maintain that?

Mr Vaughan—The subject matter with which the office deals does not have a significant overlap with the subject matter of much of the rest of the department. Therefore, the identity of the office and the subject matter it deals with will continue. To the extent that that is an important consideration for a lot of indigenous people when they join an organisation, or if they decide that they want to work in indigenous affairs to be assured that that is the sort of subject matter that they would be working on, that will not change.

The second thing, though, that will change—this may operate as an incentive or advantage—is that it provides indigenous staff who do have an interest in moving outside the indigenous area with access to the rest of the department in a seamless way that did not exist, for example, when we were a stand-alone department or did not exist to the same extent when we were in PM&C, which was a much smaller department than we are now in. So there are, if you like, career opportunities there that people may find attractive as well.

Senator LUDWIG—Do you hold information which is not culturally sensitive about the level at which Aboriginal people are employed within the office and the number currently?

Mr Davis—On our personnel systems we do hold that information, but generally if an individual does not elect to be identified in that way it is not something we force upon them. Subject to that caveat, we could see what information we do have, but whether they complete those details on our systems is subject to individuals' discretion. Indeed, that is true of cultural or ethnic backgrounds as well.

Senator LUDWIG—That is why I added the caveat. You indicated that you advertise in the indigenous press for employment opportunities should a vacancy arise within the office,

as I understand it. But do you target indigenous employment areas within your office and say, 'This is what we require'?

Mr Vaughan—Within the office we have not changed our approach, which is to select the best indigenous or non-indigenous person we can find for the job.

Senator LUDWIG—We will move on then. I take you to pages 20 and 21, which talk about administered expenses of \$3.3 million for the 2000-01 financial year. Of this amount it states that the balance of the appropriation was given over to the then DORATSIA on creation, totalling \$1.411 million. It also states that the total resources for the department in those five months was \$2.998 million. The report details administrative expenses as for the costs of indigenous affairs litigation. Can you tell me—I am quite happy for you to take it on notice if you do not have the information at your fingertips—what type of litigation was involved in this?

Mr Vaughan—There were a range of cases in the course of the year, as there are in any one year, where people have initiated litigation against the Commonwealth relating to indigenous issues for which we are the instructing department or agency. In the past that has been things like High Court appeals against the validity of legislation. The two main cases we had running in this period under review were the Gunner and Cubillo case in the Federal Court and the separated children case in the Northern Territory.

The other main case we had was in relation to the Commonwealth being sued by the Chapmans, the developers of the Hindmarsh Island real estate development that was affected by former minister Tickner's ban on the construction of the Hindmarsh Island bridge. They have been pursuing action against the Commonwealth for compensation for damages they allege they sustained wrongfully as a result of those decisions. So we have been running, if you like, the defence for former Minister Tickner and the Commonwealth on that issue as well as the defence for the Commonwealth on the separated children issue.

Senator LUDWIG—Perhaps you would like to give us a breakdown of those litigation costs and whether there was litigation involved other than those two. You said those were the main two. Perhaps we could have a look at the actual budget to date—what you have spent out of that budget. It appears, as far as I can ascertain, that just under half of your total departmental budget has been dedicated to litigation in indigenous affairs. It appears to me that you are defendants—you can confirm that—in the litigation. I will get an answer to that question before we go on. You were defendants in those two main cases?

Mr Vaughan—Defendants or respondents, yes.

Senator LUDWIG—In the High Court you would have been a respondent.

Mr Vaughan—The expenditure on that has dropped substantially this year, largely as a product of most of the actual trial time of those two cases having been completed prior to this financial year, although a lot of the expenses in the case of Gunner and Cubillo, and to a lesser extent in the Tickner case, were pretrial expenses in terms of research and preparation. That case has run over several years. I will give you a break-up and categorisation of our expenditure to date this year in some meaningful categories. That will give you a picture of the current situation, if that is what you wish.

Senator LUDWIG—Yes, thank you. What I am looking to understand from you is whether that money spent on litigation is for the benefit of indigenous peoples directly. Did it contribute to social justice and equity for indigenous Australians? What purpose do you put down when you then put 'Litigation, X dollars'?

Mr Vaughan—We are defending the interests of the Commonwealth, whatever form those interests take—whether it is defending the validity of legislation or defending a claim against the Commonwealth purse. For example, in the case of Gunner and Cubillo, where we are resisting claims from indigenous people for compensation, I would not be suggesting to you that that was other than to protect the Commonwealth's interest. The Hindmarsh Island bridge case is obviously to protect the Commonwealth's interests as well. But it has an obvious indigenous dimension to it in terms of knowing the history of Hindmarsh Island.

Senator LUDWIG—I take you to page 27. What is the status of the annual report in terms of where you sit now? The office will be consumed within the overall annual report, so you will not report separately as an office?

Mr Vaughan—That is correct, Senator. It is a collector's edition. It will never be reprinted.

Mr Davis—I am happy to add to that. Indeed the next annual report will be for DIMIA, but there will be an element of the report, particularly in the financial statements and perhaps other areas, where we do need to identify the period prior to the administrative arrangements order changes on 26 November. So there will be some visibility about transactions relating to DORATSIA before that date, but the report will be one for DIMIA which will have the period up to 26 November separated and the period since then integrated, if you like, into DIMIA's annual report.

Senator LUDWIG—We will have an opportunity in May to explore that further.

Mr Davis—The annual report will be tabled in October, so it will probably be a little later than May before we have the outcomes of the financial year in particular.

Senator LUDWIG—We will understand what the appropriations are.

Mr Davis—Indeed, in the additional estimates bills outcome 3 has been created to represent indigenous matters, and the financial figures have been transferred to that outcome on page 48 of our PAES. Indeed, our PBS and budget documents will demonstrate a new portfolio with all relevant agencies as part of the DIMIA portfolio.

Senator LUDWIG—Perhaps Mr Vaughan can assist me with this. If we look at the annual report, which is now a collector's edition, it says:

The core function of DORATSIA is the provision of policy advice which acknowledges and values the cultures, heritage, rights and aspirations of Indigenous people, and supports the creation and nurturing of opportunities for Indigenous people to meet their aspirations thus contributing to social justice and equity in Australia.

Is that phrase going to be reflected in your new annual report? Is that phrase in abeyance until you write your new report or does that still bind you in some way? I am just trying to get a feeling for where your core function in terms of social justice and equity and your vision now resides.

Mr Vaughan—The relevant or corresponding clause for certain purposes is really the description of outcome 3, which is:

Sound and well coordinated government policies, programmes and decision making processes in relation to reconciliation and Indigenous affairs.

That is similar to the outcome we had before.

Senator LUDWIG—Where are you examining that from?

Mr Vaughan—That is in the portfolio additional estimates statement on page 22. It is similar to what you find on page 9 of the last annual report.

Senator LUDWIG—It does not quite read the same, does it?

Mr Vaughan—I think the last words ‘Indigenous affairs and reconciliation’ have been reversed to ‘reconciliation and Indigenous affairs’, looking at the box on page 22 of the PAES and the box on page 9 of the annual report.

Senator LUDWIG—Mine is on page 23, which is table 1.1, Appropriations 2000-01, unless I have a different book. I might have a different book.

Senator COONEY—Why don’t you compare?

Senator LUDWIG—We could always do that. Let us get back to the point. So you then say effectively that the core function remains within your new department, within your office?

Mr Vaughan—That is correct.

Senator LUDWIG—We can agree on that?

Mr Vaughan—Yes.

Senator LUDWIG—And would it be correct to say that roughly 47 per cent of the department’s budget being spent on litigation appears to be at odds with this vision? It is a lot of money being spent on litigation—half your budget—when your vision is about the core function of policy advice ‘which acknowledges and values the cultures, heritage’ and so on, but half of it is disappearing out the door in litigation.

Mr Vaughan—In that particular year there was a lot on litigation, because we had two major trials running. It fluctuates from year to year. As I indicated earlier, the expenditure this year is much lower but it is still hard to make judgments. For example, in relation to the litigation against the Commonwealth over the Hindmarsh Island bridge, which is a defence of the decisions and actions of Minister Tickner and others in banning the bridge, it is a matter for judgment as to whether that was in fact advancing indigenous interests or not. I think a lot of people would have said that the ban on the bridge was in indigenous interests. There are other people who would say that it was not. I am not going to make that judgment as to whether it was or was not. All I am saying is that we are now defending that litigation against the Commonwealth, and they are the facts that gave rise to it.

Senator LUDWIG—And you say that in respect of the first matter as well?

Mr Vaughan—I do not think there is that degree of ‘on the one hand ... but on the other hand’ in the Gunner and Cubillo case. It is clearly a case of two indigenous people who are suing the Commonwealth for compensation over matters for which they say the Commonwealth is liable. We are defending the Commonwealth. We did the same thing when the validity of the Northern Territory Aboriginal ordinance was challenged under the previous government—that is, the Kruger and Bray case. If that case had been lost, then a potential liability would flow to the Commonwealth. The office as it then was acted in defence of the Commonwealth interest on that case as well. I think you need to also bear in mind that the Commonwealth is funding some of these claimants. The costs of the Gunner and Cubillo case are being funded through ATSIC. The Commonwealth as a whole is funding both sides of the case.

Senator LUDWIG—That may be the case, but I was interested in your budget. I think my Senate colleague has a question.

Senator COONEY—So your organisation, if I can use that neutral word, which was then in Prime Minister and Cabinet, financed the Commonwealth’s case against the litigation that took place in Darwin?

Mr Vaughan—That is right, the Gunner and Cubillo case, and before that the Kruger and Bray related constitutional case on which Gunner and Cubillo partly turned.

Senator COONEY—I wonder why you funded that and not Attorney-General's?

Mr Vaughan—Attorney-General's just really acts as a company of lawyers for this purpose. They are not the policy agency. The policy agency is the client, which could in one case be Defence. For example, if it is a native title claim affecting Defence property, Defence would instruct.

Senator COONEY—Yes, but from what I can gather—and we are very pleased to have you now in our estimates group—you have a very close relationship with ATSIC, haven't you? Do you talk to ATSIC?

Mr Vaughan—All the time.

Senator COONEY—Nevertheless you financed the case against the case that they were financing?

Mr Vaughan—That is correct. That is one of the reasons why you need somewhere like the office, because you could not expect ATSIC to fund both sides of the case.

Senator COONEY—No, nor could you, I would have thought, almost as an ethical question, expect your organisation to fund it either.

Mr Vaughan—We are only funding one side of the case.

Senator COONEY—I know you are only funding one side of the case, but you are funding a side of the case against a body with which you have an intimate relationship.

Senator LUDWIG—And at odds with your core function.

Mr Vaughan—That is true. It is not unknown for two members of the Commonwealth family to actually sue one another, which we are not doing in this case.

Senator COONEY—As I understand it, one case was a claim for compensation. I do not know how litigation is conducted these days, but I would have thought that nevertheless you are in a position where a reasonable onlooker would say, 'This organisation is not only funding but instructing lawyers and they've got a very intimate knowledge and an ongoing means of getting that knowledge to bring against these people whom hopefully they should be helping.' I do not know whether that was ever discussed.

Mr Metcalfe—The interesting question is that if ATSIC initiated litigation against the Commonwealth then someone has to instruct the Commonwealth's lawyers in its response. DORATSIA—it is now OATSIA—is the relevant policy area within the Commonwealth. So really there is no-one else who could instruct.

Senator COONEY—But that is the very reason why I would think that it shouldn't, because it is so closely related. It is different when you are conducting your case against people who want to appeal under the provisions of the Migration Act because you are at arm's length. Here they are not at arm's length at all. They are very closely associated. It just seems to me not the best as a matter of appearance.

Mr Metcalfe—From what Mr Vaughan said, who has much longer experience in these matters than me, it does appear to be a longstanding practice.

Senator COONEY—It just gets back to the question—

CHAIR—Senator Cooney, I think Mr Scott wanted to add something to that point.

Mr Scott—If I could just make one correction, Senator. ATSIC has not initiated any legal action against the Commonwealth in any of these matters. We actually support the claimants and the applicants in the matters. We have a fairly rigorous process. We look at the merits of the case and the potential outcome for it.

Senator COONEY—I have no problem with ATSIC's position. They say, 'We think it's proper for us to support this case,' and you have some very solid legal advice, as I understand it, that this has merit. So I can understand that bit. After people have initiated the action, the people who defend it on behalf of the Commonwealth are those who are very intimately connected with your organisation. The two organisations work very closely together. Some places talk about Chinese walls and things like that. There does not seem to be any Chinese wall here or even a semblance of a Chinese wall.

Mr Vaughan—I could perhaps help in the clarification of that point, Senator. The actual client who issues the instructions in defence of the Commonwealth is the minister. We, in a sense, advise the minister and carry out his instructions in that regard. There are obviously a whole range of issues on which the minister and, say, ATSIC have differing views but still work together as part of the one portfolio.

Senator LUDWIG—Yes, but how do you reconcile your vision—your core function—with funding litigation defending the Commonwealth against people from the indigenous community who have legitimate claims against the Commonwealth? Why wouldn't you then say that it appears to be too close and the Attorney-General might then otherwise be asked to fund them? At some point, litigation aside, you still have to meet your core vision. As part of your office, you still have to meet the vision, as I have stated. At some point you have to talk to indigenous people, promote indigenous issues and otherwise talk to ATSIC about a whole range of issues which are for indigenous people and for the benefit of indigenous people. I am just having a little trouble trying to understand that, without Chinese walls, without a separation, without arm's length, you then also fund litigation—not minor litigation but half your budget in one financial year on litigation.

Mr Vaughan—Aside from the fact that 'twas ever thus in the history of the office; but I do not think that is a satisfactory explanation. But what is I think a more illuminating explanation is that this is a very common situation, if you like, across government. If, for example, someone applies for an assistance grant from the department of immigration or for an Aboriginal study grant from the department of education and they are unsuccessful, they can then often seek administrative review or judicial review of those decisions. The department that was previously in the business of providing assistance, an Abstudy grant or some other form of assistance, then finds itself in the position of defending the Commonwealth's interests against that client. That is a very common experience.

Senator COONEY—I do not know whether I go along with it, but I can understand the situation of an administrative review where you say 'We are going to go through an exercise to ensure that the administrative decision was made as it should have been made.' I can follow that. However, this is the leap, if you like, into chapter 3 and it is of a different nature altogether, I would have thought.

Mr Metcalfe—As I understand the situation, essentially—as Mr Scott explained—the nature of the activity by ATSIC is more akin to a legal aid type examination and, therefore, funding is provided to an individual to pursue a claim. As Mr Vaughan has explained, the respondent in that litigation is the Minister for Immigration and Multicultural and Indigenous Affairs and, therefore, the minister needs advice on that matter. The conduct of the litigation

is quite often undertaken on behalf of the minister by officers of the department. That is not in any way inconsistent with the obligations of the office or, indeed, of the minister in terms of advancing the policy objectives in that area. Similarly, in the immigration area, the minister for immigration is sued by many people. There are over a thousand matters in the court at any particular time, but I do not think that in any way prevents the immigration minister and the immigration department from continuing to work and focus on the positives of our immigration program and our refugee resettlement program.

Senator COONEY—I do not want to go on with this, but there is a clear distinction there, because the people that are funded are funded through legal aid, which is not supplied by the department of immigration.

Mr Metcalfe—That is the only element that differs, I think.

Senator LUDWIG—I think that is an important issue we could talk about all night, but we will move along. Perhaps when giving us the statistics in relation to litigation that I earlier asked for on those two matters, you might also include a breakdown of the barrister's fees or counsel's fees, so we can understand the actual litigation costs. In addition, I was interested in an answer as to whether the appropriation for litigation is ongoing in relation to the office, or is it now subsumed within your overall area? In other words, will the same amount of money still be available within the office for litigation? I am just trying to gain an understanding of how the office will work now within DIMIA. Perhaps, Mr Metcalfe, we can deal with the whole lot in one go. If you would then try to explain to me the employment and staffing situation: would it be the same or would it be different; would the staffing and functions of those people be the same?

Mr Metcalfe—Yes.

Senator LUDWIG—Going to the vision, perhaps you can confirm for me that the answer was that the vision would be the same? How will the appropriation for the litigation be dealt with in the future?

Mr Metcalfe—I think that one key point, of course, is that the ATSIC funding in relation to its legal aid equivalent program is not affected by either issue.

Senator LUDWIG—No, I am just dealing with the office.

Mr Metcalfe—So it is a question of the financial treatment of the office. As you know, the department has quite a considerable legal expenses area because of the amount of litigation in the immigration aspect of the portfolio. One thing we have been doing—and it is a work in progress, but reasonably close to completion—is working through those corporate support issues, that Mr Vaughan referred to earlier, in moving from a small stand-alone department of 30 people to an office of 30 people within a department of 4,000 people. There are clearly some corporate services support issues, everything from resource management through to ministerial services, preparation for this evening and areas such as litigation. As I understand it, we have a substantial litigation budget and in producing forward estimates and making arrangements under our funding models for that, the aspect of potential litigation in the indigenous area will be a matter factored into forward budget processes.

Mr Davis—As it currently stands, the litigation budget has been transferred as a separately administered item into the portfolio. Indeed, Mr Metcalfe is right—the litigation budget is actually part of our departmental funding in the immigration portfolio. At the moment we need to discuss with the department of finance the question of whether the forward estimates for this matter revert to departmental funding and are, if you like, pooled together with other

litigation moneys. I am advised that the forward estimates for litigation are smaller in the transfer of resourcing from DORATSIA into our department. I guess we will need to discuss with the department of finance whether that stays as a separate item or is, if you like, integrated into our departmental appropriation, which is where we have it in the immigration side of the portfolio. That is a question I cannot answer for you because we have not yet examined the issue.

Senator LUDWIG—When will you examine the issue?

Mr Davis—We will do that prior to budget. We will make a definitive decision one way or the other in time for budget estimates and appropriations for next year.

Mr Metcalfe—So when we see you next time, Senator, we should have a clear position on that.

Senator LUDWIG—So if I ask the question next time whether or not that has been rolled over or consumed within your large litigation budget, Mr Metcalfe, you will be able to tell me?

Mr Metcalfe—I will look forward to it, Senator.

Mr Davis—Certainly I would expect that the estimates we have would either stay as a stand-alone or be rolled in as they stand. I do not expect, if you like, a reduction in those forward estimates in the process of either amalgamating them or leaving them where they are. That would be my expectation, but that is subject to discussions with the department of finance.

Senator LUDWIG—And the staffing numbers are the same?

Mr Davis—We do have staffing information in our portfolio additional estimates statement on page 31. Staffing of DORATSIA was 29 and the estimate for the current year is 29. I am not aware of any expectation that that will vary in any significant way in forward years.

Senator LUDWIG—That will be a new area to explore, I suspect, next time we meet. We have touched on the departmental arrangements in part but, as I understand it—and correct me if I am wrong—they will then have to conform to the overall DIMIA. In other words, the immigration department as we have known it, the corporate and financial services and the staff, will be utilised and you will be involved in all of those, Mr Davis?

Mr Davis—Yes.

Senator LUDWIG—Are there any additional departmental issues I have not seized on that would have to be dealt with that are not on the horizon, or have you talked all those through, Mr Vaughan?

Mr Metcalfe—There has been no—

CHAIR—That is kind of reversing the order of the process, Senator Ludwig.

Mr Metcalfe—yes.

CHAIR—It is an interesting fishing expedition, but I am not sure that it is necessarily in order.

Mr Metcalfe—I will be as helpful as I can, Senator.

CHAIR—Thank you, Mr Metcalfe.

Mr Metcalfe—Changes to administrative arrangements of this nature are quite common. Departments acquire functions, change functions, lose functions and whatever. This is not

unusual for our portfolio. It is a little while since we have been through this process but, of course, the Office of Multicultural Affairs came to the portfolio from the Prime Minister's portfolio in 1996. Indeed, for a while we were the Department of Immigration, Local Government and Ethnic Affairs under minister Mick Young, from memory, so this particular type of administrative change is something that happens from time to time. Immediately upon the announcements being made that we were to become the Department of Immigration and Multicultural and Indigenous Affairs, a group of officers was established. Ms Gray, our chief financial officer, was chair of that process and officers from the former DORATSIA were involved in that process and we worked through the range of integration issues that cover the sorts of matters that you have described here this afternoon—corporate support, financial support, personnel matters, preparation of estimates, annual reports and IT support. Mr Vaughan has mentioned co-location and accommodation issues. So that absorption process has been quite intense. I hope it would be pretty close to complete once we are through the current budget processes and once OATSIA is able to join us out in Belconnen.

Senator LUDWIG—Who now would deal with consultancies and approvals thereof? For argument's sake, DORATSIA as a separate department would have dealt with contracts, tendering and outsourcing previously. Who would now deal with it?

Mr Davis—An area of my division deals with contracting advice and oversighting of contract arrangements in the organisation. That branch of my division would have that broad responsibility. There are many parts of the department that undertake tendering or, because of the nature of their business, have significant contracts which are matters that are dealt with locally within the output areas. In DORATSIA's case there were only a few contracts in place and most of those were in the corporate areas. So indeed they are matters that largely we are able to subsume or deal with within our other corporate resourcing or arrangements. So in that respect there are not any specific contracts that I expect would continue for any ongoing period, as far as I am aware.

Mr Vaughan—We would only have the odd ad hoc consultancy contract—a bit of research, a bit of analytical work or something like that once or twice a year perhaps.

Senator COONEY—Are they all proforma contracts, or do you vary the terms of the contracts depending on what the outsourcing is? Do you get them off the word processor?

Mr Davis—We do have a range of standard terms and conditions typical to most Commonwealth departments which we do bring to contracts. In particular, issues associated with the recent Murray motion and the requirements of confidentiality et cetera are all being brought into our guidance material for managers who do implement contracts. So I would have to say that is an area of significant examination at the moment in terms of looking at what is, if you like, our standard contract and trying to meet new guidelines in a whole range of areas that are being asked of us.

Senator COONEY—Do you ever purge the contracts or do you just keep adding clauses as new problems arise? Privacy has now become an issue—I think it has been used more as a vice than a virtue. Do you purge the contract or do you say, 'We will use the old contract and put in a few extra clauses about privacy'?

Mr Davis—On the matter of privacy or confidentiality, which is a major issue—and there has been an ANAO report recently tabled on the matter—we were one of the agencies examined in that process. We are seeking to give guidance to all managers or people who undertake contracting in the organisation to seek to deal with the confidentiality and privacy matters in line with the ANAO guidance and to negotiate—each individual contract is a

negotiation process. We start from the position of the principles of material not being confidential, but it is subject to the negotiation process as to where individual parts of contracts or larger parts of contracts become confidential. So it is a matter where we have taken on board the principles of the ANAO and the Senate in terms of requesting us to seriously scrutinise the issue of confidentiality before we apply that principle to anything in our contracts. We certainly do not just simply take the last contract and roll it over. That is not the way we are operating. We are assisting managers as best we can in the organisation to meet the requirements of the ANAO and the Senate.

Senator COONEY—How many pages does the biggest contract have?

Mr Metcalfe—Senator, I think the point you are driving at is what the contract is for. It is to ensure that services are delivered. We have many standard contracts for purchasing materials, and they probably do not change very much from time to time. Quite often they have been developed with advice from the Attorney-General's Department and the office of commercial law. In terms of our biggest contract, in relation to other programs of the portfolio we have had a lot of discussion about some of our big contracts—big in terms of money and big in terms of size. In terms of size, I suspect some of our contracts that deal with major areas of service provision, such as detention services, IT services as part of cluster 3, and possibly some of the areas of adult migrant English programs, would probably be the most complex and longer contracts because of the range of issues to be dealt with.

Senator COONEY—The trouble is that in the end the contract becomes so complex and so thick that people who are contracting with you who do not have a raft of lawyers to interpret for them might just be overwhelmed by the amount of print they have to get through.

Mr Metcalfe—Yes. To a certain extent modern commercial practice drives agencies towards having to be quite specific. Clearly we need to have well-understood and articulated objectives. To the extent that the legal profession is able to work to assist us with plainer English, then we look forward to our legal advisers assisting us in that respect.

Senator LUDWIG—Turning to another issue, the Reconciliation Place memorials, page 16 of your report refers to the then DORATSIA organising three meetings and events. Is that all you did in relation to developing the memorials?

Mr Vaughan—The role of the office and, indeed, of the department was to provide secretariat support to the steering committee which was appointed to oversee the project. The actual technical design and construction aspect of it was supported by the Department of Transport and Regional Services. So we organised, for instance, meetings of the steering committee.

Senator LUDWIG—Perhaps you could assist me with this. It is not an area that I am entirely familiar with. Where were the eight members of the Reconciliation Place steering committee drawn from? Were they appointed by your department or by whom?

Mr Vaughan—They were appointed by the government, by the minister.

Senator LUDWIG—And you then provided the secretariat support. Did you provide the funding?

Mr Vaughan—We obtained reimbursement for our actual out-of-pocket expenses, for things like airfares and so forth. But we covered our own wage costs.

Senator LUDWIG—The branch, it says here, organised three meetings and events announcing the national design competition for Reconciliation Place. Your involvement was only to the extent of providing secretariat services; is that right?

Mr Vaughan—Organisational aspects, yes.

Senator LUDWIG—Were you represented on the committee?

Mr Vaughan—No. The co-chairs of the committee were Evelyn Scott and Ian Spicer. The other members of the committee were Matilda House, Vic McGrath, Cassandra Gibbs, Richard Walley and Jim Murphy.

Senator LUDWIG—Perhaps you could take this on notice. Could you detail the expenses that the secretariat provided, unless you have those here?

Mr Vaughan—No, I do not, but we can provide you with the costs which we were reimbursed for in connection with it.

Senator LUDWIG—Then post the conclusion of that process, did your department—or your office now—receive any representations from people or organisations expressing concern about the process?

Mr Vaughan—There has been correspondence to the minister about the issue and we have provided assistance in answering that correspondence. We have provided briefing to the minister on aspects of the issue as it has come up from time to time. We have been involved in liaison with the National Capital Authority, which is actually responsible for the construction.

Senator LUDWIG—Perhaps more particularly, though, have there been concerns expressed to you about the slivers, in particular the separated children's memorial?

Mr Vaughan—Yes, that has been the subject of some of the correspondence the minister has received.

Senator LUDWIG—Is any of that available to the committee? Are you saying that people complained about it? What are you saying?

Mr Vaughan—Some people expressed concern, on the basis of reports they had read in the paper, about what they understood to be the nature of the design. Some expressed concern about what they perceived as being no consultation—those sorts of issues. They are much the same as what is being reported in the press—the same tenor.

Senator LUDWIG—You are aware of the report card issued by Reconciliation Australia in which it stated that the process of developing the new Reconciliation Place in Canberra did not adequately reflect the goals or the spirit of reconciliation? Are you familiar with that?

Mr Vaughan—I have seen the statement, yes.

Senator LUDWIG—What role does your office now play in respect of that? Do you just pass the complaints on to the minister or write the correspondence on behalf of the minister, or do you now investigate the complaints and ascertain whether or not that is the case—whether the complaint is of any substance? What do you do?

Mr Vaughan—Leaving aside those complaints that have been based on what people thought the slivers contained—and they have not seen the slivers, so there is a lot of misinformation about that—on the question of consultation, what the minister has said is that there has been a significant amount of consultation and indeed some continuing consultation on the issue. The original steering committee itself—it is majority indigenous membership—was in fact a form of consultation. Subsequently, a reference group was established to assist

with some of the design selection, which included an indigenous person who had been associated with the successful tender, and the images which are in the sliver, most of them, come from an exhibition mounted by the National Archives originally some five or six years ago, which itself was the subject of consultation. So there has been a continuing thread of consultation running through the process. But that is not to say that some people who feel that they particularly were not consulted or that they do not like the outcome of the process feel that there should have been more consultation.

Senator LUDWIG—Yes, but, given that, what have you done about it—just answered them? Have you answered all of the correspondence?

Mr Vaughan—We have provided advice to the minister and assisted him with answering the correspondence; that is correct.

Senator LUDWIG—So you can say you have answered the letter from the shadow minister for Aboriginal and Torres Strait Islander affairs dated December?

Mr Vaughan—I cannot be sure of that particular piece of correspondence. I would have to check our records on that.

Senator LUDWIG—Perhaps you could. If you have not, I understand that I could then encourage you to respond. Would that be the normal course?

Mr Vaughan—I hear what you are saying, Senator.

Senator LUDWIG—Was the reference group funded out of the office or DORATSIA? How was that worked through?

Mr Vaughan—Just to finish that last point, I am advised that the letter from the shadow minister was answered.

Senator LUDWIG—And when was that answered?

Mr Vaughan—I do not have a date for it, I am afraid, not here tonight.

Senator LUDWIG—Perhaps you could relook at it and, if there is a letter of response, if there is no objection, perhaps we could make it available to the committee so we know there has been one and it has a date on it.

Mr Vaughan—I am sure that, if the shadow minister does not object, we would not have a problem.

Senator LUDWIG—Did the funding for the establishment of the reference group come from the office?

Mr Vaughan—The reference group's costs were covered by the National Capital Authority.

Senator LUDWIG—So what stage are we up to in relation to the process? Has the reference group disbanded? Has it finished its work or is it still being funded by the National Capital Authority?

Mr Vaughan—The reference group still exists. At the moment the earthworks and basic construction works for Reconciliation Place are largely completed and the slivers have not yet been put in place.

Senator LUDWIG—Just going to another issue in relation to the Aboriginal Land Rights (Northern Territory) Act 1976, have there been any responses to—it is a mouthful; it must be another acronym like an alphabet soup—the HORSCATSIA report? I do not want to try to

pronounce it, but I am sure you know what I am talking about. Is there a response to *Unlocking the future*?

Mr Vaughan—It is commonly known as HORSCATSIA.

Senator LUDWIG—They do not shorten it to the ‘Reeves report’?

Mr Vaughan—There are two separate reports. There is the Reeves report, which was done by John Reeves in 1997-98 for the minister, and that report itself was then referred to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, HORSCATSIA, for consultation and inquiry. The committee produced a report. The government has not responded to either of the reports as yet. It made certain commitments in the election platform which bore upon the land rights act and which was the subject of the Reeves report and the HORSCATSIA report. The minister, since the election, has opened up further consultations with the land councils and with the new Northern Territory government and written to a number of other players, too, about possible changes to the act. But there will not in a sense be a response to the HORSCATSIA report or the Reeves report except and until the government announces what it is proposing to do in terms of possible changes to the act.

Senator LUDWIG—Can you find out where that is up to and whether or not there is an intention to have an answer to that report? I know that was part of the last parliament.

Senator Ellison—I will take that on notice.

CHAIR—Could I just note for the benefit of those who are here and of Senator Ludwig that we are only allowed by the motion passed by the Senate to sit until 9.30 in this hearing.

Senator COONEY—Can I ask about an acronym? What does NIDA stand for?

Mr Vaughan—The National Institute of Dramatic Art, is it not?

Senator LUDWIG—That is what I thought, too.

Senator COONEY—Is that within ATSIC at all?

Mr Vaughan—No.

Mr Scott—NIDA is an Aboriginal organisation incorporated in Queensland.

Senator COONEY—Mr Vaughan, you do not know anything about it?

Mr Vaughan—No, not another NIDA.

CHAIR—Shall we just check that and perhaps come back to it when you have the answer and move on now?

Senator COONEY—I would just like to get an answer now. I think Mr Scott knows that.

CHAIR—Yes, but we are very pressured for time, Senator Cooney. I was just hoping that we could move on and come back to it when we have the answer.

Senator COONEY—I have not asked many questions, with great respect to you, Madam Chair.

CHAIR—I am very grateful, Senator Cooney.

Mr Scott—The acronym stands for the National Indigenous Development Association.

Senator COONEY—Right. Mr Vaughan, you do not know about that at all?

Mr Vaughan—The name does not ring a particular bell.

Senator COONEY—Right. That is very interesting. That is in Queensland, is it, Mr Scott?

Mr Scott—It is based in Queensland, yes.

Senator COONEY—Is that resourced out of ATSIC?

Mr Scott—It has received some funding from ATSIC in terms of grants and loans, yes.

Senator COONEY—But it is not an ATSIC body?

Mr Scott—It is not an ATSIC organisation. It is an independent indigenous organisation.

Senator COONEY—I see. That is probably why, Mr Vaughan, you do not know about it? It is a body in Queensland that ATSIC has funded?

Mr Scott—Yes.

Senator COONEY—I for some reason had the thought that it was a body of ATSIC itself.

Mr Scott—No, it is independent.

Senator COONEY—How much has it received from ATSIC?

Mr Scott—I could not give you the specific figures, but it has been substantial. It is probably in the vicinity of \$2 million or \$3 million or more—\$3.2 million.

Senator COONEY—What does it do?

Mr Scott—It is an organisation which tries to focus on economic development for indigenous people. It was around for a number of years before it received any funding at all. It has a range of activities—insurance services, some development services in terms of Aboriginal pastoral properties, a funeral fund, insurance programs. There is quite a range.

Senator COONEY—I thought that you might have known about that, Mr Vaughan.

Mr Vaughan—As Mr Scott has spoken of it, some bells have started ringing. I think that I have heard of—I did not recognise the name—or have some recollection of such an organisation.

Senator LUDWIG—I understand that the minister has engaged in a process of requiring the northern and central land councils to go through a performance audit. Can you tell me a little bit about that performance audit and whether or not there has been any discussion with your office about how that would impact upon the indigenous people in the northern and central land councils?

Mr Vaughan—That is an ANAO—Australian National Audit Office—initiative. The first I knew of it was when I saw it reported. But the ANAO's independence and mode of operation tends to lend itself to that in any event.

Senator LUDWIG—So what do you intend to do? I take it that you have got the audit, the recommendations?

Mr Vaughan—I think that it has only just commenced. I do not think that there is a report available.

Senator LUDWIG—Have they told you when there will be one available?

Mr Vaughan—No, I have not spoken to the ANAO about their time frame for it. I am not sure if it was one of this year's or one of next year's audits or whether they, in fact, did put it on a particular time .

Mr Davis—There are discussions going on with the ANAO about the audit program for the forthcoming year. The matter is not a departmental matter so it is not one that I am aware of either. But in our meeting just the other day with the audit office they did mention that they

would be advising us of their forthcoming program and mentioned that there was a range of audits in the indigenous affairs agencies, if you like, which they would inform us of. But I am not sure that we have actually received that letter or advice from them as yet.

Senator LUDWIG—I am comfortable with that. I know that they have to be talking to you at some point to be able to conduct the audit. That is all I was trying to get a flavour for—what areas, if they have identified any areas, what sort of distance they intend to travel in terms of their ideas—where they are.

Mr Davis—I do not have the information as yet, but they have indicated—and only a couple of days ago—that they would be writing to us in the very near future on a range of audit matters, including agency matters in the indigenous affairs areas.

Senator LUDWIG—And there is no other interoffice audit going on outside of that?

Mr Davis—Not of the nature that you have talked about, no.

Senator LUDWIG—And what about you, Mr Vaughan? Do you have a regular auditing process within your office?

Mr Vaughan—Not one that—

Senator LUDWIG—Outside the usual.

Mr Vaughan—Certainly not one that extends to other portfolio agencies, but it could be that the Office of Evaluation and Audit within the portfolio, which is a statutory office holder, have some related process afoot, because they have a statutory role in that regard.

Senator LUDWIG—Are there any intentions to amend the ALRA? Do you have any recommendations for amending that act?

Mr Vaughan—The only reliable guidance that we have at this stage is what was in the government's election platform, which talked about reducing barriers to economic development on Aboriginal land, reducing barriers to effective devolution of control from existing land councils to more localised regional bodies, and a couple of other things which are not actually legislative changes so much as administrative changes about outcome based funding and the administration of the Aboriginal benefit account.

Senator LUDWIG—It is fair to say that you have not had any detailed discussions with the northern and central land councils about proposed amendments to date to the ALRA, or is that wrong?

Mr Vaughan—We have a pretty good understanding of their views, because the process—not only the original Reeves review but also the HORSCATSIA review and subsequent correspondence and submissions from the land councils—has given us a pretty good idea of where they are coming from. In fact, most recently, they have said to us, 'Look, we think that you know enough about where we are coming from,'—that is the land councils—'we would like to know where the government wants to go.'

Senator LUDWIG—I think that is what I am asking.

Mr Vaughan—Until the current renewed rounds of consultations are completed and the minister and cabinet have had an opportunity to consider the results of that, I do not think that we are going to know exactly which direction we will go, although the minister has indicated to the land councils that he will certainly give them some issues and options documentation for them to reflect on.

Senator LUDWIG—I am sorry, I missed that.

Mr Vaughan—He has indicated to the land councils that he would give them a document which would canvass some issues and options.

Senator LUDWIG—And you have not got that as yet?

Mr Vaughan—That document has not been prepared as yet.

Senator LUDWIG—That is an undertaking that the minister has given to the Northern Land Council, as you understand it?

Mr Vaughan—Yes. At either the meeting that the minister had in Darwin or the meeting down here where the land councils came and saw him; I am not sure which of those two.

Senator LUDWIG—Perhaps you could have a look at that.

Mr Vaughan—That was in the last couple of months since Christmas.

Senator LUDWIG—Perhaps you could have a look at when that was given and where and whether it was a written undertaking as well.

Mr Vaughan—It was in discussion.

Senator COONEY—You did not know anything about NIDA?

Mr Metcalfe—No. I was interested to hear Mr Scott's advice also.

Senator LUDWIG—Perhaps we could move to ATSIC then. If we could do that?

CHAIR—Move to ATSIC, did you say?

Senator LUDWIG—Yes. Unless Senator Cooney has anything left in that area, I think that I have exhausted—

CHAIR—Can I thank then the officers from that area for assisting the committee. Thank you.

[8.59 p.m.]

Aboriginal and Torres Strait Islander Commission

Senator LUDWIG—I think all the questions that I have are in this area. If there are matters that are outside, that do cut across outcome 3, I will put them on notice.

Senator Ellison—Thank you.

CHAIR—So we will concentrate on ATSIC for the next half-hour and other officers may leave. Senator Cooney, is that acceptable to you?

Senator COONEY—Yes, thank you.

Senator LUDWIG—Can you tell me if the extra \$17.4 million for the NTRBs has been allocated or expended? Is there anything left over from that?

Mr Scott—This is the additional funding for NTRBs from the additional estimates?

Senator LUDWIG—Yes.

Mr Scott—The majority of that money has been allocated to NTRBs and it is being expended in the current year. In terms of the \$17.4 million, I am just trying to identify the figure. Are you talking about the \$17.4 million in additional funding, additional resources for native title?

Senator LUDWIG—Yes.

Mr Scott—That has been provided over four years. We have received \$2.9 million in the current year. That money has been allocated to NTRBs for two items in particular. One is the capacity building for the NTRBs themselves in terms of their administrative capacity in their development, and the balance of the money is for tests or for precedent test cases in that area.

Senator LUDWIG—So it has been exhausted or it has been allocated in this—

Mr Scott—It will be allocated and we do not expect there to be any funds left at the end of this financial year. In terms of that, the demand for the test cases and for the NTRBs far exceeds the resources we have.

Senator LUDWIG—By how much?

Mr Scott—I could not identify the amount, but by a significant amount.

Senator LUDWIG—Do you keep those statistics about the unmet need or the unmet demand?

Mr Scott—We do have some statistics on that, but it is not something we test too often. Across all the programs we run, the demand far exceeds the amount of resources we have and it is a case of prioritising the funding we have at this stage.

Senator LUDWIG—Just moving to a different area, in terms of community housing and infrastructure the last budget contained an extra \$75 million over four years to increase spending on housing. Of that, \$35 million is to go to ATSIIC and the remainder to the states through the Aboriginal rental housing program.

Mr Scott—That is true.

Senator LUDWIG—They say that in the last estimates, as I understand it, it had not been decided how to spend the money and we are waiting renegotiations with the states. That was aimed for the remote and regional areas, as I understand it. By all means, correct me if I am wrong about that. The question then that really comes out of that is: has the extra \$75 million for housing been allocated or expended?

Mr Scott—Of the additional \$75 million, the \$40 million you referred to in funding for other agencies is administered through the Family and Community Services portfolio under the Commonwealth-State Housing Agreement. In respect of the \$35 million, we can comment. That money has been received—\$2 million in the current financial year. We have done some preliminary work with the \$2 million and the board has made some allocations in terms of the distribution of the \$35 million over the four years. The board has made a decision, as it has done with the bulk of its national Aboriginal health infrastructure funding, that in the main it is provided to the remote areas. That is in terms of infrastructure, given that in those remote areas the greatest need in the country is for water, sewerage, roads and infrastructure.

Senator LUDWIG—So that is the basis on which it has been allocated? You design the program to meet those needs and then you allocate it accordingly?

Mr Scott—Yes.

Senator LUDWIG—What about the states regarding this money? Where is that up to—the renegotiation?

Mr Scott—I am not even aware that renegotiation has started for that for the next round of the Commonwealth-State Housing Agreement.

Senator LUDWIG—When does that normally happen then?

Mr Scott—I would think it would happen later this year, but I could not speak on behalf of Family and Community Services.

Senator LUDWIG—To put it around the other way, they have not contacted you yet?

Mr Scott—No.

Senator LUDWIG—But when they do that is when you will start renegotiations? Is that what you are telling me?

Mr Scott—It will be.

Senator LUDWIG—In relation to output 4, which is economic development, the portfolio budget statement on page 48 states that ATSIC is receiving \$31.5 million over four years to provide capacity building in remote communities and the FACS is receiving \$1.7 million, although this money has been, as I understand it, allocated to the area but not defined. Has this measure been defined yet with that FACS money, which is \$1.7 million? Are you familiar with that area?

Mr Scott—The \$1.7 million?

Senator LUDWIG—Yes. You received \$31.5 million over four years to provide capacity building in remote communities and then FACS is receiving \$1.7 million.

Mr Scott—Okay. In terms of the FACS money, I could not tell you where that is being directed. But in terms of the money that is coming to ATSIC—the \$31.5 million—community participation agreements is the basis for the allocation. We have started implementing that program. In our experience it is going to require a fairly strong government structure in each of the communities to implement those programs. An intrinsic part of that is actually providing resources and support to communities to actually increase their capacity in terms of the skills of the organisations and individuals and the community itself.

Senator LUDWIG—How will you consult with the communities about the time frames and priorities? Is that part of the process?

Mr Scott—It is.

Senator LUDWIG—In the allocation of the money?

Mr Scott—At the moment we have only done some detailed work with one community. That was the Mutitjulu community at Uluru. That has had some issues we are still working through. We have identified a number of other communities where we are working through those issues now around the country.

Senator LUDWIG—Are there guidelines on the types of projects that you will fund, or are they on tender or submission?

Mr Scott—No, we really have not gone out to tender or submission on it. If we go out and advertise for applications for our programs we tend to escalate the expectations of communities. Actually prioritising which communities we should target, in our assessment and the assessment of a regional councils and our commissioners, is a vital part of our process.

Senator LUDWIG—Has any money been expended yet?

Mr Scott—Only in this first year—the funds for the current year, which is only \$1 million.

Senator LUDWIG—Has any of that been expended?

Mr Scott—We expect to have it all spent by the end of this financial year. Probably half of it has already been expended.

Senator LUDWIG—So just for me to understand a little bit better, what will that \$1 million be spent on?

Mr Scott—Some of those resources are spent in engaging people to assist the community—providing support and some analysis of what the issues are in terms of the governments the community has been talking to. It is quite an involved process in terms of the community participation agreements. I probably do not have time to go into detail here, but I will take it on notice and give you details of it. The program involves—

Senator LUDWIG—I would be happy if you did that because that is an area I have an interest in. I know we are a bit limited for time at the moment, but if you could take that on notice and provide that to the committee it would be helpful.

Mr Scott—It is an area in which ATSIC sees a lot of potential—actually directly assisting communities and overcoming the current issues they face.

Senator LUDWIG—There is \$31 million allocated for the Community Development Employment Project—CDEP—as I understand it. Can you tell me if the trials—I think they were discussed in the last estimates process—of the project have been set up and, if they have, how they are progressing? There are a number of questions I have in this area, but you might want to hold the detailed answers and take them on notice. I can detail the area I was interested in particularly—whichever is easier for you.

Mr Scott—I think I would like to take the question on notice. But trials have been established in eight or nine communities at the moment which deal with CDEPs who do have a capacity for significant outcomes in terms of providing employment and real jobs for indigenous people, and the outcomes have been quite encouraging.

Senator LUDWIG—That was part of the answer I was seeking—how they are progressing—but in particular whether you had found a definition of a viable labour market. I think that was under some discussion last time.

Mr Scott—It is an issue which we are still trying to get some agreement on.

Senator LUDWIG—And then in consultation with different people have there been any concerns expressed about how you may meet the definition of a ‘viable indigenous labour market’?

Mr Scott—There are some concerns. In terms of defining a viable labour market, no, there has not been a position we have come to as yet. But if you are talking about a viable indigenous labour market, that can be distinctly different from a viable labour market in its own right. That is the debate that is going on. In saying that, some of the CDEPs that were involved in the trials have met their targets of providing placements outside in a very short time frame. They are actually seeking more resources to place some more people.

Senator LUDWIG—So you would agree with me that they are encouraging, but it is still early days yet? Is that where we are?

Mr Scott—They are encouraging, and it is early days. But the CDEPs were targeting those where there is a potential for outcome, and they are very active in providing employment outside the CDEPs.

Senator LUDWIG—You may wish to take this on notice as well. I was particularly inquiring as to whether the money has been expended and, if so, how and where. That would

range across a number of programs that you have in place. But if you have that data available to the committee it would be helpful.

Mr Scott—I would probably need to clarify which programs you are looking at—whether it is the whole of the CDEP program or the targeted program.

Senator LUDWIG—The whole of the CDEP program.

Mr Scott—We have that data.

Senator LUDWIG—If we go to another area—the native title capacity, building and training budget funds—output 2 is the advancement of indigenous rights and equity. Your annual report at page 9 details the review of the Aboriginal Councils and Associations Act 1976. Can you tell me what the terms of reference are for this review and the progress to date? Sorry about that jump. I just decided we did not need to spend any time on that area.

Mr Scott—Mr Mastrolembo is the acting registrar of the legislation. He can probably answer that question.

Mr Mastrolembo—Basically, the terms of reference are looking at determining the capacity of the legislation to meet the corporate governance needs of Aboriginal and Torres Strait Islander people and also to identify areas of required reform. That is basically the key scope of that review.

Senator LUDWIG—But do you have terms of reference for the review?

Mr Mastrolembo—Yes, we do.

Senator LUDWIG—Can they be made available to the committee—that would be helpful—and the progress to date in terms of that. Is there a committee established? Are people employed doing work?

Mr Mastrolembo—That is correct. We are basically at a stage now where we had a group of consultants who conducted a certain degree of research. We now are at a situation where they put together a consultation paper. That consultation paper has been made public. We are really at a consultation phase. I am more than happy to have that consultation paper made available.

Senator LUDWIG—That would be helpful. You will also include in the advice to us the number and range of consultants that you have employed to develop the process, the expenditure on the consultants and who has been consulted? Will that be included?

Mr Mastrolembo—I can take that on notice.

Senator LUDWIG—Thank you. The point you have got up to is only the consultative phase? There have been no recommendations made?

Mr Mastrolembo—Not as yet.

Senator LUDWIG—I will go to the issue of the Council of Australian Governments resolution on reconciliation in November 2000, with the review due by November 2001. Has this review been finalised?

Mr Scott—The actual review is not overseen by ATSIC. It is overseen by OATSIA and Prime Minister and Cabinet. The review has not been finalised.

Senator LUDWIG—I understand. Just from your perspective, have you seen it?

Mr Scott—No, it has not been finalised, but we are actively involved with both agencies in trying to promote and get progress.

Senator LUDWIG—You are in the final stages of the review being finalised? Have you seen a draft copy of it?

Mr Scott—The first stage of response to the review, yes. We are in the final stage of doing that now. It is still going through an interdepartmental consultative process at the moment.

Senator LUDWIG—Who is the lead department then?

Mr Scott—Prime Minister and Cabinet, the social policy branch, which I think Mr Vaughan alluded to.

Senator LUDWIG—That is not available at this point to the committee? Is it still in the departmental stage?

Mr Scott—It is in the early draft stage, yes.

Senator LUDWIG—When will the final report be available?

Mr Scott—I do not know exactly what the date will be. I will get back to you.

Senator LUDWIG—Perhaps we can have another look at that in May. If we go to the output pricing review, the annual report details cuts of \$3.2 million to ATSIC after an output pricing review. Can you explain the rationale for decreasing funds to ATSIC?

Mr Scott—I think it was part of an efficiency process. We were expected to have a pricing review and identify and give effect to efficiencies in the agency. That was agreed to in the output pricing process.

Senator LUDWIG—Can you tell me where these funds were cut from?

Mr Scott—ATSIC has to some extent a one-line appropriation. It will come off the top of our allocations, and it is up to the board to determine where those cuts will be.

Senator LUDWIG—So you have not gone through that process yet?

Mr Scott—Not at this stage.

Senator LUDWIG—When will you go through that process?

Mr Scott—The board will be considering this current year's funding at its April board meeting and their funding allocations for the following year.

Senator LUDWIG—Was the output pricing review, which provided the \$3.2 million cuts, an internal process?

Mr Scott—That was a joint process conducted by the Department of Finance and Administration and ATSIC.

Senator LUDWIG—I am just trying to identify who I next need to ask questions of. If we turn to indigenous employment programs, page 44 of the annual report, as I understand it, refers to a lack of data to suggest the IEP is achieving substantial outcomes and that the Job Network has not been assisting indigenous job seekers. Can you explain this?

Mr Scott—I think there has been a view, and a fairly strong one, from the ATSIC board and ATSIC itself of doubts about the prospects of IEP actually providing the outcomes for indigenous people. There was a desire to. I mean, part of the role of ATSIC, I think, in government is that we actually provide advice back to government and actually document that and what our feelings are on government initiatives. That comes back to your point about where is there a viable indigenous labour market, what are the outcomes we are seeking from the Job Network and those issues.

Senator LUDWIG—How have you taken up those issues? You mentioned them in your annual report. Have you provided a report to anyone?

Mr Scott—Part of our process is actually talking to DEWR, as it is known now, about the process itself and trying to improve on the outcomes that are being achieved. That is an ongoing process we engage in with several agencies.

Senator LUDWIG—Is it fair to say that you are not satisfied with the outcomes in those programs to date or that they have been satisfactory but do have some problems? I am just trying to get a differentiation between how you feel about them and where they are heading.

Mr Scott—I think I have to provide to you an issue from the board's perspective when they are considering this, and they are not satisfied.

Senator LUDWIG—Did you want to take that on notice and check with the board?

Mr Scott—I can safely say that is the board's view, and I think it is a consistent view from the Commonwealth Grants Commission.

Senator LUDWIG—If we turn to the MCATSIA, which is the report on page 45—

Mr Scott—It is the Ministerial Council of Aboriginal and Torres Strait Islander Affairs.

Senator LUDWIG—They have endorsed a national strategy on indigenous family violence. But ATSIC, as I understand it, is saying that there is no evidence it has had any effect. What I was interested in is whether MCATSIA signed a national strategy on indigenous family violence. You have stated in your annual report that it has had no effect. Can you tell me why that is the case?

Mr Scott—MCATSIA is a ministerial forum which tries to provide some priority and guidance nationally on what issues are facing indigenous communities and people. In 1999 the issue of family violence came to the fore, but it is not an issue that is new. It is one ATSIC has been trying to deal with since its inception. The record is there. Since 1990 we have been raising the issue, with little impact. I think the press getting hold of the issue and deciding it was going to be an issue for them in 1990 provided an impetus. That is how it came to be on the MCATSIA agenda and for a concerted drive and effort that way. Since that time, ATSIC has established a series of forums with men's groups and women's groups to develop positive strategies about addressing the issues. It is not an issue that can be addressed by one level of government or one agency alone.

Senator LUDWIG—In relation to the Commonwealth program Partnerships Against Domestic Violence, which is funded out of the Indigenous Family Violence Intervention Strategy, as I understand it those funds are almost exhausted. Is that right?

Mr Scott—I could not give you details of that. The PADV, or Partnerships Against Domestic Violence, is a program run out of the Office of the Status of Women. I am not sure where their funding allocations are at right now. There is a second round in which I understand they are currently considering allocations.

Senator LUDWIG—In terms of your strategies for pursuing issues about family violence, do you have programs dedicated to that?

Mr Scott—Family violence is a symptom of the current status and, if I can be honest, about dysfunctional communities and governance issues. From ATSIC's point of view, we are really saying that a range of our programs try to contribute to those issues but do not address them specifically. There have been funds devoted in previous years to providing a number of domestic violence support centres and networks. I think it is safe to say that ATSIC's position

is that the more funds we divert to this area the more we take away from other programs. It does not provide the necessary impetus for other agencies to pick up the responsibility. But I think this is really about the capacity of the communities themselves and how we actually work on the ground.

Senator LUDWIG—I understand that you are not responsible for the funding of the Commonwealth's program Partnerships Against Domestic Violence, but do they liaise with you about where the funds are expended and how they are expended? Do they report to you informally or formally?

Mr Scott—We have associations with both the Partnerships Against Domestic Violence program through the Office of the Status of Women and the Strengthening Communities program through the Department of Family and Community Services. There is a process for consultation on that, but the decisions in terms of where those funds are directed are taken by those agencies themselves. ATSIC is not the only body they consult with in determining those allocations.

Senator LUDWIG—Thank you. I have a few more questions, but I might put those on notice, if that is all right.

Senator COONEY—How is NIDA doing? Is it doing well in Queensland?

Mr Scott—I do not have any information in front of me to give you a direct response on that. It is an enterprise that ATSIC funds in a number of areas. We are in a constant state of assessing how it is doing, but it is in a very early stage at this time. The bulk of funding provided has only been in the last six to 12 months.

Senator COONEY—Anyhow, we will be back in May.

Mr Scott—Yes.

CHAIR—We will indeed. I do need to correct the record in one regard. The motion that was passed in the Senate did not in fact include a finishing time but the committee had, by agreement and in consultation, agreed to half past nine. I am extremely grateful to Senator Cooney, Senator Ludwig and Senator Scullion for their cooperation in achieving that time frame. I thank officers from ATSIC and the department for their assistance this evening. Answers to questions taken on notice are, as I said at the beginning of the meeting, due for return to the Senate by 16 April 2002. I also thank Hansard and the secretariat for assisting with this evening's hearing.

Senator Ellison—Thank you, Madam Chair.

Committee adjourned at 9.26 p.m.