



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION  
COMMITTEE

**Consideration of Budget Estimates**

FRIDAY, 31 MAY 2002

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE**  
**LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE**  
**Friday, 31 May 2002**

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

**Senators in attendance:** Senators Carr, Cooney, Lightfoot, Ludwig, Mason, McKiernan and Payne

**Committee met at 9.09 a.m.**

**ATTORNEY-GENERAL'S PORTFOLIO**

Consideration resumed from 30 May 2002.

**In Attendance**

Senator Ellison, Minister for Justice and Customs

**Departmental Executive**

Mr Robert Cornall, Secretary

Ms Kathy Leigh, Acting General Manager, Civil Justice and Legal Services

**Australian Federal Police**

Mr Mick Keelty, Commissioner

Ms Annie Davis, Director, Legislation

**High Court of Australia**

Mr Christopher Doogan, Chief Executive and Principal Registrar

Ms Carolyn Rogers, Senior Registrar

Mr Lex Howard, Marshal

**Australian Customs Service**

Mr Lionel Woodward, Chief Executive Officer

Mr John Drury, Deputy Chief Executive Officer, Border

Rear Admiral Mark Bonser, Director-General, Coastwatch

Mr John Hawksworth, National Director, Border

Mr Phil Burns, National Director, Commercial

Ms Jenny Peachey, National Director, Office of Business Systems

Ms Gail Batman, National Director, Passengers and Information Technology

Mr Alistair Cochrane, Chief Financial Officer

Ms Sue Pitman, National Manager, Trade Measures

Ms Marion Grant, National Manager, Border Operations

**Attorney-General's Department**

**Outcome 1: An equitable and accessible system of federal civil justice.**

Output 1.1—Legal services and policy advice on courts and tribunals, alternative dispute resolution, administrative law, human rights, evidence and procedure.

Output 1.2—Support for the Attorney-General as First Law Officer, advice on constitutional policy, and promotion of Australian legal services internationally.

Output 1.3—Legal services and policy advice on family law and legal assistance and the administration of government programs providing legal assistance and family law related services.

Output 1.4—Legal services and policy advice on international law.

Output 1.5—Drafting of legislative and other instruments, publication of legislative materials and provision of related legal services.

Output 1.6—Legal services and policy advice on information law.

Output 1.7—Legal services and policy advice on native title.

Mr Karl Alderson, Principal Legal Officer, Criminal Law Branch

Mr Mike Fish, Acting General Manager, Corporate Services

Mr Trevor Kennedy, Chief Finance Officer

Mr Peter LeRoy, General Manager, Information and Knowledge Services

Ms Sandra Power, Acting First Assistant Secretary, Civil Justice Division

Mr Tony Ward, Acting Principal Legal Counsel, Office of Legislative Drafting

Ms Philippa Horner, First Assistant Secretary, Native Title Division

Ms Sue Pidgeon, Acting First Assistant Secretary, Family Law and Legal Assistance Division

Mr Bill Campbell, First Assistant Secretary, Office of International Law

Mr Paul Griffiths, Acting Assistant Secretary, Office of Legal Services Coordination

Mr Peter Ford, First Assistant Secretary, Information and Security Law Division

**Outcome 2: Coordinated federal criminal justice, security and emergency management activity, for a safer Australia.**

Output 2.1—Policy advice on, and program administration and regulatory activities associated with, the Commonwealth's domestic and international responsibilities for criminal justice and crime prevention, and meeting Australia's obligations in relation to extradition and mutual assistance.

Output 2.2—Legal services and policy advice on security law.

Output 2.3—Provide national leadership in the development of emergency management measures to reduce risk to communities and manage the consequences of disasters.

Output 2.4—Development and promotion of protective security policy, advice and common standards and practices, and the coordination of protective security services, including counter-terrorism and dignitary protection.

Output 2.5—Management and coordination of the delivery of security and guarding services to meet diplomatic, consular and other Commonwealth responsibilities.

Output 2.6—Facilitation of the delivery of high quality national policing information services.

Mr Karl Alderson, Principal Legal Officer, Criminal Law Branch

Mr Mike Fish, Acting General Manager, Corporate Services

Mr Trevor Kennedy, Chief Finance Officer

Mr Peter LeRoy, General Manager, Information and Knowledge Services

Ms Joanne Blackburn, First Assistant Secretary, Criminal Justice Division

Ms Dianne Heriot, Assistant Secretary, Crime Prevention Branch

Mr Geoff McDonald, Assistant Secretary, Criminal Law Branch

Mr Peter Ford, First Assistant Secretary, Information and Security Law Division

Mr Ed Tyrie, Director, Protective Security Coordination Centre

Mr David Templeman, Director General, Emergency Management Australia

Mr Morrie Bradley, Director, Knowledge and Business Management, Emergency Management Australia

Mr John Mobbs, Chief Executive Officer, Crimtrac

Mr Stewart Cross, Deputy Chief Executive Officer and Director Operations, CrimTrac

Ms Fran Raymond, Chief Finance Officer, CrimTrac

**CHAIR**—I welcome the committee back in its consideration of budget estimates for the Attorney-General's portfolio. As you will see on the program, the committee has recalled two witnesses briefly this morning. The first of those is the Commissioner of the Australian Federal Police, Mr Keelty. We will go to him in a moment. In terms of the program for this morning, it will take us maybe up to half an hour to deal with matters concerning the Australian Federal Police. We will then move on to the High Court to discuss a matter that a senator wishes to pursue for a maximum of half an hour, and then we will resume with the Australian Customs Service, which we were part way through last night. I am not sure how much time we will need to finish our consideration of the Australian Customs Service but, in consultation with my colleagues, I would have thought that an hour-plus, give or take, would be adequate. Finally, we will move to the consideration of outcome 1 of the Attorney-General's Department. We will review the outstanding program just before the lunchbreak, and I will try to give some advice on the program for the rest of the day and possibly the evening at that time. I welcome Mr Cornall and the minister. Do you have an opening statement that you wish to make this morning?

**Senator Ellison**—No, thank you. We have no opening statement for the day's proceedings.  
[9.11 a.m.]

#### **Australian Federal Police**

**CHAIR**—Welcome, Commissioner Keelty. Some matters were discussed at the hearing the other day, largely through my fault, concerning some current issues that I understand you wish to add to.

**Mr Keelty**—I thank the committee for allowing me to clarify the issue that was raised on Tuesday about the progress of the proceeds of crime legislation. In the interchange, what is known as the Interception Consultative Committee was raised as the committee to which to refer the issue of whether telephone intercepts should be used as part of the proceeds of crime activity. I want to clarify that that committee is set up to support the functions of the agency coordinator. It has a statutory oversight role set out in the Telecommunications Act 1997. It meets quarterly and it is responsible for the oversight of agency participation in interception matters with a focus on technical issues and compliance.

The point I want to make is that it is not a policy making committee in the sense of the sort of policy that we are talking about in terms of the proceeds of crime. It last met on 20 March and its next meeting is due on 7 June, which I think relates to the interchange that we had on Tuesday night. This committee deals predominantly with technical aspects of interception capability between law enforcement agencies and, as I mentioned the other night, the telcos—the telecommunication providers. My representation on that committee consists of my telecommunications engineer and the head of my Telecommunications Interception Division, but it is hardly likely that this committee, on which the AFP is represented, will deal with this difficult issue of whether telephone intercept material should be used in proceeds of crime activity.

In terms of law enforcement policy, I can assure the committee that I, as the head of the Australian Federal Police, Mr Damian Bugg, as the head of the Director of Public Prosecutions, and Mr Gary Crooke, as the Chairman of the National Crime Authority, are all of the one view—that is, unless the telephone intercept material can be used in the proceeds of crime legislation, it is almost pointless proceeding with the new legislation. The reason is that the legislation is aimed at civil based forfeiture. It is aimed at getting the Mr Bigs in

organised and transnational crime. I can give the committee some very real examples of how the Mr Bigs will not ever be in a situation where their hands are on the scene, if you like, at the time of arrest.

I can give you an example of a matter which is before the court, so I will have to be a little vague. In this matter a large quantity of narcotics entered through a particular state in Australia and, under the controlled operations legislation, we substituted that large quantity of narcotics. We worked on that job for several months using telephone intercept material. The narcotics arrived in one state while the activity, the organisation and syndicate behind it, resided in another state. When the narcotics arrived, we substituted them. The people who were going to move the narcotics from one state to the other decided to be a bit greedy and removed one of the substituted boxes. Upon discovering that the narcotics had been substituted, they stopped their operation then and there and we had to move in and make arrests. What we missed out on are the organisers behind this matter who are sitting on significant assets and who have been involved in a number of activities over a number of years, but we cannot convict them of the criminal offence. However, we know that they have amassed assets.

Another case involves an international investigation. It involves a syndicate involved in money laundering and they have transferred in excess of \$10 million out of Australia. I should point out that under the telecommunications legislation, a telephone intercept warrant can only be granted for a class one narcotics offence generally or a class two money laundering offence. In other words, the bar is very high before we can actually obtain a warrant and the warrant has to be obtained from a Federal Court judge or a member of the Administrative Appeals Tribunal. The bar is very high before we get the warrant. We cannot get a warrant for proceeds of crime activity. In the case I have just referred to, it means that we would miss out on \$10 million worth of revenue and breaking down the syndicates involved in organised crime.

Another long-term major narcotics investigation has been conducted in a particular state where, if we were able to use the telephone intercept material in a civil based forfeiture action, we would be able to seize assets in the order of another \$10 million. We have another investigation which is a multinational investigation involving a number of other countries where the member of the syndicate has over \$10 million in assets in the United States. The United States is one of a number of countries including Canada and Ireland which have access to telephone intercepts for civil based forfeiture. If we were able to use our telephone intercepts we would also be able to seize the assets of that syndicate in Australia which would mean that we could share in the \$10 million.

Another case involves \$18 million where a number of people are involved in a major tax fraud. We have issued restraining orders but because of the nature of the case, we are probably limited to \$5 million of asset seizure as opposed to \$18 million of assets that could have been seized if we had been able to use telephone intercept for civil based forfeiture.

I mentioned the United States. Canada, Ireland and South Africa also have access to telephone intercepts for civil based forfeiture. In Australia, the New South Wales Criminal Assets Recovery Act does not contain any bar on the use of telephone intercept material for civil based forfeitures. The Western Australia Criminal Property Confiscation Act 2000 does not contain any bar on the use of telephone intercept material in civil forfeitures. The issue that we agree on in law enforcement is that this is so important that, if we do not have access to telephone intercept material, the practical use of the new legislation would become very difficult. By that I mean that largely when you launch into a criminal prosecutions, you obtain

statements, you put together material obtained from listening devices and telephone intercepts and that material is used by the prosecutor in the criminal prosecution.

If a parallel action were occurring on the proceeds side, it would mean that the officer in the DPP would have, first, to separate and, secondly, to ignore the evidence obtained through telephone intercepts for the purpose of the proceeds activity, which in practical terms would be a very difficult and labour-intensive thing to do. The other thing that, like us, the committee might be exercised about—I do not pretend to act on behalf of the committee—

**CHAIR**—Neither do I, Mr Keelty.

**Mr Keelty**—is the issue of the Solicitor-General's advice on the use of telephone intercept material in civil forfeiture proceedings, which for some reason or other has not been released to any of us. When we were developing the civil based forfeiture policy and legislation in consultation with the other agencies, one of the safety nets was put in place at the suggestion of our minister. There was concern being raised as to whether the police would be lazy—if I can put it that way—and rather than proceed with a criminal prosecution and criminal investigation would turn to civil based forfeiture because of the lower level of proof as an easy way to deal with the issue. I can tell you that the Director of Public Prosecutions has set in place a set of principles and it will be the DPP who will decide whether the AFP can go down the civil based forfeiture path after first engaging somebody in a criminal investigation. I have spoken at length. Unfortunately, the DPP this morning is tied up in a High Court matter, but he and I have been in close consultation, and I indicated this on Tuesday when I gave evidence.

**CHAIR**—Yes.

**Mr Keelty**—He is prepared to put in a further principle to those principles, which we in the AFP would accept, to ensure that the TI act should only authorise the use of TI product in actions for civil confiscation of the proceeds of crime subject to the same limitations and restrictions that presently govern its use and the way it is obtained. This will mean that it will not be possible to use TI product in actions for civil confiscation of the proceeds of crime unless the product constitutes evidence of a serious offence or offences, being the class 1 or class 2 offences. They are prepared to put that in as a governing principle as to into which direction we can go. I raise the issue that there is some expectation—it might have been an expectation that I gave inadvertently on Tuesday when I gave evidence—that this interception coordination committee, or whatever it is called, has absolutely no role to play in the sort of issue that we are talking about here.

I finish by saying that in the proposed legislation there is a sunset clause that says that the legislation will be reviewed after three years. My point is: unless we have access to telephone intercept material for the civil based forfeiture, the sunset clause in the review will mean that it is doomed to failure. I do not want to speak on behalf of the DPP, but I assure you that I have worked very closely—

**CHAIR**—We have previously had submissions on the matter from the DPP.

**Mr Keelty**—The use of telephone intercepts in prosecutions of major investigations—I am talking transnational and organised crime—and listening device material in those prosecutions is around the 70 per cent mark. It is a significant use in criminal prosecutions. To deny that use in civil forfeiture proceedings would almost be a self-fulfilling prophecy that the civil based forfeiture provisions would fail.

**CHAIR**—Thank you very much for addressing those issues with the committee. Having reread the *Hansard* since then, it was left rather up in the air, so I appreciate your clarifying those points. I have one question for you—I imagine other members of the committee might, but I am also mindful of the time. What does the AFP regard as the next steps then in the process?

**Mr Keelty**—I think the decision simply needs to be taken that we will amend the bill to allow it.

**CHAIR**—I understand that.

**Mr Keelty**—In terms of steps, we have almost run out.

**CHAIR**—So you have put your case and you are waiting for a response.

**Mr Keelty**—That is right.

**Senator Ellison**—That is where it is. A decision will have to be made about the legislation as to its introduction and this aspect of it. The government will have to determine whether the bill proceeds with or without it.

**Senator LUDWIG**—In respect of the report that the Senate committee produced—I am sure you have read it but I will not take you to the detail—the recommendation in that area was, effectively, as I understand it, and paraphrasing, that they would adopt the Attorney-General's view and then proceed with, or allow, a review of that telecommunications legislation. Do you say that is not adequate?

**Mr Keelty**—That is correct, Senator. If that were to occur, it would effectively stall the introduction of the usefulness of the legislation given that the proposed legislation has that sunset clause and review as part of the legislation.

**CHAIR**—And I think to be fair, the committee also made it quite clear that if left unresolved this detracted from consideration of the legislation quite considerably.

**Senator LUDWIG**—Yes. Are you familiar with the process for the telecommunications interception review? Is there an ongoing process which allows that act to be reviewed, and do you participate in that?

**Mr Keelty**—Only in a sense of that Interception Consultative Committee that I described earlier. I am instructed that it was set up to support the functions of the agency coordinator providing a statutory oversight role, which is set out in the Telecommunications Act. It is responsible for the oversight of agency participation and interception matters with a focus on technical issues and compliance with the act.

**Senator LUDWIG**—So you are not aware of a legislative review as such?

**Mr Keelty**—No, Senator, I am not.

**Senator LUDWIG**—Have the Australian Federal Police participated in a legislative review of the telecommunications interception legislation in the last three years?

**Mr Keelty**—Yes, we have. Apparently there have been one or two reviews on a case-by-case basis.

**Senator LUDWIG**—Perhaps you could tell me about that, as briefly as you can, so that I can understand what you mean.

**Ms Davis**—The Australian Federal Police do participate in a range of committees and reviews that the Attorney-General's Department either convenes or coordinates. They are



looking at, on a case-by-case basis, matters that are specifically raised, because law enforcement agencies have difficulties either interpreting the act or applying it, or because government requests a review or a matter comes up from the telcos. Those matters are typically dealt with in a whole cluster of forums on a case-by-case basis. The genesis of them is sometimes the Attorney-General's advice and sometimes, as I mentioned earlier, difficulties in policy or interpretation.

**Senator LUDWIG**—Has a review been called in relation to this matter?

**Ms Davis**—Not that I am aware of. May I add that the AFP experience with many of these interdepartmental committees is that they do take some time to produce the results—sometimes as long as 18 months. In this particular case that kind of delay would be intolerable to the AFP.

**Senator LUDWIG**—Is it that the telecommunications interception power—if we call it that—cannot be obtained or utilised through state arrangements to assist in your investigations into the proceeds of crime? In other words, is there another way? If the power is not provided in the proceeds of crime directly to allow the Australian Federal Police to utilise it, can you utilise state based powers in joint operations with the states to achieve the same purpose?

**Mr Keelty**—We would be able to do it in Western Australia and South Australia if it were a predominantly state based investigation rather than a Commonwealth investigation. Any proceeds that were derived from that activity would rightly sit with the state because they are the ones that have the proceeds of crime legislation, so the Commonwealth would not necessarily derive any benefit.

**Senator LUDWIG**—We are interested in the crime, not the benefit surely. If it returns to the state, being a strong Queenslander I would not mind it going to the state coffers.

**Mr Keelty**—I do not think that I am differing with you; perhaps there was a better way for me to express it. Yes, the money and the motive would be taken away from the criminals but we would be limited to a very narrow area of investigation because it necessarily relates to state offences, not Commonwealth offences.

**Senator LUDWIG**—So, in other words, you would not be able to utilise your full powers in an investigation of the type that you would want to conduct into drugs or money laundering. Is that right?

**Mr Keelty**—That is right. We would have to revert—

**Senator LUDWIG**—In respect of Commonwealth offences?

**Mr Keelty**—Yes, that is right.

**Senator LUDWIG**—So it would be limited only to state based offences unless some element of a Commonwealth offence were subsidiary or a part of the crime?

**Mr Keelty**—That is right. When I said that the Commonwealth would derive no benefit, I meant that it would derive no financial benefit and nor would it derive the benefit of dismantling the syndicate.

**Senator LUDWIG**—I am interested in dismantling the system; the revenue is a separate matter, providing that its use is denied to the criminals.

**Senator COONEY**—I am interested in your analysis of the way telephone intercepts may be used in civil proceedings. You are saying that it is a difficulty at the moment, as you see it, that it will not be able to be used. I must confess that it strikes me as very interesting that you

should be able to use telephone tapping in proof of criminal offences but not in proof of civil offences. In civil matters, you are usually able to use whatever instruments are available. How did it come about that we are not going to use telephone tapping in civil proceedings?

**Mr Cornall**—Senator, the way that the telephone interception legislation works is that it is limited to interception on warrant in relation to serious criminal offences. That is the way the legislation was set up. What Commissioner Keelty is talking about is extending it to use in civil forfeiture proceedings which are associated with criminal activity. This is a matter which the Attorney-General has given some consideration to, and I will ensure that all of the commissioner's remarks from today are referred to the Attorney after this hearing.

**Senator COONEY**—I can follow the proposition that you should not be able to intercept for the purposes of a civil case. I can understand that and I think it is right, otherwise you would be intercepting everybody. But, if you have evidence that has been legitimately obtained under the Telecommunications (Interception) Act as it now stands, it is a bit hard to say that that should not be used.

**Mr Cornall**—That is the policy decision that has to be taken. There is a provision in the act at the moment that limits what the product of the telephone interception can be used for. There is a question of whether that should be, if it is necessary, extended to its use in civil forfeiture proceedings.

**Senator COONEY**—I can see the absolute need to ensure that you do not conduct your civil litigation through telephone intercepts. But, if a body of evidence has been legitimately obtained and you are not going to get legislative creep, I can understand why somebody might say, 'That's there.'

**Senator Ellison**—Your point, Senator Cooney, is that it has been legitimately obtained under the act, so why could it not be used for the purpose of the ancillary civil forfeiture?

**Senator COONEY**—Yes. The only problem I can see is if people said, 'We shall extend the act so that the act allows us to do it for civil proceedings.' Then you may as well abandon the idea of any protection at all for telephone conversations. It does sound a bit peculiar: you try somebody in one court for, say, drug importation using a bit of evidence and then you go to the civil court next door and you say, 'We really can't prove our case because we haven't got the bit of evidence that we have just used in the criminal court.'

**Mr Keelty**—I know you are concerned about time, Madam Chair, but could I make one comment to the senator. Last night when I spoke to Gary Croke, the Chairman of the National Crime Authority, he told me about the Bean case in the New South Wales Court of Criminal Appeal where that precise issue was the focus of the case. In Mr Croke's previous capacity working with the New South Wales royal commission, there was a particular matter where telephone intercepts were used and prosecutions were launched but the derivative use of the telephone intercept was the issue at point and it was unable to be used. I will not labour the point now in the interests of time. It also strikes me that, as we work through the issues on the new legislation, the proceeds of crime legislation, and we work through that issue of derivative use, this is another extension of that principle.

Madam Chair, if you would like, I have consent from the Director of Public Prosecutions to table for you the guidelines for the conduct of compulsory examinations under the Proceeds of Crime Act, with a draft of the principles to include the new principle protecting the use of telephone intercepts.

**CHAIR**—If you would table that for the committee, it would be very helpful, Commissioner. If there are no further questions, on behalf of the committee I thank you for assisting us this morning in clarifying those points. We are very grateful. Thank you, Ms Davis, for attending also. I imagine that this is an ongoing matter for consideration not just by this committee but by the parliament, so that is very helpful. Thank you.

In trying to adhere to our timetable, I would like to ask Mr Doogan, the Chief Executive and Principal Registrar of the High Court, to come to the table.

[9.38 a.m.]

### **High Court of Australia**

**CHAIR**—Good morning, Mr Doogan.

**Mr Doogan**—Good morning, Madam Chair.

**CHAIR**—Thank you for returning to assist the committee with its deliberations, and thank you also for providing the correspondence you sent to the committee on 29 May following your appearance on the 28th. We are grateful for your clarification of a couple of those matters. I understand that there are further questions flowing from that that members of the Senate wish to address to you. I understand that Senator Lightfoot has a question.

**Senator LIGHTFOOT**—Thank you, Madam Chair, and thank you, Mr Doogan, for returning to the committee this morning. The questions this morning have arisen out of evidence that you and your colleague Mr Lex Howard gave on Tuesday, 28 May, this week. It conflicted appreciably with questions and answers on Wednesday, 29 May at another committee. Would you be kind enough to briefly tell the committee—mainly for my benefit, being a boy from the bush in Western Australia—what the role of the Chief Executive and Principal Registrar involves in the High Court.

**Mr Doogan**—It is dealt with in the High Court of Australia Act, and essentially it is to act on behalf of and assist the justices of the court in the administration of the court. It has a range of functions including—as I am sure you are aware—that the staff of the court are not members of the Public Service; they are in fact engaged under the High Court of Australia Act by me. Essentially the role is twofold: the chief executive role is exactly that—to be the chief executive in relation to administrative matters affecting the court—and the principal registrar role is a legal role to give effect to the rules of court, which are akin to regulations and, in effect, to act as the chief lawyer for the court in relation to case management and dealing with matters that come before the court. Those rules also provide for the exercise of quasi-judicial functions.

**Senator LIGHTFOOT**—I do not want to force you to be modest, but it is a pretty senior role in the High Court, isn't it?

**Mr Doogan**—Leaving aside the seven justices of the Court, it is the most senior position in the court.

**Senator LIGHTFOOT**—Thank you, Mr Doogan. You wrote a letter to the secretary of this committee, the Senate Legal and Constitutional Legislation Committee, pointing out some discrepancies that you had noticed subsequent to the evidence you gave on Tuesday the 28th. You said *inter alia* that you were 'unfamiliar' with the document entitled 'Chronology' and on some occasions that document had been referred to as 'onology' because the 'Chr' had been missed out on some photocopies but that they were the same document. Was the

statement that you gave then—that you were unfamiliar with the document entitled ‘Chronology’—true in retrospect?

**Mr Doogan**—At the time yes it was. You will see attached to my letter that I sent to the secretary of the committee that the first attachment is the document passed to me on the day by Senator Scullion. You will see that a large portion of the document—on the front page—is almost illegible. I should say, as is clear from my letter, that after returning to the court I did as Senator Scullion had asked and I examined my records. I subsequently found in that examination that in a letter dated 21 March from the secretary of the department of finance, which is also attached to my letter to the secretary of this committee, there was a chronology attached to that letter which was forwarded to me following a discussion that I had had earlier that day with the secretary of the department of finance.

**Senator LIGHTFOOT**—I have a document entitled ‘Chronology’ or in this case ‘onology’—but we know that to be ‘Chronology’; there is no such word as ‘onology’, at least not yet—

**CHAIR**—It is a useful suffix.

**Senator LIGHTFOOT**—It may very well give life to it out of this committee, Madam Chair. The document appears to be totally readable; it is not illegible. I wonder whether you would be kind enough to confirm that that is the same document and the fact that it is probably a better photocopy than yours.

**CHAIR**—We will pass that to Mr Doogan.

**Mr Doogan**—Yes, I now have the document.

**Senator LIGHTFOOT**—Is that a more superior document in terms of its copy than the one you had?

**Mr Doogan**—No. If you look at my letter of 29 May, you will see that there are two copies of this same document that we are talking about. There is one that was given to me on Tuesday of this week by Senator Scullion to look at, which is the one that you will see has a poor presentation. You will see that at the back of my letter there is a second copy of the same document with minor variations. The text appears to be the same. There is additional handwriting—or a copy of handwriting—on the second version, which I note is the same as the version that you have just passed to me.

**Senator LIGHTFOOT**—Would you be kind enough to let the committee have a look at those. I think this is my document that I just passed to you.

**Mr Doogan**—Yes.

**Senator LIGHTFOOT**—You said that you had a document that was the same, apart from some notations.

**Mr Doogan**—I said that the document attached to my letter of 29 May has the same markings on it as the copy that you just showed to me.

**Senator LIGHTFOOT**—Yes. What I am trying to establish is that neither your document nor mine happen to be illegible or almost so. That was what I was trying to establish.

**Mr Doogan**—There is a difference. Do you have a copy of my letter of 29 May?

**Senator LIGHTFOOT**—Yes. I have got a copy, probably of a copy as well, of your correspondence.

**Mr Doogan**—There are three pages of my letter. If you look at the document immediately behind those three pages you will see that the foot of page 1 of that document is substantially illegible.

**Senator LIGHTFOOT**—That is the document marked ‘onology’?

**Mr Doogan**—That is the one, yes. And it has a mark at the top which is illegible next to that word. If you go to the back of that set of documents you will see a second copy, the difference being that this is a more legible copy than the first. You will also see that it has additional markings at the top of the page and the foot of the second page which are markings identical to those that are contained on your copy that you just showed me.

**Senator LIGHTFOOT**—Yes.

**Senator MASON**—Wouldn’t you agreed, though, Mr Doogan, that at first glance they are apparently the same document.

**Mr Doogan**—Of course I would. In fact, I said that at page 2 of my letter of 29 May.

**Senator MASON**—That is right.

**Mr Doogan**—There is no doubt that they are copies of the same document.

**Senator LIGHTFOOT**—One is less legible.

**Mr Doogan**—One is less illegible than the other.

**Senator LIGHTFOOT**—From my perspective, I would say that one is less legible than the other but certainly not illegible—either of those documents. That is my personal observation. I have a new pair of glasses and I can read very well.

**Mr Doogan**—Very good.

**Senator LIGHTFOOT**—Let me get on with this. So in response to my question where you said you are unfamiliar with the document titled ‘Chronology’, in retrospect that is not true. You have amended your position since the evidence you gave on Tuesday.

**Mr Doogan**—I have not amended my position. I was asked a specific question on Tuesday and at the time I said I was not familiar with that document. I have since returned to the High Court and examined the High Court records and have found a second version of that document which was attached to Dr Watt’s letter of 21 March. I immediately wrote a letter to the committee, which you have a copy of, for the purpose of clarifying the evidence that I had given. I said at the foot of page 2 in the final paragraph:

Having now had the opportunity to compare the document provided to me yesterday by Senator Scullion with the document forwarded to me by Dr Watt, it is obvious that both documents are substantially identical, save for the fact that the one under discussion in the Senate yesterday is almost illegible on a significant portion of the first page and the copy provided to me by Dr Watt has additional writing on it at the top of the first page and the bottom of the second page.

Where that takes us, I do not know. If you are leading to a suggestion that I am the author of this document or was in any way, shape or form involved in the production and distribution of this document, I reject that out of hand.

**Senator LIGHTFOOT**—Who is the author, or who was responsible for collating the document?

**Mr Doogan**—I have no knowledge as to who the author of the document is.

**Senator LIGHTFOOT**—Do you think it emanated from the High Court? Do you think that was the source of the document?

**Mr Doogan**—I have no knowledge as to the source. I am a lawyer. I deal in facts and evidence; I do not deal in speculation and innuendo. There is no evidence to suggest, as you implied in another place, in the Finance and Public Administration Legislation Committee, that Mr Howard is the author of that document. Indeed, Mr Howard was incensed at that suggestion and has written to the secretary of the Senate finance and public administration committee refuting that implication and asking that in fact the chairman of the committee give permission for his letter to be tabled. If it would assist you, I am happy to read that to you. I have a copy of this letter.

**Senator LIGHTFOOT**—I am sure it will find its way to the committee at an appropriate time, Mr Doogan.

**Senator McKIERNAN**—As a member of the committee, I would appreciate hearing what Mr Howard has had to say. This is a matter for the committee and I would appreciate knowing more about this instance. While I have got the microphone, I had thought that we had asked Mr Doogan to come back here to correct the record of his evidence before this committee. We seem to be going beyond that at this stage. I am not seeking to stop the proceedings at this time but I do have a concern that perhaps it may be going beyond the wish of this committee, as the committee determined last evening in determining that Mr Doogan should return here today. I am not making that judgment at this time but I am certainly keeping an eye on that matter. Now that the matter has been put on the record, I would appreciate hearing what Mr Howard has got to say, if that is okay with you, Chair.

**CHAIR**—I appreciate you making that note. I was going to seek to have Mr Howard's remarks put on the record here also. I also note what you have raised in relation to the committee's decision to ask Mr Doogan to return this morning. I also have my mind turned to that matter. Mr Doogan.

**Mr Doogan**—The letter is dated 30 May 2002. It is addressed to Ms Sue Morton, Secretary, Senate Finance and Public Administration Legislation Committee, Parliament House, Canberra, ACT 2600. It reads:

Dear Ms Morton

At hearings of the Senate Finance and Public Administration Legislation Committee on 29 and 30 May 2002 Senator Lightfoot questioned officers of the Department of Finance and Administration on the source of a document referred to as 'the chronology document'.

He is referring to proof committee *Hansards* of that committee.

Senator Lightfoot's line of questioning contained a strong implication that I am the author of the chronology document. I wish to place on record that I deny unequivocally being the author of the chronology document referred to by Senator Lightfoot or of playing any part whatsoever in that document's copying or distribution to any person. Further, I wish to state that I am completely unaware of the person or persons who compiled, copied or distributed the chronology document. I would be grateful if you would bring this letter to the attention of the committee chairman and seek his permission to have it tabled.

Yours sincerely

Lex Howard

Marshal

So in summary, Senator, neither Mr Howard nor I have any knowledge about who compiled the document, who copied it and who distributed it.

**Senator LIGHTFOOT**—Thank you, Mr Doogan. With respect to the document that was hand delivered to your personal assistant earlier this year, and for which there was evidence of a receipt—are you aware of the document I am talking about?

**Mr Doogan**—I believe you are talking about Dr Watt's letter of 21 March.

**Senator LIGHTFOOT**—Yes, which followed up a phone call between you and Dr Watt on the same day.

**Mr Doogan**—That is correct.

**Senator LIGHTFOOT**—How did that slip past your attention?

**Mr Doogan**—Would you explain? How did what slip past my attention?

**Senator LIGHTFOOT**—How did the letter that was delivered to your office with respect to a conversation between you and Dr Ian Watt slip past your attention? I understand that you were not aware of that letter.

**Mr Doogan**—No, that is not correct. If you look at the *Hansard* transcript of Tuesday, 28 May for the Senate Legal and Constitutional Legislation Committee you will see that Senator Scullion said at the last two lines on page 167:

Can you recall having any discussions with department of finance officials with regard to a document that may have related to freedom of information requests in this matter at all?

To which I responded at the top of page 168:

I believe that on one occasion I had a discussion with a department of finance official, yes.

There has been only one discussion between me and Dr Watt in relation to this chronology. In the letter, which I sent to the secretary of this committee on 29 May, I stated that, having examined the records, there was another conversation as well on a related issue—not in relation to the document but in relation to the Justice Kirby issue. It was a discussion that I had with Ms Jan Mason. You will see in the bundle of material which I forwarded to this committee a letter to Dr Watt dated 15 March in which I referred to the conversation that I had had with Ms Mason the previous day.

**Senator COONEY**—I am not sure what has been put to Mr Doogan and what Mr Doogan's answer was. I think you were being asked about the chronology that Senator Scullion put to you, Mr Doogan.

**Mr Doogan**—Yes.

**Senator COONEY**—I am not sure how we got across to Dr Watt and to—who is the lady you were talking about?

**Senator LIGHTFOOT**—Perhaps we could backtrack.

**CHAIR**—Perhaps Senator Cooney could finish his questions, and then Senator Lightfoot can continue.

**Senator COONEY**—I accept what Senator Lightfoot is saying. If Senator Lightfoot could put to Mr Doogan what he, in effect, is saying, then we might be able to get this into some shape. Do you mind if that is done, Mr Doogan?

**Mr Doogan**—Not at all, Senator.

**Senator LIGHTFOOT**—Let me go back then—

**Mr Doogan**—Before you do, if you do not mind, could I put this into context? From the line of questioning that you are putting to me today and the line of questioning that you have put to others in the finance and public administration committee, that suggests to me that you regard this chronology document as one of great significance. For my part, I regard the document as of little interest—and at the time I regarded it as of little interest.

What we have here is a situation where Senator Heffernan made allegations against Justice Kirby on the night of Tuesday, 12 March. I knew nothing of those allegations at that time. The first I knew of these allegations was when my wife and I were awoken at 5.40 a.m. at home by an ABC journalist seeking a comment from me about this affair for the 6.00 a.m. ABC radio news. Thereafter, I learnt of the allegations. That day—that is, Wednesday, 13 March—Justice Kirby asked me to issue a media release. I issued that media release. It is on the public record. Copies were provided to every media outlet in the parliament.

**Senator LIGHTFOOT**—Mr Doogan, I am happy—if the committee is happy—if you go down that path. That was not the point of my questioning this morning. What I want to establish is whether it is more appropriate for the committee to accept the accuracy of the evidence given by the head of finance, Dr Ian Watt, than the veracity of the evidence that you had given on Tuesday of this week—the 28th. I am not interested in those other parts.

**Senator COONEY**—This is what I cannot quite get. It may be that the problem is the terms that have been used. ‘Veracity’ has a connotation of an intent. Is what you are asking about whether there was an intention to say something that was not true or are you asking about differences or apparent differences in statements? I am not sure what is being asked.

**CHAIR**—Senator Lightfoot, as I indicated at the beginning of this morning’s hearing, and as had been advised to you previously, the committee set aside 30 minutes for this discussion and we have approximately eight of those remaining. With regard to the matters that you are discussing, I am more than happy for you to continue doing so with Mr Doogan, clearly. But in terms of the material which has been placed on the record to this committee, this committee understood Mr Doogan to have corresponded with us on 29 May to indicate that on returning to his office, as he says, and noting the discussion with Senator Scullion he felt that he should—is ‘amplify’ an appropriate word—

**Mr Doogan**—Yes.

**CHAIR**—amplify the comments that he had made on the record on the previous day. So, Senator Lightfoot, if you wish to continue discussing this matter with Mr Doogan and questioning Mr Doogan, please do.

**Senator LIGHTFOOT**—I am trying to ask short questions in the hope that I will get comprehensive but nonetheless short answers. With respect to the same document and the same finance department personnel conversation that you had had, Mr Doogan, do you recall that conversation with those officials on the chronology document? Do you recall that telephone conversation?

**Mr Doogan**—Yes, I do.

**Senator LIGHTFOOT**—Would you say that the letter that subsequently came from the finance department to your personal assistant, which you would have received—I think you have said you received that—

**Mr Doogan**—Yes, I did say that.



**Senator LIGHTFOOT**—was significantly the same as the telephone conversation that you had had with that finance official, with Dr Watt?

**Mr Doogan**—Sorry, Senator. You are asking: would I agree that the conversation I had with Dr Watt in which he told me that the document—

**Senator LIGHTFOOT**—Let me put the question again, rather than you put it to me. Would you agree that the telephone conversation that you had had with Dr Watt was reflected in the letter that you, or your personal assistant, had received from Dr Watt?

**Mr Doogan**—Yes, I would agree.

**Senator LIGHTFOOT**—No anomalies there? No inclusions? It was the same.

**Mr Doogan**—If you look at Dr Watt's letter, you will see that he specifically refers to the document which is attached.

**Senator LIGHTFOOT**—Yes.

**Mr Doogan**—I have no quarrel with that.

**Senator LIGHTFOOT**—Where is the discrepancy, then, between the evidence you have read from the Finance and Public Administration Legislation Committee and that which you say is anomalous with the evidence that you gave on the Tuesday? Where are the major discrepancies there with respect to the documents?

**Mr Doogan**—I would not say there is a discrepancy. I have said to this committee that I provided this committee with correspondence. It is identical correspondence to the correspondence that Dr Watt provided to your committee.

**Senator LIGHTFOOT**—Where is the difference?

**Mr Doogan**—It is all attached to the letter of 29 May.

**Senator LIGHTFOOT**—Where then do you see the problem existing? There is a reason you were called back here this morning. Where do you see the problem then? If you say that the evidence given on Wednesday to the Committee of Finance and Public Administration—

**Senator McKIERNAN**—Madam Chair, I am not so sure that it is a fair question to address to Mr Doogan. It was not Mr Doogan's decision to be drawn back here today; it was the decision of this committee to ask Mr Doogan to come back here, and we are very grateful that he did. If the question needs to be asked in the form that my colleague Senator Lightfoot wants to ask it, I think he has to ask it of members of this committee, because we were the ones who took the decision to invite Mr Doogan back, and we did that. I will speak for myself; I cannot speak for other members of the committee. I was influenced to make my decision to invite Mr Doogan back here by the content of the letter that Mr Doogan wrote to the committee with regard to the evidence that he gave to this committee.

**Senator COONEY**—I thought that Mr Doogan was asked back here at the request of Senator Lightfoot.

**CHAIR**—Yes, but there had to be a decision of this committee, and we assisted Senator Lightfoot in that decision. I know Senator Mason has one or two questions he wishes to put to Mr Doogan.

**Senator MASON**—I do not have the benefit of the understanding of the evidence that Senator Lightfoot has, but to come to the point, as I have picked it up this morning: you gave

evidence to this committee on 28 May that you were not familiar with the chronology. I think you accepted that in your letter of 29 May.

**Mr Doogan**—Yes, I did.

**Senator MASON**—In response to a question from Senator Scullion, you said:

I recall that I was informed that there was a chronology circulating, the authorship of which was unknown to the department of finance.

Do you remember saying that?

**Mr Doogan**—I do.

**Senator MASON**—You say that, and yet you could not recall receiving from the Secretary to the Department of Finance and Administration, Dr Watt, on 21 March a copy of that same document.

**Mr Doogan**—No, I did not specifically recall that at the time because, as I have explained earlier to Senator Lightfoot, this particular document was of no interest to me. This was received after the whole issue involving Justice Kirby was over and done with.

**Senator MASON**—Do you get many letters or documents from the Secretary to the Department of Finance and Administration?

**Mr Doogan**—I do get documents from the Department of Finance and Administration.

**Senator MASON**—From the secretary?

**Mr Doogan**—Yes, I have had correspondence from the secretary in the past.

**Senator MASON**—From the secretary, following up a conversation, as you said before to Senator Lightfoot, that raised one of the most important and controversial issues confronting the High Court in its history?

**Mr Doogan**—I would not agree, Senator Mason, that that document raised the most controversial issue.

**Senator MASON**—No, it did not raise it, but it touched on it. Would you agree with that?

**Mr Doogan**—Senator, no, I would not. I have told you repeatedly that I regarded the document as inconsequential, and I started to go down the path of telling you the sequence of events that occurred. Let me just repeat two of them that are relevant, if I may, Madam Chair.

**Senator MASON**—I have only a couple of questions and I will become more interested.

**CHAIR**—I am not sure what that means, Senator Mason.

**Senator COONEY**—I think Mr Doogan must be allowed to answer.

**CHAIR**—If Mr Doogan could place the information he wishes to place on the record, we will come back to your question.

**Mr Doogan**—I merely wish to point out that the allegations were raised by Senator Heffernan on the night of Tuesday, 12 March. By Monday, 18 March, six days later, Senator Heffernan had resigned. The material relating to Justice Kirby had, at that point, been shown to be false. On 21 March, I spoke by telephone to Dr Watt, who told me about this chronology that we have been talking about and said that it had been floating about the press gallery. He followed up with a letter attaching that. As far as I was concerned, I had no great interest in it. The matter was finished; it was a six-day wonder.

**Senator MASON**—Just to recap: you spoke to Dr Watt, as you have just said, on the 21st about the matter. That is correct, isn't it—you have just said that?

**Mr Doogan**—Yes, it is.

**Senator MASON**—And there was a hand-delivered letter to the High Court that day?

**Mr Doogan**—Yes, that is correct.

**Senator MASON**—From the Secretary to the Department of Finance and Administration. Is that correct?

**Mr Doogan**—Yes.

**Senator MASON**—And you do not recall that attached to that letter was a copy of the chronology?

**Mr Doogan**—I do now recall it, Senator, yes, and let me add—

**Senator MASON**—You did not recall it on Tuesday.

**Mr Doogan**—No, I didn't. Now let me make it clear as well that, if I could refer to the Finance and Public Administration Committee *Hansard* for Wednesday, 29 May, at the foot of page 330 Senator Lightfoot, in re-examining Dr Watt, said:

Whilst that evidence of the delivery of the letter is coming, could you explain Mr Doogan's statement that he is unfamiliar with the correspondence that we are referring to?

At no stage was I asked about correspondence in this committee earlier in that week. I was asked about whether or not I had had a discussion about a chronology. As I referred to earlier, at the top of page 168 of this committee's *Hansard*, I said:

I believe that on one occasion I had a discussion with a department of finance official, yes.

And that is true.

**Senator MASON**—Mr Doogan, at the bottom of page 167 of the transcript of this committee of Tuesday, 28 May, Senator Scullion asked:

You cannot recall having knowledge of a document that actually marked out the chronology of those requests?

Your reply, sir, was:

No, Senator, I am not familiar with the chronology.

That is in relation to a document, do you agree?

**Mr Doogan**—The first question from Senator Scullion, yes. I said at that time I was not familiar with the chronology that was passed to me. Bear in mind that I had not been previously advised that there was to be any discussion about a document. As I have said, it assumed no importance to me at the time. In the interests of completeness and accuracy, I then went back to the court and reviewed the files. The following day I wrote to this committee for the sake of accuracy.

**Senator MASON**—Sir, what I find difficult to understand—as I say, I do not have the background in this issue that others have—is that Senator Scullion points you, as you have just agreed, at the bottom of page 167, to a document called a chronology. In response to a conversation you have on 21 March with Dr Watt, Secretary of the Department of Finance and Administration, a letter is hand-delivered to your office, headed 'FOI request relating to Justice Kirby' in relation to an extremely important matter—although I concede that the heat

had gone out of it somewhat, but still a very, very important matter touching on the court—attaching the chronology, and you could not recall it when Senator Scullion asked you questions on Tuesday. It is a fair question.

**Mr Doogan**—Senator Mason, it did not touch on the court. What it touched on was freedom of information requests that had been processed in the Department of Finance and Administration relating to Justice Kirby at a period of time before he was even appointed to the High Court of Australia.

**Senator MASON**—Sir, but wouldn't you agree it touched on notorious events only a couple of weeks before?

**Mr Doogan**—I would agree it touched on notorious events, yes, but at that stage it was of no interest because the allegations in question had been found to be false.

**Senator MASON**—Even though it was—

**Mr Doogan**—I would also add that, frankly, I am a very busy person in my job in the High Court. I have a lot of other issues to be concerned with. I can tell you, having reviewed the records, that 21 March was not the first time when Dr Watt attempted to speak to me by telephone. He had attempted to do so the previous day, but I was in Adelaide on court business.

**Senator MASON**—But, sir, was it the first time that he wrote you a letter relating to the conversation, and then had he hand-delivered it to your office?

**Mr Doogan**—No, it was not. He wrote to me twice, as I have indicated in the material attached to my letter of 29 May.

**Senator MASON**—I understand that but, you see, in the end it comes down to whether a conversation you had with Dr Watt was immediately put into a letter from him relating to that conversation and hand-delivered the same day with a chronology attached relating to notorious events within the previous fortnight you do not recall. It comes to that.

**Mr Doogan**—I am not saying I do not recall it; I do recall it.

**Senator MASON**—You did not recall it on Tuesday.

**Mr Doogan**—I was not asked about any correspondence with Dr Watt last Tuesday.

**Senator COONEY**—Madam Chair—

**CHAIR**—Senator Cooney, before we go on, I have indicated to Senator Lightfoot that half an hour was set aside by the committee for this discussion. We have exceeded that time and, unless the committee indicates otherwise, I intend to thank Mr Doogan for appearing again this morning.

**Senator COONEY**—Madam Chair, the problem with that is that I think there has been a vigorous attack on Mr Doogan and I think he is entitled to clarify the situation. I think accusations have been made against him, which he is entitled to respond to.

**CHAIR**—Senator Cooney, it was my understanding that Mr Doogan's response to Senator Mason was in response to the issues that Senator Mason had raised.

**Senator COONEY**—But I think it has been not put in a way this morning as it came out on Tuesday. If I could just have a minute to put this in context, because I think that Senator Mason and Senator Lightfoot, who I respect greatly, are probably not familiar with the context. As I understand the context, it was this: Senator Ludwig was asking Mr Doogan

questions. Senator Scullion then, in a very polite way, asked him about a chronology, to which Mr Doogan then said that at that point—he was asked ‘at that stage’—he was not familiar with the chronology. The chronology, as I understand it—and if you read the *Hansard* you will see this—was not described to him, excepting that Senator Scullion said:

I apologise for the quality of the document. I understand the document purports to be a chronology of various freedom of information requests for Justice Kirby’s Comcar records. Have you seen the document before?

Mr Doogan—Was it published? If it has been published in a newspaper, I probably have seen it.

Senator SCULLION—No, it has not. Have any of your officers seen the document?

Mr Howard—No, I have not seen it before.

That was in the context of the moment. Now, if you go over to page 168, as the matter was brought to Mr Doogan’s mind more, he became more familiar with it:

Mr Doogan—I believe that on one occasion—

**Senator MASON**—Senator Cooney, I do not mean to be rude but, if you keep going down, finish to the end of the page you have just read and incorporate what I read out before, sir, that will give more context.

**Senator COONEY**—In that case I will read it right through:

Mr Howard—No, I have not seen it before.

Senator SCULLION—Perhaps you could help me with it, even if you have not actually seen this particular document. As I said, it is a chronology of the various freedom of information requests for Justice Kirby’s Comcar records. You cannot recall having knowledge of a document that actually marked out the chronology of those requests?

Mr Doogan—No, Senator, I am not familiar with the chronology.

Senator SCULLION—Can you recall having any discussions with department of finance officials with regard to a document that may have related to freedom of information requests in this matter at all?

Mr Doogan—I believe that on one occasion I had a discussion with a department of finance official, yes.

Senator SCULLION—Could you share with us the nature of that discussion? What was that about?

Mr Doogan—I recall that I was informed that there was a chronology circulating, the authorship of which was unknown to the department of finance.

Senator SCULLION—In that conversation or just through other information you may have, you have no idea who perhaps prepared that document that was circulating?

Mr Doogan—No, I have no idea.

Senator SCULLION—Clearly this is the document that they were referring to.

Mr Doogan—I would imagine so.

Senator SCULLION—It appears to be, I am not sure how many documents—

CHAIR—I am sorry, Mr Doogan, what was your response?

Mr Doogan—I can only accept what you are saying to me.

Senator SCULLION—Obviously, if that would follow, one would think that you would have no understanding about how that document came into the hands of the federal opposition?

Mr Doogan—I have no idea, Senator.

Senator SCULLION—As part of your discussions with the department of finance, did you perhaps touch on the accuracy of information in that document?

Mr Doogan—Actually, I just cannot recall. I would have to check to see what records I have available.

Senator SCULLION—Perhaps you could take that on notice ...

If I could make a comment there: Senator Scullion did not cavil with the statements. He went on:

Senator SCULLION—Perhaps you could take that on notice: the details of the conversations that you and your staff may have had with the department of finance on that matter, particularly any discussions you may have had with regard to the accuracy of the alleged document. That would be very valuable.

Mr Doogan—Just let me be clear, Senator. What you are asking me to do is to take this document away, examine it and respond as to whether or not at any stage I have discussed with the department of finance the accuracy of this document that you have given to me.

Senator SCULLION—I just thought you may need the time—

that is what Senator Scullion said, and he continued:

to further recall that particular conversation. I know it must be difficult—

this is what Senator Scullion was saying on Tuesday—

with the amount of conversations you must have, but that would be of great interest to me.

That was a very courteous way of putting it, I thought. He went on:

Perhaps at the same time you can again clarify or establish with your staff, if it turns out that members of your staff had seen that document, who actually had access to it, if any copies were in fact made of the document and those people to whom that document may have been circulated. I think that would be of use. Perhaps I can get that on notice.

That is what Senator Scullion was asking to get on notice. The chair, in her usual way of wanting to make absolutely sure everybody was happy, said:

Do you have anything further, Senator Scullion?

Senator Scullion replied:

No, I do not.

I will just say for Senator Mason and Senator Lightfoot, because they were not here, that in response to that invitation from Senator Scullion, Mr Doogan went off and wrote this letter to Mr Hallahan very rapidly. May I say that I was very impressed with the quick return that we got on that matter on notice because most matters that are taken on notice take a lot longer to come than this did. I just put that in the context that there was no aggression between Senator Scullion and Mr Doogan, and I thought it might help Senator Lightfoot and Senator Mason to know that it was done on a basis of great politeness. I think that Mr Doogan on that day, when Senator Scullion helped him, started to come to some recollection of a document, which he at no time tried to disguise, and which he admitted to, and then he went away and returned very rapidly with his letter explaining it.

**CHAIR**—Thank you, Senator Cooney.

**Senator McKIERNAN**—Mr Doogan, I want to put on the record my gratitude to you for coming back and correcting the record. In the course of these estimates, I had caused you to question two sets of witnesses who had not done the same thing as you, and that questioning is on the record. So I do give you an accolade for actually doing it and providing the

committee with, as you see it after having had time to think of it, the correct record. I am grateful for that; thank you.

**Mr Doogan**—Thank you, Senator McKiernan. And thank you, Senator Cooney, because I think you have summarised the situation. It was an issue that I was stretching my memory to recall. It was put on notice and I went away and immediately examined records and promptly responded the following day.

**CHAIR**—Thank you, Mr Doogan.

**Senator LIGHTFOOT**—I would like to thank you for your appearance here this morning, Mr Doogan, and thank you, Madam Chair, for allowing this rather prolonged extension to the half an hour. In retrospect, perhaps it was not wise to try to air subjects of this matter and this nature in such a short time. I would propose that at some later date you and your colleague Mr Howard may care to visit an appropriate committee.

**CHAIR**—Thank you, Senator Lightfoot. The committee was just trying to assist you with your request, so we did endeavour to facilitate that.

**Senator LIGHTFOOT**—I appreciate that very much.

**Mr Doogan**—Madam Chair, may I, before I go, raise one final matter in relation to this issue? Is that acceptable?

**CHAIR**—Mr Doogan, I am disinclined to extend the discussion, but if you wish to place more on the record, please do. Please go ahead.

**Senator Ellison**—I think that if the request has been made it should be allowed.

**CHAIR**—I appreciate that. I am just very conscious of the undertakings I have made to other witnesses and to other members of the committee. Mr Doogan, please.

**Mr Doogan**—Madam Chair, on Wednesday, 29 May in the Finance and Public Administration Legislation Committee, Senator Lightfoot said, and it is recorded at page 331 about halfway down the page, in examination of Dr Watt:

You are very kind, Dr Watt. If another departmental secretary called you up and said that a document produced in Finance was grossly inaccurate, do you think that you would remember that conversation?

After Dr Watt's response, Senator Lightfoot said:

No. It is a fairly monumental statement to make under those circumstances, is it not?

The clear implication from those statements is that the document was in fact produced in the High Court of Australia. Again, it was a follow-on from the implication that had been made that Mr Howard or I had produced this document. I again reject categorically any suggestion that I or Mr Howard or any of my staff in the High Court have produced and circulated this document.

**CHAIR**—Mr Doogan, having placed that on the record, it really is incumbent upon me to determine whether Senator Lightfoot has a further comment he wishes to make.

**Senator LIGHTFOOT**—I do not think it appropriate since you have been generous enough to double my time, Madam Chair. But I would give notice that I will be putting further questions to the committee on notice.

**CHAIR**—Thank you, Senator Lightfoot. The committee will receive questions on notice until the close of proceedings today. Mr Doogan, thank you very much for appearing before the committee again this morning. We appreciate your time.

**Mr Doogan**—Thank you, Madam Chair.

[10.29 a.m.]

#### **Australian Customs Service**

**CHAIR**—Mr Woodward, Mr Drury, good morning. Thank you very much for attending. We will continue with questions in relation to Customs matters. Mr Woodward, is there anything that you wish to say?

**Mr Woodward**—Yes.

**CHAIR**—Yes, indeed. Pieces of paper out of pockets always unnerve me.

**Mr Woodward**—I would like to make one minor correction to some information we gave last night. Last night we said that in our passenger analysis unit there were 12 new staff and 18 existing; in fact, the information is that we have eight staff and there are 16 existing. I just wanted to get that information on the record.

**CHAIR**—Thank you very much. We will continue with questions from Senator McKiernan.

**Senator McKIERNAN**—Thank you for taking the opportunity of correcting the record. That is a very good practice which all agencies and officials should do. I hope that it is continued and that other bodies which have appeared before the committee during these estimates have learned by the experience of perhaps not doing so. I indicated last evening that there was a range of issues that we were going to continue with today. The first one I want to deal with is container and pallet X-ray machines. There is quite a substantial amount of additional money in the budget for these matters. How many X-rays are currently in operation and where are they located?

**Mr Woodward**—When you say ‘X-rays’, do you mean the totality of our X-rays in airports, postal facilities et cetera, or are you talking about only container and pallet X-rays? We have numerous X-ray units obviously at our airports in what we call the HVLV environment. We have them in postal facilities, and I am not sure what the number of those would be—probably 60 or more. But we do not yet have any container X-rays. The first one will be commissioned in Melbourne in August this year. We are planning to commission the Sydney facility very late in the year. A pallet X-ray is in the process of being tested in Sydney at the moment.

**Senator McKIERNAN**—Also, decisions have been made to purchase machines which would operate as pallet X-ray machines in Adelaide, Brisbane and Perth.

**Mr Woodward**—These are additional pallet machines. Other pallet machines were provided under funding made available to us at an earlier time. The first one is in the final stages of commissioning, and I am not sure if it has passed its final test yet or not. Mr Hawksworth might have the answer to that.

**Mr Hawksworth**—It is 99.9 per cent ready. There are a couple of minor matters still to be resolved. This is the new pallet X-ray for Sydney, which is currently being tested, preparatory to commissioning. There is a new one for Melbourne, which is currently in a storeroom waiting to be installed in our new examination facility, which will also contain the container X-ray. There are two old pallet X-rays which we have experience with which are in the process of being decommissioned in Sydney and Melbourne. In this budget, we are getting additional pallet X-rays in the issue that you referred to earlier, Senator.



**Senator McKIERNAN**—The portfolio statement indicates that \$4.8 million has been allocated over three years for the expenses of pallet X-ray machines. What does this \$4.8 million entail, given that the machines, in some instances, are already in situ?

**Mr Hawksworth**—The four that are mentioned in this portfolio budget statement have not yet been ordered; they are still to come. They come with a capital cost and also a running cost.

**Senator McKIERNAN**—Is the \$4.8 million the running cost?

**Mr Hawksworth**—The \$4.8 million is the ongoing expenditure, not the capital.

**Senator McKIERNAN**—Could you describe, Mr Woodward, what the \$26 million is going to be expended upon?

**Mr Woodward**—Which \$26 million?

**Senator McKIERNAN**—It is mentioned on page 63 of the PBS.

**Mr Woodward**—Did you say page 63? We cannot find it.

**Senator McKIERNAN**—I did say page 63, but I do not have my PBS; it has gone walkabout. I see what you mean; it is not on that page.

**Mr Woodward**—I am trying to find a reference to \$16 million, and I cannot quickly—

**Senator McKIERNAN**—It is \$26 million.

**Mr Hawksworth**—Under ‘Additional container X-ray machines’ on page 334.

**Senator McKIERNAN**—We are going well this morning. It has been a long week. Thank you very much for that reference.

**Mr Hawksworth**—The \$26 million is ongoing expenditure over three years for the running costs of two additional container X-ray machines—one for Brisbane and one for Fremantle.

**Senator McKIERNAN**—Thank you very much. I have just been informed that the reference I gave to page 63 was the second budget paper, not the PBS. It is my fault and I apologise for the confusion that has been caused. The \$26 million is for Fremantle and Brisbane. Does this amount include maintenance and training that would be required to operate the equipment?

**Mr Hawksworth**—We are trying to spread the dollars wisely and as far as we possibly can but, on our current figuring, we will have to put a little bit of our own money in to supplement it to cover everything.

**Senator McKIERNAN**—Have you an indication of how much that might be and for what it would be used? Would it be for the maintenance or the training components of it?

**Mr Hawksworth**—I cannot answer that at this stage. The first three machines are all the same; they come from the same supplier, under the same contract—that is Sydney, Melbourne and Brisbane—and we have a pretty good handle on the costings and the break-up for all of those. With Fremantle, because the scale of operation is different, we will be going back to potential suppliers and finding technology which is appropriate to the circumstances of Fremantle. I honestly do not know what the break-up will be between the capital expenditures, the maintenance and other running costs at this stage because we do not know which technology we will pick.

**Senator McKIERNAN**—Thank you for that. If there is any additional information that you could provide on notice to the response you have given me now, we would be appreciative of it.

**Mr Hawksworth**—I can give you a more detailed breakdown in relation to the first three machines, but I have just about told you all I can tell you in relation to Fremantle.

**Senator McKIERNAN**—Okay, thanks. We mentioned a number of ports of entry into Australia. In my own mind, I note there are a number that are not mentioned or covered here. Does that leave us entry points which will not be covered with the new technology and, therefore, there might be a gap in the system?

**Mr Hawksworth**—It certainly leads to a number of entry points which will not be covered by container X-ray and/or pallet X-ray, although in some cases there will be pallet X-ray where there is no container X-ray. The result of that is not necessarily a hole in our system; it is a shift in the nature of the risk we face in those places. I will explain. Obvious possibilities are Adelaide, Hobart and Launceston. Customs officers from those places are cooperating with the Melbourne team because a lot of the cargo ultimately intended for Hobart and Adelaide physically passes through Melbourne before it clears Customs at a later stage. So they will be assisting with the targeting efforts in Melbourne on containers which will clear Customs later in Adelaide or Hobart. That is one element. The other is that our people in all the other ports will be well aware of the fact that, as soon as the Melbourne machine is switched on, evil people might change their distribution route, so we will be watching for people who traditionally have used Melbourne, who suddenly decide Adelaide is a wonderful place for importation. That will drive the way in which we pick boxes for physical examination in Adelaide. There will be the direct impact of the box, but we will also be watching for the ripple effect that the box examination facility causes.

**Senator McKIERNAN**—That is exactly what was going through my mind, even though I did not come to the evil people thinking these things.

**Mr Hawksworth**—One of the things we always have to bear in mind here is that we are not operating the Customs plan in a vacuum; we are working against someone and they are continually adjusting their techniques in response to our planning. So we always try and stay one step ahead, and naturally they do too.

**Senator McKIERNAN**—Yes, and that is why I framed my question in a vague manner. We do not want to put too much on the public record because likely as not they might find time to read the *Hansard* of the estimates committee proceedings.

**Mr Hawksworth**—And if they do not move to Adelaide, that will improve the target rich environment in Melbourne for our new machine.

**Senator McKIERNAN**—With regard to smaller ports—and again I do not want to put names on, but in my state of Western Australia a number of smaller ports come to mind—are risk factors taken into account from those smaller ports?

**Mr Hawksworth**—Yes, indeed. The risks facing us in each port are in a sense different. We have been talking about sea cargo containers, so obviously you focus on container ports. In some of the other ports you may have in mind, the risk might be more associated with the crew of particular bulk carrier vessels, and we would have different techniques for dealing with that risk.

**Senator LUDWIG**—What about ports like Gladstone, where they deal with containers and bulk goods as well? There are multiple ports at Gladstone and then Mackay is a bulk terminal as well.

**Mr Hawksworth**—It depends on the risk profile we are facing: the types of vessels, the routes they follow, the nature of the goods that are being imported and the actual importers themselves. A very large part of the commerce of this country is carried out by a relatively small proportion of importers. Those tend to be large multinational companies or large Australian companies and we have a pretty good handle on them and the extent to which we can trust them. So we tend to focus our efforts on the tail of the importers—a lot more people but in fact responsible for a relatively small proportion of the commerce of the country. If you are looking at a port where there is a very small number of containers coming in, and probably a fair number of those containers are related to a major local enterprise, there may not be a risk. On the other hand, if it is a very small number of containers then it is readily handled by physical inspection of what is in there, so you do not need this new whiz-bang equipment.

**Senator LUDWIG**—That makes sense. Thank you.

**Senator McKIERNAN**—What can you tell us on the record about the percentage of goods which enter Australia which are currently X-rayed, either by X-ray machines or by pallet X-ray machines?

**Mr Hawksworth**—We look at the various streams that come in. The first bit of goods that we worry about are passenger baggage and suchlike things. Between us and AQIS, we are currently running a tad over 80 per cent of that stream which is either X-rayed or physically examined. In the postal environment we are pretty close to doing 100 per cent now, and that is the target we are working towards. In what we call high value low volume, which is a lot of the same sort of thing brought in by one importer for subsequent distribution here, magazines or those sorts of things, that group are at 100 per cent or very close to it in most ports. We are moving rapidly to increase the proportion that we do in the air courier stream. That will be a very significant proportion in a very short period of time. In the general air cargo environment we currently do I think less than 10 per cent. In the sea cargo container environment it would be less than one per cent at the moment but we will be increasing to five per cent when we have the first three container X-rays in place. We are continually pushing to do more. The good news is that five years ago I would have told you it was impossible to do the sorts of things we are doing at the moment, but the technology is improving all the time and it is making it possible for us to aspire to a significant proportion of all the streams.

**Mr Woodward**—It is high volume low value rather than the reverse. As for the air cargo checks, my understanding is that the national figure at the moment is about 35.8 per cent.

**Mr Hawksworth**—I split it into three streams, Mr Woodward—the HVLV, plus air couriers, plus general air cargo. You are right.

**Senator McKIERNAN**—Thank you very much. On my return from overseas recently, I was amazed at the sensitivity of the machine at the airport. It detected a peppermint in one of my bags. I was unaware that it was there, but the machine certainly detected it. I was very embarrassed.

**Mr Hawksworth**—Our colleagues in AQIS usually haul people away to jail for something like that!

**Senator McKIERNAN**—No, they were very kind. It was an example of the sensitivity of the machine. It was one peppermint that had fallen out of a packet—one cleans up when one

is entering the country, if one knows the rules to do so. It just goes to show how good they are. In that regard, well done. On the location of the new machines, what delays have been caused to the clearance of passengers leaving the airport after arrival in Australia? How much has it added to the processing times?

**Mr Hawksworth**—I might ask one of my colleagues to take the chair for a moment on that.

**Mr Woodward**—You are talking about air passenger baggage?

**Senator McKIERNAN**—Passengers with their baggage as they are exiting the airport. How much has it added to the processing times?

**Ms Batman**—It varies quite a lot from airport to airport. It relates predominantly to whether the infrastructure works to accommodate this greater range of X-ray equipment have yet taken place. For example, in Sydney and Brisbane, where the works are complete, I think you would be hard-pressed to say that it made any difference at all to previous clearance times. In places like Melbourne and Adelaide, where the works have not occurred, I think there are quite significant delays at various times of the day.

**Senator McKIERNAN**—What would you describe as ‘significant’?

**Ms Batman**—An hour’s wait in a queue at Melbourne airport is not uncommon. This is to get through the quarantine clearance there.

**Senator McKIERNAN**—Are tourism industry representatives making representations to you because of that? Is it seen to be negative to the promotion of Australia as a destination for international tourists?

**Ms Batman**—Not to Customs, they have not. In my discussions with colleagues in AQIS they still say that the number of complaints they are getting from people who feel that they have not been examined enough outweigh the complaints that they are getting from people who have waited too long, which is interesting, I think. There are still people who feel that they should have had their shoes cleaned or their clothes looked at. It still seems that the balance is people wanting more intervention rather than less.

**Senator LUDWIG**—They think you are doing your job.

**Senator McKIERNAN**—It is in a very good cause. Thank you very much for that.

**Senator LUDWIG**—I wanted to explore some statistical information in relation to copyright. The current figures for notices of objection: do you have those available? I understand that you may need to take some of them on notice, depending on how detailed we go. I understand that as of June 1999 you had placed 52 notices of objection from 43 companies. I was looking, since at least that date, for an update from there.

**Mr Burns**—I am not aware of any explosion in that number. But I can take that on notice, if you wish.

**Senator LUDWIG**—Yes, please. Could you update that figure and provide us with it—however your system provides it—up to today, or the nearest point to today that provides a whole number? When you are doing that, could you have a look at how many are from individual companies and how many are from industry associations or bodies such as that? Do you break your statistics up in that form?

**Mr Burns**—No, they are all from individual companies. I will add that a notice of objection is lodged by somebody who claims to be an owner of copyright.

**Senator LUDWIG**—Yes.

**Mr Burns**—Proving that they are that owner is part of our checking process. They register a notice of objection that could cover any one of a large number of goods or titles and then that stays on our computer as something that we profile in respect of imports from then on.

**Senator LUDWIG**—There are a number of organisations which represent copyright owners in various places. I imagined they would, on behalf of the copyright owners, provide that sort of information to you. But you are saying it comes from the individuals themselves or individual companies.

**Mr Burns**—I will check. They certainly agitate and they certainly come to us and talk to us but generally speaking, given that we are talking about the owner of the copyright, it will rarely be an association that is an owner of copyright. It will be a company.

**Senator LUDWIG**—Is it only the owner? Perhaps you can help me clarify this point in my mind. Is it only the owner who can complain?

**Mr Burns**—It is the owner or a licensee of copyright in Australia that can lodge a notice of objection.

**Senator LUDWIG**—And none of the associations are owners. Do you have agents for licensees?

**Mr Burns**—I will check that.

**Senator LUDWIG**—Do you see what I am saying?

**Mr Burns**—Yes, I do.

**Senator LUDWIG**—Although it is the owner or the person who owns the copyright, in many instances an association may then have, like a solicitor, the right to write to you on their behalf and seek it. But perhaps we are going further than we need to. But you can have a look for me, please. In terms of the number of notices since 1999, what I was looking for was the composition of the types of areas that they fell within, if it is possible to disaggregate the data.

**Mr Burns**—I can give you a rough run-down: videotapes, audio tapes, CDs, sound recordings, artistic works, cosmetics, fishing gear, footwear. It is just about anything that is worthy of protection and in terms of copyright we have probably got it closely listed.

**Senator LUDWIG**—When you analyse that data, do you categorise them for your own purposes?

**Mr Burns**—No. We treat any notice of objection as intelligence, if you like, to profile imports. We also work very closely with the companies that own that copyright—trademarks is much the same—in order to improve our targeting capability. It is well known within industry that the effective enforcement of trademarks and copyright is very much dependent on information from the industry and we work with them.

**Senator LUDWIG**—The composition of a notice of objection: do you then follow trend changes if the number from a particular area starts to increase? That is what you are talking about when you say that you profile it. Is that as I understand it?

**Mr Burns**—It is an option for the owner to lodge a notice of objection. There are a number of owners who do not lodge notices of objection, and that is sometimes a difficult issue to come to grips with.

**Senator LUDWIG**—Back in 1999, CD sound recordings, videotapes, computer software, clothing and footwear were the most common goods covered in the notices. I think that at the time there was a Customs submission which stated that in 1998 in excess of 400,000 consignments of these goods were imported by more than 50,000 importers, which are quite astonishing figures. Could you provide an update on the numbers of consignments and importers for each year, including 1998-99, 2000-01 and to the present—the nearest quarter, if your statistics are provided in that way, or to the nearest point—in the areas of CD sound recordings, computer software, videotapes, DVDs, books—including electronic books and periodicals—and sheet music. Is that possible? I understand that you would need to take it on notice.

**Mr Burns**—I will do my best. I would also point out that, in the middle of that period, we had the Olympics. There was a considerable increase in activity associated with the Olympics, so there will be a spike in the middle of the statistics which we will need to remember.

**Senator LUDWIG**—Perhaps you could identify the spike so that we can at least take it out of consideration when we have a look at. If the information I have requested becomes onerous to collect and provide, by all means please come back to the committee. We are not trying to swamp you with statistical collection on our behalf. As I understand, your submission to the inquiry into copyright enforcement stated that, in the 12 months to 30 April 1999, Customs seized more than 60 consignments of goods for infringements of copyright, ranging in value from under \$1,000 up to \$45,000. Could you provide an update of that information, your rate of seizure of consignments and their values, to the nearest period or quarter. I suspect that you would keep that sort of data?

**Mr Burns**—Certainly.

**Senator LUDWIG**—Included within the information that I am looking for is the number of consignments of goods seized for infringement of copyright, the types of goods in those consignments and the range of values—I think we went to that. I am not sure how your analytical tools provide that data, but I suspect that it would be along those lines. If it has a few extra fields, I am only too happy to receive that too.

**Mr Burns**—We will do our best.

**Senator LUDWIG**—Thank you. Can you say what proportion of those seizures were pursuant to notices of objection lodged under the Copyright Act? In other words, could you link them back to those notices. Is that a measure of how successful the notices were? And what proportion occurred pursuant to an act other than the Customs Act?

**Mr Burns**—Our seizures would be limited to the Copyright Act, the Trade Marks Act and the Commerce (Trade Descriptions) Act.

**Senator LUDWIG**—Just those three?

**Mr Burns**—Yes.

**Senator LUDWIG**—They might be the extra fields that I was talking about if you delineate your data according to where the seizure is and which legislation it is seized under. I suspect that for any prosecution you would have to do that anyway.

**Mr Burns**—In respect of the trademarks and copyright legislation, we do not have ex officio powers; we are simply seizing or detaining, which allows the importer and the owner of the trademark or copyright to enter a court and resolve their differences. We simply hold the goods whilst that process is going on. In the Commerce (Trade Descriptions) Act, there

are other considerations and it is therefore different from the Trade Marks Act and the Copyright Act.

**Senator LUDWIG**—So you do not do any prosecutions in that area? Tell me if you do—

**Mr Burns**—I would not say that we do not—

**Senator LUDWIG**—If you do, then tell me the type and nature of them and that perhaps will help me. You can give me a flavour now if you want so that I understand.

**Mr Burns**—I do not have in my mind the rate of those prosecutions. It is not high.

**Senator LUDWIG**—What area would they be in?

**Mr Burns**—What do you mean? They would be in the Commerce (Trade Descriptions) Act.

**Senator LUDWIG**—I will step back a little bit: if you do a prosecution and one comes to mind, what is it?

**Mr Burns**—The general thrust of the Commerce (Trade Descriptions) Act concerns false and misleading statements in respect of goods—goods that are mislabelled, misdescribed in terms of labelling or not labelled at all, origin issues and those sorts of matters.

**Senator LUDWIG**—That helps me immensely; thank you. As far as you are aware, has the introduction of the parallel importation regime for sound recordings in 1998 impacted on the work of Customs in copyright enforcement?

**Mr Burns**—I suspect that the answer to that is a bit of yes and a bit of no in the sense that it certainly takes a large chunk of the target audience of that legislation out of the auspices of the legislation. But, because there is still a large range of goods involved that have not yet been exonerated from parallel imports, it complicates the system to some degree.

**Senator LUDWIG**—How is that?

**Mr Burns**—It simply means that we have to sift through the goods and the notices of objection and match them all up, and that becomes quite an arduous process. It goes back to a point that I made earlier, which is that if this sort of intellectual property enforcement is targeted by intelligence it certainly makes it a lot easier. But intellectual property is not something that you would find, for example, on an x-ray machine; intellectual property is not something you can discover by looking at information on an entry. It is basically something that you have to target by intelligence or happenstance when you open a container and find there are goods in it that are worthy of examination in this regard.

**Senator LUDWIG**—Let me try to understand. We are only talking about how many notices of objection there are. There were 52 back in June 1999; are we still talking about the same sort of number?

**Mr Burns**—I am not aware of any great change one way or another. It is surprising that, having regard to what one would expect in terms of the ownership of intellectual property, the number of notices of objection are as low as only 52 or even more than that now. Again, I reiterate that it is up to the owner of the copyright or the trademark to register. We cannot make them do that.

**Senator LUDWIG**—I am trying to understand how the ‘onerous’ work that you just outlined relates to those sorts of numbers. When you say that you have to sift through all these matters, it conjured in my mind more than 50-odd; or is that still an onerous task in any event?

**Mr Burns**—For example, if a notice of objection is in relation to music CDs, it might only relate to, say, 200 titles. Unless we have information as to when people who are not the owners of the copyright might be importing them, then profiling on music CDs would simply not be an effective way of trying to find them. You need intelligence to drive the targeting: the likely importer, the likely time and the likely place—those sorts of issues, which are really best summarised as industry intelligence, I suppose. There is a low probability of picking that sort of thing up in a normal examination.

**Senator LUDWIG**—How would the introduction of the same regime for computer software, books, periodicals and print music impact on the work of Customs in this area, given the explanation that you have now provided in relation to CDs?

**Mr Burns**—You mean the introduction of the parallel import legislation?

**Senator LUDWIG**—Yes.

**Mr Burns**—That legislation, as I understand it, is either about to be introduced or has been introduced. I do not expect, in terms of the Customs enforcement activities, that it is going to make a large difference. The numbers of seizures and detentions of goods of that nature are not that high in the scheme of things. If they are allowed as parallel imports, then presumably some of what we would seize and detain at the moment would not be seized and detained in the future. But, as I said, I am not talking about large numbers of goods.

**Senator LUDWIG**—When you say ‘the number of seizures’, do you have a method to determine what the seizures are in that area?

**Mr Burns**—If by what you mean there is how we determine whether or not to seize—

**Senator LUDWIG**—No. You said there was a number of seizures, and I was just trying to get an understanding of how many and the scale and the type of operation that we are talking about.

**Mr Burns**—I do not have that sort of information.

**Senator LUDWIG**—I am happy for you to take that on notice.

**Mr Burns**—I will do that.

**Senator LUDWIG**—Chair, those are all the questions I have on copyright. I will move to another area of Customs unless someone else has a question in that area.

**CHAIR**—There is nothing else on copyright, so please go ahead.

**Senator LUDWIG**—It was indicated at additional estimates that the target employment strategy was for 98 people in addition to extra marine crew, staff and the like. Has that target been achieved? Given the new funding, are you projecting more crew?

**Mr Hawksworth**—We have been running a recruitment campaign for marine crew from late last calendar year. The training is still ongoing. We are very close to target in terms of crew numbers. I think we are short of a couple of engineers that we will have to do a short additional recruitment for. Basically we are there in terms of bodies; we are not there yet in terms of trained bodies, because the process of training them before they can go operational is still happening. We expect to be at full strength for the marine crew by around September. We have a process of recruiting some additional back-office staff as well, but it is early days for that one and we are probably a few months away from completing that.

**Senator LUDWIG**—So you have not got your additional 98 yet?



**Mr Hawksworth**—No, but we are close.

**Senator LUDWIG**—Of those, not all of them are currently suitably trained or have the appropriate qualifications?

**Mr Hawksworth**—We have tried very hard to recruit people with the right background and the right qualifications, but you can be the world's greatest boat driver and you still need training as a Customs officer before you can be out there enforcing the law, so there is a process of familiarising themselves with our equipment and receiving the necessary training that we require in a whole range of matters.

**Senator LUDWIG**—So are you saying that the deficiency in training in relation to your recruitment strategy is not about lack of boaties with licences but about Customs' requirements to ensure that they are trained?

**Mr Hawksworth**—It is a time thing. If we bring on an extra 70 or 80 crew members, we cannot just put them all in the classroom together: we run them through in groups of around 10 or 15 at a time. It would be an inappropriate expenditure of funds to have quadruplicate training facilities. It is better to move them one after the other through the same training facilities. We have to give them a degree of experience on the boats. You cannot suddenly put a whole lot of people out on work experience on the vessels under experienced crew and expect it to work, so the whole thing has to be programmed through. We are in the process of ramping up—we are well on the way—and I expect it to be completed by September.

**Senator LUDWIG**—Does that include the funding out of this budget as well for the target staffing? Do you have an additional target, given the current funding?

**Mr Hawksworth**—No. The funding in the current budget plus some of the additional estimates money that we did not expend will allow us to pay the full-year cost of the newly increased size of marine crew. I think the issue you are coming to is this: we started the recruitment before we were guaranteed the money, on the basis of nudge-nudge, wink-wink and a bit of praying.

**Senator LUDWIG**—That is as I recall it.

**Mr Hawksworth**—We have been going hell for leather during the period since the additional estimates but, with the best will in the world, we have not managed to spend all the money we were generously given in additional estimates. Some of that will go into the next budget year—the one that we are about to commence—thus bringing the figuring that is appropriated in this budget up to full year strength. We expect that we will be able to spend the full year amount in that year and the subsequent three years.

**Senator LUDWIG**—How much was not spent?

**Mr Hawksworth**—I am not absolutely sure yet, Senator, but I think we are looking to roll over between \$5 million and \$10 million. I am not absolutely sure of the exact figure. I can take that on notice, if you like, and get it for you. It will not be set in concrete until 30 June, of course, but we can get you a good estimate.

**Senator LUDWIG**—If you would not mind. I think there is a significant difference between \$5 million and \$10 million. It would be to me.

**Mr Hawksworth**—We are trying to balance availability of vessels and availability of trainees to go through courses. While it is happening quickly and it is ramping up fairly steeply, it means that the total figure is a little bit inaccurate until we get to the end point.

**Senator LUDWIG**—So are you explaining to me that you wanted additional funds, the additional funds were forthcoming, and they were so large that you could not spend them?

**Mr Hawksworth**—No, they were so late that we could not spend them. If we had been given the additional funding when we first flagged that we needed it, we would have been able to spend it. But the processes of approval and appropriation meant that the money actually came through a little later in the financial year than we had hoped.

**Senator LUDWIG**—When was that?

**Mr Hawksworth**—Additional estimates is when we got the—

**Senator LUDWIG**—Yes, I think I recall that without going to the transcript.

**Mr Hawksworth**—That was when we in a formal sense got the money, but we were actually looking for it in the last quarter of the previous year.

**Senator LUDWIG**—What do you call that in the portfolio budget statements? Is it a carry-over? I will hone my financial skills here. When you do not spend something in the order of—

**Mr Hawksworth**—It is a carry-over, Senator.

**Senator LUDWIG**—\$5 million or \$10 million, which is given to you in additional estimates—

**Mr Hawksworth**—It is not automatic; we have to ask nicely. But we have been told that we can carry over the National Marine Unit funding.

**Senator LUDWIG**—So it is not guaranteed now? Can you lose—

**Mr Hawksworth**—No, not nowadays.

**Mr Woodward**—Can I add just one point, Senator. It goes back the other way. When the cabinet was looking at the budget requirements for the next four years, it took into account the expected shortfall in expenditure for this current financial year. It noted that the full funding that we had been allocated during this financial year would not be spent. It took that into account in terms of the funds that it would provide in 2002 and 2003, and that reflects the point that Mr Hawksworth was making. It was a reverse category. There was a hope that we would be able to get the crews up quickly but it was simply not possible in the time. One other factor that I am not sure was brought out is weapons training that our people have to go through. All our marine crew are trained in weapons and other related equipment. We get that training from the AFP, so the two have to—

**Senator LUDWIG**—Marry up?

**Mr Woodward**—Yes.

**Mr Hawksworth**—A special feature last year, of course, was the election, which meant that additional estimates were a little later than in a normal year.

**Senator LUDWIG**—Yes, it all compounds, doesn't it? If you did not spend—and you will get back to me on this—somewhere between \$5 million and \$10 million—

**Mr Woodward**—The precise figure is actually \$12 million.

**Senator LUDWIG**—That is what was not spent?

**Mr Woodward**—That is right.

**Senator LUDWIG**—How much was provided? What was the total amount?

**Mr Woodward**—My recollection is that of the total of \$23.6 million, \$17.8 million—

**Mr Hawksworth**—That was for the National Marine Unit.

**Senator LUDWIG**—So the total amount was \$17.8 million and you did not spend \$12 million of that?

**Mr Woodward**—So we have spent about \$5.8 million of that \$17.8 million.

**Senator LUDWIG**—What is the process for that to be made available? Is that a carry-over?

**Mr Woodward**—I think ‘carry-forward’ is the correct terminology and ministers quite specifically agreed that funds would be able to be carried forward. So from a governmental point of view, there will be no problems.

**Senator LUDWIG**—I was trying to learn the accounting terminology; my accountant on the left is going. In terms of trying to ramp up your staff, is it intended to change your current recruitment strategy, or job requirements, to obtain additional staff to meet the target figures?

**Mr Hawksworth**—I may have misled you; we have just about recruited all the additional staff that we require to meet the target that the government agreed to. They are all on board. They have come in under very strict quality requirements.

**Senator LUDWIG**—I do not think you misled me; I think we were probably talking at cross-purposes.

**Mr Hawksworth**—The slow down thing is that, having recruited them and having selected them, there is a process of training them which takes time before they can become operational. We are halfway through that process. Some new recruits have already been through the courses and are fully operational; others are still going through the training process.

**Senator LUDWIG**—Have all those people who have been recruited gone through security checks, and the like, or have you changed that?

**Mr Hawksworth**—Security checks are standard for us.

**Senator LUDWIG**—In terms of the upgrade for border protection, are there any additional training requirements that you have decided to add to your training curriculum?

**Mr Hawksworth**—Are we still talking about the National Marine Unit?

**Senator LUDWIG**—Yes.

**Mr Hawksworth**—It is probably not categorised as an increased requirement, but we are trying to increase the proportion of the crew who have higher marine qualifications on our vessels so that they can be in charge of the tenders that we operate and so on. We always have an adequate number of such people on board each vessel, but it makes for more flexible operating if we can get a higher proportion of such people. So we are stressing very hard the need to get coxswain certificates for as many of the crew as we possibly can.

**Senator LUDWIG**—Perhaps you could take this on notice. Could you give me a breakdown, in percentage terms, of the type of training that you undertake? You mentioned firearms; what level of requirement is involved in the training there? I do not want the actual details.

**Mr Woodward**—We can provide that.

**Senator LUDWIG**—Perhaps you could provide a breakdown of what firearm training they are required to undertake. Could you define what level—whether it is small arms, side-arms, rifles? And what are the operational requirements? I am not familiar with the certificates in this area, but I imagine there would be certain certificates that would be issued or required before they could be fully operational at the end points in the—

**Mr Hawksworth**—Yes. There would be some variations depending on the background of the person. A former Customs officer moving into the National Marine Unit will require more marine training and less Customs officer training, and vice versa for someone who used to drive a naval patrol boat or a fishing vessel.

**Senator LUDWIG**—Will they be given arrest powers and, if so, what training is going to be targeted to ensure that they know what legal requirements Customs have and the like?

**Mr Hawksworth**—All Customs officers have arrest powers by virtue of being a Customs officer and they will all have had a bare minimum level of training in the powers of officers and how to exercise those powers. Some in particular work areas will have higher level training because they are expected to exercise those arrest powers more often.

**Senator LUDWIG**—So what about the marine crew?

**Mr Hawksworth**—The marine crew will be trained in that area.

**Senator LUDWIG**—And that would be a high level of training or the usual amount of training?

**Mr Hawksworth**—In terms of powers of officers, it would be the standard level of training. In terms of the use of force elements, it would be a much higher level of training than the average officer would have.

**Senator LUDWIG**—In order to meet the additional requirements under the Border Security Legislation Amendment Bill when enacted—I am sure you are familiar with that—will extra training be required for those Customs officers?

**Mr Hawksworth**—There will be some areas of activity where people will be asked to do new things and, yes, there will be training that is appropriate to that. I think there will be an increased number of people who, for example, will be able to authorise the carriage of firearms. So we will need to increase the number of people who have been trained in that function beyond the number of people who currently perform that function.

**Senator LUDWIG**—Do you have training packages worked out or in place yet to deal with that?

**Mr Hawksworth**—I would hesitate to be categorical and say simply yes; in most areas, yes. If you want to know where we are working up new and enhanced training packages, I would have to take that on notice.

**Senator LUDWIG**—Perhaps you could take it on notice to give us a general sketch, without giving away the game, so to speak.

**Mr Hawksworth**—It is like painting the Harbour Bridge: it is a continuous process. Some of our packages are very old; some are very new. Some are in the process of being upgraded and rewritten; others we are very comfortable with. But I will give you more details about that.

**Senator LUDWIG**—In terms of your capacity to train, is the training internally delivered or externally provided?

**Mr Hawksworth**—It is a mixture.

**Senator LUDWIG**—Is your capacity to meet the additional requirements under Border Security Legislation Amendment Bill going to be met from within or without?

**Mr Hawksworth**—It will be a mixture.

**Senator LUDWIG**—Could you take it on notice to provide some sort of idea about what amount and what level of training is required? If a new training package has to be developed, is it going to be put out to tender and, if so, how much will that be? If it is internal, what is the budget—I think I know where the budget is now for it—

**Mr Hawksworth**—It is more likely to be extensions of arrangements which are already in place. But I will take it on notice and get back to you with details. But where we have already external training from the AFP on the use of force, we will be making a bit more use of that, rather than putting something totally new in place.

**Senator LUDWIG**—Is it only the AFP that you obtain your firearm training from? I am happy for you to take that on notice and have a look what the security implications are and provide me with an update on that.

**Mr Hawksworth**—The real firearm training, yes. But there is also training in the safe handling—

**Senator LUDWIG**—You might have to explain what ‘real’ is.

**Mr Hawksworth**—There is training for officers who are expected to carry firearms in the performance of their duty. That is serious firearm training.

**Senator LUDWIG**—That seems real to me.

**Mr Hawksworth**—It is very important that they learn how not to use their firearm, rather than make that the first recourse.

**Senator LUDWIG**—That is even better.

**Mr Hawksworth**—For many more officers there is a possibility they will open a suitcase and find a firearm.

**Senator LUDWIG**—I see.

**Mr Hawksworth**—They have to be trained in the safe handling of firearms, because the last we want them to do is to pull it out, say ‘What’s this,’ and shoot the passenger by mistake. So there is a process that they go through too. The AFP are not the sole provider of that firearm safe handling training; that is done mainly nowadays by our own specialist officers who have been through courses.

**Senator LUDWIG**—That is helpful.

**Senator COONEY**—Can I ask a question that follows on in a way from a question I asked last night of Mr Woodward. Customs officers undertake work, as I understand what was said, on behalf of other agencies and other departments. Is there any readily accessible and readable material available to the public as to what the Customs officers can do, what the AFP can do, what the NCA can do and what their powers are? I am really getting at whether there is a way

members of the community can find out exactly what is to be done and what is not to be done and what are the limits of the work of a Customs officer. When I say ‘the limits of the work’, I mean not only what he or she does under statute but what he or she might do in addition to that, if in fact such work is done. Do you have any idea of what I am asking? I do not want to go into a long series of questions; I just want to get an idea of the problem.

**Mr Woodward**—I think I know what you are talking about. I am sure there are documents and I suspect that some of them would have been prepared by the Attorney-General’s department explaining the roles of various agencies and how they are linked together. I saw one recently, but I cannot remember what it was. However, we can talk to our colleagues and get copies of whatever is available for you.

**Senator COONEY**—With this interface with the public there is sometimes a misconception of what happens. The officer is doing his or her duty in absolutely the correct way but because people cannot get the knowledge about the reality of the situation, difficulties arise. Related to that is the question of training that Senator Ludwig referred to. I take it that anybody who does a range of duties is trained in all those duties and I think Mr Hawskworth referred to that. That was the idea of saying that you had ongoing training because you cannot look at this as a static issue of someone being trained and who then does that job for years. There is a continual training process responding to whatever demands are made on Customs. Is there a way we can get to know about that?

**Mr Hawskworth**—Yes, Mr Drury has a list of all the powers of Customs officers under the act which is quite comprehensive. We can provide that to you. I have lost count of the number of times people have come through Sydney airport and spoken to me afterwards who never realised they had met a Customs officer. They assume that the person who stamps their passport is an Immigration officer. In fact, that is a Customs officer exercising Migration Act powers. Our officers who take a patrol boat to Ashmore Islands have the powers of an officer under the Environment Australia provisions so they can protect the sea snakes from the Indonesian fishermen if necessary. You would never expect that. While we will provide you with as much information as we can, we will probably miss one or two like that because they are very specialised and only in particular places.

**Senator COONEY**—I do not want to go into a long series of questions here, but I take it that there are acts, regulations and what have you supporting all this?

**Mr Woodward**—Yes. In summary, we put a lot of investment into training and retraining, and in some areas in relation to officers involved in personal searches and those involved in the potential to use firearms, there are formal recertification processes.

**Senator COONEY**—I take it that all the work you are doing and all the training they do for that work is supported by legislation, whether primary or secondary, which can be identified?

**Mr Woodward**—The training includes identifying the legislative framework, the expectation of officers and what they can and cannot do. In many cases, there are exercises to ensure that people actually display the skills.

**Mr Hawskworth**—Often the owning department of the legislation provides the training to our officers and certifies them to carry out powers under their act. Immigration train our officers before they go on the primary line, and Environment Australia trains them before they issue them with a warrant card to protect sea snakes.

**Senator COONEY**—So in the interface with the public, the public can be assured that whatever is being done by the officer is being done—

**Mr Hawksworth**—In accordance with the law.

**Senator COONEY**—I suppose it is almost a Ridgeway type question, but all that support is there; it is all supported by legislation.

**Mr Hawksworth**—And all of us who have to authorise control deliveries are well aware of Ridgeway, too. We are very careful in that area.

**Senator COONEY**—Thank you. You can appreciate that people might get the impression that what the Customs officer is doing is saying to the Federal Police, ‘Look, I’ll help you out of this while you go and have a cup of tea.’ That is not the situation, is it?

**Mr Hawksworth**—That happens all the time, but only when we have the legal power to do it.

**CHAIR**—I think Senator McKiernan is going to conclude questions on the Australian Customs Service.

**Senator McKIERNAN**—There are only a few questions to conclude on. We will be putting some on notice in order to try and speed up the process because we have quite a deal of work to do with the department afterwards. Don’t feel slighted that you are not getting the usual quantity of questions. You gave me the figure of the number of bags that are X-rayed going through the airports, or was it just Sydney airport? Can you repeat that information?

**Mr Hawksworth**—The figure I gave you was that in excess of 80 per cent of bags coming through airports generally are examined either physically or by X-ray.

**Senator McKIERNAN**—Would it be close to 100 per cent at Sydney? I was there recently with a different committee, and it seems to me that there are a lot more machines operating in Sydney than there were in Perth.

**Mr Woodward**—The latest figure we have nationally is that we were aiming for 81 per cent and it is in fact heading up towards 90 per cent nationally. In Sydney, as you would have seen, a very high percentage either are X-rayed or have their bags opened.

**Senator McKIERNAN**—Thank you for that clarification. Has the greater emphasis on people-smuggling had an impact on Customs efforts to detect drug smuggling?

**Mr Woodward**—We do not believe that to be the case. There has certainly been a refocusing of our Coastwatch activity to the north-west. When I say the north-west, the north-west and Torres Strait. There has certainly been a refocusing of our Marine Unit capability to the north-west and the Torres Strait. We spoke to you before about the ways that some smugglers use marine capabilities to get drugs into the country, but there has been no operation that has been seriously adversely impacted because of that refocusing. We have been able to make adjustments. There have been one or two cases where we have had to move aircraft and one of our vessels at fairly short notice towards the east, but that has been done flexibly.

The people-smuggling has not had a major impact on airports virtually around the country or on the seaports around the east, the south and parts of Western Australia. So it has not impacted as much on us as it has impacted on some other agencies. We have not gone through the formal processes that one or two other overseas agencies have done, the FBI most

recently, of declaring terrorism number one enemy. We have not done the parallel of saying terrorism is the number one enemy and people-smuggling the number two enemy. In other words, we continue to discharge our responsibilities in relation to all of the threats, including drug threats.

**Senator McKIERNAN**—Thank you for that information. Would I be right in assuming that people smugglers generally use larger vessels than drug smugglers and that, when drugs have been detected coming into Australia other than through the airports in baggage and in containers, the people bringing them in have used smaller vessels? Has there been an increased detection focus by Customs in seeking to detect the larger vessels that might be carrying the people smugglers as opposed to smaller vessels that might be carrying drugs?

**Mr Woodward**—The way in which we operate is that we regard all vessels as being of potential risk, whether they are large or small. We are building up quite a strong intelligence capability in cooperation with neighbours in the region in relation to yachts and other small craft so that we can have information on smaller craft arriving. It is much harder to get a handle on small craft—mainly fishing vessels—coming out of Indonesia. In short, the answer is that we look at every craft against the possibility—be it small, medium or large—that it might be of interest to us. Obviously, it is much easier for us to get intelligence to make assessments of the likelihood of some of the larger vessels—container carrying or bulk carriers—because of the access that we have to quite sophisticated systems that shipping companies, importers and stevedores have. I am confident that we have systems that enable us to discharge our responsibilities appropriately.

**Senator McKIERNAN**—Thank you; that is comforting. Does Customs have use of the Jindalee over-the-horizon facility and the intelligence that comes from that system, rather than use of the facility itself?

**Mr Woodward**—With the surveillance which I think you saw, Senator—I am not sure whether you went into the back room and saw some of its capabilities—we have direct links to very highly classified information in the defence arena and in a number of intelligence agencies. We have access to relevant Jindalee information to support the activities of our own Coastwatch aircraft and the Air Force aircraft that are operating, either commissioned by us or separately under Operation Relex.

**Senator McKIERNAN**—I do not pretend to understand its capabilities, because I do not have a scientific mind, but can the radar system be configured to detect larger vessels as opposed to smaller vessels?

**Mr Woodward**—This is the Jindalee?

**Senator McKIERNAN**—Yes, indeed.

**Mr Woodward**—I am not a technical expert on that. It can detect out to very significant distances and it can detect, as I understand it, reasonably small craft, but the image that is projected from, say, a steel-hulled vessel is much better than from a wooden-hulled or synthetic-hulled vessel. It gives us a better picture much further out. As you get closer to Australia there is an array of other technologies that are available. One of the initiatives taken in this budget involves high frequency surface wave radars. With the Department of Defence, we will be installing a facility, most likely around the Torres Strait, which will project out to 300 kilometres and will cover 70,000 square kilometres. If that proves to be successful, that may well be another part of the armoury in detecting vessels and, potentially, aircraft.



**Senator McKIERNAN**—My final question is in regard to the motion picture industry, which is growing at great speed within Australia. Does that industry seek licences from Customs from time to time to import arms—guns and the like—for use in the motion picture industry?

**Mr Woodward**—Yes, it does. I am sure there will be further questions in relation to this, so I will get somebody who is more qualified than me to answer some of those questions.

**Mr Burns**—To import firearms or replica guns for films, a permit is required from the minister. It is not an unusual occurrence. The guns that are generally imported are very sophisticated, high-tech sorts of firearms. They are imported for a specific period of time, and when the film is over they are exported.

**Senator McKIERNAN**—What checking mechanisms do Customs have to ensure that they are removed after the licence period for which they have been brought in has expired?

**Mr Burns**—The permit holder must be a holder of a licence in the jurisdiction that they are going to use these things.

**Senator McKIERNAN**—Is that a firearms licence that you are talking about?

**Mr Burns**—Yes—a firearms licence in a state or territory. The licensing of the use of those firearms in that state is a state responsibility. There is an export permit issued by the Department of Defence for the export of those firearms. There is a normal compliance regime, which is driven by risk, to check up on the export of those guns. Customs does not actively watch the guns through their period in Australia, nor does it check to see that they have been exported, apart from the fact that, if there is a condition on a licence that requires them to be exported by a particular time, we can take that up with the importer.

**Senator McKIERNAN**—So there is no visual or physical check at the point of entry?

**Mr Burns**—No, that is not true. There is an inspection at both ends.

**Senator McKIERNAN**—That is what I am really getting at: there is a physical check at the point of entry and a physical check at the point of departure? Customs is aware that the licence is actioned? It knows the time and date that the weapon enters Australia, and it knows the licence is of no use as it hits the dockside or the airport at its point of exit?

**Mr Burns**—There is no doubt that the same gun is in and out. We check serial numbers and all of those sorts of issues. I thought your question was: what compliance regime do we have in place to make sure that it was exported? If it was to be imported for only three months, how do we ensure that it is exported? The point I was making was that that is a matter for the importer. Guns, like firearms of any description, are checked rigorously at their point of importation: serial numbers are taken and checked against manifests, and all of those sorts of things. The issue of an export permit from Defence can be checked on a risk assessment basis. They are not always checked off one by one, but the important ones generally are.

**Senator McKIERNAN**—I was not asking what happens with the weapon while it is in Australia. I would have imagined that that role would be for the state police forces in whichever state or territory the weapon is being used in the making of the film.

**Mr Burns**—That is right. While it is here, it is the responsibility of the licensee, if you like, who is generally the importer.

**Senator McKIERNAN**—Will you give me an assurance that there is no possibility that the film industry could be building up a bank of arms and armaments?

**CHAIR**—Perhaps we should ask the communication and arts committee about that, Senator McKiernan.

**Senator McKIERNAN**—I just want an assurance, not a guarantee.

**Mr Woodward**—Perhaps we can give you this assurance: there have been discussions involving the Prime Minister in relation to hand guns, which are of particular concern to the government. As a result of that, we have given assurances that we will look at all aspects of our control of hand guns and other firearms. There is some tightening-up that needs to be undertaken, and the area that you are picking up will be included in that exercise.

**Senator McKIERNAN**—Thanks very much, Mr Woodward. That occasion that we got to fire a hand gun was the first time I had ever used a hand gun—I never want to use one again—and I won a bet: it hit the target.

**CHAIR**—You did, and the AFP paid!

**Senator McKIERNAN**—It was delivered through a colleague.

**CHAIR**—Yes, it was delivered via a colleague—I have never carried a bottle of Guinness around unopened for so long in my life! On behalf of the committee, I thank you and your officers for assisting the committee.

**Senator MASON**—I want to thank officers of the Customs Service in Cairns and of Coastwatch in Cairns. I was up there the other day with Senator Brandis and we were given a very enjoyable and informative briefing. We were very impressed, particularly with the new strategies being invoked to protect Australia's borders. We thank you very much for that.

**Mr Woodward**—Can we also join the farewells to Senator McKiernan and Senator Cooney. Everything that I would want to say has been said, except that when they go on holidays overseas and travel through our airports we will give them a warm reception on their return.

**CHAIR**—Thank you. If you would convey Senator Mason's remarks to Admiral Bonser that would be helpful.

**Proceedings suspended from 11.46 a.m. to 12.02 p.m.**

**Attorney-General's Department**

**CHAIR**—We will now consider the budget estimates for the Attorney-General's Department. In its private meeting, the committee has agreed to begin with matters raised by Senator Carr and then move to outcome 1 and the department's outputs.

**Senator CARR**—May I begin by thanking the minister. It is not usual for me to start my discussions in this way. However, I genuinely want to thank the minister and the government for responding to the question. I also thank Mr Cornall and the department for providing the material to the committee last night. That is very good to see and that is the way the parliament should work. I always maintain that the questions we have been pursuing are perfectly legitimate and appropriate in terms of the accountability of public expenditure. Nonetheless there are some issues that trouble me.

First of all, I note that the list of barristers and QCs that you have provided to us indicates that Mr John Agius, senior counsel, in the period from 16 August 2001 to 8 May 2002 received \$615,122.73. As I understand it, Mr Agius and his team basically worked the Perth circuit for the royal commission which sat for 17 days of public hearings. On my assessment, the pro rata rate for Mr Agius for those 17 days is \$36,183 per day. I will make a couple of points and then you can respond.

I suppose one could argue that that is cheap. If you look at Mr Green QC and his team which did the Hobart circuit, there were eight days of public hearings in Hobart. The pro rata rate for Mr Nicholas Green QC was \$52,861 per day. When you consider the figures for Mr Agius, he has two juniors that I am aware of—Mr Sullivan and Mr Lucev—Mr Sullivan is on \$13,542 per day as a junior counsel and I suppose that is cheap because Mr Lucev is on \$17,914 per day.

I could keep going through the list: Mr Robberds QC, who did the Brisbane hearings, 24 days, \$22,000 pro rata per day; and Mr Tracey, who does the Melbourne hearings, for 37 days of hearings the pro rata rate per day is only \$9,500. You told us the other day that the range was between \$2,400 and \$3,800 a day. My question is: how is it that these figures are producing results of \$36,000 and \$52,000 pro rata per public sitting day?

**Mr Cornall**—The figures that we provided the other day were that senior counsel at either of the royal commissions were being paid between \$2,800 a day and \$3,800 a day, and junior counsel were being paid between \$1,300 and \$2,400 a day. That is my understanding of how the figures are made up. They are made up of an accumulation of daily rates. The simple answer is that the barristers have worked on many other days, apart from the formal sitting days, in terms of preparation for the hearings, investigation of material and so forth. The wrong assumption in your question is that they are only charging for sitting days.

**Senator CARR**—The normal practice, though, is for QCs to charge for court appearances on a daily rate—

**Mr Cornall**—No, not in an inquiry of this nature where a great bulk of the work will be done preparatory to the hearing days.

**Senator CARR**—Can you explain how that works? How many extra court days does Mr Agius, Mr Robberds, Mr Green and Mr Tracey have between them?

**Mr Cornall**—Their fees are charged at the rates we have provided for the days that they work. I am sure that if we got into the figures, you would get to this amount after you took the relevant daily rate and multiplied it by the number of days they worked for the commission.

**Senator CARR**—I will come to that. Could you provide us with the number of public sitting days each legal counsel has appeared and the number of days outside of those public sitting days? Could I have that on notice? Can you confirm that the royal commissioner in Perth has sat for 17 days, in Brisbane 24 days, in Melbourne 37 days, in Adelaide one day, in Sydney one day, in Canberra one day, and in Hobart eight days? That is in the period between 16 August to 8 May. Can you bring the figures up to date? They are a little old. Can we have that on notice?

**Mr Cornall**—The figures were, as at yesterday, amounts actually paid. They will change every time a bill is paid.

**Senator CARR**—Of course; I appreciate that. Can I also get the breakdown of the membership of each of the four teams that are headed up by Mr Agius, Mr Robberds, Mr Green

and Mr Tracey? There are junior counsel associated with each of those. Is it the case that Mr Agius appears mainly in Perth, Mr Robberds in Brisbane, Mr Green in Hobart, and Mr Tracey in Melbourne? Can you confirm those things for me?

**Mr Cornall**—I will have to take all those questions on notice.

**Senator CARR**—Can I just bring you to this point: you advised us the other day that the commission has now spent \$19 million, nearly a third of its budget, on legal fees. You have provided us with advice—and again I thank you—that \$4.2 million was paid to the list of solicitors and Queen’s counsel and senior counsel in the document headed ‘Fees for legal counsel’. You then advised us that the Government Solicitor’s office has paid to legal firms a total of \$4.9 million. That is \$8.9 million for the two. Where has the other over \$10 million been expended?

**Mr Cornall**—I think the evidence you are referring to from the other day would have been given to you by Mr Thatcher. It would not have been information within my knowledge. I do not recall the evidence he gave on that point. All I can say is I can take that question on notice for you.

**Senator CARR**—If you would not mind, please. This was a budget summary—a document tabled to the committee. It is an official document in the public arena tabled before the committee.

**Mr Cornall**—Can I have a look at that document?

**Senator CARR**—Yes. Could you explain to me where that \$10 million has gone?

**Mr Cornall**—This document is headed ‘Budget summary’. It projects that, out of the total \$60 million allocated to this commission, \$19 million, approximately, will be spent on legal and audit expenses, which is 31.96 per cent of the total. But I take this to be over the whole life of the royal commission. The royal commission will not conclude until 31 December this year, so there is a significant period of the year yet to go before this budget figure would be expected to be reached.

**Senator CARR**—I ask you to take on notice whether you can confirm whether your impression that there is another \$10 million in legal fees to be spent between now and December is correct. That is the thrust of what you are putting to us, isn’t it?

**Mr Cornall**—Yes, taken in conjunction with fees which might be about to be rendered or work in progress to date.

**Senator CARR**—Yes, I understand that. I was not here last night; I was actually in a committee room adjacent. I see that there is a dedicated figure of \$4.4 million from the Australian Government Solicitor’s Office. What is that for?

**Mr Cornall**—That is for legal services provided by the Australian Government Solicitor.

**Senator CARR**—That money has been expended already?

**Mr Cornall**—Yes.

**Senator CARR**—Has that been paid?

**Mr Cornall**—Yes.

**Senator CARR**—We have here a figure of basically \$4.4 million, plus \$4.9 million on that one sheet: ‘Total legal firms’. Or is that—

**Mr Cornall**—No, that is the aggregate of all of those figures on that page.

**Senator CARR**—The aggregate. So I am right in assuming that only about \$9 million has been accounted for in these two tables.

**Mr Cornall**—It is \$9.5 million.

**Senator CARR**—Thank you. Perhaps you can take this on notice because you may not be able to deal with it now. Could I get detail of the travel breakdown on the royal commission expenditure associated with this? Firstly, I want a breakdown of the travel budget—how it has been allocated. Secondly, how much has gone to the particular legal counsel? I calculated that a figure of about \$21,000 a week is what the senior people will be able to call upon in this exercise, which is a fairly substantial sum of money. I just want to be clear about that. If we include the cost of transport, plus accommodation, it may in fact be higher than \$21,000 a week. I would ask you to confirm that.

Further, I asked you this question, which appears on page 36 of the *Hansard*, in regard to Blake Dawson Waldron lawyers:

So there is no contract that you are aware of between the department and Blake Dawson Waldron for legal services?

This was also associated with Mr Amendola. You said:

No, not that I am aware of.

The document you have tabled, or given to the committee, has an appropriation for Blake Dawson Waldron. Is that the same Blake Dawson Waldron, as far as you are aware?

**Mr Cornall**—I am sure it is.

**Senator CARR**—Have I misunderstood your answer?

**Mr Cornall**—No. You asked, ‘Had the department engaged that firm?’ The department had not. I was not aware that the royal commission may have engaged them.

**Senator CARR**—So this is the commission directly, not the department?

**Mr Cornall**—That is correct.

**Senator CARR**—When it says ‘Australian Government Solicitor’ at the top of the page, have I misread that?

**Mr Cornall**—In what way have you misread it?

**Senator CARR**—Does this relate to the Australian Government Solicitor’s expenditure or to the royal commission’s expenditure?

**Mr Cornall**—No, it is headed ‘Building and Construction Industry Royal Commission—fees paid to legal firms’. The first firm is the Australian Government Solicitor, the second one is Blake Dawson Waldron, the third one is Minter Ellison and the fourth one is Phillips Fox.

**Senator COONEY**—I was just saying to Senator Carr that this is a question that was raised last night. I thought there might be a better line of inquiry—but, of course, I would never say that about your questioning, Senator Carr. What sort of work has been done by the barristers who, as I understand it, are directly employed by the royal commission? What sort of work has been done by the Government Solicitor? I think this was turned to last night. There seems to be a very high figure there for the Government Solicitor, given the cost of the—

**Senator CARR**—I understand what you mean. Can you explain to me why it is that \$4.4 million is being spent by the Australian Government Solicitor? That is my question. Is that what you meant?

**Senator COONEY**—That is what you mean.

**Senator CARR**—Yes, that is the point. Can you explain to us—

**Senator COONEY**—It was referred to last night.

**Senator CARR**—How does the Commonwealth—

**CHAIR**—Perhaps we might let Mr Cornall answer your questions, Senator Carr.

**Mr Cornall**—This issue was taken up at length with Ms de Gruchy last night. She obviously has the information as to how the fees are compiled, and I do not. I can make some comments about how solicitors fees are normally calculated, which would, in my view, give an indication about how fees by any law firm are likely to be charged, but I do not know how these fees have been made up. I understand them to be fees for the provision of the various lawyers who have been working on this case for some considerable period.

**Senator CARR**—Since August last year, \$4.4 million worth—the Australian Government Solicitor. Forgive my ignorance, but it does seem to me to be a lot of money to be paying the Australian Government Solicitor for work that you would expect the Australian Government Solicitor to be doing as a matter of course.

**Mr Cornall**—I am not quite sure what that means, because the Australian Government Solicitor is a government business enterprise. All the services it provides—

**Senator CARR**—So it has been corporatised.

**Mr Cornall**—are on a fee-for-service basis.

**Senator CARR**—I see—it is a fee for service. In the past, before corporatisation, would you have a bill like this?

**Mr Cornall**—We would not have rendered a bill.

**Senator CARR**—This is one of these innovations that occur.

**Senator COONEY**—We will take this up later on; I am getting some more material on this. This is on the question of what should be revealed and what should not be revealed. There does seem to be a duplication. You have a series of what I would call ‘very learned counsel’ employed directly by the commission, getting substantial fees, as Senator Carr has pointed out. At the same time, you have the Australian Government Solicitor charging the sum of \$4 million. The difficulty that remains is: who is doing what work? Is there a duplication? If we go down the list of barristers, somebody like Richard Tracey—who I think used to lecture in industrial law and went to the bar; I think he is very learned in the field of administrative law—is charging substantial fees. What then is left for the Australian Government Solicitor to do? I think that is the problem. I know the situation you are in. I am getting some more material to put in front of the estimates committee to say that we should be entitled to that, but you can see that without that information there is a real problem because there seems to be duplication of work.

**Mr Cornall**—I am not sure that you can assume that, Senator. The commission has determined that it needs to engage a certain number of counsel and a certain number of solicitors to do whatever tasks are allocated to them. They have come to agreements with individual counsel and with the Australian Government Solicitor to do that. I assume from

that point on, as a management process, they ensure that the work is not unnecessarily duplicated and that the people are fully engaged in the work of the commission.

**Senator COONEY**—It is only a short amount of time to devote to this—all I want you to do is to see the point and perhaps not comment—but \$4,491,000 plus \$260,477 is a very substantial figure for legal costs. You can understand that if the royal commission is getting all its legal advice and so on through that, that gels. But when the royal commission, as I understand it, directly employs a whole range of people you would have to call eminent as counsel—

**Senator CARR**—And very expensive.

**Senator COONEY**—you begin to wonder what the counsel is doing or what the Government Solicitor is doing. That is a real problem, isn't it? Given the figures we have before us, it is very hard to work out who is doing what. So we have a very expensive royal commission and we are not in a position to assess why it is so expensive and what is happening. I think that is the problem.

**Mr Cornall**—I do not think there is anything I can add to what I said earlier—that I am sure, as a management responsibility, the commission is ensuring that all are actively engaged on the business of the commission.

**Senator CARR**—I agree, Senator Cooney. I am at a loss to explain, firstly, the size of these legal fees and, secondly, the nature of the work that is being undertaken on behalf of the Commonwealth—on these figures, the better part of \$10 million.

**Mr Cornall**—Can I just make a point that I made last night when you were not here: the great bulk of these fees includes goods and services tax and therefore you have to take into account that there is a significant tax component which needs to be taken off before you get to the net figure.

**Senator CARR**—But at \$52,000 a day—

**Mr Cornall**—No-one is on \$52,000 a day.

**Senator CARR**—That is the pro rata rate—

**Mr Cornall**—But it is an inaccurate way to calculate the fees.

**Senator CARR**—I am not a lawyer, but all I can say to you is that the QC will be appearing in public session—in the case of Mr Green—for eight days and will receive \$422,894. I look at that on a pro rata basis and I say that is extraordinary productivity at \$52,000 a day, or \$36,000 pro rata in regard to the public appearance for Mr Agius in Perth. For 17 days he received \$615,122. These are extraordinary sums of money.

**Mr Cornall**—They are false figures, Senator. We have given you the daily rates. The maximum daily rate is \$3,800.

**Senator COONEY**—I think there is a problem with not giving the sorts of figures that were given in the report we were talking about last night. As it appears, I would have thought that Senator Carr is taking the approach that most people would. They would say, 'Look. There is eight days work. You divide the eight into the figure and that is what you get.' You would say there must be a lot of reading time, a lot of research—all that sort of stuff—that you charge for. But that is not apparent on the face of the record and I think that is the difficulty.

**Mr Cornall**—I think it would be apparent that the counsel have attended at the commission's offices. They have worked on commission business and whatever number of days they have appeared at hearings.

**Senator CARR**—That is what I need. I need all that detail, if you could, to explain that. You are saying, basically, that for \$3,800 a day, you do not necessarily have to appear in court. You can be in your office reading or thinking or discussing—

**Senator COONEY**—Or walking around and thinking.

**Senator CARR**—or contemplating these matters.

**Mr Cornall**—Whatever the work of the commission is, yes.

**Senator CARR**—At \$3,800 a day minimum—

**Mr Cornall**—Maximum.

**Senator CARR**—So there is no-one receiving more than \$3,800 a day—

**Mr Cornall**—I gave you that evidence the other day.

**Senator CARR**—I just want to be clear on that. Let me ask about the conflict of interest issue. Do you think the department has a role in supervising the work of the commission at all?

**Mr Cornall**—The commission has its terms of reference. It has its allocation from the budget. It is an administered budget item. The officers of the commission have the responsibility to do the day-to-day management and administration of the commission in accordance with the terms of reference.

**Senator CARR**—That is the department though. Do you think you have any responsibilities, if there was an issue that arose within the commission that appeared to be a conflict of interest situation?

**Mr Cornall**—It would certainly be of interest to me if that were the case, yes.

**Senator CARR**—Do you have any capacity to intervene in such circumstances?

**Mr Cornall**—It would probably be an issue that I would raise with the Attorney-General if I perceived there were a significant conflict of interest, if that were appropriate. It may be something that could be dealt with by discussion with the officers of the commission if there were perceived to be a small problem. I do not know what the issue that you are getting at is.

**Senator CARR**—I appreciate that. It is just that it is supposed to be an independent commission of inquiry, isn't it?

**Mr Cornall**—Yes, it is.

**Senator CARR**—The secretary of the commission, as we have already identified, has in the past been closely associated with one side of a dispute in industrial relations; that is, the Business Council of Australia. What do you say to the idea that the secretary would appear two weeks ago—on 15 May—in Geneva at an OECD conference representing employers? Do you think that might present a question of a conflict of interest—the commission secretary representing the Business Council of Australia at an international conference between business and union organisations?



**Mr Cornall**—I understand Mr Thatcher was overseas on a personal holiday, and I understand he did attend a number of meetings whilst he was away. I do not know in what capacity he attended or what the purpose of the meetings was.

**Senator CARR**—I will table the attendance list for the conference. This is the ministerial bureau consultations—

**Senator Ellison**—Before we go any further, I do not think these matters were put to Mr Thatcher.

**CHAIR**—They were not.

**Senator Ellison**—It would have been appropriate for them to have been put to him, rather than Mr Cornall, for obvious reasons.

**CHAIR**—Indeed.

**Senator Ellison**—I am not objecting to the fact that they can be raised. It is just the way they have been done, and of course Senator Carr has been on other committees. I think the questions can be asked. We will take them on notice and get Mr Thatcher to respond to them appropriately.

**Senator CARR**—I appreciate that; I accept the way in which you would deal with that. I wanted to know whether or not you would have this list of attendees at the conference tabled.

**CHAIR**—Yes, Senator Carr.

**Senator Ellison**—Can I go further on that. The department or the government could not comment on that until Mr Thatcher had had a chance to respond.

**Senator CARR**—I understand that. My question goes to the role of the department, where there is a perceived conflict of interest between the secretary of the commission—a so-called independent commission—being an advocate for a business group at an international conference two weeks ago in Geneva.

**Senator Ellison**—Madam Chair, that is precisely the point: whilst Senator Carr has mentioned a matter that he wants to pursue, the first matter that has to be established though is Mr Thatcher's response to that, because the department cannot comment until it has heard Mr Thatcher's response. He might say he was never there. He might say he was put down to go to the conference but he never went. He might say that he did not represent the Business Council. So I really do think we need to have that established first; that ground has to be made out first before it is then answered.

**CHAIR**—I take the point that you are making, Minister. Senator Carr?

**Senator CARR**—That is why I presented the attendance list.

**CHAIR**—Now, Senator Carr, we will ask Mr Cornall to take the issues that you have raised on notice.

**Senator CARR**—There is a series of questions that flow from that, which I presume he will take on notice as well. I would like to know the purpose of Mr Thatcher's participation in the ministerial bureau consultations. In what capacity did he attend? What was the length of his absence from Australia? Was he on duty at all during the trip? Was Mr Thatcher's trip to Europe in May 2002 financed in full or in part by the Commonwealth? Did Mr Thatcher participate in this conference as part of the business organisation delegation and as a former Assistant Director of the Business Council of Australia?

How is his representation of a business lobby group consistent with the impartiality required of him in his position of secretary of the royal commission into the building industry? What was the cost of the trip? Was Mr Thatcher accompanied by any other commission staff, Commonwealth personnel or the staff of any federal minister? If so, who were they? What costs did they incur? What was the purpose of their trip? How much has the royal commission into the building industry spent on overseas travel? Would you provide details of each trip including the personnel involved, the cost involved and the duration and purpose of each trip and provide details of all official or continuing positions or functions that Mr Thatcher has retained on behalf of any business or business organisations during his tenure as the secretary to the royal commission into the building industry?

The next point that I know you will take on notice is this: could you indicate to us when Mr Thatcher actually left the Business Council of Australia prior to his taking up the appointment as the secretary of the royal commission? What positions, either formal or honorary, does Mr Thatcher retain with the organisation? I understand the Business Council of Australia is actually based in Melbourne.

**Mr Cornall**—I do not know.

**Senator CARR**—I think you will find that it is. I would be interested to know when Mr Thatcher left that position based in Melbourne. Will you take those questions on notice?

**Mr Cornall**—Yes. I will make a couple of observations. My understanding is that this was entirely a personal trip paid for entirely by Mr Thatcher and that to that extent it was nothing to do with the royal commission. I have a note here about overseas travel which I will—

**Senator CARR**—Can you provide that now? It would be very helpful if you could.

**Mr Cornall**—I will endeavour to do so—I just have to find the note. Secondly, Mr Thatcher's role is administrator of the commission; he is not part of the investigative team, he is not counsel assisting the commissioner, and he is not a commissioner who makes decisions on the evidence presented before the commission. My view is that as an administrator he is in a different position from the person who will make decisions and form judgments. I will try to find the note on overseas travel.

**CHAIR**—Thank you, Mr Cornall.

**Senator CARR**—While you are doing that, on the question of conflict of interest, does the department have a role in regard to the lawyers who are employed by the commission? As I understand it, Minter Ellison have been employed by the commission—you have provided a document to us, and I appreciate that. I also understand that Minter Ellison act for Baulderstone and Multiplex in the same commission. Can you explain why that is not a conflict of interest?

**Mr Cornall**—Yes, I can. Minter Ellison were employed, as I am instructed, to provide advice in relation to fit-out and the appointment of project manager and other contract arrangements. So their involvement was limited to that specific piece of advice.

**Senator CARR**—But they are also representing parties to the commission, are they not—that is, Multiplex and Baulderstone?

**Mr Cornall**—I do not know whether they are or not but I will assume that they are for the purposes of your question. I assume that to be the case—

**Senator CARR**—Yes.

**Mr Cornall**—but I do not think there is an automatic conflict of interest because they have provided advice about a totally unrelated administrative matter to the royal commission.

**Senator CARR**—An administrative matter?

**Mr Cornall**—Yes. Fit-out, appointments of project managers and other contract arrangements are administrative matters.

**Senator COONEY**—The difficulty is that you have knowledge of what is actually happening, and you can say that there is advice as to administrative matters or that there are Chinese walls and all sorts of things. Senator Carr is a classic outsider—

**Senator CARR**—Absolutely.

**Senator COONEY**—The appearance of propriety is important. One problem with a lack of knowledge of what these fees paid for is that the conflict of interest, if not real, is apparent. That is one reason why I suggest that we get some more detail about it. I will go into how much ought to be revealed later.

**Mr Cornall**—In relation to Blake Dawson Waldron, Minter Ellison and Phillips Fox, the briefing note I have indicates that all the work they were doing related to administrative, procedural and set-up work to get the commission established. It was not related to, on my instructions, the actual work of the commission itself in terms of the investigation of the terms of reference and the presentation of the commissioner's report.

**Senator CARR**—So they will have nothing to do with witnesses, for instance?

**Mr Cornall**—That is my understanding.

**Senator CARR**—That is your understanding. Can we have that confirmed, please?

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

**Senator CARR**—In terms of the method of operation of the commission, do they provide any advice as to the practice notes prepared by the commission?

**Mr Cornall**—Perhaps it will help if I recite the information given to me, and that will take us some distance. Blake Dawson Waldron provided advice in relation to Mr Thatcher's contract, advice in relation to the appointment of the commissioner and tax advice in relation to the engagement of some of the employees of the commission. Perhaps these other matters go to staff matters, but they are matters relating to internal matters of the administration of the commission. I have already said that Minter Ellison gave advice in relation to fit-out and Phillips Fox gave advice in relation to tenders for services, advice on an e-law contract and services in relation to the legal services contract.

**Senator CARR**—Again, it does seem odd to me as an outsider that you need a lawyer to give you advice on fit-out. Can you explain to me what advice that would be?

**Mr Cornall**—I assume it would be advice in relation to contracts with builders and so forth for the fit-out of office premises or hearing rooms.

Can I come back to this point about overseas travel. I have found the briefing note on this. No staff of the royal commission have taken overseas travel in connection with the commission investigation or research. No potential witnesses have been brought to Australia to assist the commission. Between 3 and 22 May the secretary to the commission, Mr Colin Thatcher, was travelling overseas on leave. He met his own costs for the trip.

**Senator CARR**—When you are on leave when you are from a highly controversial commission like that, do you think that absolves you from acting impartially?

**Senator Ellison**—I do not think that is a question that Mr Cornall can answer.

**Senator CARR**—My final question is that in regard to the information technology in the budget summary a figure of \$8.1 million has been allocated. Can we get detail of how that appropriation has been broken down? In particular, can you give us an indication of how much each of the flat screen computers costs and whether any assessment was made as to a cheaper form of provision of computers?

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

**Senator CARR**—Thank you very much.

**Mr Cornall**—Can I just add one more matter about Mr Thatcher's overseas trip. I am advised that he attended a consultation with the OECD Ministerial Council by certain OECD advisory committees—namely, the business and industry advisory committee and the trade union advisory committee. His attendance was as an observer of the business and industry advisory committee—the work of that committee relating to Mr Thatcher's work before his appointment to the royal commission.

**Senator CARR**—So you are confirming he was there?

**Mr Cornall**—Yes, that is my instruction.

**Senator CARR**—And you are confirming that he was there as part of the employers' delegation—

**Mr Cornall**—No, as an observer.

**Senator CARR**—But on the list I have just distributed—

**CHAIR**—It says he was an observer.

**Senator CARR**—Yes, it does—it says, though, as part of the BIAC side of the business, not the other. There were two parties to the conference, were there not?

**Mr Cornall**—I do not know, Senator.

**CHAIR**—I think that is what Mr Cornall just said, in fact, but we can check the *Hansard*.

**Senator CARR**—Thank you.

**CHAIR**—That concludes that area, as I understand it.

**Senator COONEY**—I have got some material here—

**CHAIR**—If it is on this area, Senator Cooney, why don't you do it now? It pertains to what we had just been discussing, does it?

**Senator COONEY**—And last night.

**Mr Cornall**—There is one that I want to add to. The one concern I have about the questions we have taken on notice is that the Attorney-General has expressed very clearly his reasons for not disclosing precise daily rates per counsel. If we answer precisely each of your questions in a way that will identify the daily rates, that is an issue that the Attorney has been concerned about for the reasons discussed here the other day.

**Senator COONEY**—You could not have made a better contribution as an introduction to my remarks than that. I will read out some material on that, taken from Estimates Committee

F into the Attorney-General's Department on 27 May 1994. The questioning was by Senator Vanstone, a very eminent member of cabinet now. She was talking about the judicial inquiry into ASIS. The transcript reads:

Senator VANSTONE—The judicial inquiry into ASIS was generated because of remarks made by a number of people who have since left and are not happy. Do they have representation at that inquiry?

Mr Skehill—They do.

Senator VANSTONE—I understand that they were unhappy with the funding that the government was prepared to provide them for counsel—which, I roughly recall, was \$1,000 or \$2,000 a day.

Mr Skehill—I am not aware of the figures.

Senator VANSTONE —They have written to me or to someone—I have seen the letter but I do not have it with me—expressing dissatisfaction with that.

There is a statement by Mr Reaburn, which I will leave out. I will pass over the material so that you can see whether you think it ought to be put in. It continues:

Senator VANSTONE—Is that figure of \$2,000 a day as being the tops correct?

Mr Reaburn—That is the rate that is being paid to the QC.

Senator VANSTONE—What about the counsel representing the government or ASIS? Who is that?

Mr Reaburn—Chris Maxwell is the counsel assisting the inquiry.

Senator VANSTONE—I am asking because I do not know.

Mr Reaburn—The inquiry is being conducted by Mr Samuels QC, the co-commissioner is Michael Codd and the counsel assisting the inquiry is Chris Maxwell.

Senator VANSTONE—What is Mr Codd's daily rate?

Mr Reaburn, without any equivocation, says:

Two thousand dollars.

Senator VANSTONE—And Mr Maxwell?

Mr Reaburn—Fifteen hundred dollars.

Senator VANSTONE—And Mr Samuels?

Mr Reaburn—I am advised it is \$3,000.

I will now read the next statement, which may not be directly relevant. It is a statement by a very eminent parliamentarian then, a very eminent lawyer before that and a very eminent minister now—Senator Ellison. He says:

Page 20 of the annual report of the Attorney-General's Department states that the department will achieve its goals by strong leadership, personal commitment, team work and rewards in line with performance. How is that performance measured and what forms do these awards take?

Mr Skehill answers—I will leave out a bit. It continues:

Senator ELLISON—The hourly rate mentioned in relation to the legal practice area, which is tied in with user pays, is that looked at in relation to the performance of individuals—for instance, what output they have been responsible for?

Mr Skehill—The quality of their work. The question of how many hours they may have billed in a numerical sense is not brought to account, but the quality of their work is certainly brought to account in that process. I should also say that while there are some features unique to our appraisal scheme it is not markedly different from performance appraisal and payment schemes that apply across the Public Service.

Senator ELLISON—With the hourly rate for this user pays situation, what figure have you arrived at and how did you arrive at that?

Mr Skehill—The figure that we charge to our clients?

Senator ELLISON—Yes.

Mr Skehill—In dollars per hour?

Senator ELLISON—That is right.

Mr Skehill—We devised a scale of figures depending upon the seniority of the lawyer involved and related them on a national basis to our estimated costs of providing a lawyer of that seniority and our estimation of comparable rates in the market.

Then there is another statement by a member of the ministry now—Senator Abetz—but I will not go on to him. Certainly, Senator Ellison is a most distinguished member of this parliament and all the praises I made before I reiterate at the end of this statement.

**Senator Ellison**—I did allude to that last night when I said I had raised this matter at a previous—

**CHAIR**—You have been on the other side of the table. You indeed did say that, Minister. Senator Cooney, having put all that on the record, is there a question?

**Senator COONEY**—Yes. I have a lot more statements from Senator Tambling which I will put on the record later.

**Senator Ellison**—That can all be put on the record, of course, and it is on the record anyway. I would say that Senator Cooney and his colleagues have been a lot more successful with this administration than we were with the former one, I can assure you.

**Senator COONEY**—I was going to go to 24 November 1989 and read matters put by Senator Ellison—no, I mean Senator Alston. Ellison and Alston: I am not going to say who is the greatest.

**Senator LUDWIG**—Ask them.

**Senator COONEY**—With everybody's concurrence, instead of reading them out I might show them to you and Mr Cornall and put into *Hansard* just those parts that we point out. Would that be better than reading them out?

**Senator Ellison**—No problem at all.

**Senator COONEY**—I want to raise another thing about the matter last night where Mr Cornall or Senator Ellison, or both, said, with regard to the *Aboriginal Development Commission—legal costs in relation to Senate privileges matter*, that this was all done voluntarily. This can be checked. I have been told that the matter arose out of an incident in an estimates committee. It was then taken to the Senate and the report followed from that. I am told that there was objection at the time from the private solicitors to giving that information across. When I apparently acknowledged last night that it was all done by consent, I think—

**Mr Cornall**—We had a discussion about it.

**Senator COONEY**—I was brought to book very rapidly after I left these chambers, like we all are when we leave here, I suppose. I am told that I should not have conceded that it was voluntary. It might have been voluntary in the time frame that we are talking about—

**Senator CARR**—But it was provided.

**Senator COONEY**—but it arose from an incident where there was some objection. If I gave all that across, we could check that and it would save a lot of time now, if everybody is happy to do it that way.

**Senator CARR**—Mr Cornall, I wish to persist with my questions.

**CHAIR**—We had noted that, Senator Carr.

**Senator COONEY**—If I get some copies of these made, that might be a better way of doing it.

**CHAIR**—Thank you, Senator Cooney.

**Senator CARR**—Thank you very much.

**CHAIR**—Thank you very much, Senator Carr.

**Senator CARR**—Am I allowed to go now?

**Senator COONEY**—Senator Carr wants to know whether he is allowed to go.

**Senator LUDWIG**—No!

**CHAIR**—That begs the question of whether he thinks I could stop him.

**Senator CARR**—I could sit here and ask a few more questions!

**Senator Ellison**—I can tell when the next plane to Melbourne is.

**CHAIR**—It would not happen to be 2 p.m., would it, Senator Carr? Given that it is 10 to 1 now, I think that it is probably appropriate for the committee to take a natural break for lunch now and resume at 10 to 2, if that is acceptable to senators.

**Senator Ellison**—Are there any guidelines as to where we—

**CHAIR**—The deputy chair and his colleagues have been pursuing any opportunity they have to put questions on notice where it is possible and appropriate but, not having had a chance to commence proper examination of the Attorney-General's Department, there is obviously still a deal of material to get through. But, Minister, we are endeavouring to ensure that we do not go late into the evening.

**Senator McKIERNAN**—I endorse the chair's remarks on that. I have a difficulty because there are some people I have not been able to contact during this morning's proceedings. They are not in Parliament House. I am going to endeavour to use the lunch period to make contact with those persons. Senator Ludwig, Senator Cooney and I have agreed that there are some other questions that we can place on notice, but they will need to be rewritten into a form which will be more easily understood and digested on the 'on notice' form rather than verbally. We are endeavouring to do that, but I think it would be wrong for me to go through the list at this stage, because there may be changes to it over the lunch period.

**Senator Ellison**—Yes, settle it first.

**CHAIR**—Thank you very much.

**Proceedings suspended from 12.49 p.m. to 1.53 p.m.**

**Senator COONEY**—I have some extracts here from *Hansard* relating to the issue of what should or should not be put into the record about legal fees, although I take it that it goes to wider issues than that. There are a few pages. I will photocopy them and give them to the minister and the secretary. And if they are happy with them, I will table and perhaps incorporate them into *Hansard*. So with the concurrence of the committee, I will take that

course. I do not expect an answer now, but perhaps later in the afternoon we can return to that issue.

**CHAIR**—We will see how we go, shall we, Senator Cooney?

**Senator COONEY**—We shall, if that is agreeable to the minister.

**CHAIR**—Senator McKiernan, Senator Ludwig, and Senator Cooney, notwithstanding my efforts to get to outcome 1, output 1.1 on several occasions already today, I thought we might try it again now and see how it goes.

**Senator McKIERNAN**—Do you know what the secret was in getting to outcome 1 at this time, Madam Chair?

**CHAIR**—What is that, Senator McKiernan?

**Senator McKIERNAN**—Morning tea—today is the first time we have had morning tea all week and we are most grateful for that. It was a very kind gesture on your part. Thank you very much.

As I indicated prior to lunch, we have a series of questions, but because of the lateness of the hour and the day—the 14th round of a 15-round contest—we will be putting those questions on notice. We cannot immediately hand them over because they are not in a form that would be conducive to your responding to them on notice. A series of questions will be lodged over the weekend or first thing on Monday.

**CHAIR**—Can we have those by lunchtime on Monday, Senator McKiernan?

**Senator McKIERNAN**—I think we can facilitate that. We are already working on it. Hopefully, we will move through this afternoon relatively quickly. My aim would be certainly not to be here by 6 p.m., and much earlier if we can do that. But there is still a fair amount there, and I will not waste any more time and get into it.

The Commonwealth has budgeted \$53.4 million for Commonwealth legal aid and \$70 million for state and territory legal aid payments in 2002-03. That totals approximately \$123.6 million. What changes in real terms does this represent since 1995-96 in (a) total Commonwealth legal aid funding, (b) Commonwealth legal aid payments and (c) legal aid payments to states and territories?

**Ms Pidgeon**—Can I, firstly, explain that those two figures in fact in total are the legal aid program, including in both parts of that money that goes to the states. The part that is called Commonwealth legal aid program is not money that we keep back; part of that is paid to the states. In fact, the majority of both of those figures is payments to the states. There are two programs because one program gets paid to state governments; the other program goes direct to legal aid commissions. It is not a question of a distinction between money that the Commonwealth has in legal aid and the money it pays to the states. Does that affect your question?

**Senator McKIERNAN**—I do not think it does. But just to get a further clarification of what you have told us, Ms Pidgeon, is any of that \$70.1 million to be used for the Commonwealth's expenditure, or is it totally, as I thought it was, for disbursement to states and territories?

**Ms Pidgeon**—A very small amount is for the Commonwealth. The Commonwealth does provide money, for example, to run a computer system, to obtain data from the commissions, but that is a very small amount. Almost all of that money goes to states and territories.



**Senator McKIERNAN**—Thank you for that. The second part of what I asked would probably be better taken on notice.

**Ms Pidgeon**—I think that would be better, yes.

**Senator McKIERNAN**—Then I want to find out whether the department maintains data on the number of legal practitioners performing work for legal aid at the Commonwealth level.

**Ms Pidgeon**—We do not keep those figures ourselves on the number of legal practitioners, because it changes frequently. This is in terms of legal aid through the commissions?

**Senator McKIERNAN**—No, at the Commonwealth level.

**Ms Pidgeon**—Most of our legal aid, of course, is not at Commonwealth level; most of it is the states. We have a very small financial assistance grants process, some financial assistance schemes.

**Senator McKIERNAN**—For the expensive cases. Is that the only area?

**Ms Pidgeon**—Money for expensive cases is money that is paid to the states. That is a fund that we hold centrally because it is a contingent fund for when expensive cases come up that the states and territories themselves cannot manage. We actually pay that out to the states and territories.

**Senator McKIERNAN**—So there is very little Commonwealth distributed money on legal aid.

**Ms Pidgeon**—That is exactly right. We have some financial assistance schemes including, for example, the native title scheme and there are some other statutory and non-statutory schemes. To answer your question in relation to those solicitors, we would have records of those who have been applicants or who are receiving funding through applications. We would not have a master list as such of solicitors. There is, however, an accreditation scheme for legal practitioners that will do work with our native title funding, which we do have a list of. That is, as I said, a scheme that we ourselves run.

**Senator McKIERNAN**—The prompt on native title is just a little early; we are coming to that shortly, but not just yet. Is it possible to have the details of those fees that are being paid to lawyers for Commonwealth legal aid matters? We are looking at doing judgments as to what has happened since 1995.

**Ms Pidgeon**—In terms of any change?

**Senator McKIERNAN**—Yes.

**Ms Pidgeon**—Those schemes do not intersect with the legal aid program funding. We keep those schemes quite separate. Any change in the number of lawyers we have there would not affect the legal aid funding in the states and territories.

**Senator McKIERNAN**—In relation to the Administrative Review Tribunal, the budget statement indicates that the department spent \$1.5 million in 2001-02 on the non-establishment costs of the ART. Pending the passage of legislation to establish the ART, which did not get established, what detail can you provide about that expenditure?

**Ms Pidgeon**—Could you repeat the figure that you mentioned?

**Senator McKIERNAN**—It is \$1.583 million; I do not have a reference page.

**Ms Pidgeon**—I know which figure you are referring to now. That related to preliminary work that was done on how one would set up the ART. So we were exploring issues of premises, co-location of the tribunal's IT needs and what the staffing needs would be—all of those issues were being explored. In addition, we had to run a selection process for the AAT once it was clear that the ART legislation would not pass and that also came out of that money.

**Senator McKIERNAN**—Is there any allocation in the current budget in any of the PBSs regarding expenditure for a proposed ART?

**Ms Pidgeon**—Yes. That money has been carried over.

**Senator McKIERNAN**—How much?

**Ms Pidgeon**—I think the figure that has been carried over is \$1.583 million.

**Senator COONEY**—My question is in relation to a matter where legal aid was not given from the Commonwealth but, when legal aid through PILCH was in focus, there is a perception that the Commonwealth may have intervened. There was an interception of a communication from PILCH to the *Tampa* which offered legal aid to the asylum seekers and to the captain of the *Tampa*. Soon after that there was an interview on 3LO on the John Fayne show, the 8.30 a.m. show, when the Attorney spoke about PILCH and made an adverse comment about PILCH offering legal aid to the captain of the ship. Later on it was revealed by the Minister for Defence that there had been an interception of that communication. It is not absolutely clear, but it seems likely that the fax that was sent from PILCH to the ship had been intercepted.

It would certainly have been consistent with what happened that that fax was communicated to the Attorney and he was able to use that, as I understand it, to make the statement that he made on the John Fayne show. I suppose I am putting it forward in this circumstance to see whether or not the department or the minister has any knowledge of it. I have no problems giving you the material that I have here, Mr Cornall. I know there were two contacts at PILCH, an Emma Hunt and a Samantha Burchell. As Mr Cornall would know, the Emma Hunt is the mother of my grandchild. I just put it in this context to clear up any misapprehension that you feel might be around on this.

**Senator McKIERNAN**—Your oldest grandchild?

**Senator COONEY**—Yes, Eleanor, the daughter of my son Sean and my daughter-in-law Emma Hunt, whose communication was intercepted by DSD.

**Mr Cornall**—This has been a matter of some public discussion but, as I understand it, our department has really no more knowledge than is in the public arena.

**Senator COONEY**—I think there was an article written—I should have brought it up—in the *Financial Review*, amongst others. I thought it was appropriate and proper to bring it up in this context and to give an opportunity to the department.

**Mr Cornall**—As I say, we have no other knowledge of this other what has been publicised in other places.

**Senator COONEY**—And there was no material obtained by the Attorney-General's Department from any other department of any sort?

**Mr Cornall**—That is my understanding.

**Senator COONEY**—Do you agree with that, Mr Ford?

**Mr Ford**—Yes, I am not aware of any other report.

**Senator COONEY**—It is a matter that is probably better to take up with Defence. I will do that; I will come back and do that with Defence.

**CHAIR**—You could do that next week, Senator Cooney.

**Senator LUDWIG**—In the Attorney-General's budget announcement it was stated that there was Commonwealth spending of \$120 million in the area of native title financial assistance payments, whereas the ministerial statement by Minister Ruddock indicated, in the Indigenous Affairs portfolio, that the total Commonwealth spending on land and native title matters is estimated to be about \$224.4 million, excluding potential native title financial assistance payments to the states and territories of about \$11 million. Can you explain the difference in those figures? Your responsibility is up to \$120 million. What component of that \$224.4 million is that and where is the balance held?

**Ms Pidgeon**—I can give you the financial assistance that is paid to the non-claimant parties, which is a smallish component of that. I can give you a figure that is actually for native title and includes our other very small schemes. This year it is \$11,198,643—'Financial assistance schemes, native title' and 'Other statutory/non-statutory'.

**Senator LUDWIG**—That is administered out of Attorney-General's, is it?

**Ms Pidgeon**—That is right. That is not for the claimants; that is for generally respondents but non-complainant parties.

**Senator LUDWIG**—Could you give me an example?

**Ms Pidgeon**—It could be pastoralists, for example, whose pastoral leases are part of a native title claim. Financial assistance would be provided to assist them to respond to that claim—local government as well.

**Senator LUDWIG**—Is that made by the Commonwealth to the states and territories for distribution?

**Ms Pidgeon**—No, that is administered directly by the Commonwealth, with applications going directly to the department and approved by the department on behalf of the Attorney-General.

**Senator LUDWIG**—How many applications did you receive in the last financial year? I am happy for you to take it on notice.

**Ms Pidgeon**—I have actually got that. The claims under the Native Title Act up to 30 April in this financial year total 354.

**Senator LUDWIG**—How much money is that? Is there a breakdown?

**Ms Pidgeon**—There may well be—

**Senator LUDWIG**—As I said, I do not object to your taking that on notice, because we might try to ascertain the amount of money paid.

**Ms Pidgeon**—I have a month by month total and I am looking to see whether there is a figure at the bottom for the total so far. The expenditure so far this year is \$9,486,717 on native title cases.

**Senator LUDWIG**—That is for non-claimants?

**Ms Pidgeon**—That is right, for non-claimants.

**Senator LUDWIG**—You might take on notice a breakdown of how many individuals or companies that was paid to as non-claimants; the nature of the payment and the reason for the payment; whether there was a means test that accompanied it to determine whether the payment was required; and what sort of probity check—maybe probity is not the right word, but what the check was made to ensure that it was relevant to the issue and that it was expended appropriately, as Commonwealth funding always is in your capable hands.

**Ms Pidgeon**—While I can answer some of that, it seems more sensible to take it on notice at this stage.

**Senator LUDWIG**—What I was trying to get to the nub of is that Attorney-General's in their statement stated that total Commonwealth spending is \$120 million whereas the ministerial statement by Mr Ruddock says it is \$224.2 million. What I am trying to ascertain is who is right about that.

**Mr Kennedy**—In the 2001-02 budget, additional funding was provided for the Federal Court, the Native Title Tribunal, the department and ATSIC for additional workloads in the native title system. The \$120 million figure appears in the portfolio budget statements for 2001-02 as being the sum of the existing funding for the Federal Court, the Native Title Tribunal, ATSIC and the department, plus the additional funding that was being provided in the budget. I do not know where the \$220-odd million figure comes from from Minister Ruddock, but that is the origin of the \$120 million that appears in our documents.

**Senator LUDWIG**—So, as far as you are aware, the total Commonwealth funding in this area is \$120 million and the budget portfolio statement shows how that is broken up and spent. Is that right?

**Mr Kennedy**—It does not, only because that includes ATSIC which is not shown in our portfolio budget statement.

**Senator LUDWIG**—Sorry—then as an agency in the Indigenous Affairs portfolio?

**Mr Kennedy**—Yes.

**Senator LUDWIG**—I will have to put a question on notice to Minister Ruddock to explain the \$224.2 million.

**Mr Cornall**—Senator, Ms Horner is here and she might be able to assist you with a more complete answer to the question that we have just been pursuing.

**Ms Horner**—As I understand the question, it was about an apparent discrepancy between the amount that shows up in the indigenous spending that is in Minister Ruddock's blue book.

**Senator LUDWIG**—It is not so much a discrepancy as such. I was trying to reconcile the two figures to get an understanding of how the amounts come about. In fact, it was preparatory question rather than a trick question.

**Ms Horner**—Okay.

**Senator LUDWIG**—The ministerial statement by Minister Ruddock statement states that the total amount of Commonwealth spending was \$224.2 million. But the Attorney-General's press release on the budget stated that the total Commonwealth spending was \$120 million.

**Ms Horner**—The \$120 million relates to spending within the Attorney's portfolio which obviously includes native title—and I think as Trevor Kennedy was pointing out just then—

**Senator LUDWIG**—The agency.

**Ms Horner**—the material that is referred to in Mr Ruddock's statement includes money spent in his portfolio which will obviously include ATSIC. I should make one comment about that: the \$120 million in this portfolio will include money spent on providing assistance to respondents in native title matters which is about \$12 million a year—

**Senator LUDWIG**—Yes. We have gone through that.

**Ms Horner**—Which is administered in FLLAD and which would not be included in Mr Ruddock's portfolio. So the \$120 million includes that. The \$120 million also includes the \$11 million that is for Commonwealth financial assistance to the states, and the rest of it will be for this department, both FLLAD and the Native Title Division, NNTT, the Federal Court et cetera. So I would imagine that the difference between the \$108 million—if you take away the FLLAD money—and the amount referred to in Mr Ruddock's statement will be the amount spent in his portfolio.

**Senator LUDWIG**—I will have to put a question on notice to Minister Ruddock so that I can work out the difference. Is the exclusion of the payments to the states a matter within the Attorney-General's portfolio, or is it a matter for Minister Ruddock?

**Ms Horner**—The \$11 million that was in the forward estimates for this year for payments to the states was money in the Attorney-General's portfolio.

**Senator LUDWIG**—The native title financial assistance payments?

**Ms Horner**—Yes.

**Senator LUDWIG**—They were the payments that we went through which detailed the non-claimant payments, or is that another pot of money?

**Ms Horner**—The moneys that FLLAD spends for respondents to native title claims is, I understand, about \$12 million. I think the expression 'financial assistance' causes some confusion.

**Senator LUDWIG**—To me at least.

**Ms Horner**—The \$11 million is financial assistance to states and territories to help them pay their compensation for native title. So the \$11 million, when and if it is spent, will end up in the hands of native title holders. The \$12 million that is spent by FLLAD goes to respondents to native title applications. That money is spent as a legal aid assistance to help respondents to native title claims. Can I make one clarification—something that has been pointed out to me by Ms Leigh—that the \$120 million also includes money spent by ATSIC on native title. So the difference between the \$108 million and the \$224.2 million would be on the land rights side of their portfolio, I imagine. I do not know the detail of that.

**Senator LUDWIG**—I will direct my question there. In past estimates, bodies which are funded for native title purposes are allocated funds on a workload basis, as I understand it, and that is why the NNTT, Federal Court and the Attorney-General's Department received increased funding in the last budget because they were calculated on a workload basis?

**Ms Horner**—That is right.

**Senator LUDWIG**—The workload was increased and, as a consequence, they got more money? Am I right about that?

**Ms Horner**—What happened—I think this came out in the evidence the other day—was that there was an evaluation in the year 2000. That evaluation fed into the consideration by government for the 2000-01 budget. That money is being spent in this financial year for the

first time. Both the NNTT and the Federal Court, in their evidence, described the money that started in that year—and that is, I think, going on for the next three financial years. That was based on an estimate of the likely workload over this four-year period. It does not have an automatic increase depending on workload. It was based on what the expected workload would be. I think you asked Mr Soden a question about whether the decline in the money was based on an estimate of decline in the workload. That was the outcome of the consideration by the committee that did the evaluation in the year 2000: that in those out years the workload of the Federal Court would decline, and that accounted for the additional funds to the Federal Court being less in years 3 and 4 than in years 1 and 2.

**Senator LUDWIG**—Is it simply done on an historical survey method, or is it based on what they were doing and then projected forward?

**Ms Horner**—Yes. What made it very difficult—I think this is reflected in the evidence given by Mr Doepel as well—was that, after the 1998 amendments, the whole way the native title determination process was set up changed substantially. It was very hard to make an estimate of the likely workload of the Federal Court. I think Mr Soden made mention that there might have been an underspend so far because the number of cases considered had not been as much as had been expected when the workload predictions had been made. You may be aware that there are a couple of cases in the High Court at the moment—the Croker decision has been handed down, but the decision in the Miriwung Gajerrong case has yet to be handed down and that has caused a delay in some hearings. Of course, that was not anticipated in the year 2000 when these workload projections were being made.

**Senator LUDWIG**—So we can summarise it this way: I suspect there was a survey done in 2000.

**Ms Horner**—Yes.

**Senator LUDWIG**—It determined what the workload would be, if I can use that phrase—I would be happy to adopt your phrase, if I can discern it. That was then used to determine the workload for the Federal Court and the Native Title Tribunal. Are there any others?

**Ms Horner**—Additional money was also given to the department, both my division and FLLAD, for legal aid to respondents to native title applications.

**Senator LUDWIG**—How were those two amounts to the department and to FLLAD determined? What is the acronym?

**Mr Cornall**—Family Law and Legal Assistance Division, which is Ms Pidgeon's division.

**Ms Horner**—It was a very important part of this committee, which was set up to do the evaluation, to make sure that each of these agencies and parts of the portfolio were making predictions about their workload based on the same set of assumptions. So all the recommendations about an increase in resources were based on the same prediction of increase in workloads. I think it is important to note that the work of the Federal Court is determined by reference to the number of trials and consent determinations they feel they are likely to deal with in the period. As you know, the NNTT has a wider range of work including future act determinations and registration, as well as mediation of applications. So the predictions made about the number of native title applications that were likely to be dealt with in the period were only one element of the NNTT's likely workload, but they were a substantial part of the Federal Court's likely workload.

**Senator LUDWIG**—But you then said that the Federal Court will increase for two periods and then start to tail off. Is that right?

**Ms Horner**—The funding for the Federal Court in this financial year was \$5.3 million. It will be \$4.623 million in 2002-03, \$4.1 million in 2003-04 and \$3 million in 2004-05. So, in fact, this year they got their maximum additional funds.

**Senator LUDWIG**—By correction, it peaks this year and then it tails off.

**Ms Horner**—Sorry, I might have given you the wrong impression.

**Senator LUDWIG**—Are the recommendations available to this committee?

**Ms Horner**—They have not been made available. We did get a request from the state and territories some time ago for them to get access to some of the information emerging from the evaluation. The Attorney-General has agreed to that. I am not sure that the information has yet been made available to them. Otherwise, it was just for governmental consideration.

**Senator LUDWIG**—It is not a cabinet document, is it?

**Ms Horner**—No.

**Senator LUDWIG**—I wonder if the committee could have that made available to it.

**Ms Horner**—Sorry, I will think about that again. I might have to check on that. I know the information that was in it was considered by cabinet, but I am not sure whether the report itself—

**Senator LUDWIG**—That is why I asked you, because if it has gone there it is not fair game. By all means, take it on notice. The information or the recommendations may not be available because they might have gone to cabinet. If the matter was made available to the states, I wonder if it could then be made available to the committee on that basis. If not, let me know.

**Ms Horner**—I will take that up with the Attorney-General's office.

**Senator LUDWIG**—Were the recommendations all fulfilled? In other words, did you get 10 out of 10 or 9 out of 10?

**Ms Horner**—That is a very tempting way to put the question. I am not sure that I am in a position to give you an answer on that.

**Senator LUDWIG**—Will that be an annual review or a three- or four-year review?

**Ms Horner**—What was decided and announced at the time that the extra funding was announced in the last budget was that there would be an evaluation done for the 2003-04 budget, and I think that is the evaluation that we are just starting now, which I referred to when I gave evidence here earlier in the week.

**Senator LUDWIG**—Would that have been taken into consideration? Obviously there have been state government changes and different directions in policies by some of those state governments, particularly in Western Australia where it appears they are heading towards more agreement making, so there is potentially less litigation. Do you have—and these are my words—an update on the review, so to speak? If the review in 2000 set certain parameters and you followed those through, do you at some point come back and say, 'We need to have a minor revision because significant circumstances may have changed and require a reallocation of those funds'?

**Ms Horner**—I will make two points about that. I think you asked before about the timing of it. The review is scheduled to be completed by September 2002, so we are already well under way getting information for the NNTT and the Federal Court. I should also mention that the division runs a forum in which state and territories also participate. Part of the purpose of that is to get information about what they predict is likely to happen in their own jurisdictions in the relevant time period, so we can feed that information into the evaluation. What the states, such as Western Australia or the Northern Territory, propose to do, or they think they are likely to be resourced to do, in the relevant period will feed into that evaluation. I have to say, though, in terms of whether there is a change of policy or a change of emphasis in a state about litigation versus negotiation of consent determinations, it is unlikely that that is likely to show up a substantial difference in the balance between, say, consent determinations and hearings that go to trial, given the relatively low number of cases that go to trial in any given year.

**Senator LUDWIG**—Would there be a need to reallocate moneys—for argument's sake, the Federal Court—to bodies that look after agreement making, such as the NTRBs?

**Ms Horner**—On that issue of agreement making: if any state were to decide that they wanted to emphasise agreement making in contradistinction to litigation, what they will be talking about is a desire to have negotiations for consent determinations rather than pursue a trial through the Federal Court, which may involve weeks of hearing and could be a fairly major source of resource allocation for all participants. The negotiation of consent determinations basically involves the same parties and it is also very resource intensive. The only difference is that it will not entail the Federal Court being involved in the trials. So it is unlikely that, at least in the foreseeable future, it will involve any reallocation away from particular participants: they will just be spending the money in a slightly different way. The representative bodies may be spending on negotiations money that they otherwise might have spent in preparation for trial, but basically it will be in relation to the same things, which is providing material about the evidence of connection and that kind of thing. The amount allocated to the representative bodies is, of course, a matter ultimately for ATSIC. You may be aware that the ATSIC board has in the past also agreed to spend additional amounts other than the amount provided in the budget directly. You are probably aware that the amount provided by the government over the last few years has been about \$43 million.

**Senator LUDWIG**—As I understand it, there has been no significant increase—at least not in this budget—for representative bodies like the NTRBs.

**Ms Horner**—No, funding has not been increased in this budget, but you will remember that in the last budget additional money was provided to ATSIC.

**Senator LUDWIG**—That might be before this became my area of interest, which I think was in finance and public admin at that stage.

**Ms Horner**—In the budget last year, the organisations within the Attorney-General's portfolio got increased money, and you will be aware that ATSIC got increased money. That money was not for the individual rep bodies, as you know, but was for ATSIC to spend on native title—running test cases and spending on the rep bodies to increase their capacity building. The ATSIC board have in the past also provided money directly to the rep bodies. I am not sure whether they have decided to do so in their current budget.

**Senator LUDWIG**—Let us get this clear: in this budget, there was no increase to the NTRBs. That concerns me because there seems to be more emphasis on agreement making



and they are the bodies that will facilitate that. The Federal Court got an increase but, even though Western Australia and other states are moving away from litigation to agreement making, the NTRBs did not get a corresponding increase.

**Ms Horner**—With regard to the NTRBs, I want to emphasise again that ATSIC, as with the other agencies, did get an increase this year, being year 1 of the money that was provided in the last budget. As for the issue about the rep bodies spending money on agreement making rather than litigation, it is ATSIC that decides how much each individual rep body is going to have. It is up to the rep bodies to prioritise the spending between litigation, agreement making and future acts, in accordance with the rules that are set out in the Native Title Act and their responsibilities to the Minister for Immigration and Multicultural and Indigenous Affairs in terms of his approving budgets and that sort of thing. The allocation to the different parts for agreement making or litigation is a matter for the individual representative bodies. If it is the case that WA is not intending to spend as much on litigation, one would presume that the relative rep body will make a decision that will see their resources transferred from their litigation priorities to their consent determination and negotiation priorities.

**Senator LUDWIG**—I might not be right about this, but perhaps you could set me straight. Given the Love-Rashid report into the NTRB funding, the evidence given by ASIC and the Native Title Tribunal's statement that there is a dire shortage of funds for agreement or negotiation which is affecting their capacity to fulfil their obligations to native title claimants, could there be a reallocation given that the review was done in 2000? That is what I was talking about earlier: a subset or an ability to modify the review, given changed circumstances.

**Ms Horner**—I think that everybody in the system, for want of a better expression, accepts that each element of the system is interrelated and that, in order to progress litigation or negotiations over future acts or the negotiation of consent determinations, it is necessary to ensure that all the participants in the process are adequately resourced to participate properly. The purpose of the evaluation that is now starting is to see how the money has been spent so far and to reassess the predictions that were made in 2000 about the likely workload of the different parts of the system over the forthcoming couple of years. I imagine that the kinds of factors that you are adverting to will be relevant to the kind of analysis that is done as part of that assessment.

**Senator LUDWIG**—Turning to a slightly different topic, I understand that the Native Title Act allows financial assistance to native title respondents. Who administers these funds? This might be another area that Ms Pidgeon should deal with.

**Ms Horner**—Yes.

**Senator LUDWIG**—Ms Pidgeon, is this the same or a different pot of money from the one we were talking about earlier?

**Ms Pidgeon**—This is the same pot of money. It is the funding that is administered directly by the Attorney-General's Department, with applications coming from the respondents.

**Senator LUDWIG**—This is the \$12 million?

**Ms Pidgeon**—Yes, that is right. So far this year, as I said, we have spent \$9½ million of that.

**Senator LUDWIG**—I think that I have asked for a breakdown of those figures by claimant; will that also show the information by region? It just dawned on me when I looked

at my notes that I should get the framework right. What fields will it break it down into for the committee?

**Ms Pidgeon**—We have a fairly old and creaky data system, which we are trying to do something about, so we have some problems with how we can break down the data. I believe that we are getting to a stage now where we can break it down by region and by type of claimant. We would not normally make public the names of individual claimants in that there are obviously privacy issues. We have ordinary farmers out there who do not particularly want their names to be spread around the place. We can break it down into groups of claimants, and I think that we are now in a position where we can also do it by region, although I would have to confirm that when we come back with the answer.

**Senator LUDWIG**—That pot of money is not means tested, is it?

**Ms Pidgeon**—That is correct; it is not means tested.

**Senator LUDWIG**—Then why can't you provide the names of the recipients?

**Ms Pidgeon**—It has been a practice not to do that. I am not saying that it would necessarily be the outcome; I am just saying that our normal request would be that we maintain confidentiality of individuals' details. I do not think that we would have the same problem with providing the names of the firms of solicitors involved, so if that would help we can do that.

**Senator Ellison**—I feel a line of questioning coming on.

**Senator McKIERNAN**—Will you take questions on notice?

**Mr Cornall**—My recollection is that under the Victorian legal aid legislation you were not allowed to disclose whether or not somebody was receiving legal assistance. It was something that ought not to be disclosed, and I would be reasonably confident that that would be the position under the legislation of other states. While that is not directly applicable to this situation, there is a long established and well-recognised principle that details of legal aid applicants are not disclosed.

**Senator LUDWIG**—I will tell you my problem, rather than spend 15 minutes cross-examining and getting back to the place we started. I am concerned about public accountability. This is not a means tested pot of money. It is a significant pot of money and it is being handed out upon application and, for all intents and purposes, I am not sure of the scrutiny that is applied to it. I am not too sure of how a person gets to claim X dollars and what requirements you attach to them to prove that they deserve X dollars and, given that it is not means tested, where it is then placed. For argument's sake, it could go to the King of England, who owns a property in Australia—I am using that as a hypothetical example; I am sure he does not.

**CHAIR**—I gathered that; because we have got a Queen!

**Ms Pidgeon**—I may be able to help you with that, in that there are, obviously, accountability processes. When an application is made, it is made usually by the solicitor on behalf of the claimant. There are times when it might become direct—for example, from a local government body. That is then assessed according to the size of the claim, how much that respondent is involved in a claim, what sort of complexity there is in a claim, what sort of complexity of issues there is, then whether the amounts of money in the application are reasonable. We certainly look at that critically and we make a judgment about how much we think should be provided.

But when the funding is granted, it is not just then paid out into somebody's bank account. In fact, the work has to be done before it can be acquitted. While we do provide money to solicitors in advance to their trust accounts so that they can get access to it quickly, they still cannot get access to it until they have shown they have done the work. If they do not do the work—for example, if the case does not proceed in the way that is expected and in fact does not cost as much in terms of hours of work or various things that they thought they would have to do—the money will come back. That is where the accountability is. It is not just, 'Oh, can I have so much money,' 'Oh, yes, here it is.' Perhaps that helps.

**Senator LUDWIG**—That is the difficulty. That is what I want to find out, because the committee—

**Ms Pidgeon**—We will take it on notice.

**Senator LUDWIG**—are entitled to ensure that public moneys are expended properly and that there are sufficient checks. I have to say that you have got a lot of confidence in solicitors' trust accounts.

**Mr Cornall**—Trust accounts would not come into this. They would present bills and the bills would be paid.

**Ms Pidgeon**—We do actually use some advances to trust accounts—

**Mr Cornall**—Do you?

**Ms Pidgeon**—but they cannot draw down on that until we—

**Mr Cornall**—I stand corrected.

**Senator LUDWIG**—I think my comments are apt. Could you break that down too as to how much money is paid into solicitors' trust accounts in advance of work done and by trust account name, if possible?

**Ms Pidgeon**—I think we could manage to do that.

**Senator LUDWIG**—What about the interest that accrues if the money is not expended?

**Mr Cornall**—No interest accrues on trust accounts.

**Senator LUDWIG**—That is right; it does not. What about the interest lost?

**Mr Cornall**—This is a very big area of discussion about how solicitor indemnity funds are funded out of notional payments.

**Senator LUDWIG**—We will move on.

**Mr Cornall**—It is too big an issue to get into.

**Senator McKIERNAN**—Especially for a Friday afternoon.

**Senator LUDWIG**—Has the *Native Title Report 2001* been received and responded to? I do not seem to be able to get this in order, do I?

**Mr Cornall**—It does not matter.

**Ms Horner**—Was this the social justice commissioner's native title report?

**Senator LUDWIG**—Yes.

**Ms Horner**—I think it was tabled in parliament on—

**Senator LUDWIG**—It has been tabled; I was just wondering whether it has been responded to. It was dated 2001, but it only came out a short time ago. Perhaps you could

outline—I suppose it is very difficult to say—when you would be able to have a response date.

**Ms Horner**—My understanding is it is not the practice of the government to respond to the report of the social justice commissioner.

**Senator LUDWIG**—I just assumed that, like Senate committee reports, you respond to them by recommendation.

**Ms Leigh**—To confirm what Ms Horner has just said, it is not the normal practice to respond to them. However, it is evident from the press release that was put out on 14 May jointly by the Attorney-General and Minister Ruddock that the government has considered the issues that were raised and they will be taken into account by the government in relevant cases.

**Senator LUDWIG**—Perhaps you could take this question on notice: how many previous reports have been responded to where a press release has or has not been issued, and how many reports have been responded to by the Attorney-General or the minister responsible for indigenous affairs at the time? One of the recommendations calls for greater funding of NTRBs, and that was an area that I spoke to you about and asked you questions on. Given the changing workload that seems—I say ‘seems’—to be occurring in the various states, it is a matter of interest when the government, if it responds, deals with one of those issues such as increased funding for NTRB agreement making. Perhaps you can take it on notice.

**Ms Horner**—Yes, certainly. I shall clarify something about the social justice commissioner’s report on the Native Title Act. Until 1998 the relevant parts of the Native Title Act were administered in the Prime Minister’s portfolio, so the Attorney has only been responsible for the administration of that part of the act under which the social justice commissioner has reported since that time.

**Senator McKIERNAN**—As you will appreciate, we have been asking questions out of outcome order, and I apologise for that. It was my fault, because, in trying to hasten the process, I separated the questioning.

**Senator MASON**—If it will hasten it, let’s do it.

**Senator McKIERNAN**—There will be some more questions on notice. I apologise: I had inserted them into output 1.1. There are some more questions in that area. I regret the inconvenience caused to you.

**Senator LUDWIG**—I knew that was happening.

**CHAIR**—You were concealing it from us, Senator Ludwig!

**Senator LUDWIG**—Given that we were skating through it, I thought that you might bear with me.

**Senator McKIERNAN**—I have one more question on output 1.1. We have completed output 1.7. I have only one question on 1.6. I suggest that following the question on outcome 1.1, we move to 1.6, which would allow the officers to leave

**CHAIR**—Then we can go to output 1.2. I will have to check.

**Senator McKIERNAN**—Indeed. I am trying to suit everybody’s convenience.

**CHAIR**—We are considering output 1.1.

**Senator McKIERNAN**—One Family Court judge was appointed in 2002 and in 2001. What is the situation when vacancies arise in the Family Court—that is, when judges retire, die or leave due to ill health? Are there vacancies as a result of those happenings?

**Ms Leigh**—Yes. Justice Smithers retired with effect from 16 March this year. As you heard earlier this week, Justice Jerrard has just retired with effect from yesterday, because he has been appointed to the Queensland Court of Appeal. There are two positions that are under consideration.

**Senator McKIERNAN**—They are under consideration?

**Ms Leigh**—They are.

**Senator McKIERNAN**—That completes output 1.1 for me.

**CHAIR**—Thank you, Senator McKiernan. Senator Ludwig, have you completed your questions on output 1.1?

**Senator LUDWIG**—If I wanted to ask a question in relation to the costings, if any, that have been done in relation to paternity leave by the human rights commission, would that be in that area?

**Ms Leigh**—Yes, it is.

**CHAIR**—I will take Senator Cooney's question on the courts and we will come back to that.

**Senator COONEY**—When did Mr Justice Smithers resign? His age would not have been such as to disqualify him.

**Ms Leigh**—He retired. He had not reached 70, if that is what you are saying, but he did retire, and that was with effect from 16 March this year.

**Senator COONEY**—He was a very eminent jurist. Who is replacing him?

**Ms Leigh**—That is still under consideration.

**Senator COONEY**—That is one in the court itself in the first instance. What about in the appeal division—are there any problems there? Are there any vacancies there?

**Ms Leigh**—The chief justice has raised with the Attorney-General whether he might appoint additional members to the appeal division and the Attorney has that matter under consideration. The number of judges that can be appointed to the appeal division was increased quite recently and that now allows further judges to be appointed to that division.

**Senator COONEY**—Do you know whether a decision to appoint an extra judge has been made or is it simply that there is an ability to appoint a further judge, which has not been exercised?

**Ms Leigh**—There is an ability to appoint further judges to the appeal division and the Attorney has under consideration whether he should do so. It has been put to him and he has it under consideration.

**Senator COONEY**—I am not trying to pry into what happens, but has he discussed the matter with the chief justice, do you know?

**Ms Leigh**—Yes, he has.

**Senator COONEY**—But the appointment is not imminent, from what you can judge.

**Ms Leigh**—I think I cannot go any further than to say that it is under consideration.

**Senator LUDWIG**—When the Human Rights and Equal Opportunity Commission were here I asked them about costings—whether any had been done in relation to the issue of paid maternity leave. Has the department done any costings or produced any estimates as to the costs of the recommendations by Ms Goward in relation to paid maternity leave?

**Ms Leigh**—Our department has not done any costings—it is not the type of area that we would take responsibility for.

**Senator LUDWIG**—Who would?

**Ms Leigh**—The Department of Employment and Workplace Relations, for example. There would be a number of departments that would have an interest. FACS would have an interest because there are a wealth of aspects—

**Senator LUDWIG**—I should not ask you. I can think of a few and I will put questions on notice and ask them. I much appreciate it.

**CHAIR**—As there are no more questions on output 1.1, let us move on. I thank the officers.

[2.53 p.m.]

**CHAIR**—Output 1.5 is headed ‘Drafting of legislative and other instruments, publication of legislative materials and provision of related legal services’.

**Senator McKIERNAN**—Do you want some good news? We are going to put the questions on notice for 1.5.

**CHAIR**—I am always up for good news. Those questions will be put on notice. Senator Cooney, do you have any questions on 1.5?

**Senator COONEY**—Yes, I do. I notice in the drafting of the legislative materials—and I put this to Ms Penfold QC—that there is more and more an inclination to insert absolute liability into crimes that carry very heavy penalties. What has led to that? Is it a matter of convenience?

**Mr Ward**—The point you raise, I think, is more to do with criminal policy than anything else. We act on instructions, of course.

**Senator COONEY**—This is not a matter of course; this comes through as a matter of policy—is that so? It is deliberately put in—

**Mr Ward**—It would originate that way.

**Senator COONEY**—I just want to know whether you say it ‘would’ originate or it ‘does’ originate from policy.

**Mr Ward**—I find that a bit difficult to answer in the abstract.

**Senator COONEY**—It is in the terrorist legislation. A number of offences are set out in the terrorist legislation, elements of which are made absolute in the liability. It is that particular area that I was thinking about. Within the context of that legislation, was it the policy of the government to make those elements absolute and, in some cases, strict in the liability?

**Mr Cornall**—The Office of Legislative Drafting drafts subordinate legislation and legislative instruments in accordance with instructions received from a variety of sources. It is not directly involved in the preparation of statutes and, in any event, it acts on the instructions of appropriate agencies, so Mr Ward is not really able to comment on that question.

**Senator COONEY**—So this just deals with subordinate legislation. Why is that not done by the Office of Parliamentary Counsel?

**Mr Cornall**—The division of the two offices is something that has been in place for some time. Mr Ward can probably give you the background of it, but my understanding of the rationale of it is that, by having a separate office for subordinate legislation through the Office of Legislative Drafting, it ensures that subordinate legislation and legislative instruments are given appropriate priority and drafters are not distracted from that work to draft legislation and bills.

**Senator COONEY**—I think the opposition and everybody else have theirs done through the Clerk. Do any communications take place between the First Parliamentary Counsel, Ms Penfold, your office and the Clerk so that there is some consistency in the way that material is drafted?

**Mr Ward**—I am officially a member of the Parliamentary Counsel's committee which deals with the development of Commonwealth and state legislation and, particularly, the development of model legislation. I think there is more of a dialogue between the Clerk and the Office of Parliamentary Counsel in relation to the sort of thing you are referring to.

**Senator COONEY**—From that it seems that there would also be dialogue around the various parliaments in Australia?

**Mr Ward**—There is a very active discussion of matters of mutual interest.

**Senator COONEY**—In the old days, I remember, there was a big drive on plain English and—it is probably before your time—there was a drive on at one stage to get legislation into a state where it could be read by everybody.

**Mr Ward**—Yes, indeed.

**Senator COONEY**—Where has that got to? Is there some sort of body trying to drive that on?

**Mr Ward**—From being a matter of academic interest, certainly the Commonwealth Office of Parliamentary Counsel, our office and state offices very much embrace, and have implemented, drafting practices to put into effect the principles of plain English and making legislation clearer—come the day when the legislative instruments legislation sees the light of day. In my office, the Principal Legislative Counsel has the responsibility for the standard of legislation.

**Senator COONEY**—Wasn't the legislative instruments legislation originally put out in the Keating era?

**Mr Ward**—It certainly originated from a joint parliamentary committee which probably preceded the Keating era.

**Senator COONEY**—In any event, is this done fairly informally or would there be documents showing the conversations and discussions that took place? I simply ask that in the context that it would be good if we could get legislation with a lot of common elements in it so people could understand it more than they do at the moment.

**Mr Ward**—I was just thinking of the meetings we have on delegated legislation and standing committees. Those topics frequently come up, don't they?

**Senator COONEY**—Yes, they do.

**Mr Ward**—When you say dialogue—

**Senator COONEY**—If legislation could be readily understood—and it is impossible for that to happen in some cases, I understand that—that would be a good thing for the way the community is run. In the human rights area, there are people writing papers, having conferences, publishing things and doing learned work, so I was just wondering if there is the same sort of thing in your area.

**Mr Ward**—I do not know that it is formalised. Each drafting office maintains manuals for the construction and preparation of legislation to ensure that it is clearly interpreted. Outside that it is still a topic of frequent debate and discussion at forums of that kind—at drafting forums, for instance. Every two years drafting forums are attended by representatives from parliamentary counsel offices around Australia and that topic is frequently discussed and thought is given to ways to improve legislation; cases are discussed where it has been interpreted.

**Senator COONEY**—Could we have a look at your volume that sets this out?

**Mr Ward**—Yes, I will see what I can find.

**CHAIR**—That completes output 1.5. We will have one question on output 1.6, Legal services and policy advice on information law, from Senator McKiernan and we will see what we have from other senators.

**Senator McKIERNAN**—I refer to the report of the House of Representatives Standing Committee on Legal and Constitutional Affairs of November 2000, which was entitled *Cracking down on copycats*. What work, if any, has been done by the department to implement the recommendations of this report?

**Mr Ford**—Some work—in fact quite a bit—has been done on that but we are not yet in a position to report the outcome, I am sorry. One action that has been taken is the consultative committee that has been set up and is chaired by the AFP. But the formal report to the parliament is still subject to ministerial consideration.

**Senator McKIERNAN**—I accept what you are saying and I am not going to argue the point. Can you say at this time if a legislative response is being considered? In other words, will legislation be built on these outcomes?

**Mr Ford**—Some of the recommendations certainly envisage legislation.

**Senator McKIERNAN**—But that is why I asked the question.

**Mr Ford**—I cannot say for sure that legislation will be part of the government's response, but legislation is certainly part of the consideration.

**Senator McKIERNAN**—Would you take that on notice? If you are able to add any further information to the response that you have just given me, we would appreciate that on notice.

**Mr Ford**—Yes.

**Senator COONEY**—This is straining the interpretation, but is this an area where you would ask about freedom of information?

**Mr Ford**—Yes.

**CHAIR**—It is not straining it at all, Senator Cooney.

**Senator COONEY**—No, it is very interesting. I thought it was information law or IT. That is something that seems to have fallen into disuse a bit, which is a great pity. Do we get many applications for information?



**Mr Ford**—Yes, still quite a number. It is reported on each year in an annual report to parliament on the administration of the FOI Act. I do not have the figures in my head.

**Senator COONEY**—Do you know, for example, whether there would be as many applications in this department as there would have been 15 or 20 years ago? You might not have been there 15 or 20 years ago, but are you able to say? That was when it was at its height, as a matter of interest.

**Mr Ford**—I was there 15 or 20 years ago. There is an impression that it has dropped off a little in numbers. Certainly, workload has dropped off. There are two officers now working full-time on FOI matters in my division, whereas 15 or 20 years ago there was a branch that was doing this sort of work.

**Senator COONEY**—That might be the result of good estimates committees.

**Mr Ford**—Possibly, Senator.

**Mr Cornall**—Just for the department, in 1999-2000, we received 48 requests for information and, in 2000-01, we received 43 requests. The outcomes of those requests and so forth are published on page 177 of our last annual report.

**Senator COONEY**—I get the impression that people are finding other ways to get their information. These committees might be leading to an increase in work for the department in this area, but perhaps it will drop off in other areas—self-justification, I suppose.

**Mr Ford**—I am reminded that there are also another two staff in the corporate services area who work full time in handling requests and so on. It is still used quite a bit—perhaps not so much by journalists, according to seminars and things that we have run.

**Senator COONEY**—Are there still many disputes? Do you go to the Administrative Appeals Tribunal for this?

**Mr Ford**—Yes.

**Senator COONEY**—How many applications were against government?

**Mr Ford**—Again, I am not sure of the number, but jurisprudence still develops and we advise departments of decisions and implications as they come out.

**Senator COONEY**—Thank you very much, Mr Ford.

**Mr Cornall**—Again, from our statistics last year, on page 177 of the annual report, it is noted that there were four applications for review made to the Administrative Appeals Tribunal in relation to departmental FOI decisions last year.

**Senator COONEY**—I get the impression that is very moderate compared to what it was a few years back. I think it is still pretty vigorous in the states.

**Mr Cornall**—Yes. We were discussing this over lunchtime. Coming from Victoria, the estimates process there—I do not know about other states—is between the committee and the minister, whereas this process is between the committee and members of the department. I think, therefore, a lot more information is elicited through these committees than in the states. So the FOI process in the states is probably directed to the fact that they do not get information as you do through estimates committees.

**Senator COONEY**—Thank you for that, Mr Cornall. That makes us feel less guilty having kept you here for a few days.

**Mr Ford**—The trace would be the extent to which agency practices have changed about releasing information and not requiring a formal FOI request. If we looked at the history, we would find that some agencies, at least, have become more open and have not required formal FOI applications when, in the early years, they might have.

**CHAIR**—That completes questions in output 1.6. Thank you very much, Mr Ford.

**Senator McKIERNAN**—I have a question regarding the High Court IVF specific case. Can the committee be informed of the total cost of the Attorney-General being represented before the High Court in the McBain case?

**Mr Griffiths**—Yes, I can give you some information. The figure that I have includes the cost of the preliminary advice provided to the Attorney-General in relation to the granting of the fiat and the drafting of the fiat as well as the cost of the Attorney-General's intervention in the High Court. If you will just bear with me, I will find that figure for you. I just ask that you bear that in mind. The total figure incurred, bearing that in mind, is \$235,240.49 to 19 April 2002. That is inclusive of GST. That amount was payable to the Australian Government Solicitor under a memorandum of understanding that exists between the department and AGS. That memorandum of understanding provides for the payment of a lump sum by the department to AGS for a range of legal services covered by the MOU. That includes these particular services. So the amount I have just referred to is actually a notional amount because it was embraced in the services covered by the MOU. It is a notional amount based on the records of the Australian Government Solicitor for the time that they spent devoted to that particular task.

**Senator McKIERNAN**—That is the amount that is going to AGS. Was there additional work done by the department?

**Mr Griffiths**—Yes, there would have been. We would have participated in the advice to the Attorney-General.

**Senator McKIERNAN**—Is it possible to put a cost on that work?

**Mr Griffiths**—It would be possible, but it would be somewhat difficult and I would have to take it on notice. It would only be an approximation, of course.

**Senator McKIERNAN**—I would not want to ask you to do \$200,000 work to find out that there was a cost of \$150,000 in doing it.

**Mr Griffiths**—It would have been a relatively modest amount of work that was done in the department.

**Senator McKIERNAN**—So would it be a modest cost to the department to find out what that cost might be?

**Mr Griffiths**—It would be a relatively modest cost to come up with an approximation.

**Senator McKIERNAN**—See what you can do, with that caveat—if you think it is going to cost more to find out the information than the original work cost, I will not press the matter.

**Mr Griffiths**—Certainly, Senator.

**Senator McKIERNAN**—Thank you. Is there a figure for work done by counsel on the case? Is that separate from the work of AGS in any way?

**Mr Griffiths**—The figure that I quoted is the total amount that was paid to AGS, which would include the disbursements that were incurred by AGS. I will take it on notice to make sure that the information I provide is precise, but our recollection is that the counsel who were

briefed were the deputy general counsel from the Australian Government Solicitor rather than a briefed counsel.

**Senator McKIERNAN**—Was any of the work done within the department done by the human rights branch of the department?

**Mr Griffiths**—We would have consulted the Human Rights Branch, yes. What I am saying is that the briefing to the Attorney-General was coordinated by the Office of Legal Services Coordination and in doing that we did consult the Human Rights Branch.

**Senator McKIERNAN**—You have already said you would see what you can do about providing the cost of the total work in the department. I will not press that one further at this stage. What was the total cost paid by the Commonwealth as a result of the order of the High Court to pay the costs of Dr McBain?

**Mr Griffiths**—I do not have any information on that, so I would need to take that on notice.

**Senator McKIERNAN**—Do you know whether the costs have been paid?

**Mr Cornall**—No, I do not.

**Senator McKIERNAN**—Would you take that on notice as well. If they have not been paid—

**Senator LUDWIG**—Was there an order to costs? I am just trying to recollect whether or not there was.

**Mr Cornall**—My recollection is that the Commonwealth was in a position to apply for costs and that was not granted.

**Senator LUDWIG**—That is my recollection. That is why I was trying to remember whether there was an order for costs. I thought that you applied for costs, you were refused and you took issue with that.

**Mr Cornall**—I think that was the end of the matter. Perhaps we could leave it on the basis that there was no order for costs but if that is incorrect we will correct that answer.

**Senator McKIERNAN**—Thank you, Mr Cornall.

**Mr Cornall**—We are not sure whether we have got that right. We will take it on notice and give you the correct answer.

**Senator LUDWIG**—Dr McBain got something and you complained about that.

**Mr Cornall**—I may be confusing it with another case, so we will take it on notice and give you the correct answer.

**Senator McKIERNAN**—Thanks for that.

**Senator LUDWIG**—I think it was in relation to the Catholic bishops. I think the Catholic bishops had to pay their own way.

**Ms Leigh**—I believe I can answer this question. My understanding is that there was a cost order against the bishops and that as part of the condition when the Attorney granted his fiat to the bishops was that the bishops would be liable for any cost orders made against either them or the Attorney in the related proceedings. So the Commonwealth is not expecting to pay, in my understanding, any of the costs ordered against parties in that proceeding.

**Senator LUDWIG**—I would have to go back and read the case to remember again. Perhaps you could go back and have a look at the issue and then, if there is an amount that the Commonwealth has to pay, let us know what that is; if there is not, come back and say no.

**Ms Leigh**—Certainly.

**Senator LUDWIG**—Thank you.

**Senator McKIERNAN**—Was any amount of funding given by way of legal assistance to any party that appeared before the High Court in this case? I am thinking of particularly the Australian Family Association and the Women's Electoral Lobby of Victoria.

**Ms Leigh**—No, there was not.

**Senator McKIERNAN**—Did any other parties receive legal assistance from the Attorney in this case? If so, what was the value of the assistance?

**Ms Leigh**—My understanding is that there was no legal assistance to the parties in this case. If am incorrect in that, I will certainly come straight back and correct it, but that is my understanding.

**Senator McKIERNAN**—If you are incorrect, would you find out what the level of assistance was and what criteria were used to provide assistance to perhaps some parties and not others, if indeed there was assistance granted.

**Ms Leigh**—Yes.

**Senator McKIERNAN**—Thank you. It was indicated following the decision in the case that the government would reintroduce legislation to amend the Sex Discrimination Act which, of course, permits the states to discriminate against single women and lesbians in the provision of reproductive technology services. What is the status of that legislation?

**Ms Leigh**—The government proposes to reintroduce the legislation that was introduced just before the last election.

**Senator McKIERNAN**—Is there a timetable for that reintroduction?

**Ms Leigh**—I am expecting it to be introduced later these sittings.

**Senator McKIERNAN**—Are you able to say at this time whether it is identical to previous legislation?

**Ms Leigh**—Yes. As I understand it, the legislation will go ahead. Because, as you know, the case did not deal with the substance of the issue, there is no reason why one would change the legislation. That is my understanding.

**Senator McKIERNAN**—Thank you. Moving on, can you confirm whether the issue of referral by states of powers regarding de facto couple property settlements was raised at the Standing Committee of Attorneys-General's meeting in March this year?

**Senator COONEY**—I wanted to ask Mr Griffiths another question on costs. He is about to go.

**Mr Griffiths**—Not very far.

**CHAIR**—He does not look like he is going anywhere, Senator Cooney.

**Ms Leigh**—We have found another seat for Ms Pidgeon, so we can proceed.

**Senator COONEY**—Okay.

**Senator McKIERNAN**—Can you confirm that in fact there were discussions at the SCAG meeting on the matter of the referral of defacto couple property settlement powers from the states to the Commonwealth?

**Mr Griffiths**—That question is in fact for me, I think, relating to SCAG. Yes, it was discussed at that meeting.

**Senator McKIERNAN**—Has the referral been accepted or is there a will on behalf of the Commonwealth to accept such a referral?

**Mr Griffiths**—The state of play at the moment is that a model bill or a draft bill for the referral of powers is being prepared by the Parliamentary Counsel's committee. The matter will be considered once that draft bill has become available. We are expecting that it will be available in time for the next SCAG meeting, which is 24 and 25 July.

**Senator McKIERNAN**—Do the drafting instructions within the bill provide for the referral of the powers?

**Mr Griffiths**—It is a bill to provide for the referral of powers.

**Senator McKIERNAN**—It is a bill to provide that.

**Senator LUDWIG**—Will the drafting instructions include the ability for homosexual de facto couples to be able to access the Family Court to settle property matters and the federal magistracy service? At the moment, it is state law, isn't it? There's no Commonwealth legislation touching this area and that seems to be the sticking point, as I understand it. I am happy to be corrected if I am wrong. Western Australia has just introduced new legislation for property settlement for homosexual de facto couples to sort out their property settlements. But they then have to go to the Supreme Court or various courts; they cannot access the Family Court. Do the drafting instructions for this bill for the referral of state power provide uniform powers, including access for homosexual de facto couples?

**Mr Griffiths**—It is a little difficult to answer that question briefly.

**Senator LUDWIG**—You understand what I am asking, though, don't you?

**Mr Griffiths**—The reason that I am a little guarded in responding is that there is an initial question as to how wide the referral of powers is and then there is a subsequent question as to how wide or how narrow the exercise of the referred power by the Commonwealth is. That issue really will be one of the core issues I suspect that will be resolved at the SCAG meeting. It is probably uncertain at this stage. I assume you are wanting to know whether the Commonwealth will exercise a referred power of that kind.

**Senator LUDWIG**—That is the nub of the question.

**Mr Griffiths**—It is too early to say, I think. That will really become more clear after the SCAG meeting in July, on the basis that the draft bill is available for discussion at that meeting.

**Senator LUDWIG**—I missed the point, though. What has the narrowness or width of the referral got to do with that issue?

**Mr Griffiths**—The states can refer a particular power and the Commonwealth then has a choice whether to exercise all or some of that referred power.

**Senator LUDWIG**—My understanding is that the states have already got the power—

**Mr Griffiths**—Yes.

**Senator LUDWIG**—and they are exercising it. In other words, they allow homosexual de facto couples to access the courts for property settlement. I am just a lay person but if we look at that issue the states have then asked—if there is going to be uniform legislation—as I understand it, whether that can be part of the exercise of the Commonwealth power in a uniform way so that everyone can access the Family Court.

**Mr Griffiths**—That is right. That is the attraction offered, yes.

**Senator LUDWIG**—Why can't you tell me yes or no in relation to the drafting instructions as to whether the bill would include that ability or not?

**Mr Griffiths**—Are you actually referring now to what is in the drafting instructions for the referral bill rather than anything further downstream?

**Senator LUDWIG**—Yes, or both. We will go as wide or as narrow as we can. I think you know what the question is. If I have to ask it 17 different ways, I will keep asking it until we finally get it narrowed.

**CHAIR**—Frankly, I do not think you will need to ask it 17 different ways, Senator Ludwig.

**Senator LUDWIG**—Well, he is not answering the question.

**Mr Cornall**—Senator, this is a subject of some political disagreement, as I think you would appreciate, and the point that Mr Griffiths is trying to make is that, if the states, for example, chose to refer to the Commonwealth power to deal with de facto couples, being either heterosexual couples or homosexual couples, the Commonwealth could elect to exercise that power only in respect of heterosexual couples if that were the Commonwealth's policy position.

**Senator LUDWIG**—Yes, I understand that.

**Mr Cornall**—What Mr Griffiths is saying is that we have not got to the stage of those decisions being taken.

**Senator McKIERNAN**—Is the Human Rights Branch of the department involved in the development of this draft document for the SCAG meeting?

**Mr Griffiths**—A range of areas of the department would have been involved. The primary carriage within the department would be in the Family Law Branch. The Office of Legal Services Coordination is involved because of our responsibility for the Standing Committee of Attorneys-General. The constitutional policy unit was involved because of the reference of constitutional powers. As to whether the Human Rights Branch was involved or not, I am afraid I personally am not certain.

**Ms Leigh**—Can I take that on notice, Senator? I might be able to get back to you on that quite quickly.

**Senator McKIERNAN**—Okay. I am asking that in the context of the Attorney's address to the department on 5 February, which we have talked about here in previous estimates committees, in which he said:

... I am concerned that there is a view among sections of the community that the Howard Government is not committed to human rights. I would like to address this misconception during the third term.

Perhaps this is one area where the misconceptions about human rights might be addressed. That is why I ask if the branch has been involved in the development of things. Thank you for taking the matter on notice.

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**Senator COONEY**—Madam Chair, I would just like to say I thought that Mr Griffiths explained the situation with considerable lucidity. He was once the secretary of this committee, as you know, Madam Chair, and I would just like to take this occasion to acknowledge that. He enhanced my knowledge of the law, such as it is, and he provided the committee with wise and, I might say, learned advice with considerable grace, and Mr Griffiths guided Senator Vanstone through the stormy passages. I would just like to put that on the record.

**Mr Griffiths**—I do not know what to say. Thank you very much, Senator.

**Senator McKIERNAN**—I associate myself with those remarks, Mr Griffiths.

**Senator COONEY**—What is happening with these documents?

**Senator Ellison**—I have read them. I thought they were tabled.

**Senator COONEY**—Do you mind them being incorporated in *Hansard*?

**Senator Ellison**—No. I would do it myself.

**CHAIR**—So we have that undertaking, Senator Cooney.

**Senator COONEY**—Thank you, Madam Chair. May I say the minister at the table also does things with considerable grace.

**CHAIR**—Let us continue in output 1.2.

**Senator McKIERNAN**—Regrettably, I am going to revisit the Justice Kirby allegations that we talked about in a different context. Again, I am not following the same line as was followed earlier. Were the allegations that were made by Senator Heffernan in the parliament in March under parliamentary privilege ever communicated to the department?

**Mr Cornall**—Senator, we were not aware of the allegations that were going to be made by the senator in the Senate. However, we have a system where we are notified by the Australian Government Solicitor about significant matters that are going on and we did receive reports under that significant matter category in relation to the senator's FOI requests.

**Senator McKIERNAN**—Prior to the statement in parliament?

**Mr Cornall**—Of the two reports I have, one was made to us on 11 January 2001 and the second was made on 19 March 2002.

**Senator McKIERNAN**—19 March 2002—that was after the senator had spoken in parliament.

**Mr Cornall**—Yes. That is my recollection of the dates that we have been talking about.

**Senator McKIERNAN**—Has Senator Heffernan ever submitted documents such as Comcar records or statutory declarations to the department in connection with these allegations—that is, the allegations against Justice Kirby?

**Mr Cornall**—Not to us, Senator, no.

**Senator McKIERNAN**—In the parliament on 13 March this year the Prime Minister said: It is therefore time that the parliament, and in particular the government, gave more urgent consideration to a recommendation of the Law Reform Commission—most recently in recommendation 12, where it was recommended that the federal parliament should develop and adopt a protocol governing the receipt and investigation of serious complaints against federal judicial officers.

Has the Attorney-General directed anyone in the department to develop such a protocol?

**Ms Leigh**—Yes, Senator. The Civil Justice Division of the Attorney-General's Department has been undertaking work on this issue.

**Senator McKIERNAN**—What progress has been made on the development of the protocol?

**Ms Leigh**—We have been doing preliminary work, basically, on what might be included in such a protocol. The ultimate decision is a matter for the parliament.

**Senator McKIERNAN**—Do you have a time line when you expect the development of the protocol to be finalised?

**Ms Leigh**—I do not think that I can answer that with any precision, Senator.

**Senator McKIERNAN**—Would you take it on notice for us and see if you can give us any further indication—

**Ms Leigh**—I am not sure at this moment that we are able to know a time line. That is what I am saying.

**Senator McKIERNAN**—All right. I will persist with my request that you take it on notice. I think that it might assist in speeding the development of the protocol—whether it does or not I do not know. But if I am, in my final days in the parliament, able to assist in that, I think that would be of value. It is a matter of moment and, as you are aware, it has been revisited during the course of the proceedings of this committee during the week. If you would, Ms Leigh, thank you very much.

**Ms Leigh**—Yes, Senator.

**Senator McKIERNAN**—Moving to a different matter. I am asking questions specifically about a case before Justice Merkel in the Federal Court last year. The case was called the Australian Industry Group v. Automative, Food, Metals, Engineering and Printing and Kindred Industries Union in which a union official had refused to pay a \$20,000 penalty imposed for contempt of court. Is the department aware of this case? Might I say in the beginning, I am a member of the AMWU—using its shortened title—but there is no association with this case.

**Mr Griffiths**—Yes, I have a recollection of that case and the issue that you are most likely going to refer to.

**Senator McKIERNAN**—The Australian Industry Group wrote to the Attorney asking him to assume responsibility for the enforcement of the penalty. Is this correct?

**Mr Griffiths**—I am not sure that he actually wrote. I am not certain about that. He may very well have done so. But certainly that question was put to the Attorney-General and he was asked to do that.

**Senator McKIERNAN**—Is it accurate to say that the Attorney declined that request?

**Mr Griffiths**—In the interest of precision, I would probably like to take that on notice so that I can check the wording of the records.

**Senator McKIERNAN**—Could the department provide the committee with a copy of the Attorney's letter to the Australian Industry Group? I am told that it was quoted by the judge in his judgment, so it is on the public record. The reason I hesitated in asking that is that I am not so sure how it could be on the record if it was something that happened after the event, after the handing down of the judgment.



**Mr Griffiths**—My recollection is that the issue was raised with the Attorney-General in fact by Justice Merkel. It is for that reason that I am not absolutely certain that there was any correspondence with the Australian Industry Group to the Attorney at the time, so I would like to take that on notice and refer to the files.

**Senator McKIERNAN**—I am told that the Attorney took the view that the dispute concerned private interests and did not affect any interest of the Commonwealth. Can you confirm that?

**Mr Griffiths**—The Workplace Relations Act contains a number of provisions for the making of orders and also for the imposition of penalties if those orders are not observed. In a number of circumstances those pecuniary penalties are sought by the party which obtained the order and the pecuniary penalty imposed can be ordered by the court to be paid to the party. In a small number of cases that we are aware of, there has been conduct which is alleged to amount to what we would call criminal contempt; in other words, contempt that brings the judicial process into disrepute—calculated defiance of the judicial process. There is a distinction between those two types of circumstances: the earlier ones that are a pecuniary penalty payable to one or other of the parties, and the latter and rarer cases which involve defiance of the court system. Having said that, can we just go back to your question? I am afraid I have lost the thread of the question.

**Senator McKIERNAN**—I am just considering what you have told me to date and taken on notice, because there are a number of other questions leading back from that. I am not so sure we are going to get the sense out of the remainder of the questions and how they are framed, so I think I might use discretion at this point and seek to put the remainder of the questions on this matter on notice. You have taken the responses to my earlier questions on notice.

**Mr Griffiths**—Yes, we will certainly take those on notice.

**Senator McKIERNAN**—For my final question in this area, output 1.2, I will have to put on the record a little bit more information than I would have liked, because I do not have the program heading under which it would come. I am asking specifically about a project which was entitled Preventing Violence and Crime at Public Events. This project was budgeted to cost \$120,000 in 1998. The project was awarded to the Melbourne University Centre for Police and Justice Studies. It took 18 months to complete but the work that was produced as a result of this expenditure of money seems to have vanished without trace. There have been a number of repeated attempts by individuals to get answers, to see what is happening as a result of this project, but no light has been cast on what is happening. Are departmental officers in a position to provide any further information with regard to this? It seems to me that, in my efforts to try to shorten the processes here this afternoon, I have lost an attached page, which has left me without the vital other information that I needed with regard to it.

**CHAIR**—Dr Heriot has come to the table. Are you able to assist Senator McKiernan, Dr Heriot?

**Dr Heriot**—Senator McKiernan, I am afraid I confess to missing the first part of your question. However, the publication is in the final stages of development. It is awaiting clearance. Last year we conducted focus tests with target user groups, and we had made some emendations to the text as a result of that. We have had some contact from people who had worked on the project. From memory—I am sorry, this is very much from memory—that was

some time ago, possibly in 2000, and I have not been contacted more recently. We would be hoping that publication would be produced before the end of the year.

**Senator McKIERNAN**—Thank you very much. The key words I was looking for were ‘preventing violence in the community’ and of course the title is what I have lost.

**Dr Heriot**—If it is the same thing, it is focusing on safe public events.

**Senator McKIERNAN**—That is it. The project was entitled Preventing Violence and Crime at Public Events.

**Dr Heriot**—I believe the report will be published with a slightly more alluring title, but it is the same project.

**Senator McKIERNAN**—Dr Heriot, I think we are on the same wavelength. If you have any further information for the committee, we would appreciate receiving it. If we are not talking about the same matter, I will ensure that the people who gave me this question to ask will bring the matter to the attention of the next person who serves on this committee, who will probably do the job a little bit better.

**Dr Heriot**—It does sound like it is the same thing, and I am very hopeful of its completion.

**Senator McKIERNAN**—Thank you, I appreciate that.

**Senator Ellison**—Does that complete output 1.2?

**CHAIR**—I do not think so, Minister. Senator Cooney, do you have anything in output 1.2?

**Senator COONEY**—Is this an area that deals with the committees in Geneva?

**Ms Leigh**—No, Senator.

**Senator COONEY**—Where is that, Ms Leigh?

**Ms Leigh**—It is under the Office of International Law, Senator. That is output 1.4.

**Senator COONEY**—I see, it is the promotion of Australian legal services internationally. That means we try to sell our services overseas?

**Ms Leigh**—That is right.

**Senator COONEY**—Have questions been asked about that already?

**CHAIR**—Senator McKiernan has been directing questions in that area.

**Senator McKIERNAN**—Good. That shows that I was not in the room when I should have been. Thank you very much.

**CHAIR**—Not at all. I believe that does conclude output 1.2, Minister, in response to your question. Let us move on to output 1.3, Legal services and policy advice on family law and legal assistance and the administration of government programs providing legal assistance and family law related services.

[3.45 p.m.]

**Senator McKIERNAN**—Is it possible to receive a copy of the review of the distributive legal aid funding model?

**Ms Pidgeon**—The review that is underway at the moment?

**Senator McKIERNAN**—Yes.

**Ms Pidgeon**—There is not anything to have a copy of at the moment. Certainly I can see, when we have an output from that review, whether that is something we can provide the committee with. I do not think there would be a problem with that.

**Senator McKIERNAN**—I think that is a fair enough answer, thank you, Ms Pidgeon. Do you know whether the content of that review will include detailed and comparative data of the number of solicitors and barristers providing work for legal aid in Commonwealth family law matters since 1996-97?

**Ms Pidgeon**—I believe the review will not be looking at the number of solicitors involved. It would be looking at legal aid need as such, so it will be looking at cases before the courts. It does not look at the way legal aid is being distributed at the moment. It is looking at how the legal aid money should be distributed between the states and territories.

**Senator McKIERNAN**—With that answer in mind, is there any place within the department where data on the number of solicitors or barristers performing work in Commonwealth family law legal aid matters is collected?

**Ms Pidgeon**—We would not have the number of barristers or solicitors but what we would have are the statistics on the proportions of legal aid work being done in the states and territories by private practitioners as distinct from legal aid inhouse solicitors. We just keep those sorts of statistics so that we can see how much is being done inhouse and how much is being outsourced, so to speak. We do not have the actual numbers of individual firms or individual solicitors or barristers doing that legal aid.

**Senator McKIERNAN**—I wonder whether you could collate that information that you do have and provide copies of that to the committee.

**Ms Pidgeon**—In relation to the proportions?

**Senator McKIERNAN**—Yes, please.

**Ms Pidgeon**—Certainly I can do that.

**Senator McKIERNAN**—It might be of assistance and we might be able to move then to the commissions and get some more details from the commissioners themselves.

**Senator COONEY**—That means legal aid generally, doesn't it—but I think that we have discussed that many times. There has been a growth, Mr Cornall, in the legal aid area—not government funded but by private firms particularly in Melbourne, and I do not know about anywhere else. Does the Commonwealth acknowledge that? Is there any mark of thanks—or whatever you do? I am not quite sure what the right word is. Firms throughout Melbourne and big firms, may I say, do a lot of good work through PILCH and elsewhere—do you acknowledge that? And, secondly, is there any correlation or plan to correlate the services—government providers and private providers?

**Mr Cornall**—I think that there has been a Commonwealth increase in legal aid funding over the last few years. There was \$63 million over four years that was appropriated to legal aid a couple of years ago, I think the Commonwealth does recognise the significance of pro bono work undertaken by the legal profession, and it has done for some years. You may recall the Attorney-General convened the pro bono conference in Canberra in 2000 and, as a result of that process, we are establishing a pro bono secretariat to get a better handle on the extent of pro bono work being undertaken by the profession and to recognise the value of that contribution.

**Senator COONEY**—Thank you.

**Mr Cornall**—The other day, Senator Cooney asked about the matter of Ivanoff. Mr Campbell is in a position to report on that matter.

**Mr Campbell**—I took it, Senator Cooney, that you were wondering about the progress of the human rights communication that was made by four former pilots of Australian Airlines to the human rights committee in Geneva.

**Senator COONEY**—Yes. It is interesting because it is against the government but in respect—

**Mr Campbell**—In respect of Australian Airlines which were subsequently taken over by Qantas. On 3 July 2001, that communication alleging discrimination was registered with the human rights committee in Geneva. As I said, the authors were four former pilots employed by an airline then operating in Australia. All those pilots were dismissed, I think in the early 1990s, from employment upon reaching the airline's mandatory age of retirement of 60 at that stage. They alleged discrimination under article 26 of the International Covenant on Civil and Political Rights. On 20 December 2001, the government lodged its response to the communication and that was before the deadline of 31 December 2001. On 21 March 2002, we received the authors' response to the government's submission and we made some further comments on 8 May 2002.

I do not believe that the communication has been listed for consideration by the human rights committee yet. The committee's next session will be held in July 2002, but we do not get information as to whether the committee is going to consider particular submissions, because they are considered on the papers; nobody actually attends.

**Senator COONEY**—Thank you for that, Mr Campbell, and thank you for all the advice—always correct—that you have given with plenty of charm over the years on this area and in Foreign Affairs.

**Mr Campbell**—Thank you, Senator.

[3.53 p.m.]

**CHAIR**—I think we will now move to output 1.4.

**Senator McKIERNAN**—I have a series of questions in this area and then I am going to shut up. The Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, is intended to prevent and combat trafficking in persons and to facilitate international cooperation against such trafficking. A number of countries have signed and ratified this protocol, but Australia is not one of those countries. Is that correct?

**Mr Campbell**—I think that is correct.

**Senator McKIERNAN**—Do you know why Australia has not signed or ratified it?

**Ms Leigh**—Australia has signed it; it has not ratified it.

**Senator Ellison**—Signed but not ratified.

**Senator McKIERNAN**—Do you know why ratification has not happened?

**Ms Leigh**—Because we have a process that needs to be followed in order to ratify it. You would be familiar with processes involving consultation with the states' treaties committees et cetera.

**Senator Ellison**—It has to go to the Joint Standing Committee on Treaties.

**Senator McKIERNAN**—Is it with the treaties committee yet?

**Senator Ellison**—Can we take that on notice? I am not sure whether it is.

**Senator McKIERNAN**—The optional protocol to—

**Ms Leigh**—I am sorry, Senator; I may have confused the issue here. I might be answering in relation to the wrong optional protocol. Could you clarify which one you are talking about?

**Senator McKIERNAN**—I am talking about the Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

**Mr Cornall**—That protocol has not been signed by Australia.

**CHAIR**—The question was whether it was with the treaties committee.

**Mr Cornall**—There are three protocols under the UN Convention against Transnational Organised Crime. Australia has signed two of them, and those two need to go through the ratification process. The particular protocol that Senator McKiernan is talking about has not been signed by Australia. Signature is a matter which is still under consideration.

**CHAIR**—So it is nowhere near the treaties committee.

**Senator McKIERNAN**—What about the convention which, I suppose, is the parent of the protocol—that is, the Convention against Transnational Organised Crime? In what circumstances is that, in the manner in which Australia deals with that? My information is that this convention has been signed by 140 countries and ratified by seven.

**Ms Blackburn**—As we mentioned, the Convention against Transnational Organised Crime has been signed by Australia. It has not yet been ratified. Within the department, we have commenced the process to allow the ratification of that convention to be considered by the treaties process.

**Senator McKIERNAN**—How far away is it from the treaties process? Are these the matters you took on notice, Minister?

**Senator Ellison**—Yes. I think Ms Blackburn might be able to help us.

**Ms Blackburn**—The question was how long before it might come before the treaties committee?

**Senator McKIERNAN**—Yes. What stage are we at in the Australian process? From that, we can try to gauge what the time lines might be towards ratification—if that is going to be the recommendation of the treaties committee.

**Ms Blackburn**—It is difficult for me to answer that question, because at the moment the matter is in the preliminary stage in the department. We are undertaking an audit of legislation so that we can assess the legislative changes which would be necessary to implement the convention. Once that process is complete, we need to put the matter before the government for its consideration. We would then prepare the national interest analysis, which involves some consultative processes before we can put it before the committee. I would be reluctant to put a time frame on it, because at the moment I do not have a clear view of how long that process is going to take. I can only say that it has commenced.

**Senator McKIERNAN**—Thank you very much. Have you collected evidence to show whether there has been an increase in the levels of trafficking of women and children and whether there are any links to organised prostitution as a result? Are you collecting any background material with regard to this?

**Ms Blackburn**—I cannot say specifically whether we are, at the moment, collecting that information. There are a number of sources of information; there is a recently published UN report on trafficking. The process of developing the national interest analysis and the material for submission to government would involve collecting a wide range of information on the extent of the problem and the activity that we would need to undertake to fully implement the convention and protocol obligations in Australia. I should clarify that the government has not signed the trafficking protocol—the protocol we mentioned earlier—at this point.

**Senator Ellison**—Madam Chair, just on the nuts and bolts of it: this very topic was discussed at the people-smuggling conference in Indonesia as a subject of one of the working groups chaired by Thailand. It was, indeed, an issue for all 135 countries represented at that conference. I also attended a conference in Tokyo in December in relation to the child sex aspect and the international dimensions to that, but the discussion at the people-smuggling task force was very much at the business end. That was because that was where you had law enforcement represented in many cases and we were looking at tangible ways that we can deal with this problem, not just by way of international agreement but by getting out there and closing down organised criminal syndicates dealing in this.

**CHAIR**—Thank you very much for that information, Minister.

**Senator McKIERNAN**—Has there been any prosecutions or convictions in the Australian legal system of persons being involved in the trafficking of women and children?

**Mr Alderson**—The main area where there has been many prosecutions is in the people-smuggling area. There are provisions under the Criminal Code specifically relating to the trafficking of persons for sexual purposes. There have been a number of investigations of those provisions but to date there have been no prosecutions. Those provisions were only enacted in 1999.

**Senator McKIERNAN**—Is there a specific jurisdiction in this matter? Where there is an allegation of trafficking in people for sex, for example, would that be an AFP responsibility to undertake the investigations? Would it be a matter for the NCA because of possible transnational organised crime? Or would it be a matter just for the state or territory police services?

**Mr Alderson**—If it was transnational trafficking—bringing someone into Australia, for example—it would normally be an Australian Federal Police matter. There would conceivably be a situation where it would fall within something the National Crime Authority was looking after. But, to date, of the investigations that I am aware of, in the normal course of events it would be an Australian Federal Police matter.

**Senator McKIERNAN**—Thank you. I appreciate your assistance on that matter. During the course of the last estimates committee hearings, Ms Blackburn, we canvassed the matter of the transfer of prisoners treaty with Thailand. You are smiling; you anticipated I might raise this matter again. Well, I am not going to disappoint you; I am raising the matter. Have you got any further developments to report?

**Ms Blackburn**—Senator, I am very pleased to be able to report to you progress since our last discussion on transfer of prisoners. I recall that at that meeting I mentioned that there were no impediments; there was just a process. Since we last met we have completed the process for proclamation of the Commonwealth act. The Governor-General has signed the proclamation for that and the Commonwealth act will commence on 5 June. The complementary state legislation is in force in the Northern Territory, Queensland, South

Australia and Western Australia. We are still awaiting proclamation of the legislation in the ACT, New South Wales, Tasmania and Victoria. However, each of those jurisdictions—certainly at officials level—is engaged in the process of preparing their necessary processes. I should mention in that context that the minister wrote to all his state counterparts proposing the 1 July start date and, at this stage, we have not had anyone come back and say 1 July is not possible. At officials level, all of the jurisdictions are working towards that date.

We also have in place administrative arrangements completed with three jurisdictions. We have the other four jurisdictions actively progressing the administrative arrangements. However, at the moment, we are working on the scenario that the legislation will hopefully come into force on 1 July. We can then take the treaty action so that the scheme can operate, notwithstanding that we may not have completed all of the administrative arrangements because the scheme can operate without those being finalised.

**Senator McKIERNAN**—Excellent. I am very pleased to hear that news from a constituent's point of view who shall remain nameless. As for the three states who have not completed those administrative arrangements, one would hope that one of those states is not Western Australia.

**Ms Blackburn**—You would be correct. Western Australia has agreed to the text of the administrative arrangements. I understand that it is in the process of arranging for them to be signed. The other states which have agreed are Tasmania and the Northern Territory.

**Senator McKIERNAN**—Thank you. I know that one particular family will be very pleased to receive this news. Of course, it does not mean that an immediate transfer will be able to be made. Nonetheless, it is very dramatic progress on what has been a long and drawn out process.

**Senator Ellison**—The government is keen to see it implemented and up and running.

**Senator McKIERNAN**—Indeed, thank you, Minister. That fulfils a commitment you gave at the last round of estimates committees as well. I am very pleased to put that matter on the record, too.

**Senator Ellison**—Thank you.

**CHAIR**—Are we still on output 1.4, Senator McKiernan?

**Senator McKIERNAN**—We are.

**CHAIR**—Before we leave it, Senator Cooney has one question in this area.

**Senator COONEY**—The matters that Senator McKiernan has put before the committee show how important international law and international relations are. There is a greater understanding of it than there used to be. I think a lot of that has come from a report that came out of this committee, Senator Ellison, when you were secretary of the committee and I was deputy secretary. That was the *Trick or treaty?* report. I think that set a basis for a lot of this stuff and I would like to put that on the record.

**Senator Ellison**—It was important work.

**Senator COONEY**—Mr Campbell has always been in this area and has understood it all, but I do not think that many others did. As a result of that, we never quite got to Mr Campbell's level of understanding. But a lot more have got to at least a working level of understanding, so I would like to put that on the record.

**Senator McKIERNAN**—Thank you. I am very pleased to get that information.

**Senator COONEY**—I hope that gets put in the report.

**CHAIR**—You would be surprised what gets put in the report, Senator Cooney, as it constantly surprises me.

**Senator McKIERNAN**—Where is the Australian ratification process up to with regard to the International Criminal Court?

**Ms Blackburn**—As you know, the Joint Standing Committee on Treaties has presented its report, including a recommendation to ratify the statute with some conditions and concerns. The government response to that report has not yet been completed. The matter is under consideration by the government.

**Senator McKIERNAN**—I understand that the bishops have blessed it or maybe that is incorrect—one bishop has blessed it and one bishop has not. But maybe you should not comment on that, Minister.

**Senator Ellison**—I do not think that is something that should be put to the officials. There has been some coverage of this in the papers and it is under consideration.

**Senator McKIERNAN**—The first meeting of the assembly of state parties to the International Criminal Court is scheduled to take place in September. Australia is not part of the process yet. Is there a possibility that Australia might be able to attend this meeting in some shape or form even if it has not ratified or joined up to the Statute of the International Criminal Court?

**Ms Blackburn**—It is possible for Australia to attend that first meeting in September as an observer only, if we have not at that point ratified the statute and it is not in force for Australia.

**Senator McKIERNAN**—Is there an intention for Australia to have any observers at this court?

**Ms Blackburn**—It is not the court itself which is meeting.

**Senator McKIERNAN**—I am sorry, the assembly of state parties.

**Ms Blackburn**—I would expect that Australia would be represented by officials at the meeting in September, either as an observer or as a states party.

**Senator McKIERNAN**—Do you know who would be attending? Would it be a departmental person?

**Ms Blackburn**—This work has been led by the Department of Foreign Affairs and Trade and there have been, as you know, many years of activity on this. At this stage I would expect the Department of Foreign Affairs and Trade to carry that representation in September.

**Senator McKIERNAN**—Does ratification require legislation in Australia?

**Ms Blackburn**—Yes.

**Senator McKIERNAN**—It does?

**Ms Blackburn**—Yes.

**Senator McKIERNAN**—So it is very unlikely, unless there is agreement with all parties, that the legislation will be introduced and passed by September, bearing in mind there is only a few of weeks of sitting between now and September.



**Ms Blackburn**—The legislation actually has to be passed and in force by 1 July for Australia to be a states party for the meeting if it goes ahead in September as scheduled. The statute comes into operation effectively three months after the date on which Australia completes its ratification, and we cannot complete the ratification until the legislation is passed. So that would have to be completed by 1 July for Australia to be a states party in time for the September meeting.

**Senator McKIERNAN**—Thank you for that information.

**Senator COONEY**—Where did Australia come on the list of signatories to the Statute of Rome?

**Ms Blackburn**—As I recollect, Australia signed the Statute of Rome in—

**Senator COONEY**—No, where was it? It has been ratified by 60 states, so it is now in operation. Australia is not one of those 60 states, but I thought Australia was early in the list of signatories.

**Ms Blackburn**—Australia was an early signatory to the statute, yes.

**Senator COONEY**—Can you remember where it came?

**Ms Blackburn**—Australia signed the statute on 9 December 1998.

**Senator COONEY**—But where was it in the list of signatories?

**Ms Blackburn**—I cannot answer that question.

**Senator Ellison**—We will take it on notice.

**Senator COONEY**—No, it does not matter. The only point I was making was that I think Australia was a big player early on in the actual drafting of the Statute of Rome, wasn't it, Mr Campbell? But it got behind a bit at the ratification stage.

**Ms Blackburn**—Australia was an active participant in the process by which the Statute of Rome was drafted, completed and accepted through the UN process.

**Senator McKIERNAN**—What would be the normal manner in which the government would respond to reports of the Joint Standing Committee on Treaties? Is there a formal government response, or does it come in the form of a response like that for legislation committees of the Senate, where the actual legislation is the response itself?

**Mr Campbell**—My recollection is that the response is just as with a response to any other government committee; they are responses tabled in parliament and a statement made.

**Senator Ellison**—I think it is just like the response to any other parliamentary committee. That can of course involve legislation, as with some other parliamentary committees.

**Senator McKIERNAN**—I hope it does not take 3½ years like it did for a response to a different committee we debated in the Senate recently. Moving on to a different aspect of this, it has been reported that there is some disagreement between the United Nations and the United States about the legal effect of the United States recent decision concerning the statute. Does the department have knowledge about this difference of views between the UN and the USA?

**Ms Blackburn**—I do not, beyond what has been reported in the press about the United States position on the ICC statute.

**Mr Campbell**—I am not aware of any particular disagreement between the United Nations and the United States about the legal position, though recently, the United States indicated its intention not to ratify the treaty. Therefore, its prior signature of the treaty should not be taken to indicate that it would comply with the objects and purpose of the treaty which is an obligation arising out of signature, unless you notify that you do not intend to ratify the treaty. That is the legal position as stated by the United States, but I am not aware of any United Nations disagreement with that position.

**Senator COONEY**—I think it was signed by the United States in the late stages of Mr Clinton's presidency. Hasn't the United States stepped back from that now?

**Mr Campbell**—Yes.

**Senator COONEY**—I think there has been a degree of disappointment expressed about that.

**Senator McKIERNAN**—Have any representations been made to Australia from the United States regarding the ratification of the treaty? Or indeed, has Australia made any representations to the United States about their position on ratification?

**Ms Blackburn**—There are none that I am aware of.

**Senator McKIERNAN**—Could you take it on notice and find out?

**Mr Campbell**—I think that any representations that might have been received, either way, would be done through diplomatic channels, and the Department of Foreign Affairs and Trade. So the question might be best directed to them.

**Senator McKIERNAN**—They are they sitting next week.

**Mr Campbell**—Yes. I am sure they will thank me for that.

**Senator McKIERNAN**—I am sure they will appreciate your advice. I am going to conclude on the ICC, Senator Cooney, unless you have more questions. The Attorney on 25 March announced that Australia had made a declaration concerning the compulsory dispute settlement by the International Court of Justice and the International Tribunal on the Law and the Sea. I have been informed that the effect of the declaration is that Australia still submits to the jurisdiction of these bodies, except in three areas: firstly, where the parties have agreed to other peaceful means of dispute resolution; secondly, where the disputes involve maritime boundary delineation or disputes concerning the exploration of an area in dispute; or, thirdly, where a country has only accepted the compulsory jurisdiction of the court for a particular purpose, or for a period of less than one year. Is this correct?

**Mr Campbell**—That is correct. One slight nuance on that is that the previous declaration made by Australia already had the qualification in it concerning the exception where the parties have agreed to other peaceful means of dispute settlement. That was in the pre-existing declaration.

**Senator McKIERNAN**—Thank you for that added information, Mr Campbell. The announcement by the Attorney coincided with media reports that an American oil company is encouraging East Timor not to sign the Timor Sea Treaty and was offering to finance international litigation by East Timor contesting the maritime boundaries between Australia and East Timor. Does the department know whether this was a coincidence or not?

**Mr Campbell**—One would have to say that the actual timing of offering to finance East Timor—Oceanic Exploration and Petrotimor were the two companies involved—was a coincidence.

**Senator McKIERNAN**—Do you know what the purpose of the declaration was by the Attorney?

**Mr Campbell**—The purpose of it is set out in the exceptions—that is, to place additional qualifications on our acceptance of the jurisdiction of the International Court of Justice. I will just place something in context here. In relation to any international tribunal or court, including the International Court of Justice, it is dependent upon state consent to their jurisdiction. In the case of the ICJ, there are 61 countries who have made declarations accepting the jurisdiction out of 180-odd countries that have the capacity to do so, and Australia is one of those 61. Most countries, who do accept the jurisdiction of the court, make exceptions to that acceptance of jurisdiction.

**Senator McKIERNAN**—Did the declaration have the effect of preventing East Timor from pursuing litigation against Australia over the issue of the maritime boundary between the two countries?

**Mr Campbell**—Yes, it did. It also had the effect of precluding the jurisdiction of the court over the maritime boundaries which we have with six other countries, as well.

**Senator McKIERNAN**—Has Australia received any representation from the East Timorese authorities that such litigation was being considered?

**Mr Campbell**—No. I cannot go into the detail of bilateral negotiations between the two countries and UNCTAD beforehand because, generally speaking, they are confidential. But I can say that in that period the possibility of East Timor taking proceedings was mentioned by commentators and things like that.

**Senator McKIERNAN**—Of East Timor taking proceedings, rather than the oil company that was mentioned earlier?

**Mr Campbell**—If it is the International Court of Justice or the International Tribunal on the Law of the Sea, under the law of the sea convention or any other dispute settlement under the law of the sea convention, it would have to be a country that actually takes the proceedings. They might well be financed by somebody else, but it would have to be a country that took the proceedings.

**Senator McKIERNAN**—In the event of further dispute arising on the maritime boundary between East Timor and Australia, how would that be resolved? Are there mechanisms now in place that would help to resolve a dispute?

**Mr Campbell**—The situation at the moment is that we have just signed the Timor Sea Treaty. There are still some more subsidiary documents to be done in relation to that treaty, but hopefully that would come into force and govern the exploration and exploitation of resources in the particular part of the Timor Sea which is claimed by both countries. There is a desire on the part of East Timor to delimit the maritime boundary and have a permanent boundary there. The Australian government is on the record as saying that maritime boundaries are best resolved by negotiation and not by resort to an international court or tribunal. But those negotiations on a permanent boundary have yet to start. In fact, a precursor to that actually happening would be the declaration by East Timor of its maritime boundaries, which I understand may take place soon but has not yet occurred.

**Senator McKIERNAN**—Is the second reservation concerning maritime boundary disputes impacted at all by the declaration by the Attorney on 25 March?

**Mr Campbell**—Sorry, I might have missed something here. That second reservation concerning maritime boundary delimitation disputes was actually part of the package announced by the Attorney.

**Senator McKIERNAN**—Is that going to be reviewed, or would it have to be reviewed in the light of East Timor making an announcement on where they consider their territorial boundaries to be?

**Mr Campbell**—No.

**Senator McKIERNAN**—I am seeking clarification on the third reservation—which is where a country has only accepted the compulsory jurisdiction of the court for a particular purpose. Does this reservation describe any country, such as Australia, which has made a declaration limiting the extent to which it submits to the jurisdiction of the International Court of Justice?

**Mr Campbell**—That particular reservation is a quite common reservation used by other countries, including the United Kingdom, and I think New Zealand would be an example of it. Let me put it this way: our acceptance of the jurisdiction of the court is still fairly open in many matters but what this prevents is a country simply coming along and saying, ‘I accept the jurisdiction of the court on a particular dispute,’ and then seeking to take Australia to the court on that particular dispute and then otherwise withdrawing from the jurisdiction. It is really there to say that, if we are going to have a general acceptance of the jurisdiction of the court, other countries who want to use the same mechanism should also have a general acceptance and not just a very particular one.

**Senator McKIERNAN**—Thank you for that information. Is it possible on notice to provide the committee with information of the number of countries, and which ones, that have submitted to the ICJ without qualifications?

**Mr Campbell**—I will have to take that on notice. I have some statistics about qualifications but not those without qualifications. I suspect, though, that it would be very few, because most countries do actually have that initial qualification that I mentioned earlier about where the parties have agreed to other peaceful means of settling disputes.

**Senator McKIERNAN**—Chair, that was my last question in the Senate estimates committee processes.

**CHAIR**—Was it, Senator McKiernan?

**Mr Campbell**—Senator, I feel honoured to have answered it.

**CHAIR**—You might be honoured, Mr Campbell; I am surprised. Senator McKiernan, just to clarify, does that mean you do not have any questions in outcome 2?

**Senator Ellison**—Some of these have been in outcome 2, Chair.

**CHAIR**—In any other areas of outcome 2. Or are you helpfully putting them on notice?

**Senator Ellison**—I was going to raise that matter because I was going to ask the committee’s indulgence to leave at 20 to five to catch a plane to get back to Perth. Otherwise, the next one after that is a couple of hours later, at a quarter to 8.

**CHAIR**—Yes, Minister, I appreciate that. If Senator McKiernan has indicated that that is his last question, then I do not think that we now have a problem. Senator Cooney, if I proceed to close these hearings, is that acceptable to you?

**Senator COONEY**—I will just be five or 10 minutes. On that theme that I have been on about, about what should be revealed by the Australian Government Solicitor and by the Attorney-General generally, I have given you those extracts from *Hansard* but, and this may be more for you, Minister—

**Senator Ellison**—You are not addressing a question to Mr Campbell?

**Senator COONEY**—No. It always terrifies me to ask Mr Campbell questions because he is just too good.

**Senator Ellison**—No, I thought you wanted to have a few more in the international area. As time is pressing, I have had a look at those *Hansard* extracts and I noted that the 1989 references related to that inquiry into the Aboriginal Development Corporation—

**Senator COONEY**—And it was Senator Alston who sent it off.

**Senator Ellison**—Yes. You subsequently pointed to questions put by Senator Vanstone and me in 1994. I would still draw the distinction that the 1989 references relate to an inquiry which was particularly aimed at the adequacy of those fees or whether they were justified. I think that was the point, and it seemed to cause some angst at the time. That being a subject of that inquiry, it makes it a little different. The references you pointed to in 1994 relate to hourly rates there or a total amount, a daily rate, that was given. All I can say is that, in this estimates, we have given a scale for a daily rate, the aggregate of the fees paid to date to the council concerned, and we have broken that down for each council, and we have taken on notice for AGS that we will be giving aggregates for each solicitor involved in AGS. What I am saying is that I think we are on a par with precedence.

**Senator COONEY**—I would dispute that but, as long as you have the understanding of all that, and that has gone in.

**Senator Ellison**—I have got that.

**CHAIR**—I think the minister has.

**Senator Ellison**—But, if that is about to conclude, Chair—

**CHAIR**—Before we do—

**Senator Ellison**—I know the secretary wants to say something.

**CHAIR**—Yes, and so does the chair.

**Senator Ellison**—But I think that the minister might jump in first.

**CHAIR**—Do you, Minister? Can you remember what Senator McKiernan said about not tangling with redheads?

**Senator COONEY**—I have some questions to ask Ms Leigh and Mr Cornall. It will not take more than an hour!

**Senator Ellison**—It will not take more than an hour!

**Senator COONEY**—But they have sat here for a long time, especially Mr Cornall with his injured knee.

**Senator Ellison**—I think I will defer to you then, Madam Chair.

**CHAIR**—I think that would be helpful, Minister, because I suspect we are all about to go down the same road, in varying ways. It has been happening since Monday morning, so it is about time the rest of us had a go.

In closing this set of budget estimates hearings, I want to particularly acknowledge the experience I have had on this committee since I began as chair in 1998—which was in fact my first experience on the committee. In some ways, I would describe myself as almost a fraud in the chair in comparison to the experience of my two colleagues who are retiring from the Senate on 30 June, with a combined parliamentary experience of almost 40 years between them—and experience on this committee and its antecedents, for Senator Cooney, since 1985 and, for Senator McKiernan, since 1993.

I was thrown in at the deep end when asked to take on this role. It is for others to judge how I have done that, but I do know—and I am very happy to place this on the record—that the contributions and instructions of my colleagues have been extremely valuable to me. I think it is fair to describe Senator Cooney as a great contributor to the colour of the Senate. In everything he does he is thoughtful, he is considered and he is strong. He bases his views firmly in theory, in principle and in philosophy, and I have learnt valuable lessons from observing that process.

To the deputy chair, I would say that he is a great contributor in a different way to the colour of the Senate—in that regard he has not disappointed me today, either. I can say with absolute confidence that his help, his cooperation and his very positive approach to the work of the committee has made my life singularly easier. I might also say—and I think it is important to do that while the minister is here—that that is not an easy thing to do as a senator from Western Australia. It is an extraordinarily time consuming process to be a member of these committees and to travel around the country. To operate in a country which largely regards itself as east coast based makes it so much harder for senators, and of course members, from Western Australia. To be a chair of a committee and to also fulfil that role is an extraordinary commitment.

Earlier in the week, Senator McKiernan acknowledged his wife Jackie, and I would also like to do the same. We have travelled together and we have worked together in many ways, and I think that it is very important to place that on the record. So, for the lessons, for the experience and for the contribution to making this very important parliamentary process work, I say thank you to both of my colleagues.

**Mr Cornall**—Madam Chair, I have one last piece of formal business. I table a letter from Mr Carnell explaining the differences in the document about the transformation of the NCA, to bring it up to date. We had a discussion about that the other day, and I table that letter.

I will reiterate the comments made by the heads of various agencies during the course of these budget estimates. I would like to thank both Senators McKiernan and Cooney for the courtesy and consideration they have extended to departmental officers in my time as secretary. To Senator McKiernan, I want to say that your conscientious application to your duties as a senator has impressed on me the importance of this committee as part of the parliamentary process and the need for this department to respond as fully and promptly as it can to the committee's inquiries. To Senator Cooney, I wish to say that you will be remembered in this department for your deep concerns about individual rights and, as a consequence, legal aid issues in particular. The department congratulates both of you on more than 17 years of service in the Senate and wishes you well in whatever endeavours you undertake in your life after parliament.

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**Senator Ellison**—I reserve some of my remarks for another place and another time because I think we will have another opportunity, but I just want to say that, in the context of estimates, I have certainly enjoyed being involved in this committee, both on that side and this side—I think more so this side.

**CHAIR**—We will take your word for that!

**Senator Ellison**—I have enjoyed working with Senator McKiernan and Senator Cooney in the capacities in which I have been involved in the committee—as a member, chairman and now as a minister in the portfolio. Both Senator McKiernan and Senator Cooney have done a great service not only for their side of politics but for the parliamentary process in the way that they have participated in this estimates committee, which I think is an essential part of our institution of government in Australia. I want to place on record the government's acknowledgement and appreciation of their efforts, even if they have at times been pressing the government and pursuing the government on matters. I think that that has been done from a direction of their consideration of what they regard to be in the interests of this country and good government, and I accept that, albeit we might have some differing opinions on occasions. I reserve my remarks on other aspects for another time but, in the estimates process, thank you both for the work you have done.

**CHAIR**—Thank you, Minister. I suspect I am not going to get out of here without a couple of comments from my colleagues. Senator Cooney.

**Senator COONEY**—Thank you very much for those gracious remarks. I find this portfolio the most significant one in terms of what we should be doing in government. Health only deals with matters of the body; I think this deals with matters of the heart and soul—civil liberties or whatever you like to call them. Civil life is absolutely essential and I think it is all run through this department. I have had nothing but admiration for people in this room, including you, Ms Leigh. You may think I have been a bit tough on you from time to time. If that is so, it does not lessen my respect and privilege in knowing you all—you too, Mr Campbell. I would just like to acknowledge what this department does, because I think it is the most important one in the system.

Senator McKiernan mentioned his wife, Jackie. I had better put my family on the record. In the balance of terror, as to whether or not you should pursue the sorts of things I do pursue, there is on the one side those who say, 'Let's be a little limited in what we press.' On the other side, I have a family that says, 'No, you have to press it the whole way.' Mr Cornall, I think you know my wife. I would just acknowledge that. Thank you all for everything you have done for me over the years. Thank you.

**CHAIR**—Thank you, Senator Cooney. Senator McKiernan.

**Senator McKIERNAN**—Firstly, can I thank you personally, Madam Chair, for the very kind words that you have had to say. I must say that it has been a pleasure working with you in our legislation committee process and in our reference committee process work where our roles are reversed from chair to deputy and deputy to chair. We have, from time to time, had a number of disagreements, but I am very pleased to say that we have always been able to have our political disagreements and still be able to talk to each other afterwards. The fact that you are able to facilitate that—and I say it is you that is facilitating it, rather than claiming the credit for myself—has helped the whole of the processes of the work of the legal and constitutional committees, not just this particular one.

In regard to the Senate estimates committees, Minister, you have said it is a vital role and I agree with you. It is essential for the good governance of the country. I know it is a trial for the public servants to come along here and have to wait around for hours upon hours upon hours for their turn to be interrogated. That is not our doing; it is the system, but I think it is good for the system that you have to go through that ordeal. We do not and I do not like keeping people waiting and we try to make it as easy as possible. It is an adversarial system and, regrettably, that sometimes does not work out the way it ought to, but it should not necessarily be confrontational. From time to time, the Senate estimates committees have been made much more confrontational than they ought to be.

Mr Cornall, it has been a pleasure for me—although there have been strains from time to time—working with the Attorney-General's Department in the development, mainly, of legislation. We have made certain demands, particularly from opposition, which have not been fulfilled and, in some instances, not been able to be fulfilled by you. Nonetheless, we have conjointly striven to bring about good laws for the benefit of the people of the nation that we both serve in different capacities. We have different responsibilities in regard to that. I hope the process that we have been engaged in can grow from this.

This occasion is the longest period that I have ever had to go in the Senate estimates process—where we are here at nearly five o'clock on the fifth day of the estimates committee. I do not think that I have ever done this in the modern era. Maybe I did in the past eras, when we used to go on until four, five or six o'clock the next morning, and then continue at nine o'clock. But, in recent times, I do not think that we have gone on as long as this. Part of the reason for that on this occasion was that there were a number of issues which were running subliminal to what was happening on the floor of the meeting rooms. As committee members, we had to give great attention to the detail contained in those, because they were very important.

Some of them became issues on the floor of the committee meeting, with the recall of certain witnesses. All of this put enormous pressure on the secretariat to serve the committee. They have had to do even longer hours than the hours that we have done. They are here before we arrive in the morning, and they are here after we depart in the evening. I pay enormous tribute to the committee secretaries who have served this committee in the past; they deserve the greatest credit for that. But there is a whole host of individuals who come in and provide the service on the way through.

With regard to this particular round of estimates committees, there were a number of matters of very great importance that came before us, and I think we have been able to address them very well. Part of the reason we have been able to do that is not only the way the chair controlled things but the way the minister, the secretary of the department and the individual officers handled the matters. We contained them; it did not become an all-out, open brawl. I think that that was very good, because some of those issues were highly politically charged. They also involved individuals—human beings—and it is they whom we should be about serving.

I have enjoyed my time in estimates. I know that one can view the estimates committee proceedings from the web; I do not think that I will be doing that. I know that there have been people overseas monitoring the progress of the committees. It has been a great experience for me, and I wish the committee all the very best in the future, and indeed all of the officers in the departments who come to serve us. Finally, thank you to you, Madam Chair.



**Senator Ellison**—Yes. Thank you, Madam Chair, for your good work.

**CHAIR**—Thank you, Senator McKiernan, and thank you, Minister. I would also like to thank Hansard, Broadcasting and, of course, our own secretariat.

**Committee adjourned at 4.43 p.m.**