



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Consideration of Supplementary Estimates

WEDNESDAY, 20 NOVEMBER 2002

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SENATE
LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
Wednesday, 20 November 2002

Members: Senator Payne (*Chair*), Senator Bolkus (*Deputy Chair*), Senators Greig, Ludwig, Mason and Scullion

Senators in attendance: Senators Allison, Bolkus, Carr, Jacinta Collins, Crossin, Faulkner, Harradine, Kirk, Ludwig, Marshall, Mason, Payne, Scullion and Sherry

Committee met at 9.03 a.m.

**IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS
PORTFOLIO**

Consideration resumed from 30 May.

In Attendance

Senator Ellison, Minister for Justice and Customs

Department of Immigration and Multicultural and Indigenous Affairs

Mr Bill Farmer, Secretary

Ms Philippa Godwin, Deputy Secretary

Mr Steve Davis, First Assistant Secretary, Unauthorised Arrivals and Detention Division

Ms Christine McPaul, Acting Assistant Secretary, Unauthorised Arrivals and Detention Services Branch

Ms Rosemary Greaves, Assistant Secretary, Detention Policy Branch

Mr Jim Williams, Director, Unauthorised Arrivals Section

Mr Vince McMahon PSM, First Assistant Secretary, Offshore Centre Management and Infrastructure Division

Ms Mary-Anne Ellis, Assistant Secretary, Detention Infrastructure Branch

Mr John Moorhouse, First Assistant Secretary, Border Control and Compliance Division

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

Office of Aboriginal and Torres Strait Islander Affairs

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

Aboriginal and Torres Strait Islander Commission

Mr Wayne Gibbons, Chief Executive Officer

Mr Les Turner, Manager, Heritage, Sport and Culture Policy Group

Mr Brian Stacey, Manager, Land and Development Group

Mr Peter Schnierer, Manager, Coordination and Review Policy Group

Ms Laura Beacroft, Registrar of Aboriginal Corporations

Mr Rod Alfredson, Director, Office of Evaluation and Audit

Mr Paul Barrett, Chief Finance Officer

Mr Peter Taylor, Manager, Education, Employment and Participation Group

Mr John Kelly, Manager, Network

Mr Robert Goodrick, General Counsel and Legal Affairs

Ms Bronwyn Nimmo, Manager, National People and Development

Mr Allen Hedger, Manager, Legal and Preventative Services

Ms Adrienne Gillam, National Program Manager—CDEP

Ms Fran Emerson, Manager, Health

Indigenous Land Corporation

Mr David Galvin, General Manager

Ms Jodie Lindsay, Chief Finance Officer

CHAIR—I declare open this public meeting of the Senate Legal and Constitutional Legislation Committee. This is the supplementary round of estimates hearings for the Immigration and Multicultural and Indigenous Affairs and the Attorney-General's portfolios. The committee will consider the portfolios in the order in which they appear on the circulated program. The committee has authorised the recording and rebroadcasting of its proceedings in accordance with the rules contained in the order of the Senate dated 23 August 1990. The date for receipt of answers to questions taken on notice and additional information has been set at 30 days after the conclusion of hearings on 22 November 2002. Today's hearing will be suspended for a lunchbreak from 1 p.m. to 2 p.m. and a dinner break from 6.30 p.m. to 7.30 p.m.

I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. I welcome my colleague Senator the Hon. Chris Ellison, the Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs and the Minister for Justice and Customs, and officers of the Department of Immigration and Multicultural and Indigenous Affairs and associated agencies, and the secretary, Mr Farmer. Officers will not be required to answer questions relating to policy or the advice they have given in the formation of policy. Minister or Mr Farmer, do you wish to make an opening statement.

Senator Ellison—I have no opening statement.

Mr Farmer—No, thank you.

[9.05 a.m.]

Department of Immigration and Multicultural and Indigenous Affairs

CHAIR—We will move to the program as it appears in front of us this morning. Are there any questions on outcome 1, Lawful and orderly entry and stay of people. and output 1.3, Enforcement of immigration law (Maribyrnong Detention Centre)?

Senator SHERRY—I understand there have been a number of transfers—at least five detainees from Maribyrnong to other centres. Is that correct?

Ms Godwin—Yes, it is correct.

Senator SHERRY—Can you give me some more detail?

Ms Godwin—I can. At about the time that we were closing Curtin, we did an examination of the detention population generally to look at things such as appropriate numbers in each centre and other considerations. I think six detainees at Maribyrnong were initially identified as appropriate to transfer. In the end, five were transferred. One individual was not transferred, I think because of a medical condition.

Senator SHERRY—I gather from what you are saying that there was a reassessment of the overall level of detainees that would be kept in each detention centre.

Ms Godwin—It was a variety of factors, including numbers in centres, the particular population in each of the centres, the appropriate mix and where we thought people could be most appropriately managed.

Senator SHERRY—What was the appropriate number determined for Maribyrnong?

Ms Godwin—I do not have the exact numbers that were there at the time. Maribyrnong is a relatively small centre. I think the capacity is about 80, but that number fluctuates a lot because as a metropolitan centre it takes a large number of compliance cases. Those numbers, as I say, fluctuate. It would have been a question of looking at the numbers at the time and the particular needs of those detainees, as well as where else we had appropriate accommodation.

Senator SHERRY—What is the range of—

Ms Godwin—I am sorry, I can give you some additional information. We had 71 detainees in Maribyrnong before the transfer. Because of the configuration in the centre between the male and female areas and so forth, you can have full capacity in one area and not complete capacity in the other.

Senator SHERRY—You have talked about this general reconfiguration. What impact has the proposed closure of Woomera had in respect of this respreading of numbers? Has that been taken into account?

Ms Godwin—Woomera remains open, as you are aware.

Senator SHERRY—Yes, I am aware of that.

Ms Godwin—We continue to have a number of detainees there. At the moment, that is largely a single male population because most of the families from Woomera transferred to Baxter. We continue to have the residential housing project there, and there is a small number of families in the centre.

Senator SHERRY—So when Woomera is closed there will be another reassessment of the overall numbers?

Mr Farmer—Can I make an introductory comment on that question. As Ms Godwin said, no decision has been taken to close Woomera. The minister has indicated that he is minded to consider a closure of Woomera when we are able to secure appropriate arrangements for women and children at Port Augusta. That would enable us, in effect, to translate to the Baxter centre the arrangement we have at Woomera for housing women and children. That is as accurate an indication as I can give you. The minister is minded to consider closing Woomera when we have those arrangements in place at Baxter, Port Augusta.

Senator SHERRY—What is the target date for that?

Mr Farmer—The minister has been working very assiduously with the South Australian government and with the city council in Port Augusta to make those arrangements. We would like it to be as soon as possible.

Senator SHERRY—This year?

Mr Farmer—We would like it to be as soon as possible. There are some elements there that are not in our control.

Senator SHERRY—One of the issues would be the reaction of the local community. I notice the local mayor is opposed to any change.

Mr Farmer—No, I do not think that is entirely accurate.

Senator SHERRY—Give me the accurate picture.

Mr Farmer—I thought we were talking about Maribyrnong, but I just—

Senator SHERRY—That is right, and I want to come back to Maribyrnong, but I am just interested in what the overall impact will be, relating it back to Maribyrnong.

Mr Farmer—The picture is that we are trying to establish arrangements at Port Augusta which will enable us to accommodate women and children in accordance with the arrangements which have been trialed successfully at Woomera. When that happens the minister will look at the future of Woomera. As I have told you, he is minded to consider closing Woomera at that time and then the remaining detainees at Woomera would be transferred.

Senator SHERRY—When that happens, and you want it to be done as soon as possible, will there be a reassessment of the numbers again, nationally?

Ms Godwin—Particularly in relation to Maribyrnong, the population there and the appropriate configuration of the centre is something that we review regularly. We have had transfers from Maribyrnong to Villawood on other occasions. It is essentially because it is a small centre and we need to manage the capacity there. That is an ongoing process in relation to Maribyrnong.

Senator SHERRY—Just coming back to Maribyrnong again, when did the transfers occur?

Ms Godwin—They occurred on 4 and 5 September.

Senator SHERRY—Was there any announcement at that point about the transfers?

Ms Godwin—What sort of announcement?

Senator SHERRY—A public announcement.

Ms Godwin—There was no public announcement.

Senator SHERRY—Has there been any public announcement since 4 and 5 of September?

Ms Godwin—Not that I am aware of, as a public announcement, no.

Senator SHERRY—Where were they transferred to?

Ms Godwin—To Port Hedland.

Senator SHERRY—What is the nature of their claim for asylum?

Ms Godwin—I am not aware that they are all asylum seekers. Not everyone in detention is an asylum seeker.

Senator SHERRY—I understand that.

Ms Godwin—Two of them are awaiting removal and three of them have applications before the courts.

Senator SHERRY—Two are awaiting removal and two have applications before the courts. What about the other one?

Ms Godwin—No, I said three.

Senator SHERRY—So it is three who have applications before the courts?

Ms Godwin—Yes.

Senator SHERRY—Where are those two awaiting removal to?

Ms Godwin—I do not have their nationalities. I could get that. I am not sure if anyone has that.

Mr Farmer—We can take that on notice, Senator.

Senator SHERRY—What are the circumstances with the three applications?

Ms Godwin—I will have to take that on notice; I just have a note here that says they are before the court.

Senator SHERRY—What sort of notice was given to those detainees that they would be transferred?

Ms Godwin—I think they were all notified either on the day of or on the day before the transfer.

Senator SHERRY—That seems to be fairly short notice. Why on the day or the day before?

Ms Godwin—That would largely be an operational decision at the time. If you need to transfer someone and you want that to go smoothly, the question of when is the appropriate time to make the notification would be something to be considered. It would vary from case to case.

Senator SHERRY—Have you ever watched *The Birdman of Alcatraz*? It was on television last night.

Ms Godwin—No, I have not.

CHAIR—Not everybody has the time to watch that much television, Senator Sherry.

Senator SHERRY—This is all pertinent to the estimates, I have to say.

CHAIR—I will be fascinated to see how.

Senator SHERRY—It was interesting to see the transfer of the prison population in *The Birdman of Alcatraz*. The lack of notice that was given to this fellow fascinated me. But, anyway, I thought you might have spied it last night on TV.

Ms Godwin—I was too busy swotting for this.

CHAIR—Good answer, Ms Godwin.

Senator SHERRY—I must admit that I did have a pile of estimates questions in front of me while I was watching it.

CHAIR—Limited to the Maribyrnong Detention Centre, however.

Senator SHERRY—As I say, if you ever watch the *The Birdman of Alcatraz*, there are some similarities.

CHAIR—Sometimes I feel like I am living through *The Birdman of Alcatraz*, so can we proceed with Maribyrnong, please.

Senator SHERRY—I am sure some of the public servants or people before estimates feel like they are in *The Birdman of Alcatraz* as well.

Mr Farmer—Or *Groundhog Day*.

Senator ELLISON—*Groundhog Day* is a better one.

Senator SHERRY—I will get back to Maribyrnong.

CHAIR—Please.

Senator SHERRY—Why only give notice on the same day or the day before?

Ms Godwin—It is just an operational consideration.

Senator SHERRY—Obviously it is an operational consideration. But people have relationships and friendships in these centres.

Ms Godwin—Sure, and those factors would be taken into account. But, equally, you would take into account whether there was likely to be a reaction to the news that they were moving and the appropriate way to manage that. A variety of factors would be considered. A decision is taken and it varies case by case.

Senator ALLISON—Ms Godwin, is it true that in fact people are sometimes removed from their beds in the middle of the night?

Ms Godwin—Not that I am aware of. That was certainly not the case with these individuals.

Senator ALLISON—Is it possible for you to check the records and see what time detainees were actually removed from the centre and provide the committee with some sort of idea of that? Certainly, the advice that I have been receiving is that detainees are not only woken up and removed without being able to indicate to other detainees that they are going but also unable to take their possessions with them. Are there any circumstances in which that is necessary?

Ms Godwin—As a starting point, the point you are making about people moving without their possessions is not my advice. In the notation I have here, detainees were asked to come up to the admin area. They did that, they were told they were moving and they then went and collected their possessions. Things they had in the storeroom as opposed to their own rooms were collected and all of that went with them.

Senator ALLISON—So you would be prepared to guarantee that no detainee has been removed from Maribyrnong for relocation elsewhere without being able to get all of their possessions?

Ms Godwin—It may be possible that someone had something left behind. That does sometimes happen, where something has not been identified as that person's or they have had it somewhere else and not identified at the time. So it is possible that people would move without all of their possessions, but that is not generally the process.

Senator ALLISON—What is the process if something has been inadvertently left behind and the detainee recognises that?

Ms Godwin—It would normally be located, if possible, and transferred to where they are.

Senator ALLISON—And the process for doing that?

Ms Godwin—I am not sure what you mean. If the detainee said, 'I think I had X and it is still back at the centre,' that would be advised to the centre that they had left; they would try to locate it and it would then be transferred to their new centre.

Senator ALLISON—Can you assure the committee that that would be the case in all circumstances?

Ms Godwin—That is the standard procedure. As I have said, it can happen that sometimes things might get mislaid. Certainly there have been occasions when that has happened—not, that I am aware of, in relation to this group of transfers—but generally the procedure is that, when people are transferring, their possessions are identified at the time and transferred with them, unless there is some sort of emergency. If someone needs to be, for example, admitted to hospital in the middle of the night, obviously their possessions cannot all be gathered up. The focus at that time would be on their medical needs. There have been the occasional emergency transfers between centres but, as I say, that does not apply to this particular group of transfers.

Mr Farmer—If it would be helpful we could provide the committee, on notice, with the time at which these five detainees were transferred and tell you whether there is any information about the possessions relating to these five.

CHAIR—Thank you.

Senator ALLISON—It is my information that it has happened on numerous occasions and that detainees have been told that their possessions, their goods—whatever it is they own and need—would be forwarded on, but it never happens.

Mr Farmer—If you have details, I would be very happy to look into that.

Senator ALLISON—Thank you. I will see that you get some names and times.

Senator KIRK—By what method of transport were these detainees transferred from Maribyrnong to Port Hedland?

Ms Godwin—They went by air—commercial.

Senator KIRK—You were talking about the amount of time that the detainees were given by way of notice that they would be leaving, although I do not think you were specific as to how long the individuals were given. I am wondering at a personal level whether they had time enough to make their goodbyes to the friends and bonds that they may have formed at the centre.

Ms Godwin—I do not have any specific information on that. My understanding is that there was not a great deal of time, and so it is possible that people may not have been able to make any number of phone calls—although they would have had the opportunity once they got to Port Hedland.

Senator KIRK—I know you said it is an operational matter, but how do you make the decision as to how much time an individual ought to be given? Do you just make a decision about the group as a whole or do you look at one individual and say, ‘This person is likely to react badly so we had better only give them one hour’s notice’? How do you make that decision? Does it depend on the individual?

Ms Godwin—I not sure that I can add much more to what I said. There would be an individual consideration but, if you are moving a group, then you would obviously have regard also to the dynamics within the group. It varies. I can think of times when people have had days’ notice of transfers, and others when they have had relatively short notice, such as happened in this case.

Senator KIRK—I take it that these individuals who were transferred did not have family members who were left behind at Maribyrnong?

Ms Godwin—They are all single men.

Senator SHERRY—You mentioned they were transported by plane. Are they physically restrained in any way?

Ms Godwin—They would be escorted, and so there would be an officer with them.

Senator SHERRY—I am sure they would be escorted. Are they handcuffed or are they restrained in any way?

Ms Godwin—They would not normally be restrained but, if there had been a risk assessment that showed there was likely to be a problem, they can be restrained. I do not know whether these individuals were restrained. We could take that on notice, if you wish.

Senator SHERRY—Yes, you could take that on notice.

CHAIR—Do you have anything further, Senator Sherry?

Senator SHERRY—Nothing on those transfers.

Senator ALLISON—I want to go back to that question about people being taken to hospital and having to take their possessions with them. What sort of information are they given at that stage? Do they know that they will not be returning to Maribyrnong when they are taken to hospital? What sort of advice is provided?

Ms Godwin—It would depend a lot on the individual case. Generally speaking, if people are admitted to hospital and they continue to be in detention, they would return to Maribyrnong. I am not aware if there has been any situation where someone has gone from Maribyrnong to hospital and then direct to another centre. We could check that, but I am certainly not aware of any specific case. Generally, if someone needs to go to hospital, presumably they are unwell. The nurse is called and then the nurse makes a decision about whether a doctor should be called or whether the person should be taken straight to hospital, rather than having that extra step of waiting for the doctor to come. In those sorts of circumstances, people would normally just go, because the focus at that point would be on their medical needs. That would mean that their possessions would be left behind in the centre.

Senator ALLISON—So you would be surprised to hear that the experience of some detainees is that when they go to hospital they are told to pack up their possessions and take them along, they do not know what hospital they are going to and they do not know if they will be returned to Maribyrnong. They are afraid that they might be being shipped off to Nauru or somewhere of that sort. That would surprise you; you would expect that if they were going to hospital they would know what is likely to happen to them after their hospitalisation?

Ms Godwin—It would depend very much on the individual case. It may well be that someone needs to go to hospital, but it is not clear which hospital they are going to. That can happen in the community. There are a number of hospitals in the western Melbourne area that detainees go to. So it would not particularly—

Senator ALLISON—So they head off in a car and they do not know what hospital they are going to?

Ms Godwin—It may well be that that is the case if they need medical treatment but it is not clear which hospital is able to accept them at that point.

Senator ALLISON—Surely you would make a phone call to the hospital from the centre and ask, ‘Have you got a bed or not?’

Ms Godwin—If they are ill and requiring emergency treatment, the focus at that point would be on their medical treatment, their medical needs, and the need to—

Senator ALLISON—I can understand that, but you would not just head off in a car and drive to three or four hospitals until you found one that had a bed, surely.

Mr Farmer—Senator, I think that that does actually happen in the Australian community. You do not have a surety that you can receive treatment at a particular hospital.

Senator ALLISON—So that would be the reason why a detainee was not told where they were going?

Mr Farmer—That is a possible reason.

Senator ALLISON—And what about in terms of where they are likely to be sent after hospital?

Ms Godwin—Generally speaking, if someone needed emergency treatment and they were normally located at Maribyrnong, the expectation is that they would come back to Maribyrnong; but there have been transfers from Nauru, as you mentioned. We have had some people who have needed to receive medical treatment, and they have received that in Australia and then returned to Nauru. So I guess there are a variety of circumstances. Without knowing the individual case, it is hard to comment.

Senator ALLISON—Perhaps you could check in terms of the Maribyrnong detainees—and I am sure this happens with other centres, but we can just focus on Maribyrnong—that there are no detainees who are sent to hospital without knowing (a) which hospital they are going to and (b) whether, after their period in hospital, they will be returned to Maribyrnong or somewhere else. If you could check that and the process by which they are told what the expectation is, that would be useful.

Mr Farmer—I am very happy to take that on notice, but in doing so I would say that we will endeavour to give you a description of the policy and the practice, to the extent we can, in the cases that are relevant. I hesitate to say that we could go through every file of everyone at Maribyrnong to give you chapter and verse on all of those cases.

Senator ALLISON—Mr Farmer, I am less interested in chapter and verse than in the general principle, which is that people have a right to know what is happening to them. I would have thought that the anxiety, if you were both ill and being kept in detention, would lead you to be in quite a state if no-one was telling you where you were going. I do not necessarily want to know about how many cases there are; I am interested in this whole question of the right of people to at least be informed about what is happening to them.

Mr Farmer—Yes, I understand the point. In our answer to your question we will set out the policy and the practice.

Senator ALLISON—Thanks very much. The question of visitor arrangements at Maribyrnong has for some time been contentious and difficult. There is a new policy at Maribyrnong that there be one detainee per visitor—which, as I understand it, both detainees and visitors say is not working. What are the opportunities for reviewing that policy and providing for some return, at least partially, to the previous situation where there could be groups of people visiting? As I understand it, it can be quite difficult if there is limited English for one person to conduct a conversation with a visitor, and it is more helpful to have several than just one. Are you reviewing that current arrangement? Can you indicate what changes you propose?

Ms Godwin—My understanding is that the visits policy and process has been reviewed a number of times through the year. As I have said, the starting point is that Maribyrnong is a small centre where space is limited, including in the visits area, and an assessment has been made about the number of people who can reasonably be accommodated in that area, for both amenity and security reasons. I would have to take on notice the specific comment you made about only one visitor allowed at a time, and I can easily check that; but it has certainly been necessary to limit the number of visitors per detainee in order to try to give—

Senator ALLISON—Ms Godwin, it was necessary to limit the number in the first place. I think 50 was the maximum in that space, for good reason. The rule was changed, though, to one detainee and we now have far fewer people in that space. You may regard that as a good thing—I do not know—but it is not working from the point of view of the detainees and the visitors. That is what I am saying.

Ms Godwin—I will make a couple of other points. Yes, the total area can take 50; but if one detainee ends up with a large number of visitors it limits the opportunity for other detainees to have their visitors. That was what was happening. As I understand it, a number of things have been done. The visits hours have been extended so that people can have a greater opportunity, and there have been consultations with the detainees and with visitors and community representatives about the visits process. It is something that the centre are aware of and have been trying to adjust over time, to balance the needs of individual detainees with the space available and make sure that numbers of detainees all have an equal opportunity to have visitors, if that is their wish.

As I understand it, it has also been necessary from time to time to limit the time that visits can take, to enable more people to go through; and so rather than some people being there for the whole visits period they can only be there for a part of the period. So there have been a range of adjustments through the year. As I say, I would need to check the specific point you are making about one visitor but I am certainly aware that there is an issue about visitors, that it has been regularly reviewed and that there have been adjustments made to try to take account of the various needs of people. Just as an example, as I understand it, the visiting hours have now been extended by a couple of hours a day to try to give people a greater opportunity.

Senator ALLISON—Recently, I raised the matter in an estimates session about visitors not being able to take in notebooks and pens to Maribyrnong, and I was assured that there was no such restriction. But I am told that there is, that it is ongoing and that this makes it extremely difficult for legal representatives taking, for instance, details of persons to be contacted and so forth. Can you explain why it is necessary to have this restriction?

Ms Godwin—I am sorry, Senator, but our advice is that it is possible for people to take in notebooks and pens. I am also being told that the ratio of visitors is four visitors per detainee. That is our understanding of the ratio.

Senator ALLISON—My question was more to do with the number of detainees per visiting group.

Ms Godwin—I was assuming that you were talking about the numbers of visitors.

CHAIR—That is what I thought you were saying, as well, Senator Allison.

Senator ALLISON—I guess it is both. The issue that has been raised is that if you have a detainee who has limited English, it can be difficult to communicate unless there is a group of them—two or whatever.

Ms Godwin—You mean more than one detainee for the visitors?

Senator ALLISON—Exactly.

Ms Godwin—We will check that aspect; but, as I say, the ratio of visitors to detainees is four per detainee.

Senator ALLISON—So you would be surprised to know that a visitor is not allowed to take a pen into Maribyrnong; that is not your understanding?

Ms Godwin—Again, there might be individual circumstances where that has happened because there was a concern about some element of it, but it is not standard practice to refuse the entry of notebooks and pens.

Senator ALLISON—What sorts of circumstances would give rise to not allowing a visitor to bring a notebook and pen?

Ms Godwin—The service provider is required to check people's belongings as they come in. If they thought something was dangerous, for whatever reason—but, again, I am speculating about whether there might be any particular circumstances where a pen was not allowed in, but it is not standard practice to not permit them to go through.

Mr Farmer—It is also possible that a visitor would not agree to having their effects checked by an ACM officer and therefore would not be allowed to take a bag or something like that into the centre, and that might well contain a pen and paper and so on. One of the aims of allowing lawyers access is to permit them to serve their clients. As in all of these things, if you have a particular instance that you would like us to check on, we are very happy to do that.

Senator ALLISON—Again, Mr Farmer, I am interested in the broad principle. I am happy to provide you with details of the most recent date on which someone was denied access with a pen and notebook when they asked to enter.

CHAIR—Senator Allison, as you indicated, we have discussed this before, and I think it probably would be of assistance to the department to have specific examples to respond to, given that we appear to have conflicting advice.

Senator ALLISON—I am happy to do that. But this is very recent advice that I have had, and so I would be surprised if it is incorrect.

CHAIR—Would you like that to be a question on notice, Senator Allison?

Senator ALLISON—Do I need to say any more than I have already said? I would have thought that we would need to check with Maribyrnong about the rule.

Ms Godwin—We know what the rule is. It is a question of whether there is a particular example where it appears that the rule has not been adhered to.

Senator ALLISON—I am happy to provide you with some names of visitors who have been denied bringing in a pen and a notebook. However, as I have raised on a number of occasions, it is the case that the rules are interpreted in different ways by different officers at Maribyrnong—which has been problematic in the past with bringing gifts and other items into the centre. I also raise that with you. The detainees at Maribyrnong are pleased that there is a reduction in the number of times they are woken in the middle of the night with headcounts, and so there is some improvement there, and thank you for that. I will ask about the balance of detainees at Maribyrnong now. Is Maribyrnong full? How many detainees at Maribyrnong are there because they have served prison sentences in Australia and are awaiting repatriation? And what length of time do we now have for those detainees?

Ms Godwin—As of last Friday, which was the 15th, there were 69 detainees in Maribyrnong—52 males and 17 females.

Senator ALLISON—How many children are in that group?

Ms Godwin—There were five children at that time. In regard to why they are there, I would have to check the specifics of people who have completed a custodial sentence and then been transferred to Maribyrnong, but I can tell you that 33 of the 69 have been there for less than six weeks. As to the rest of the details—what the circumstances of the detainees are—we can take that on notice.

Senator ALLISON—Thank you. I have heard it said that a greater proportion of the detainees at Maribyrnong now are in that category of previously having had custodial sentences. Is there a policy direction being taken here? Are we moving asylum seekers out of that centre, generally speaking? What is your approach?

Ms Godwin—There are a couple of points to make here. It never was a centre predominantly for asylum seekers. As a metropolitan detention centre, it was largely used in response to compliance operations and for people who arrived in an unauthorised fashion at airports. From time to time, of course some of those people do claim asylum after they have been detained. The issue of people coming back from prisons actually relates to a policy of the Victorian government. They have a view that, while it is lawful under the Migration Act to hold immigration detainees in prisons, they should not be detained in prisons except in exceptional circumstances. That has resulted in some people being transferred back to Maribyrnong.

Senator ALLISON—So there is not a policy change from your point of view? As I understood it, this was a federal issue. These are people who come out of prison, and they might have been in Victorian state run prisons but, because they cannot be repatriated—and I think the biggest problem is people from Vietnam—

Ms Godwin—No; we have had a very successful return program to Vietnam, going since late last year.

Senator ALLISON—So Vietnam is now accepting those who have been given residential status in Victoria?

Ms Godwin—Vietnam always did accept back their nationals. There was an issue around long-term residents, and that process was resolved with the signing of an MOU in about the middle of last year. As a result of that MOU, we just operate normally in regard to them.

Senator ALLISON—So Vietnam now takes back long-term Australian residents who have had custodial sentences; is that correct?

Ms Godwin—Those who are subject to removal for whatever reason, yes.

Senator ALLISON—Thank you.

Senator KIRK—I have a few questions in relation to the heating and cooling at Maribyrnong. There have been some claims that the heating is inadequate during the winter and that the cooling is inadequate during the summer. Could you comment on those claims?

Ms Godwin—The question of adequacy is, I guess, a matter of judgment. But there certainly is an issue with the heating and cooling system at Maribyrnong. It is the original system that was installed when the place was built. It is probably over 30 years old now. There is in fact a review going on as to the appropriate replacement for the heating and cooling system. It is true that there were occasions during the winter when the heating broke down in some areas of the centre. I am assuming that you have been to Maribyrnong. Some areas of the centre are covered by the central system and some are not. So these comments apply to those areas covered by the central heating and cooling system. We are in the process of examining what might be the appropriate replacement for that system. But some other areas of the centre, particularly the family area, have a separate heating and cooling system, and that has not been an issue.

Senator KIRK—Is there any provision for individual detainees to control the temperature of the rooms they are in—say, in the family areas or in their own individual rooms?

Ms Godwin—I would need to take the specific details on notice, but my understanding is that it is relatively more easy in the family areas for people to do that than it is in the rest of the centre because the system is essentially a centralised system in the rest of the centre.

Senator KIRK—So within their individual rooms they do not have any control over the outlets?

Ms Godwin—I would need to take that on notice, but it may well be more difficult.

Senator KIRK—When do you expect the review to be completed?

Ms Godwin—It is a part of an ongoing assessment of repairs, maintenance, refurbishment and so forth. It is, in a sense, a current issue that is being looked at. I do not have an end date, if you like.

Senator KIRK—What is the usual kind of time frame for that sort of review?

Ms Godwin—There is a regular ongoing repairs and maintenance program in most of the centres. This is just one of the immediate issues in Maribyrnong.

[9.46 a.m.]

CHAIR—As there are no further questions on Maribyrnong, we will move on to outcome 3: sound and well-coordinated policies, programs and decision-making processes in relation to Indigenous affairs and reconciliation.

Senator LUDWIG—Last estimates we received from you a helpful budget breakdown of all the ATSI programs. In that, Victoria just seems to have a single entry. Can you explain why Victoria has a single entry?

Mr Farmer—Is that the ATSI budget that you are talking about?

Senator LUDWIG—Yes.

Mr Farmer—I think that question would be better addressed to the ATSI representatives when we leave questions in relation to the department.

CHAIR—Senator Ludwig, we are on outcome 3 itself in the departmental area.

Senator LUDWIG—I thought I would ask you guys first, but it is one of those areas I am going to ask ATSI as well. So you do not do the budget allocation by region?

Mr Farmer—No, we do not.

Senator LUDWIG—Moving on to consultants—is that your area?

Mr Farmer—If it is an ATSI consultancy, ATSI would be the correct agency to deal with that.

Senator LUDWIG—No, it is within the Indigenous affairs area. Looking at your budget for consultants, as I understand it, the number has risen from 17 to 27 in 2000-01. Can you list the consultancy projects and the types of projects they were engaged upon?

Mr Vaughan—I am not sure which figures you are referring to. Are you talking about figures in the order of 17 million to 21 million?

Senator LUDWIG—No. I am talking about 17 to 27 consultants.

Mr Farmer—Is there a page reference you could give us? Is that in the portfolio budget statements?

Senator LUDWIG—I will slightly change my question. In relation to Indigenous affairs, have you employed any consultants?

Mr Vaughan—In the case of the Office of Aboriginal and Torres Strait Islander Affairs within the department, yes, we have employed a couple of consultants.

Senator LUDWIG—Can you list the consultants by project type, the amount that has been spent on them, the project work that they have been doing and whether the projects have been completed and, if they have been completed, what reports they have produced? And, if those

reports are available, can you provide them? If they have not produced a report, can you explain the deadline or time line for producing the report or the output required to be produced by them? Can you provide a synopsis of that so that we know when that will be available? When that does become available, can you provide it?

Mr Vaughan—I would be happy to take that on notice and provide that information.

Senator LUDWIG—Since the Office of Aboriginal and Torres Strait Islander Affairs has folded within the department itself, has there been an increase in consultancies?

Mr Vaughan—In a comparison of OATSIA with its previous incarnation as a separate department, there would in fact be fewer consultancies, because a number of the corporate management functions of the previous Department of Reconciliation and Aboriginal and Torres Strait Islander Affairs were handled by consultants—things like internal audit and so forth—and we no longer have a need for that. So, in that sense, we have had a reduction.

Senator LUDWIG—You say there has been a reduction.

Mr Vaughan—Yes.

Senator LUDWIG—That is within the Indigenous affairs area?

Mr Vaughan—If you define the Indigenous affairs area as the Office of Aboriginal and Torres Strait Islander Affairs compared with its predecessor, the Department of Reconciliation and Aboriginal and Torres Strait Islander Affairs, if you go across all the portfolio agencies, like ATSIC and the Indigenous Land Corporation, you would have to look at them individually, one by one, to establish whether there had been increase or a decrease in each of their cases.

Senator LUDWIG—How would you define ‘Indigenous affairs’ within your department or have you folded it in to such an extent that it is now invisible?

Mr Farmer—No. The portfolio includes the department as well as a number of separate agencies—agencies like ATSIC, the Institute of Aboriginal and Torres Strait Islander Studies, the Indigenous Land Corporation, Indigenous Business Australia and so on. But those agencies are not part of the department. The department has within it the Office of Aboriginal and Torres Strait Islander Affairs, which is a small policy-advising office. It has a budget of \$3.3 million. Compared with the other portfolio agencies, the office within the department is a very small operation.

Senator LUDWIG—Just so that we are clear on the question I asked earlier seeking information in relation to consultants, could you also include their salaries as a percentage of the overall project? You will gather from the transcript the nature and extent of the information I have been asking for, and you seem to have indicated that you will provide that, so we will move on.

Mr Farmer—As I say, in relation to OATSIA we will provide that.

Senator LUDWIG—Are community participation agreements in this area? Can I ask you about that?

Mr Vaughan—That would be ATSIC.

Senator LUDWIG—How many employees are in the Indigenous affairs portfolio now compared with when it was first folded in from DORATSIA?

Mr Farmer—I think we can answer that, but what we are really talking about is not the portfolio but the Office of Aboriginal and Torres Strait Islander Affairs within DIMIA

compared with the former 'boutique' department—it was a very small department—of Reconciliation and Torres Strait Islander Affairs.

Mr Vaughan—The numbers have reduced from about 35 to about 31.

Senator LUDWIG—Could you give a breakdown of where those people are employed. Are they employed in Canberra or are they employed in regional centres?

Mr Vaughan—They are all employed in Canberra.

Senator LUDWIG—So there is nobody employed outside of Canberra?

Mr Vaughan—Not as part of the office.

Senator LUDWIG—Not directly as part of the office?

Mr Farmer—It is because the office is a policy-advising office and it does not have programs to administer. It is the other portfolio agencies who have programs and therefore officers stationed around Australia.

Senator LUDWIG—So, if I wanted to find out how many federal government employees were working within, in association with or directly with Aboriginal issues, how would I go about that? Are you saying that I would have to call every agency and ask them the same question? Is there a central way of establishing how many federal government employees there are, give or take one or two?

Mr Farmer—In an effort to be helpful, it would be quite easy for us to give you the staffing of all of the agencies in the portfolio—that is, the department and those officers in the department specifically working on Indigenous issues—plus the portfolio agencies, ATSIC, IBA, ILC and so on. That, of course, would not go beyond the portfolio, because you then have clearly quite substantial numbers of public servants working for departments like Education, Science and Training, Health and Ageing and Family and Community Services who are focusing on Indigenous issues. I do not believe that we have aggravated the staff numbers for people working in other agencies. We have certainly attempted to aggregate the program funds allocated to Indigenous issues across all portfolios and to describe the totality of government operations there, but I do not believe there has been an effort to aggregate the staff numbers.

Senator LUDWIG—Has there been any research work done in that area to try to aggregate exactly to what extent there is assistance directly or indirectly in this area or through other areas by federal government employees?

Mr Vaughan—The nearest approximate summary you will find would be in the minister's budget related statement—the blue book, as we refer to it in shorthand—which tabulates the \$2.5 billion spent on Indigenous specific programs across all Commonwealth portfolios and agencies. It does not separately identify the number of employees involved. Of course, many of those employees would be in government funded community organisations too. So you get some conceptual and definitional issues arising there. You also get complications, in that those numbers refer only to Indigenous specific programs. Of course, you have Indigenous people accessing mainstream programs like Centrelink, for example, for Centrelink services. It is not possible to identify how many Centrelink staff equate to its Aboriginal clientele. So the meaningfulness of those numbers has to be heavily qualified.

Senator LUDWIG—Perhaps we can then settle on the first offer so as to get an understanding at least within your portfolio area. That would be helpful.

Mr Farmer—We will give you the staffing numbers agency by agency.

Senator LUDWIG—Then, if possible, could you give a breakdown by location or region. I do not know how easy it is to unpack those figures, but if you would not mind having a look and if it is relatively easy that would be helpful. But I understand that.

Mr Farmer—We will do try to do as much as we possibly can.

Senator LUDWIG—In relation to the Aboriginal Land Rights (Northern Territory) Act—I think I am in the right area now for the department—as I understand it, you have circulated an options paper. Is that right?

Mr Vaughan—That is correct, Senator.

Senator LUDWIG—Have the land councils been engaged in the process?

Mr Vaughan—They have been invited to respond to the options paper. We have attempted to hold discussions with them, but those efforts have been unsuccessful to date and the land councils have indicated that they are engaged in a dialogue with the Northern Territory government to try to provide the Commonwealth with a common response. We are awaiting that at the moment.

Senator LUDWIG—What is the time line for that?

Mr Vaughan—We were informed that we could expect that by the end of the year.

Senator LUDWIG—So when you developed the options paper you did not seek land council input to that process; you developed an options paper and then sought land council input?

Mr Vaughan—The options paper was based on input that had been obtained through the previous series of reviews of the act—the Reeves report, the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs report and the national competition policy review. So we had a range of material, including submissions from some of the players to those reviews, from which to draw out the issues and options for the options paper.

Senator LUDWIG—Do you know if there are any discussions going ahead in relation to that options paper? Have the land councils indicated that they are talking to any other department or government?

Mr Vaughan—As far as we understand, they are certainly talking to the Northern Territory government. I am not exactly sure of the full range of Northern Territory agencies that are involved in that process, but I believe the mining department is involved as well as the Department of the Chief Minister. I am not aware of any other players who are engaged in that process.

Senator LUDWIG—Am I correct in understanding that the state of play is that you have put out an options paper, you have not had direct input from the land councils, you have asked them to respond, they have not engaged you in the process to date, they have spoken to the Northern Territory government and/or departments about it and you are hopeful of a reply at some future date?

Mr Vaughan—That is correct. In the meantime, we have had preliminary discussions with the Northern Territory government.

Senator LUDWIG—That was where I was going to go next.

Mr Vaughan—We have also had discussions with the Northern Territory Minerals Council, with the fishing interests—

Senator LUDWIG—What are those discussions about—the options paper?

Mr Vaughan—They are about the options paper.

Senator LUDWIG—Do you have a view? Are you soliciting views about the options paper or are you telling them your view? I am just curious.

Mr Vaughan—We are soliciting their views.

Senator LUDWIG—When do you expect the land councils to start talking to you?

Mr Vaughan—Our most optimistic scenario is that at the end of the year—in December—the Northern Territory government will come to us with a view which reflects their views in consolidation with those of the land councils. That assumes that the Northern Territory government and the land councils end up of one mind on all of the issues. Failing that, we would hope to at least get an indication of their differing views on those issues that they are not at one on.

Senator LUDWIG—It does not seem a very satisfactory process at the moment, does it?

Mr Vaughan—We attempted to engage each of the players directly, and the Northern Territory government and the land councils have expressed a preference to go down the route of talking between themselves. That is understandable to the extent that the land rights act is a key issue for the Northern Territory government because it effectively regulates development of 50 per cent of the Northern Territory. The Northern Territory government is a key stakeholder in the process, as are the land councils obviously, and it makes sense for the two of them to be talking together.

Senator LUDWIG—Is the problem about whether or not your government wants to hand back the ALR?

Mr Vaughan—One of the options raised in the options paper is that of repatriating the land rights act to the Northern Territory.

Senator LUDWIG—It is one of the options. Is it a view that your minister agrees with?

Mr Vaughan—No, it is just listed as an option. The government does not have a position on that.

Senator LUDWIG—Have you had a preliminary response from the Northern Territory government about that?

Mr Vaughan—We have not had a formal response from the Northern Territory government on that.

Senator LUDWIG—What response have you had if it is not formal?

Mr Vaughan—There have been discussions between the minister and the Chief Minister, but I am not aware of the full extent of those discussions.

Senator LUDWIG—Do you know the gist of it? Do you know whether or not it is the intention of the government to pursue the handing back of the Aboriginal Land Rights (Northern Territory) Act, or do you know whether or not the Northern Territory expressed a desire to accept or reject that proposition?

Mr Vaughan—We would expect to have some indication from the Northern Territory government on that issue at the end of the year when they come back with the totality of their response to the options paper.

Senator BOLKUS—Are you telling us that no federal government minister has expressed the view that the ALRA should be the jurisdiction of the Northern Territory government?

Mr Vaughan—I am unaware of what previous federal government ministers may have said—

Senator BOLKUS—I am talking about this government.

Mr Vaughan—but the current minister has not, to my knowledge, taken a position on that issue.

Senator LUDWIG—Perhaps you can find out and let the committee know whether or not the minister has formed a view. That way we can at least have a better picture of what is going on. At the moment, if they are not talking to you and you are saying that the talks with the Northern Territory government have been outside your hearing, we do not really know what is going on, do we? We do not know when this process is going to end. It would be helpful if you could at least establish a position as to what is happening in relation to this. It is an important area. I am sure people would be extremely concerned about discussions and options floating around without any clear picture of what the minister's position might be.

Mr Vaughan—I will undertake to take that on notice and advise you of what the minister's public statements on the issue have been.

Senator LUDWIG—Are you aware of the Northern Territory or the land councils' view on whether or not they would want the Aboriginal Land Rights (Northern Territory) Act to be handed back?

Mr Vaughan—In the past, the land councils have opposed the idea of repatriating the act. I have not heard a view from them in recent times. I will check that.

Senator LUDWIG—Perhaps you could establish what that is. It would be helpful for us in understanding it. My understanding was that the Chief Minister, in a press release, said that she had no interest in repatriating the act. Do you not recall that?

Mr Vaughan—I cannot recall the specific statement, but I will check that for you.

Senator LUDWIG—It would be helpful if you did, because that is my understanding of what has occurred. Perhaps I can ask you now about the Aboriginal tent embassy in Canberra.

CHAIR—It comes under the Minister for Regional Services, Territories and Local Government, doesn't it?

Senator LUDWIG—So that would be under the Minister for Regional Services, Territories and Local Government. You have no interest in that then?

Mr Vaughan—We have no administrative or direct policy responsibility for it. Obviously the minister has an interest in the issue, but it depends on whether one is talking about the by-laws and those sorts of things that apply to it. If so, then we would really need to talk to the territories portfolio. But if you are talking more generally about the future of the embassy, for example, I may be able to help you with that.

Senator LUDWIG—We will have a go and see where we end up. Has the minister or your department received any representations about whether the tent embassy should remain or about its future? If so, what was the nature of those representations?

Mr Vaughan—There has possibly been ministerial correspondence, but I would have to check on the nature of that—it does not spring to mind at the moment. We are aware that there are views within elements of the Indigenous community that the site, as it has developed, is not as appropriate as it should be and that it could be presented in a more positive way. We are aware that the people closely associated with the embassy feel, from time to time, that those concerns threaten them in some way. Aside from that, I do not know. I also know that ATSIC

has commissioned—I think through the Queanbeyan Regional Council—a consultant to do some consultation/mediation to look at ideas for the future of the embassy.

Senator LUDWIG—But that is ATSIC. Have they contacted the portfolio or the office of Indigenous affairs and had discussions with them about the future?

Mr Vaughan—We have not been in touch with the consultants—we have not heard from them. It has only recently been done. It is in the early stages, I believe.

Senator LUDWIG—As a policy unit, are you saying that you just wait for responses in relation to things like the tent embassy and you take no other interest? Is that the position that you are seriously trying to tell me? Are you saying that you do not take an interest in where it is located and how it is going to be dealt with or whether there are future plans for it and that it is a matter for the ACT minister to deal with?

Mr Vaughan—It would not be correct to describe it in that way. I am trying to distinguish between Minister Ruddock's overarching or overall responsibility for Indigenous affairs, which spreads across a range of portfolios, and that area as it relates to the specific responsibility of individual ministers. If you are looking at the question of the embassy, it is both a Territories issue in regard to the site itself and a wider national Indigenous issue because of the significance of the site and the institution of the embassy. So the minister for Aboriginal affairs—and therefore the office—has an ongoing interest in it because of its wider symbolic and historical significance, but neither the minister nor the office has day-to-day legal responsibility for the site.

Senator LUDWIG—Just dealing with that first issue, what has the office or the minister done that you are aware of in maintaining its significant position as a piece of cultural heritage?

Mr Vaughan—The government made it quite explicit when the issue was raised in the case of the establishment of Reconciliation Place that there was no linkage between the establishment and development of Reconciliation Place and the future of the embassy—they were two entirely separate and unrelated issues. The establishment of Reconciliation Place did not therefore imply or raise questions about the future of the embassy site.

Senator LUDWIG—So the short answer is nothing?

Mr Vaughan—To what question?

Senator LUDWIG—The minister has not engaged with the Minister for Regional Services, Territories and Local Government in relation to the future of the tent embassy itself?

Mr Vaughan—I believe there has been a deal of communication and discussion between the ministers about the embassy, but I am not privy to all of that.

Senator LUDWIG—Has the Office of Aboriginal and Torres Strait Islander Affairs had discussions?

Mr Vaughan—We have quite frequent and regular communications with the National Capital Authority about both the embassy and Reconciliation Place.

Senator LUDWIG—What can you tell me about the future of the tent embassy, from the office's perspective?

Mr Vaughan—My understanding is that the future of the tent embassy is secure. That is not to say that the issue between the Ngunnawal traditional elders and the residents of the embassy about the way the embassy presents itself will not be a continuing issue. ATSIC has

taken a lead in the issue because it has wider implications than for just the local elders and the current residents.

Senator LUDWIG—Looking at the response to the *Bringing them home* report and the report last week that criticised the government's response, saying that the \$63 million had dissipated and not gone to stolen generation people or organisations, can you tell me what you understand their complaints to be?

Mr Vaughan—They have claimed that the members of the stolen generation have not benefited from the programs. When we examined their report, we could not find any basis on which they had come to that conclusion. However, we do know that there are two main ongoing programs as part of the original \$63 million or the additional \$54 million. They are the national Link Up network, which is funded through ATSIC, and the emotional and social wellbeing counsellors and their support framework, funded through the Department of Health and Ageing. I will deal with the two of those separately.

The Link Up program in the Northern Territory is funded through a Darwin based organisation. There has been disputation as to which community organisation should have got that funding. ATSIC went to considerable lengths back in 1998-99 to try to mediate between the two competing groups, and there remains a degree of dissatisfaction by the group that was not funded for the fact that another Aboriginal organisation was funded. The counsellor positions that are funded through the Department of Health and Ageing are located in Aboriginal organisations, in the case of the Northern Territory and elsewhere. There is a degree of resentment, if you like, from the Alice Springs based Link Up organisation that they did not receive the funds and that in fact the funds went to other Aboriginal organisations.

In the case of Alice Springs, three of the counsellors are located in the Central Australian Aboriginal Congress. There are some 17 counsellors throughout the Northern Territory in different locations—Darwin, Tennant Creek, Katherine—including in the Central Australian Aboriginal Congress, as I indicated. When you look at the claim that was made, its basis is not so much that the services are not reaching the people as the fact that that particular organisation was not selected as the funding intermediary for the services.

Senator LUDWIG—The funding dropped from some \$63 million to \$53 million due to the determination of the National Archives. I suspect that is where the figure of \$63 million has come from.

Mr Vaughan—There were a couple of terminating projects—the archives project and the National Library oral history project.

Senator LUDWIG—Was there any formal consultation with the stolen generation organisations over the \$63 million package at the beginning of, or during, the process?

Mr Vaughan—The original \$63 million package in 1997 was developed in consultation with a number of agencies, including ATSIC. At that stage there was not a national Link Up network representing the stolen generations. We did consult directly with the existing Link Up organisation in New South Wales, which was the longest established and most senior of them, if you like, and which we used as the model for the Link Up network.

Senator LUDWIG—What about the latest round of funding, the \$54 million?

Mr Vaughan—It was essentially a continuation. The \$63 million covered the period 1998 to 2002 and the additional \$54 million covers the period 2002 to 2006.

Senator LUDWIG—Did you consult with the stolen generations organisations in relation to that?

Mr Vaughan—It was simply a continuation of the existing funding for the existing positions and the existing Link Up organisations.

Senator LUDWIG—Do you have a database which provides the number, geographical location and organisation types of those Link Up counsellors?

Mr Vaughan—Yes. We can provide a break-up of that kind.

Senator LUDWIG—That would be helpful. Thank you. Do you think that there is enough support currently out there—for argument's sake, professional affiliated persons at a national level—to assist in the process? Have you done an audit of that?

Mr Vaughan—In the case of the Link Up network, the Commonwealth government said, in late 1997 when it allocated the funding, that it was prepared to establish the basic backbone of a network across the country—that is, a Link Up organisation in each state, usually in the state capital—but that the further articulation of that network in terms of, say, its regionalised presence, was a matter for the state governments because they had in fact conducted and implemented those policies. For its part, the Commonwealth was prepared to fund on an ongoing basis the basic backbone, but its further articulation was the responsibility of the states.

Senator LUDWIG—How do you link up with the states to ensure that that work is being done?

Mr Vaughan—There is generally a close relationship between Link Up organisations and the state governments—if for no other reason than that the Link Up organisations usually need to access state government records in order to do family tracing.

Senator LUDWIG—Are you satisfied that the substance of the issues that have been raised by the stolen generation organisations have been satisfied by the continuous funding that you have been providing and the work that you have been doing?

Mr Vaughan—I think people will often, if not always, feel that a bit more could be done. They are legitimate aspirations—that more can be done—but there are always limits to what resources can do.

Senator LUDWIG—When will the funding cease?

Mr Vaughan—It will continue to 2006 at this juncture. Obviously, as we get closer to 2005-06, the government of the day will have to make a decision on whether to continue the program.

Senator LUDWIG—What work has been done in relation to match-up services? Is that a part of the work that has been commissioned under this heading, or is that separate work?

Mr Vaughan—By match up, do you mean family reunion?

Senator LUDWIG—Yes. And the more difficult issue of identifying the location of stolen generation people and being able to match them up.

Mr Vaughan—Because it holds the records of the Northern Territory and—for certain historical reasons which I will not go into—of Victoria, the Commonwealth National Archives has, as part of the original \$63 million funding, undertaken a records matching exercise to identify all the individuals and their related records that are held in National Archives, to ease the access for people from the Northern Territory or Victoria who wish to access that material to do matching and tracing. The Institute of Aboriginal and Torres Strait Islander Studies have a related project which is a genealogical database that they have been developing and maintaining. I am not across the detail of that. Each of the state archives units

has taken different measures to increase the accessibility and user-friendliness of their records, in order to facilitate family tracing and link-up. Also, child welfare agencies have to some extent over recent years, because of changed attitudes towards adoption and so forth, been facilitating access to their records for the general population.

Senator LUDWIG—Is there any funding for any coordinated program to try to draw these together? It seems to me, while I sit here and listen to you explain the disparate and half-finished programs that are under way, that there does not seem to be a coordinated effort to assist in this.

Mr Vaughan—The ministerial council relating to the archives institutions in each jurisdiction has been overlooking this to some extent, but it is really being handled by the officials representing each of the archives who, as I understand it, formed a working party back in 1997-98 in order to progress the matter. That was announced at the time as part of the Commonwealth's response with the \$63 million. The coordination relates to ensuring that, if you have a set of records relating to an individual in Victoria and another set in South Australia, because that person has moved from one jurisdiction to another, those records are linked in some way. I cannot say that I fully understand how the states do that. If we had our National Archives people here, they would be able to help us a bit on that.

Senator LUDWIG—As I understand it, some of the stolen generation people complained that they could not easily find out what services were available, because it was not clearly articulated. How do you provide that information to people? What are your system delivery mechanisms for ensuring that people understand what services are available to assist them?

Mr Vaughan—I do not think it is so much of an issue in the case of the Link Up organisations, where the purpose is self-evident. There is room for confusion to arise where someone, for example, presents at an Aboriginal medical service and says, 'I suffer from depression,' or 'I have a substance abuse problem.' They may or may not indicate that they were a separated child. The medical service counsellor would treat them in ignorance of that fact, if the person did not declare that that was part of their background. If they did declare that that was part of their background, then they would probably be referred to someone within the organisation who had more expertise in dealing with people with that type of background. What it means is that the person who is presenting as a patient would not necessarily know whether the person treating them was funded under the program—that is, under the \$63 million program for separated children—or was in fact funded under general Aboriginal health and wellbeing programs. Unless we required the counsellors who are funded under the \$63 million program to, in a sense, wear a badge which says, 'I am the dedicated separated children counsellor,' the patients would not necessarily know.

But there is also a treatment issue here in that, if someone is suffering from, say, depression, you may not readily be able to ascribe the depression to the fact that they had been separated from their parents at an early age as opposed to some other experience in life—or indeed that it is just endogenous. Therefore, from a medical and treatment point of view, it is often a moot question as to what may have given rise to the condition. The more immediate question is how to treat the condition. So there are treatment issues that make a simplistic idea of having a counsellor who is exclusively for separated children appropriately badged and of having separated children only deal with that person and not with any other treatment specialist.

Senator LUDWIG—I do not know whether you have gone to the actual substance of the question. The concern that I have—and I do not know whether you have not compounded it in your answer—is: how people find out that these services are available.

Mr Vaughan—Your first port of call would normally be to go to the Link Up organisation, which would be able to refer you to the other specialist services that existed in the region or in the location.

Senator LUDWIG—How do they find out about the Link Up organisations, or how they should contact them?

Mr Vaughan—The Link Up organisations are pretty well known. They are well advertised; they have a relatively high profile—

Senator LUDWIG—Is that part of your budget?

Mr Vaughan—No; they do their own promotion.

Senator LUDWIG—You do not provide any funding for the dissemination of information in this area?

Mr Vaughan—They would be using part of their \$63 million funding for that purpose.

Senator LUDWIG—What about within other federal government departments, for argument's sake—Centrelink or suchlike? Do they have information that would be able to direct these people to these organisations for assistance?

Mr Vaughan—I cannot answer specifically for Centrelink.

Senator LUDWIG—Do you coordinate any information that might be sent to Centrelink to assist?

Mr Vaughan—The fact is that the Link Up organisation is fairly well known nationally, and certainly in the Indigenous community. If someone were a separated child, I would be surprised if they were not aware of the Link Up network or could not readily find out about its existence from friends or even by going to an office of Centrelink, the Department of Family and Community Services or ATSIC and saying: 'I am a separated child. I need help. Where do I start?'

Senator LUDWIG—In relation to the stolen generation, have you commissioned a survey or an evaluation of how those groups are accessing the funding?

Mr Vaughan—Yes, we have had an ongoing monitoring process, which has recently taken on a new form. The existing ongoing monitoring, coordination and evaluation takes two forms. One is that the Ministerial Council for Aboriginal and Torres Strait Islander Affairs has been producing a report that covers all jurisdictions on what their responses have been to the original *Bringing them home* report. The first such report, covering the period up to the year 2000, was released some time ago and that was coordinated by Victoria on behalf of the ministerial council. The second report, covering the period up to 2001, was being coordinated by ATSIC. In addition the Commonwealth, in relation to simply its own programs—that is, the \$63 million—has been publishing periodic reports on progress implementation. The most recent one was an appendix in the department's annual report released recently. The new development that I adverted to a moment ago is that the ministerial council has commissioned an independent evaluation of all government and non-government responses to the *Bringing them home* report. That project is being managed by our office and it is currently in the field.

Senator LUDWIG—Could you tell me how much has been allocated in the budget for that, whether it was a tender process to determine who would then undertake the project, how that selection process was done, and whether funding comes out of the Office of Indigenous Affairs or elsewhere? There is a set of questions that I usually ask and there are a few more questions if I turn my mind to it, I am sure.

Mr Vaughan—It will fetch up on the list of consultants we promised you, but just to answer your question on the spot now—

Senator LUDWIG—I am happy for you to take that on notice, because you may want to look at all those issues, including the number of employees, the salaries that have been part of it, and where the funding came from—as I said earlier. You may also want to look, if there is a survey, at where the questions have come from, whether the minister has ticked off on the survey, where the survey has been sent, how you determined who would and who would not receive the survey or whether that was left in the hands of consultants and, if so, whether that is in their interim report back to you about the process. You may also want to look at whether it has been audited yet, when it is likely to be completed and when the results will be made available. When the results are made available, could you, if possible, provide them to the committee? I think that is the full gamut of the usual questions I usually ask about these things, but if I have left something out I am sure my colleagues will help me.

CHAIR—I am sure you have not, Senator Ludwig.

Mr Vaughan—If I can think of anything you have not asked, I will provide that as well.

CHAIR—You are being very helpful, Mr Vaughan! I would venture to say that that might take you further than you intended to go, though.

Senator CROSSIN—I understand the range of questions that has just been given to you by Senator Ludwig, but I am interested in having a few answers today, if that is possible, in relation to the evaluation that I understand MCATSIA commissioned. Did you say it was an audit of all government and non-government responses?

Mr Vaughan—It is a survey and evaluation of government and non-government responses. This was the one we were just adverting to. It was commissioned by the ministerial council. The office was given a project management responsibility, the funding was allocated from the ministerial council pool and an organisation called SuccessWorks was chosen by a committee of state and Commonwealth officials.

Senator CROSSIN—So that tender was publicly advertised. Is that correct?

Mr Vaughan—I think it was a selective tender by invitation, but I will have to check that in answering.

Senator CROSSIN—It would be good if you could also provide us with a list of people who sat on the committee that awarded or considered that tender.

Mr Vaughan—I will certainly provide the list of jurisdictions involved in this.

Senator CROSSIN—When you say they are doing an evaluation of the government and non-government responses, what are they actually measuring?

Mr Vaughan—They are assessing the range of responses against the categories of recommendations that were in the original *Bringing them home* report. There were recommendations about acknowledgment, records and various other things—it is against those categories of recommendations.

Senator CROSSIN—So this is an evaluation that stems from the original *Bringing them home* report, following the first allocation of money. Is that correct?

Mr Vaughan—It is not just to do with the Commonwealth; it is also looking at state responses and church and non-government responses. It is not a tick list of each of the 54 recommendations. It is dealing with them in blocks in terms of the intent underlying them because, in many cases, the government said, ‘We understand what the intent of this

recommendation was, but it is not actually the best way to skin that cat. This would be a better way to do it.' We are looking at the underlying intent.

Senator CROSSIN—What is the time line for this evaluation?

Mr Vaughan—It is due to be completed in the first half of next year—2003.

Senator CROSSIN—So by the end of June.

Mr Vaughan—Yes.

Senator CROSSIN—Do you have an idea of the amount of the tender?

Mr Vaughan—I would have to check that, but I believe it was in the order of \$100,000—subject to checking.

Senator CROSSIN—Is that all—\$100,000?

CHAIR—Do you have anything further, Senator Crossin?

Senator CROSSIN—No.

Senator ALLISON—I want to ask about the National Aboriginal Justice Advisory Committee. What support is made available to the National Aboriginal Justice Advisory Committee, or is that just a responsibility of the Attorney-General's Department?

Mr Vaughan—Unhappily, Senator, I cannot help you on that one, because the NAJAC secretarial function is provided by the Attorney-General's Department.

Senator CROSSIN—So there is no funding from your department that goes into that program.

Mr Vaughan—No, that is appropriated directly to them.

Senator ALLISON—What funding do you provide in the Partnerships Against Domestic Violence initiative for Indigenous communities?

Mr Vaughan—We do not provide any funding for that. That money is appropriated to the Department of the Prime Minister and Cabinet.

Senator ALLISON—So there are no resources from you either; you do not assist in any way?

Mr Vaughan—No. As Mr Farmer indicated, we do not provide programs or manage programs. We simply exist to provide policy advice to the minister.

Senator ALLISON—So you would not be aware of whether the funding available for family violence generally had been fully expended on not?

Mr Vaughan—I have some information, but I am not sure if I can answer your specific question—it will depend on what it is.

Senator ALLISON—Perhaps you could indicate what your information is.

Mr Vaughan—I could indicate, for example, the amount of money which I understand has been allocated through the Partnerships Against Domestic Violence program for Indigenous projects—

Senator ALLISON—That is Family and Community Services.

Mr Vaughan—No. Family and Community Services is a separate allocation. It is made under the Stronger Families and Communities Strategy. ATSIC has resources dedicated through some of its programs and then there are other programs that are not explicitly to do with family violence or not tagged as family violence but which obviously have a relationship

to the issue, such as substance abuse programs and supported accommodation assistance programs—shelters, for example. There is a gamut of programs, which I could give you some indication of. But if you want to get into the specifics of how those programs operate then we would need to get the officials from those departments.

Senator ALLISON—I am most interested in the Partnerships Against Domestic Violence program, because I understand that that is set to be discontinued shortly. Is that correct? I understand that there was not any funding set aside for that in the May budget. Is that correct?

Mr Vaughan—I understand that there is no commitment to funding beyond June at the end of this financial year at this stage.

Senator ALLISON—No funding ‘at this stage’; does that suggest—

Mr Vaughan—We have a new budget for next year coming up. That is all I am adverting to.

Senator ALLISON—What sort of funding is allocated by the department to address alcohol and substance abuse?

Mr Vaughan—Most of the money for that purpose would go through the Department of Health and Ageing.

Senator ALLISON—So none of it comes from your department?

Mr Vaughan—No. The money for Indigenous programs of that and other kinds is appropriated directly to those portfolios and departments; it is not channelled through our office.

Senator ALLISON—What about resources or funding in addition to ATSIC’s existing budget to assist ATSIC in its audit of its existing programs? I understand that the minister with responsibility for ATSIC had requested that assistance from your department. Is that the case? Is that assistance likely to be coming?

Mr Vaughan—ATSIC would be better placed to answer this question, but ATSIC have set aside an amount of money to undertake what has colloquially been called ‘an audit of existing family violence measures and programs’. They were doing that from within their existing budget.

Senator ALLISON—I understand that quite a lot of your budget is spent on litigation. It was suggested that the figure was around 30 per cent. Can you confirm that? Can you confirm that that is actually down from previous expenditure of 47 per cent?

Mr Vaughan—It has been of that order. It varies from year to year, depending on the range of litigation that we are involved in. It has reduced this year compared with last year both in absolute terms and proportionate terms.

Senator ALLISON—What is it in absolute terms? Do you have a dollar figure?

Mr Vaughan—I do not have the actual figure on me at the moment. In our administered item, \$1 million was the budget estimate for this year for litigation compared with \$1.4 million last year.

Senator ALLISON—Broadly speaking, what are the categories of litigation that that money is used for?

Mr Vaughan—The two main cost drivers have been the separated children litigation, which is mainly the Gunner and Cubillo case, and the Hindmarsh Island bridge litigation. In

the past year, the Hindmarsh Island bridge litigation has been our main expense. There has not been significant expenditure on the separated children litigation in the past year.

Senator ALLISON—So most of that \$4 million would have been spent on Hindmarsh?

Mr Vaughan—Not \$4 million; \$1 million.

Senator ALLISON—I thought you said that the previous year's budget was \$4 million.

Mr Vaughan—The previous year's budget was \$1.4 million—\$1.357 million, to be precise.

Senator ALLISON—Does any of the funding for Indigenous language programs come through your department?

Mr Vaughan—No. That is handled to some extent by ATSIC and to some extent by the Institute of Aboriginal and Torres Strait Islander Studies and also by the states themselves.

Senator ALLISON—So your department essentially has no role in funding those kinds of programs?

Mr Vaughan—We do not have any program role.

Senator LUDWIG—A report in the *Age* on 9 November 2002 caused me some concern. You may not have seen it. It said:

Federal Indigenous Affairs Minister Philip Ruddock has written to the Mirimbiak Nations Aboriginal Corporation, warning it that he will consider withdrawing its representative status under the Native Title Act unless he is convinced to act otherwise.

Are you aware of that issue?

Mr Vaughan—Only in a general sense—not the specifics. The minister is advised and supported in relation to native title representative bodies, of which Mirimbiak is one, by ATSIC because ATSIC administers that part of the Native Title Act.

Senator LUDWIG—I know that; I just wanted to make sure that the Office of Aboriginal and Torres Strait Islander Affairs did not have any direct involvement in that. The office does not have any direct interest in this?

Mr Vaughan—Not in relation to individual representative bodies like Mirimbiak. We do have an ongoing interest in the overall operation of the native title system. The primary carriage of that, in an oversight sense, is with the Attorney-General's Department but we obviously have a serious interest in it too. But when it comes down to individual representative bodies like Mirimbiak, the funding of them is administered more or less exclusively by ATSIC.

Senator LUDWIG—So I can hold those questions for ATSIC and I do not need to ask the office any questions about that. Your policy does not extend to that area?

Mr Vaughan—You do not need to ask us any questions.

Senator LUDWIG—No, but I will in any event! Does the office have an interest in the Indigenous land strategies?

Mr Vaughan—I think what is referred to there is the statutory role of the Indigenous Land Corporation, which is required under its act to devise these strategies. Those questions are better addressed to the Indigenous Land Corporation.

Senator LUDWIG—By way of explanation—which I do not have to make—the reason I am doing this is that, because you do not appear together, we sometimes face the difficulty that we ask them a question and they refer it back to your office or to Indigenous affairs or to

the minister. To try to minimise that eventuality, it makes it easier if we first establish who is going to have the greatest interest in this. I do not have any further questions for the Office of Aboriginal and Torres Strait Islander Affairs; I do have others in relation to ATSIC and the ILC.

CHAIR—I understand that. Are there any other questions for Mr Vaughan in relation to outcome 3 and the Office of Aboriginal and Torres Strait Islander Affairs? There being none, Mr Vaughan, thank you very much for your assistance this morning. We will move on to ATSIC.

[10.54 a.m.]

Aboriginal and Torres Strait Islander Commission

CHAIR—Good morning, gentlemen—I can say that universally.

Senator LUDWIG—I wanted to ask a couple of questions about the budget allocation. Specifically, the answer provided to question No. 16 included an attachment entitled ‘ATSIC 2002-03 budget allocation: regional councils and national program’. I have a couple of questions about that attachment—firstly, in relation to Victoria, where there is a single line of entry. To whom would I be directing my questions—I know there are a lot of you here.

Mr Gibbons—The attachment you are referring to is a list of funding by state, as I recall. That is probably the reason. In Victoria there are two regions—and we can give you the breakdown of funding by those regions, if you require.

Senator LUDWIG—If you could provide it in a similar form to the others—if there are two regions then by region—that would be helpful.

Mr Gibbons—Some states have one region only and other states have more than one region. What we will do, on notice, is provide another table that breaks things down further for you.

Senator LUDWIG—That would be helpful—or with a note perhaps at the end which explains if there are any inconsistencies or differences that might otherwise lead me on notice to ask another question.

Mr Gibbons—We can do that.

Senator LUDWIG—Looking at the uneven spread of the native title funds, it seems that there are no funds expended in New South Wales or South Australia—there are zero entries in places. Can you explain what that means?

Mr Stacey—Certainly we are making allocations for native title services in New South Wales and South Australia. I do not have that document in front of me—

Senator LUDWIG—I am happy for you to take that question on notice. It is not critical that you answer it now, because there are a couple of questions that surround that particular document. There is already an undertaking from Mr Gibbons to provide an updated table, so while you are looking at that, you could also perhaps explain why there are some zero entries in New South Wales and South Australia—and why there is no budget allocation for family violence prevention in Victoria as well. The other area which interests me is municipal services; what is that exactly and how is that funded? Is that the provision of council works?

Mr Gibbons—I will just go back to the earlier question about native title funding. In the document that you have, the reason there is a zero by New South Wales, I am told, is that at the time that document was produced the distribution of funding across the nation had not

been clarified. In the document that I will provide you with I will make sure that we have distributed the funding appropriately by state for the native title expenditure.

Senator LUDWIG—I figured that there would be a reasonable explanation, but I would have expected a note to say that there is a zero entry because of X or Y reason. Having not got that before me, this is an opportunity to follow up and clear up some of those questions. So what are municipal services?

Mr Taylor—The municipal services component is an element of the Community Housing Infrastructure Program. Over the last few years it has been around \$40 million annually. It is part of a regional council component of CHIP. It is intended to provide small-scale capital and some recurrent funding for municipal service type activity—roads, water, power, sewerage—in areas where mainstream local government does not extend to full servicing of Aboriginal communities.

Senator LUDWIG—So there is something in the order of \$41 million being expended?

Mr Taylor—It varies a little. The allocations can be varied depending on regional council decision making.

Senator LUDWIG—And that is spent by ATSIC rather than an appropriate local government authority or regional or municipal council?

Mr Taylor—Yes. In some parts of Australia there are no mainstream local governments to cover Indigenous communities.

Senator LUDWIG—Is the work contracted out or do you talk with the local authority in the area and discuss with them what their future plans are and whether or not they will extend to providing those services? Do you tender for work on request from particular areas?

Mr Taylor—Essentially, the municipal services component is grant funded to Indigenous community organisations. They can use those funds to tender services, sometimes from adjacent shires. Often they are basically purchasing services themselves. Some of the funding on municipal services goes to recurrent costs of the organisation administering basic services such as water and waste management. It can cover off things such as essential services offices, community based administrators to purchase fuel and a whole range of those local self-management activities.

Senator LUDWIG—Do you have a working definition to determine the length and breadth of what falls within municipal services?

Mr Taylor—Yes, the CHIP policy guidelines—the program guidelines for that program—set out the parameters for funding for municipal services. We can provide a copy of those policy guidelines to you if you would like.

Senator LUDWIG—It would be helpful if you provided that and also a breakdown of how those funds are allocated—to which areas and what the money was expended on. If it permits a breakdown to that extent it would be helpful. In relation to the welfare reform and participation, has that money been spent in the national office?

Mr Taylor—It is being administered as a national program, yes.

Senator LUDWIG—Who administers it?

Mr Taylor—It is administered by ATSIC.

Senator LUDWIG—How is the money then spent? It is not spent in the national office; it is spent by the national office. Is that correct?

Mr Taylor—The funding is provided from our national program estimate item. Essentially, strategies are agreed at the regional level through our regional councils and regional offices. Once a funded strategy is agreed between the national office and the relevant region, funds are transferred to the regional cost centre for local administration.

Senator LUDWIG—How much is that? Does the amount vary from year to year?

Mr Taylor—The program has been running since May or June 2001. We can provide you with a breakdown of the funds expended to date if you like.

Senator LUDWIG—Can you also show the geographic area and the area of welfare reform. Do you have a working definition of what you put within that area and how you describe it?

Mr Taylor—Yes, there are also guidelines for that component which we can provide to you.

Senator LUDWIG—What other guidelines do you have? Do you have guidelines for how you expend the money across the board? We have covered municipal services. You have guidelines for welfare reform. How many other guidelines do you have?

Mr Taylor—Each output has a series of policies and procedures in place to guide our staff and regional councils in delivery of those programs against those outputs.

Senator LUDWIG—I will not ask for a copy of all of those yet, but it is helpful to know. Do you have a list of consultants that have been employed to undertake various tasks? It would appear, obviously, in your annual report.

Mr Gibbons—In our annual report at page 232 we mention how much we spend on consultants and we provide a reference there to our web site, where the full list of consultancies is published.

Senator LUDWIG—I understand that you received \$30.5 million to provide capacity building and to strengthen governance in remote communities over four years, under the community participation agreements. I think this is a matter we have been following up with you for some time now. Can you update us on the progress?

Mr Taylor—In relation to the implementation of CPAs, we recently went to tender to access community development and capacity building assistance to implement CPAs covering five communities in Western Australia, in the Tjarabalan region. We are about to go to tender for similar kinds of assistance to implement CPA frameworks, through community consultation and scoping of local arrangements for their implementation, for three communities at Cape York. In the last couple of weeks we have also completed initial negotiations with a separate community in Queensland to proceed to a scoping and implementation process for CPAs.

Senator LUDWIG—How many is that, in total?

Mr Taylor—I have not completed my list but, depending on your definition of community, Senator, we are looking at—

Senator LUDWIG—It is your definition, not mine.

Mr Taylor—To a certain extent, it is the communities themselves that are involved in defining 'community'. Doing a quick calculation, we are probably in the early stages of consultation on implementation with about 15 to 17 communities nationally.

Senator LUDWIG—What was the target by 2005?

Mr Taylor—We always saw the implementation of CPAs as being fairly slow to start with. As to the estimates for the program, I think we were allocated only about a million dollars in the first year and five million in 2002-03, and so we are clearly seeing the bulk of implementation happening in out-years 3-4 and 4-5. We did not have particular targets for the first year. We hoped to have between five and 20 pilot sites running in the second year, and we are reasonably close to that indicative target. They were not formal targets set by the board, but I think we are moving into a phase of implementation and growth in the numbers of projects being scoped and implemented.

Senator CROSSIN—Mr Taylor, do you have a policy framework under which you are operating and rolling out this implementation?

Mr Taylor—Yes, we do.

Senator CROSSIN—Is that available on the web site, or can you provide us with a copy of it?

Mr Taylor—We can provide you with a copy.

Senator CROSSIN—When was that policy completed?

Mr Taylor—In the past month. The process has taken substantial dialogue with the Department of Family and Community Services and Centrelink, and we went through an extensive piloting of one project, which proved to be an incredibly valuable learning experience.

Senator CROSSIN—Was that at Mutitjulu?

Mr Taylor—Yes.

Senator CROSSIN—Has that pilot scheme terminated now?

Mr Taylor—We are not actively pursuing a CPA in that community at the moment. We have had recent discussions with our regional manager there. There are views in that region that the CPA process ought to recommence; but, as I said, we are in discussions with the regional manager as to whether or not the local circumstances are conducive to proceeding further with that pilot.

Senator CROSSIN—So the process should be a bit easier now that you at least have a policy framework.

Mr Taylor—I think we were always aware that the process of policy settings for a fairly complex program would be iterative. That is the basis on which we are continually refining the policy framework for it, with DFACS and Centrelink.

Senator CROSSIN—A copy of that would be useful.

Senator LUDWIG—In relation to the program, the funds provided were not heavily weighted for up-front seed funding. They were low in the beginning but will increase over time. From what you have said it appears that, because you did not have sufficient funds at the outset, your ability to get it up and running was curtailed to some extent; is that correct?

Mr Taylor—No, Senator. I think that is slightly the wrong emphasis. The funds were allocated intentionally with fairly low dollars in the first year and a slightly larger amount in the second year, because there was an understanding that it would not be an easy program to simply roll-out in the short term. In anticipation of that, the funds were relatively modest in the first year and grow quite strongly to year 4.

Senator LUDWIG—I misunderstood you when you said there were small dollars in the beginning, which made it difficult to get some up and running.

Mr Taylor—I am not sure that I said that.

Senator LUDWIG—That was what I understood you to have said. The acoustics are not always so great in this place.

Mr Taylor—Maybe I can correct myself and say that the funds were intentionally low in the first year and that they grow strongly in out years. To clarify that, it was not necessarily a constraint in implementation.

Senator LUDWIG—Have there been any constraints or limitations that you have come across since the program has started? As I understand it, your aim is for something like 94 communities by 2005. Perhaps you can tell me whether you think you will reach that, on present indications.

Mr Taylor—We are reasonably confident that we will. Your first question was about elements of constraint. I would prefer to see them as areas of significant complexity. In broad terms, there are three that I think we have been grappling with. One is that the general essence of the CPA process is that it is intended to translate mutual obligation frameworks, under the Australians Working Together package, into remote areas. As you may well be aware there is already a 20-odd year history of communities providing substantial mutual obligation in return to their community, through participation in the CDEP program, where they are effectively working for the equivalent of Jobsearch and Newstart for community benefit projects. Translating recent innovations in mainstream welfare reform into that fairly complex and long-term history is one area of complexity in its own right.

The other area is that clearly, for community participation and agreements to work effectively, they rely on fairly sound governance arrangements at the local community level. If community leaders are to assert general obligations on community members, their standing has to be reasonably sound for that authority to be recognised by community members. Finding and building the capacity of community organisations to assert those kinds of mutual obligations, in a fairly disparate and fragmented governance network for community organisations, is one of the essential challenges. It also involves dealing with such issues as the reform environments around local and state government activities as they impinge on community governance issues. So there is a range of quite complex domains in which we are having to negotiate the implementation of those agreements.

Senator LUDWIG—How does the COAG document on reconciliation, which committed the government to trialing 10 communities as a whole of government approach, impact on the program?

Mr Taylor—I think ATSI's point of view is that we are clearly seeing the whole of government pilots as a significant opportunity for us to explore the implementation of CPAs in those areas. We are in reasonably constant dialogue with the ICCT, the task force that is brokering the implementation of those whole of government pilots, and we are working closely with them on the implementation of CPAs, where appropriate, in those pilot sites.

Senator LUDWIG—Do they have a separate policy framework or do they utilise the existing policy framework?

Mr Taylor—In relation to CPAs?

Senator LUDWIG—Yes.

Mr Taylor—They do not have a role in policy setting on CPAs. It is program administered by ATSIC. They may have a role in working with us in dialogue on state and local government issues, where those impact on CPAs, but they have no direct role in policy or program delivery for CPAs.

Senator LUDWIG—How many are up and running now?

Mr Taylor—Whole of government pilots?

Senator LUDWIG—Yes.

Mr Taylor—I understand that two sites have been announced jointly by the Commonwealth and the states.

Senator LUDWIG—Which are they?

Mr Taylor—I think most recently there was one at Port Keats in the Northern Territory and one at Cape York.

Senator LUDWIG—Is that the one where Mr Abbott recently announced that he was the champion of Cape York and in charge of the approach in the region?

Mr Taylor—Yes.

Senator LUDWIG—Is that your understanding of how that is going to work?

Mr Taylor—My understanding of the whole of government pilots is that various Commonwealth secretaries and their agencies are taking a lead role in the Commonwealth's engagement in whole of government strategies in the pilot sites and that Minister Abbott and his department, DEWR, are taking the lead role in dealing with state and local governments in relation to Cape York.

Senator LUDWIG—Where does the funding for that come from? It is that still part of this \$30.5 million?

Mr Farmer—Perhaps I could talk about this.

Senator LUDWIG—I thought that Mr Taylor was doing well.

Mr Farmer—I know, but I think that he is now straying out of the wading, comfort level and into—

Senator LUDWIG—I thought that.

Mr Farmer—deeper water but not dangerous water. I chair the group of Secretaries which is coordinating the work of the task force in this area. So if there are questions there, I would be very happy to take them.

Senator LUDWIG—All right. Where is the funding for this? It is not part of the CPAs as such; it is separate again. Is the funding coming from the \$30.5 million for capacity building or is it coming from a different bucket in relation to it? Have the 10 communities been identified? What selection process identified them? Who was on that panel or selection process? Was there a lead agency or person who then identified the 10 communities? Did they talk to ATSIC to establish that they were ones for whom ATSIC would agree it would be necessary or helpful to have a whole of government approach as a trialing process? How is the whole of government funding going to be initiated from other departments? Mr Abbott might be a good example. Is he also utilising funds from within the department to assist in the whole of government approach? If so, how much is going into the pilot program? We can use Cape York as an example. I might just pause there and let you have go at answering some of those questions.

Mr Farmer—The first thing to say is that ATSIC is represented on the Secretaries group. The CEO of ATSIC comes along to that. That ensures the sort of linkage that I guess you are concerned about. Selection of communities is not only a federal government issue but a COAG initiative. The choice of the community is still going on. We are in the quite early days of this process. The choice will be the result of consultation between the federal and state governments and then quite a bit of consultation with communities about just what the focus of the joint action would be in any particular jurisdiction. The choice of communities, as I say, is really a nationwide one.

The general concept here is one of shared responsibility. The state and federal governments, plus local government and the communities, are really trying, obviously on a trial basis to see whether we can make the whole greater than the sum of the parts by looking at a strongly focused and coordinated effort in particular communities or areas. The departments involved have pooled a number of administrative funds in order to fund the task force operations—that is, the staffing, travel and other costs involved. They are administrative funds of a relatively modest order. I forget the details, but they are quite modest.

In terms of the funds that might be available in any particular community, as yet no particular protocols have been negotiated for determining whether the Secretary or the department that is the lead agency in a particular community would have access to funds from another agency. There is a general feeling in the Secretaries group—and the ministers have indicated that they are quite positive about this—that, in looking at the needs of a particular community, we should have some flexibility in the use of funds over and above what has been the norm so far. If the work in a particular community reveals that there is a need for some additional focus in a particular area—be it health, education or what have you—the lead agency will have the capacity, at least, to consult with the other agencies and ask them to allocate additional funds for that community. I say ‘at least’, but it is certainly possible that we will go further with developing some protocols or new arrangements there. It is really a bit early to tell yet, because we are still at the reasonably early stages of implementing this new idea.

Senator LUDWIG—Is there any discussion paper or document which details how you are going to progress this? It seems that it is a little ad hoc at the moment. That may be just the impression you are giving me; that is the impression I am gaining. I am more interested in how the remaining eight communities are going to be selected and what process is going to be used. Your department is usually very good at providing documents as to how the processes will go ahead and how they will be dealt with; and how they will be ordered in the end to make sure that they have been undertaken appropriately and that the monies have been expended and accounted for.

Mr Farmer—Yes. There is a lot of work going on now about an evaluation framework for the trials. Also, quite a bit of work has gone into a public affairs policy so that, as we move further towards selecting and announcing communities, details will be made available as to how the trials will work. We are developing these papers in consultation, of course, with the other jurisdictions.

Senator LUDWIG—Are the acoustics bad in this main committee room? I will try a little harder. Perhaps you could take it on notice now and we can come back in February to explore a little further those issues of the evaluation of the program, the selection process and the moneys to be expended. We can look at how you account for the moneys that have been internally provided by other departments, and where that money has come from. Then we can get an overview of the program as a whole of government approach.

Mr Farmer—Regarding the money that has been provided by other departments for establishing the task force, I can give you that information on notice quite readily. It is a quite modest amount of administrative funding. It is not program funds, which are really the nub of the issue here. In relation to the expenditure of, and accounting for, program funds, that will continue to be by the normal reporting processes, but that is subject to our looking at the potential for developing some new protocols for more flexible expenditure of funding. I would not like to leave you secure in your feeling that this is an ad hoc process.

Senator LUDWIG—You still seem to be telling me that it is a little vague. Can you comfort me a bit more? I am getting messages of ‘ad hoc’ and ‘vague’.

Mr Farmer—We are going into new territory.

Senator LUDWIG—Now we are going into the unknown!

Mr Farmer—No; I do not think so. This is a process that the Council of Australian Governments initiated. There has been quite a bit of public reference to the COAG initiative. Officials are moving very quickly to implement the COAG decision. In terms of how these trials will operate on the ground, we have made a great deal of progress in talking with our state colleagues. We have obviously gone a long way down the path of reaching agreement on the communities, and that is via the process that I have already outlined to you. Two of the communities have been announced so far, and consultations are continuing with a view to making further announcements as soon as we can. This is not ‘business as usual’. A lot of people are really putting some serious thought into how we Australians—that is, all Australians not only at the federal, state and local government levels but also in volunteer organisations and the communities involved—can all aim to make a better fist of working to improve the lot of Indigenous Australians than we have made in many cases in the past.

Senator LUDWIG—I can assure you that that is the purpose of my questioning: to make sure that people’s expectations are not raised beyond what the government intends to deliver as a whole-of-government approach to this area. People do need to understand that what they are going to receive is a whole-of-government approach?

Mr Farmer—Yes; that is reasonable.

CHAIR—In relation to timing, we still have the ILC to come to. I understand, as I said to the minister, that the guidelines are only indicative, but how long do you estimate that you will need to further question ATSIC, before we get on to ILC and then on to the Attorney-General’s Department?

Senator LUDWIG—I suspect that I will be finished in about half an hour.

CHAIR—Thank you very much.

Senator LUDWIG—My next questions relate to the CDEP program and funding. People who receive those funds are not employees as such—or do you regard them as employees?

Mr Taylor—They are regarded as employees.

Senator LUDWIG—Do they receive workers compensation if they get injured at work?

Mr Taylor—The general requirement for the program is that all relevant industrial conditions should be met, depending on the category of employment.

Senator LUDWIG—Are they entitled to long service provisions?

Mr Taylor—Where appropriate.

Senator LUDWIG—What about sick leave and those sorts of benefits that are accrued?

Mr Taylor—Yes, depending on the relevant award.

Senator LUDWIG—What about superannuation?

Mr Taylor—I am sorry but I cannot advise you on that. I will have to take that on notice.

Senator LUDWIG—All right. Some awards may still provide for three per cent occupational superannuation, but we now have legislation that deals with that.

Mr Taylor—I would rather check the specific coverage and then provide you with advice on that.

Senator LUDWIG—All right. I was also trying to ascertain the length of service of some of these people under this program. Do you keep a file on the area or the regions that they are employed in, the type of work they do and how long they have been employed in these areas?

Mr Taylor—The history of the scheme is that it has been very heavily devolved, and key decisions are made locally. That has led us to, I guess, a relatively poor national database on the kinds of issues that you are talking about. There have been significant enhancements over the last few years. We can provide you with some briefing on categories of employment. I doubt that we are able to give you good historical data on the duration that people remain in the scheme, but I can see what I can provide to you.

Senator LUDWIG—Were the schemes initially designed for people to be employed on them long term?

Mr Taylor—‘Initially’ being 1977, Senator. I think the political history of the scheme is that it was initially intended to provide a kind of structured approach to labour for communities where there clearly was not a labour market. From memory, it started in a couple of central desert communities. Clearly there was an expectation at that point that the scheme would provide a long-term framework for communities to manage their work. I think the phrase at the time was, ‘There’s work but no jobs.’

Senator LUDWIG—Since it started, has there been any indication or desire by ATSIC to review the program to see whether it is meeting its original aims or to determine that it is still functioning in the area that it is supposed to?

Mr Taylor—From memory, there have been two substantial reviews of CDEP during the 1990s. The first occurred as part of a broad-ranging review of the Aboriginal employment development policy framework in 1994. There was a substantial review of social, economic and employment outcomes from CDEP at that stage. In 1997, I think, the government commissioned Ian Spicer to lead a review of CDEP, which identified a range of fairly diverse objectives being pursued by CDEPs around the country. So, yes, there have been substantial reviews. Neither of them was directly commissioned by ATSIC, but certainly ATSIC took a lead role as part of a broad-ranging, government initiated review.

Senator LUDWIG—You say the wages they receive are dealt with locally or within the community. You are going to check on superannuation and workers compensation. Those are paid to the various state agencies that look after workers compensation. Is that a requirement of the program? How do you audit that to ensure that that is actually occurring?

Mr Taylor—Yes, it is a requirement of the program. Generally, when budgets are submitted from CDEPs, if there is not a budget line identified for coverage of those kinds of matters, our field staff would be raising that with the organisation. As part of our periodic reviews of CDEPs, I think we look at compliance against those kinds of guidelines. If there are problems, then we work with the organisation to remedy them.

Senator LUDWIG—Have you identified any problems?

Mr Taylor—In the last financial year?

Senator LUDWIG—Yes, just take the last financial year. Is there a way that you identify problems and then go and resolve them?

Mr Taylor—Through the methods I have just described, yes. I cannot tell you off the top of my head about any particularly difficult issues around workers compensation. I can check with the program manager specifically and provide you with advice on that.

Senator LUDWIG—I guess I was more interested in establishing whether there is an appropriate auditing process or a framework to resolve issues as they might arise, to ensure that down the track people do not put out their hand and say, ‘Our workers comp wasn’t looked after,’ or, ‘Our long service leave wasn’t accounted for or put aside,’ because you would have to have a sinking fund to deal with that should it eventuate in the future. Issues like bereavement leave, annual leave and sick leave are the same; you need to ensure that those funds are available when they fall due. There are things like training or ongoing issues that need to be properly part of the program. Given that it is a program that you have a lot of investment in, it exercises my mind that you would normally have a framework to deal with those sorts of issues.

Mr Taylor—Our field staff are generally expected to review compliance against those kinds of criteria. As I said, with the assessment of applications and submitted budgets for CDPs, staff do review issues such as whether appropriate allocations have been set aside. In our performance monitoring and financial monitoring of funded CDP organisations, those matters are scrutinised at least on a six-monthly basis. When field staff visit CDPs to review their performance, they generally include examination of compliance against those kinds of employment and regulatory requirements.

Senator LUDWIG—I asked the Office of Aboriginal and Torres Strait Islander Affairs a couple of questions earlier about the tent embassy. You may have been in the room at the time. I am interested in whether ATSIC has been consulted in relation to the tent embassy and, if so, to what extent.

Mr Gibbons—I understand the board has taken a close interest in this. I think the chair has visited the embassy occupants at least twice, and I believe they were invited to meet with the board of ATSIC earlier this year. I think the board’s approach has been to support mediation and, in that context, it agreed that we would fund, through our Queanbeyan Regional Council, a program to facilitate mediation. Mr Turner might be able to say more.

Mr Turner—We have provided funds to our Queanbeyan regional office to undertake a consultancy to deal with the stakeholders.

Senator LUDWIG—How much has been allocated and to whom?

Mr Turner—We have put it to our regional office at Queanbeyan. The amount is up to approximately \$80,000. It is going through a tender process.

Senator LUDWIG—Have you undertaken any examination of the Australian heritage bill, which is in the parliament, as to how it might affect the tent embassy?

Mr Turner—No, we have not. There have been a couple of meetings between our deputy CEO and Minister Tuckey on a number of issues to do with the tent embassy. I could check on that for you.

Senator LUDWIG—What have those discussions been about?

Mr Turner—They have been mainly to look at a mediation arrangement in terms of what might happen at the tent embassy with the Commonwealth and the tent embassy people.

Senator LUDWIG—Do you know if there are any future plans for it?

Mr Turner—No, I don't.

Senator LUDWIG—Then what are you discussing?

Mr Turner—I was not party to the discussions. I think they were more to see what assistance ATSIC could provide in trying to resolve a number of issues relating to the tent embassy.

Senator LUDWIG—In relation to native title representative bodies, I referred earlier to the Mirimbiak Nations Aboriginal Corp. and I quoted from a press clipping from the *Age* of Saturday, 9 November 2002, which said:

Federal Indigenous Affairs Minister Philip Ruddock has written to the Mirimbiak Nations Aboriginal Corporation, warning it that he will consider withdrawing its representative status under the Native Title Act unless he is convinced to act otherwise.

Are you aware of that?

Mr Stacey—It is the case that the minister has written to Mirimbiak indicating that he is considering whether or not it should continue to be a native title representative body.

Senator LUDWIG—Can you update me on the status of the NTRB Mirimbiak Nations Aboriginal Corporation in Victoria?

Mr Stacey—It remains a representative body. The minister has written to say that he is considering whether it should continue to be a representative body. Under the Native Title Act, he has to give the representative body at least 90 days to respond. He wrote on 27 September, so a response is not due until around Christmas—27 December. At this stage we anticipate that the minister would have regard to the response from Mirimbiak and move towards making a decision early next year. But, in the meantime, it remains a representative body and it is continuing to be funded by ATSIC to provide services to native title clients across the state.

Senator LUDWIG—When the minister writes this letter, does it provide reasons, or is there a copy of the letter available to the committee with reasons?

Mr Stacey—The letter is issued under section 203AH of the Native Title Act, and it does provide the organisation with reasons why the minister might be considering withdrawing its status.

Senator LUDWIG—Is that available to the committee?

Mr Stacey—At this stage—

Senator LUDWIG—I cannot see any reasons why it would not be if it is a requirement under the act.

Mr Stacey—At this stage, I will have to take it up with the minister as to whether or not he wants to release it to the committee.

Senator LUDWIG—Who provides the reasons?

Mr Stacey—There is a letter that goes from the minister to the representative body, and that letter includes reasons why the minister is considering withdrawing its status..

Senator LUDWIG—Did ATSIC undertake any work as to why the Mirimbiak Nations Aboriginal Corporation should be sent that letter in the first place?

Mr Stacey—Yes. We had regard to consecutive independent reviews of the organisation which have demonstrated that it was having continuing difficulties with performing its

functions and consulting effectively with Aboriginal people across the state. We also have been having ongoing discussions with the representative body itself—in particular, its board of directors.

Senator LUDWIG—Are those independent reviews available to the committee?

Mr Stacey—Again, not at this stage.

Senator LUDWIG—Perhaps you take can take it on notice, rather than saying no, and have a look at it for me.

Mr Stacey—Of course. I am prepared to take that on notice.

Senator LUDWIG—Is there a process in place to deal with the eventualities should its status be withdrawn? You are saying that the deadline is likely to be 27 December, so we have got the Christmas period and January. I am sure you do not close down, but other offices do or the relevant people go on leave. What happens to the task that that organisation was performing in Victoria?

Mr Stacey—The deadline is in relation to Mirimbiak providing a response to the minister's letter to the organisation indicating that he is considering withdrawing its status. So that deadline does not mean that after that point, all of a sudden, funding ceases to the representative body or its status as a rep body ceases. It is only that the minister has asked, consistent with the Native Title Act, that they provide a response 90 days from when he has issued them with a letter.

Following on from that, the minister will have to have full regard to what the organisation has said in response to the minister's letter before he reaches any decision. Having regard to the Christmas period, that is not likely before February, in my experience. In the meantime, funding will continue to the organisation. We have already advised it of that. Should the minister ultimately decide to withdraw the status of representative body, then we would have contingencies in place to make sure that a service, and in particular a new service, can be provided to native title clients across the state.

Senator LUDWIG—I might put those questions on notice then.

CHAIR—May I thank the officers of ATSIC very much for assisting the committee this morning.

[11.46 a.m.]

Indigenous Land Corporation

Senator LUDWIG—I was looking at a press release of 11 April 2002. I am sure you would be aware of it, but I will remind you. It is in relation to a donation of health research money. The question is not about the money and what it might be used for. The aim of the question is to elicit from you why you would fund something that appears to be directed at medical health research out of the Indigenous Land Corporation. Is that within your charter?

Mr Galvin—The board decided that that was a cause to support as people in remote areas in particular suffer from that disease and it is debilitating. It thought that it was a worthy cause to provide that money for, because if people, particularly young people, are not in good health—the Indigenous population of Australia suffers from that disease more than any other population in the world—it would enable research to be undertaken to address that disease and therefore provide good health to people who could undertake land management. So it was just a particular request and the board thought it was worthy of consideration and support.

Senator LUDWIG—So you are seriously telling me that the thread that you have to substantiate the donation is that people in good health will in the future be able to manage their land. Is that the thread that you are seriously presenting to the committee?

Mr Galvin—Yes.

Senator LUDWIG—So you are saying that it would extend to other areas of health as well—that your funding can stretch to all of those areas which then might have some minor benefit, not only to the Aboriginal people but also to the wider community? Rheumatic fever is not prevalent in one section of the community. It is a matter that will help the wider community. Is that not right?

Mr Galvin—It is particularly prevalent in the Indigenous community. As I have said, the Australian Indigenous population has the highest incidence of rheumatic fever in Australia. It was a particular submission that was brought to the board to see if the board would consider providing one-off funding. The board deemed that appropriate, as it would provide significant benefit to Indigenous people.

Senator LUDWIG—So you see it as your responsibility to undertake donations to fund research into medical issues?

Mr Galvin—The board at that stage thought it was a cause that would assist Aboriginal people to combat rheumatic fever. My understanding is that it is for a trial in communities of a particular vaccine. That vaccine will be given to Indigenous children. I think a trial will be undertaken in Queensland. The board saw that as something that would assist those children to possibly get over rheumatic fever and therefore be able to attend school, get a good education, become literate and assist in the corporate governance of Indigenous land-holding bodies.

Senator LUDWIG—And that all hinges on a donation of \$50,000 for research on rheumatic fever? I do not think that is right; I just do not accept that.

Mr Galvin—Putting the trial out into Indigenous communities was the particular issue.

Senator LUDWIG—You do not think it would be better dealt with by government health departments and the like?

Mr Galvin—I cannot comment on that.

Senator LUDWIG—When the application was before you, did you consider undertaking to contact health departments to see what work they were doing and whether or not they were funding that area separately?

Mr Galvin—Those consultations were undertaken. The particular issue was the on-the-ground trial of the vaccine whereby Indigenous field officers would go out and trial the vaccine, and we hope very much that it will be positive.

Senator LUDWIG—What section of the act allows you to make a grant to a medical research body?

Mr Galvin—I will take that on notice.

Senator LUDWIG—You cannot point to it?

Mr Galvin—Not right at the moment.

Senator LUDWIG—Does it exist?

Mr Galvin—It is under the land management function.

Senator LUDWIG—You simply say, ‘It is under the land management function,’ but you cannot point to one section which authorises a donation of \$50,000 to a medical research institute? Is that what you are seriously telling the committee?

Mr Galvin—Yes.

Senator LUDWIG—Have the federal or state governments put any money into the scheme?

Mr Galvin—I am not aware of that, but I would assume so. It is a long-term research project.

Senator LUDWIG—Perhaps you could take that on notice as well. In your press release you say this will encourage ‘mainstream agencies to come on board and provide funds for such important research’. Perhaps you could also tell me if that has occurred.

Mr Galvin—Yes.

Senator LUDWIG—As I understand it, some changes to the ILC’s national Indigenous land strategy have been promulgated, and the minister received those on 18 September. What was the cause of these changes—what provoked them?

Mr Galvin—Under the NILS previous to the 2001-06 NILS, the ILC primarily acquired land for cultural purposes. We have undertaken a comprehensive stocktake of the approximately 151 properties which we have purchased since the beginning of the ILC. As a result of that stocktake, we have seen that these have not provided benefits to a number of those communities that have had purchased land divested to them. We believe that the general process of purchasing land for cultural benefits was not rigorous enough in assessment or in seeing whether we had beneficial outcomes.

Basically, the purpose of the ILC is to acquire and manage land so as to provide economic, environmental, social or cultural benefits for Aboriginal people and Torres Strait Islanders. The change to the NILS and to the programs that will follow is that we will divide the acquisition of land into four programs: economic, environmental, social and cultural. And land management will also be based on the same lines that we acquire the land. So what we are looking at is that when clients come to us we will ask them, ‘What is your primary purpose for the purchase of this land?’ They will have to identify their primary purpose and will then have a series of guidelines and application forms to fill out—which we will assist them with—and we will decide on the merits of their application, based on those four programs.

In the past we did not have a particular economic program. So, if somebody came to us and said, ‘We wish to purchase a block of land to run a small sheep operation or a large cattle operation,’ we would say, ‘No, it has to be for a cultural purpose.’ If somebody came to us and said, ‘We have a very good idea for an operation to assist youth who are in trouble, on drugs et cetera,’ we would say to them, ‘We can’t assist you, because it has to be for a cultural purpose.’ So, by breaking it up into the four program streams, we will be able to assist people with a particular use and benefit from the land they wish to acquire. So we believe it will significantly assist people.

One of the major complaints about the ILC in the past has been that it is overly rural and remote based and that it does not cater to dispossessed urban populations—the majority of the Aboriginal population lives in urban areas. We believe that, with this change, we will be able to provide land benefits to people living in urban areas of Australia.

Senator LUDWIG—I will leave my questions at that. I do have some further questions in that area, but in view of the time I will put them on notice because it will be an easier way to deal with them.

CHAIR—There will be a number of questions sent on notice; and, Mr Galvin, you took a couple of issues on notice during that discussion. There being no further questions for the Indigenous Land Corporation, Mr Galvin and Ms Lindsay, thank you for your time this morning. As I understand the program, that concludes questions in relation to DIMIA itself and both ATSIC and the ILC. There being no further questions in that area, Mr Farmer, I thank you and your officers for assisting the committee this morning.

[12.05 p.m.]

ATTORNEY-GENERAL'S PORTFOLIO

Consideration resumed from 31 May.

In Attendance

Senator Ellison, Minister for Justice and Customs

Human Rights and Equal Opportunity Commission

Ms Pru Goward, Sex Discrimination Commissioner
Dr William Jonas, Aboriginal and Torres Strait Islander Committee
Ms Diana Temby, Executive Director
Ms Rocky Clifford, Director Complaint Handling
Ms Susan Roberts, Director Legal Services
Mr Stephen Duffield, Director Human Rights Unit
Mr Darren Dick, Director Social Justice Unit
Ms Sally Moyle, Director Sex Discrimination Unit
Ms Robyn Ephgrave, Finance and Services Manager

Office of the Privacy Commissioner

Mr Malcolm Crompton, Privacy Commissioner
Mr Timothy Pilgrim, Deputy Privacy Commissioner
Ms Robyn Ephgrave, Finance and Services Manager

Office of Film and Literature Classification

Mr Des Clark, Director
Mr Paul Hunt, Acting Deputy Director
Mr Paul Tenison, Business Manager

Royal Commission into the failure of HIH Insurance Group

Mr Richard St John, Secretary
Mr Graham Millar, Deputy Secretary

Royal Commission into the Building and Construction Industry

Mr Colin Thatcher, Secretary
Ms Sheila Butler, Director, Corporate Services

High Court of Australia

Mr Christopher Doogan, Chief Executive and Principal Registrar
Ms Carolyn Rogers, Senior Registrar
Ms Fiona Hamilton, Public Information Officer
Ms Vicky Cuskelly, Chief Finance Officer
Mr Lex Howard, Marshal

Federal Court of Australia

Mr Warwick Soden, Registrar
Mr Gordon Foster, Executive Director, Corporate Services Branch

Federal Magistrates Service

Mr Peter May, Chief Executive Officer

Family Court of Australia

Mr Richard Foster, Chief Executive Officer

Mr Andrew Phelan, General Manager, Corporate Services
Ms Jennifer Cooke, General Manager, Client Services
Ms Angela Filippello, Principal Registrar
Ms Dianne Carlos, Chief Finance Officer
Ms Rebecca Wood, Associate to the Chief Justice

Australian Federal Police

Mr Mick Keelty, Commissioner
Mr John Davies, Deputy Commissioner
Ms Audrey Fagan, Executive Director Protection
Mr Brian Cooney, Chief Financial Officer

Australian Transaction Reports and Analysis Centre

Mr Neil Jensen, Acting Director
Ms Liz Atkins, Deputy Director, Money Laundering Deterrence
Mr Alf Mazzitelli, Senior Manager, Corporate Resources

National Crime Authority

Mr Phillip Bradley, Acting Chairman
Mr Adrien Whiddett, General Manager
Mr Jon Hickman, National Director, Corporate

Office of the Director of Public Prosecutions

Mr Damian Bugg QC, Director
Mr Graeme Delaney, Principal Adviser, Commercial Prosecutions and Policy
Mr John Thornton, Deputy Director, Legal and Practice Management

Office of Parliamentary Counsel

Ms Hilary Penfold, First Parliamentary Counsel
Ms Glenyce Collins, General Manager
Mr Tony Perkins, Executive Officer
Mr Peter Quiggin, Second Parliamentary Counsel

Australian Government Solicitor

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

Insolvency and Trustee Service Australia

Mr Terry Gallagher, Chief Executive
Mr Peter Lowe, Executive Director

Attorney-General's Department

Mr Robert Cornall, Secretary
Dr James Pople, Executive Adviser
Mr Bill Campbell, Acting General Manager Civil Justice and Legal Services
Ms Kathy Leigh, Assistant Secretary Civil Justice and Legal Services
Ms Amanda Davies, Assistant Secretary Civil Justice Division and Legal Services
Mr Matt Minogue, Assistant Secretary Civil Justice and Legal Services
Ms Renee Leon, Assistant Secretary Civil Justice and Legal Services
Ms Sandra Power, Assistant Secretary Civil Justice and Legal Services
Mr Keith Holland, Assistant Secretary, Security Law and Justice Branch
Mr Richard Oliver, 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 Robyn Warner, Assistant Secretary Criminal Law Branch
Ms Dianne Hariot, Assistant Secretary, Criminal Law Branch
Mr Richard Humphrey, Office of Legislative Drafting
Ms Philippa Horner, First Assistant Secretary Native Title Division
Ms Joan Sheedy, Acting First Assistant Secretary, Information and Security Law Division
Mr John McGinness, Assistant Secretary Information and Security Law Division
Ms Philippa Lynch, First Assistant Secretary, Family Law and Legal Aid Assistance
Ms Sue Pidgeon, Assistant Secretary Family Law and Legal Aid Assistance
Ms Sandra Ellims, Assistant Secretary Family Law and Legal Aid Assistance
Mr Kym Duggan, Assistant Secretary Family Law and Legal Aid Assistance
Mr Iain Anderson, Assistant Secretary Office of Legal Services
Mr James Faulkner, Assistant Secretary Office of Legal Services
Mr Paul Griffiths, Acting Assistant Secretary Office of Legal Services Coordination
Mr Ed Tyrrie, Director Protective Security Coordination Centre
Mr David Templeman, Director General, Emergency Management Australia
Mr Morrie Bradley, Director Knowledge and Business Management, Emergency Management Australia

CrimTrac

Mr John Mobbs, Chief Executive Officer
Mr Geoff Hine, Acting Director, Finance

Customs

Mr Lionel Woodward, Chief Executive Officer
Mr John Drury, Deputy Chief Executive Officer Border
Mr John Jeffery, Deputy Chief Executive Officer
Rear Admiral Max Hancock, Director-General Coastwatch
Mr John Hawksworth, National Director Border Compliance and Enforcement
Mr Phil Burns, National Director Cargo and Trade
Mr Alistair Cochrane, Chief Financial Officer
Ms Gail Batman, National Director Border Intelligence and Passengers
Ms Sue Pitman, National Manager Trade Measures
Mr Steve Holloway, National Manager CMR Transition
Mr Jeff Buckpitt, National Manager ICS Development

CHAIR—I welcome officers of the Attorney-General's Department and associated agencies. The committee will consider the portfolio in the order which appears on the circulated program. As far as possible, we are intending and endeavouring to hear the interstate agencies first, although some are to be heard in a specific order to assist committee members as well. The date for receipt of answers to questions taken on notice and additional information has been set at 30 days after the conclusion of hearings on 22 November 2002. The committee has authorised the recording and rebroadcasting of its proceedings, in accordance with the rules contained in the order of the Senate dated 23 August 1990. I remind everyone present that mobile phones should be turned off or switched to silent while you are in the hearing room, please. I also remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion

to withhold details or explanations from the parliament or its committees, unless the parliament has expressly provided otherwise.

I welcome Mr Cornall, the Secretary to the Attorney-General's Department, and officers and associated agencies. When officers are called upon to answer a question, I request them to state their full name and the capacity in which they appear. Officers will not be required to answer questions relating to policy or the advice they have given in the formulation of policy.

I want to acknowledge and thank the Attorney-General's Department for its assistance in the prompt return of answers to questions taken on notice which were, to say the least, significant in number. The provision of answers to those questions in as timely a manner as possible is extremely helpful to the committee in its estimates deliberations, and we are very grateful for that. Mr Cornall, do you have an opening statement?

Mr Cornall—No, Madam Chair. Thank you for those opening words. We are ready to commence.

CHAIR—We will begin with the Office of the Privacy Commissioner.

[12.08 p.m.]

Office of the Privacy Commissioner

Senator LUDWIG—Welcome, Mr Crompton and Mr Pilgrim. In your annual report, you indicated that you had to divert resources towards handling complaints relating to the private sector and away from activities relating to antiterrorism legislation, biometrics, border control and accountability for CrimTrac—and, I imagine, Customs as well. Could you explain to the committee how these other activities have been affected?

Mr Crompton—I am sorry, I do not remember the ones that you particularly listed. What we have had to do, as you have said, is move staff into our complaints handling area and manage the taking off contract of people whom we had taken on through the commencement period of the new legislation. All of that has had an impact on the ability of our policy areas to provide advice in those areas. In some cases—the groups that you listed, I think—we have not lodged a submission with a committee. In some of the other cases, we have done what we can in the time available but probably less than the thorough submissions we might have otherwise done.

Senator LUDWIG—Have you been able to meet all your targets?

Mr Crompton—There has been at least one Senate committee inquiry to which we did not lodge a submission where we might have otherwise.

Senator LUDWIG—Which was that?

Mr Crompton—The ACC bill—the Australian Crime Commission bill.

Senator LUDWIG—What was the issue there that you wanted to talk about?

Mr Crompton—The point is more that we did not do anything like a thorough analysis to be able to do a good submission.

Senator LUDWIG—Is this because of staffing problems, resource problems, budget problems or that there is a lot of work out there?

Mr Crompton—It is a straight financial problem in that, as we hinted at the previous hearing, the level of complaints and inquiries coming into the office is very significantly in excess of that on which the funding estimates were based. We have had to move staff out of other areas of the office into the complaints and inquiries areas to handle that. Then we do

what we can with the remaining resources elsewhere. So it is primarily a financial constraint. As with any government agency, what you need to do is manage within the resources provided to you and then make sure the government is well aware of the implications of the funding level. That is what we have been continuing to do.

Senator LUDWIG—Have you made any progress with the Attorney-General in redressing the problem?

Mr Crompton—We have been in continuous dialogue with the Attorney-General's Department. Mr Cornall may wish to comment on where that has progressed, but I believe that the department is very aware of what is going on and believes that it is across the facts.

Mr Cornall—We are supporting an application by the Privacy Commissioner for increased resources for the reason that Mr Crompton has explained, but that application is still being processed through the government's procedures.

Senator LUDWIG—Can you tell me how much that is?

Mr Cornall—I am sorry, I cannot, as I do not have the details at my fingertips.

Senator LUDWIG—Is it available? I am not sure if it is a cabinet submission or a submission made by the Privacy Commissioner.

Mr Cornall—We might be able to pick that up when we come to that department later today. We can respond to that then.

Senator LUDWIG—I hope that you can remind me then. It seems that you have been diverted from the private sector and have reprioritised your work. Is that right?

Mr Crompton—It is less of a divergence, say, from public sector to private sector activity in that sense than a diversion away from our policy, thinking or advising area towards our complaints handling and inquiries area. The vast bulk of that increase has been handling complaints and inquiries relating to the private sector jurisdiction as it has come onboard. But the impact in our policy area has been on our ability to provide assistance on both private sector issues and public sector issues.

Senator LUDWIG—Have you worked up a submission and have you made that to the Attorney-General? Is that available?

Mr Crompton—We are beginning to enter the process of developing new policy proposals for the budget process. Therefore, we have been providing statistics, figures and analysis as requested rather than any particular one document, because it will eventually be the department that prepares new policy proposals for cabinet processes, should that happen.

Senator LUDWIG—We will get that at budget time. You are also in the midst of a small business program. You have put out a document and a couple of pamphlets to assist small business, because the deadline is rapidly approaching for those. You have a number that people can call to make inquiries. How is that being impacted upon by your current financial situation?

Mr Crompton—We have had to be very focused in the work that we have been able to do and the work that we have not been able to do. We have three fairly simple initiatives. We have prepared three short documents. I can table copies of those documents for you.

Senator LUDWIG—I think you have sent those to all of us—

Mr Crompton—I believe we have. We have also started up—

Senator LUDWIG—I have the three documents in my office.

CHAIR—So the system works, then, Senator Ludwig.

Senator LUDWIG—At least I have them!

CHAIR—I am pleased that you have them.

Mr Crompton—We have prepared these three documents, which was our effort at trying to bring the issues as simply as possible to the small business sector, because they are always very pressed for time when it comes to running their businesses. They would much rather be running their businesses than looking at long documents produced by government agencies. So they are deliberately short documents aimed at small business readership. We have worked those documents up in consultation with business representatives, people from state government, small business offices, the federal small business office, and so forth, to try to make sure that we are hitting that target. We printed and mailed out those three documents to all of those people, with an offer to sell them more if they wish to buy more.

On top of that, we have built a small business webpage on our web site, where all of that material and the other most relevant material we have already prepared is available. To this point, that is the extent of the effort that we have been able to do, other than the normal engagement process through the media or through giving speeches, presentations and so forth to try to get the message across. One of the repeated messages in any media interview I do, for example, is to remind small business of the upcoming 21 December 2002 deadline when some of those small businesses are covered.

Senator LUDWIG—You have not been able to take out any national news advertisements?

Mr Crompton—You may recall that, in the middle of the year, we ran an editorial campaign—

Senator LUDWIG—I do recall that.

Mr Crompton—which was a two-page spread in all of the capital city Sunday newspapers. There were four articles in there, and one of those was specifically written for small business.

Senator LUDWIG—But since then?

Mr Crompton—No, we have not.

Senator LUDWIG—Is there any intention to use national news or media outlets to advise small business by 21 December?

Mr Crompton—We do not have the budget for that.

Senator LUDWIG—It is not a very good state of affairs, is it? You have a deadline approaching for small business—21 December—when privacy principles will apply. You then have a couple of pamphlets that you have sent out to them. Who have you sent them to, and how many have you sent?

Mr Crompton—I am not sure that I have a list of all the recipients with me, but we can certainly take that question on notice. It has been a small campaign; it has not been a large campaign, but that is what we have been able to do within the resources available.

Senator LUDWIG—Penalties for noncompliance start from 21 December, do they?

Mr Crompton—First of all, the legislation for the private sector area does not involve penalties in terms of fines being imposed on organisations, whether they are big or small. The process is to resolve complaints. If that involves financial compensation—not penalty—to the

complainant, then that does happen. Often those amounts are not large, but it does not involve penalty; it does involve compensation. The events that it relates to come in over time. So each of the privacy principles has a specific clause in the Privacy Act as to how it commences. Any personal information held after 21 December 2002 by a small business that is covered by the Privacy Act must, for example, meet the security and data quality principles when used, but the earlier principles—principles 1 and 2, which relate to the collection of personal information and the use and disclosure of personal information—only move in more gradually by the nature of the way those commencement clauses have been written.

Senator LUDWIG—Are you confident that small business will be able to meet the deadline?

Mr Crompton—Small businesses that are aware should be able to meet the deadline.

Senator LUDWIG—Are you confident that all of small business is aware?

Mr Crompton—I would doubt it. It is the same with any commencement of legislation. You find that the take-up is quite patchy.

Senator LUDWIG—If you had the resources, what more would you do?

Mr Crompton—We would almost certainly be putting more resources into some form of media campaign, possibly the specialist journals or industry magazines, maybe even some television or radio media, and we would find other ways of getting the physical pamphlets out more widely than we have already been able to do.

Senator LUDWIG—How many have you sent out?

Mr Crompton—This is recollection, so we might take that question on notice, but I believe we printed 8,000 copies.

Senator LUDWIG—How many small businesses do you estimate there are in Australia?

Mr Crompton—These are not my estimates, but I believe ABS and the tax office have estimates of anywhere between one million and three million. I do not know that we need to worry about that gap too much, in the sense that our web site is available for anybody who wants to access it and download. We have had, I believe, about 15,000 downloads of some of these documents off our web site already.

Mr Pilgrim—We have mailed out to some 500 organisations as well, including many of the peak bodies such as CPAs, ACCI and the state bodies of various chambers of commerce, advising them of the information we have developed on small business. We have also made copies of the pamphlets available to them on the web site. We are working through those organisations to assist us to get information out to small business in that way as well.

Senator LUDWIG—Did you consider whether it would have been better to defer the introduction of the 21 December deadline to enable a more effective program of letting people know?

Mr Crompton—Firstly, the commencement times are spelt out in the legislation, so it is not a discretion available to the office. Secondly, I suspect that, given that small businesses essentially had two years notice, it is less an issue of length of time to give them notice and more an issue of how you are able to conduct any education campaigns and so forth through that time.

CHAIR—There are no further questions. Thank you.

[12.22 p.m.]

Human Rights and Equal Opportunity Commission

CHAIR—Welcome. Ms Goward, is this the first time you have had the marvellous opportunity to join us here at Legal and Constitutional estimates?

Ms Goward—It certainly is.

CHAIR—Welcome then, and thank you very much for attending today. I understand and I should place on the record that we have apologies from both Dr Ozdowski and Professor Tay. Professor Tay is particularly unwell and therefore unable to attend. I would certainly appreciate it, on behalf of the committee, Ms Goward and Dr Jonas, if you would convey the committee's very best wishes to Professor Tay at this very difficult time.

Senator KIRK—I would like to start off by turning to a press release combating race hate on the Internet. I understand that this was released on 24 October and that there was a symposium on 22 October. I will read the opening statement from that press release. It says:

The regulation by responsible authorities of what could amount to racial vilification on the Internet in Australia requires more coherence. At the moment there are some inconsistencies between the content classification regime which governs the Internet in Australia, and the *Racial Discrimination Act, 1975*.

What exactly are these inconsistencies? What was brought out at the symposium about these inconsistencies? Perhaps someone could elaborate on that for me.

Dr Jonas—One of the inconsistencies relates to the film and classification system, which allows material which is racially vilificatory to be portrayed on Internet web sites. The classification will usually not be allowed if there is, for example, violence or child pornography, but there can be racially vilificatory aspects.

I suppose the best way to describe the symposium itself is that it was very early days and we considered a whole range of topics. We did not come to any firm conclusions. We had people there from government, Internet service providers, academics and people from civil liberties groups. We were not just focusing on the inconsistencies; we were focusing on the whole issue of how you deal with race hate given that the Internet is international and we are national. We were starting to talk about the problem itself as well as trying to identify solutions. That was one of the main inconsistencies that we were concerned with.

Senator KIRK—Did many speakers elaborate on the inconsistencies? Could we see a copy of those papers or could you perhaps summarise what was said.

Dr Jonas—I would prefer to get the papers to you but I certainly can elaborate.

Senator KIRK—Could you give us a brief summary of what those who spoke were saying.

Dr Jonas—On that particular inconsistency, we talked about the fact that somehow restricting anything on the Internet is very difficult given that a lot of the web sites are overseas but can be received here in Australia. We talked about the issue of filtering by Internet service providers, who acknowledge that if you filter out some of the offensive material you are just as likely to filter out material which could be educationally valuable. We talked about what is happening in Europe where they are introducing a protocol involving criminal sanctions for racially offensive material on the Internet and all the changes that might require to a number of pieces of domestic legislation within Europe. We ranged over a whole lot of topics.

Senator KIRK—Has the commission provided any advice to the government on this following the symposium? Has there been any kind of summary provided as to what sort of legislative response might be necessary in Australia?

Dr Jonas—We have not yet; we will. I should also point out that there were people there from the Attorney-General's Department.

Senator HARRADINE—Were officers from the ABA present?

Dr Jonas—I can't recall, Senator.

Senator HARRADINE—Are they not the organisation that is—

Dr Jonas—Yes, they most certainly were there.

Senator HARRADINE—Have you been in touch with the ABA given that the ABA is the organisation which paves the way for the Internet Industry Association to develop codes of practice?

Dr Jonas—At this stage, as I said, it is early days for us and we are making contact with all the relevant agencies, authorities and so on.

Senator HARRADINE—They will be assisting another estimates committee this afternoon. I would be interested in whether or not you had been in contact with them.

Dr Jonas—We have certainly been in contact with them. Our contacts have not gone much beyond what actually happened at the symposium. The symposium, as you noticed, was held fairly recently, so we still have a lot of follow-up work to do on it. But we are in contact with them, yes.

Senator KIRK—I turn to another matter—the national inquiry on children in immigration detention. Can someone provide the committee with an update on the progress of this national inquiry.

Ms Roberts—I will ask my colleague Stephen Duffield, the manager of the Human Rights Unit, to answer that question.

Mr Duffield—The current position in terms of methodology is that the inquiry has received 312 submissions, including 63 confidential submissions. These submissions have taken a variety of forms, including tapes, drawings and poetry, as well as detailed commentary by organisations representing detainees, human rights and legal bodies, members of the public, religious organisations, state government agencies and a range of non-government policy and service providing groups. Most of the public submissions for which we were able to obtain an electronic copy have been placed on the web site. Public hearings have been held in Melbourne on 30 and 31 May; in Perth on 10 June; in Adelaide on 1 and 2 July; in Sydney on 15-17 July; in Brisbane on 5 August; and we are planning to hold hearings involving DIMIA and ACM from 2 to 5 December.

Visits to immigration detention facilities have included Christmas Island in January this year, Woomera in mid-January, Cocos Islands also in mid-January, Maribyrnong at the end of May, Perth IDC on 11 June, Port Hedland on 13 and 14 June, Curtin on 17 and 18 June, Woomera again from 27 to 29 June, Villawood IDC on 15 and 16 August and Woomera again on 26 and 27 September. We are planning a visit to Baxter on 12 and 13 December. We also held focus groups—that is, interviews with ex-detainees now living in the Australian community. Generally these were groups of children, although some focus groups consisted of interviews with families and other individuals. Eight focus groups have been held in Adelaide, two in Brisbane, five in Perth, 10 in Melbourne and five in Sydney. Pending the hearings being held with DIMIA and ACM, the children in immigration detention team are

currently working on a very early draft of the report, but obviously there is still an awful lot of work to do because of the hearings with DIMIA and ACM.

Senator KIRK—What sort of time line are you looking at for the finalisation of the report?

Mr Duffield—As far as our work on the report is concerned, we still hope to have what I would call a preliminary draft by the end of this year. That is a little problematic, depending on the hearings with ACM and DIMIA and the amount of follow-up that we may need after those hearings. Under the Human Rights and Equal Opportunity Commission Act, this being an 11(1)(f) inquiry, once we have a draft report we are required to enter into an interchange of views with the department that is affected—in this case, DIMIA—on the content of that report. That process necessarily takes some time. At the conclusion of that we produce a final report which is transmitted to the Attorney-General, and then the Attorney has 15 sitting days in which to table the report. So I cannot really speculate at this stage on a time for the tabling of the report.

Senator KIRK—So, from what you are saying, there will perhaps be a final report by early to mid next year?

Mr Duffield—‘Final’ as in our side of it being completed, yes, but as to its being publicly available after tabling—

Senator KIRK—You talked about focus groups in various cities and referred to interviews with ex-detainees. You also talked about visits to the detention centres. Were any interviews conducted with existing detainees in those centres?

Mr Duffield—Yes, they were.

CHAIR—I have questions in relation to matters concerning the Sex Discrimination Commissioner. Ms Goward, the annual report mentions, and previous discussions by this committee have looked—albeit briefly—at the paid maternity leave issue. Could you update the committee as to the status of your inquiry and the interim paper?

Ms Goward—The commission has conducted a total of 34 consultations with unions, employer groups, academics and community groups. We expect to have a final report ready for public release on 11 December.

CHAIR—The annual report indicates, I think, that you were awaiting the economic modelling that the government was proposing. Have you received that?

Ms Goward—We actually asked the government to do some economic modelling as one of the recommendations in *Pregnant and productive*. That economic modelling was not provided at that stage.

CHAIR—Has it been provided yet?

Ms Goward—No.

CHAIR—Do you expect it to be provided?

Ms Goward—No.

Senator CARR—Why won’t it be provided?

Ms Goward—I would have thought they would have provided the economic modelling by this stage if they had intended to. We have asked for it.

Senator CARR—But the government will not provide the modelling?

Ms Goward—No. That request was made in 1999 and apparently there has not been any change in their view that it would not be appropriate to provide that economic modelling.

Senator CARR—Apart from it not being appropriate, what other explanation have they given? Why isn't it appropriate?

Ms Goward—That is the explanation.

Senator CARR—That is it? So basically the answer is, 'No, we do not think you are entitled to it,' and there is no further advice.

Ms Goward—Yes.

Senator CARR—How satisfied are you with that answer?

Ms Goward—We have obviously had to do some economic modelling of our own instead.

CHAIR—Thank you very much, Ms Goward. I think we all look forward to the release of the final report on 11 December. Are there any further questions for HREOC?

Senator KIRK—I have some questions in relation to pregnancy and work. I note in the annual report that complaints under the Sex Discrimination Act have increased by four per cent from last financial year and that the proportion of complaints raising pregnancy discrimination has gone from 16 to 30 per cent—almost a doubling. I wonder how the commission can explain this increase in pregnancy discrimination.

Ms Goward—According to the complaints section, this is often the result of publicity and discussion about the issues and of the fact that women become more aware of their rights in this area. You would have to say that there has been a fair bit of discussion about pregnancy and work in the last six months, and that probably is the explanation.

Senator KIRK—So perhaps it is not necessarily an increase in the discrimination but an increase in the awareness about it and individuals' rights to complain.

Ms Goward—It is very hard to distinguish between a real increase and the fact that they are aware that they can make a complaint. But obviously, with increasing numbers of women in the work force during their child-bearing years—the 30 to 34 age group now shows almost no decline in work force participation, despite the fact that that is when women are mostly having their children—I guess you could say there is a larger cohort of vulnerable women who might therefore experience discrimination in pregnancy.

Senator KIRK—On the government's legislative response to the commission's *Pregnant and productive* report, I notice that the Sex Discrimination Amendment (Pregnancy and Work) Bill 2002 was introduced into the parliament on 14 February, yet nine months later the government still has not brought it before the House for debate. Would this suggest to you that perhaps the government does not regard this as an urgent issue, despite the fact that there has been an increase in the number of complaints?

Ms Goward—The annual report is a fairly recent publication. I guess the government has its priorities, and the Senate decides its business also, with all the parties there. Perhaps it is an issue that could be pursued.

Senator KIRK—Sorry, Ms Goward; I was not referring so much to the annual report. There is a piece of legislation—the Sex Discrimination Amendment (Pregnancy and Work) Bill 2002—that has been introduced into the parliament.

CHAIR—Senator Kirk, I think Ms Goward is able to comment on HREOC's priorities; I am not sure whether she is able to comment on the whole of government's priorities.

Senator KIRK—I was coming to the question of whether or not the commission would see it as an urgent matter for this legislation to be passed, given the increase that there has been this year in complaints about pregnancy discrimination.

Ms Goward—Obviously, as the Sex Discrimination Commissioner, one would like to see these issues dealt with as quickly as possible always, but in order to declare it an urgent priority I suspect you would need more than one year's increase in figures to demonstrate that.

Senator KIRK—Are you saying that you would be happy to wait and see if there is an increase over subsequent years before this matter would be—

Ms Goward—No. Of course this is an important matter that the parliament should deal with. The government indicated some time ago that it would like to do it; but, as the chair has said, the government sets its priorities. Your question was about whether or not I considered the increase made it urgent. I would say that one increase does not a summer make. In other words, you would need to be satisfied—if that were your criterion—over a number of years.

Senator LUDWIG—You mentioned the economic modelling that you had actually had to undertake yourselves; is that right?

Ms Goward—We did it as part of the preparation of the final report; that is correct.

Senator LUDWIG—Will that be in the final report?

Ms Goward—Yes, that will be in the final report.

Senator LUDWIG—Is that modelling available?

Ms Goward—It will be available on 11 December.

Senator Ellison—I have just been advised that the bill that Senator Kirk referred to is listed for debate in these sittings of the House.

CHAIR—That will certainly assist the Senate in considering it. Are there any further questions for HREOC?

Senator LUDWIG—Ms Goward, you have said that the modelling will be available. Will the whole lot of the modelling, or just excerpts, be put in the report by 11 December?

Ms Goward—The consultants' work will be available in a summarised form. But I am sure that, if you wished, we could make more detail available to you.

Senator LUDWIG—Perhaps you could take it on notice, and if their reports are available the committee would be pleased to receive them.

Ms Goward—What exactly am I taking on notice?

Senator LUDWIG—A copy of the economic modelling.

Ms Goward—It will be in the final report.

Senator LUDWIG—A copy of the full report, then.

Ms Goward—Yes.

CHAIR—I thank the witnesses for assisting the committee this afternoon.

[12.41 p.m.]

Office of Film and Literature Classification

CHAIR—Good afternoon, gentlemen. We will begin with questions from Senator Harradine.

Senator HARRADINE—What is the current state of the review of the guidelines for the classification of films and videotapes?

Mr Clark—The current state of the guidelines is that a final draft of the new draft guidelines went to the ministers in Fremantle two weeks ago. They considered the draft guidelines; but adopting the guidelines requires the agreement of all states and territories and we cannot get a decision from Victoria until after the election. We do not have agreement from Victoria at this stage.

CHAIR—So it is all the censorship ministers?

Mr Clark—Yes. Victoria is in caretaker mode.

Senator HARRADINE—I see. Wasn't there a requirement by the ministers at the SCAGS meeting—on 7 and 8 November, I think—

Mr Clark—That is correct.

Senator HARRADINE—that you take away the proposal and come back with a much simplified version? That was also a recommendation of the previous meeting.

Mr Clark—That was at the March meeting. We did that, and we brought back to the November meeting a new draft of the guidelines, which are simplified and, we believe, much clearer to use. Ministers have looked at those. We are waiting for agreement from the states and territories in relation to the adoption of the guidelines, but that cannot happen yet.

Senator HARRADINE—When did you do that simplification work?

Mr Clark—We had been working on that since that meeting. In that process we have had the guidelines looked at by a language expert and also by legislative drafters. We can be quite happy that the document that we are taking to ministers will be adopted by them, because it is a much better document.

Senator HARRADINE—But what is being proposed in these guidelines has not been revealed to the public.

Mr Clark—The guidelines are not a change in standards in terms of content; the guidelines are attempting to deal with new and convergent media. In addition, the consultation process in relation to the guidelines indicated to us that there had not been a significant shift in community standards; therefore, there was not a need to change the standards within the guidelines. It was purely a mechanical process after that point.

Senator HARRADINE—Why can't they go to the public, as the previous proposals did?

Mr Clark—Ministers were happy for us to do a redraft of the guidelines and to use those two measures—the language expert and the legislative drafters—to bring them a document that satisfied their needs.

Senator HARRADINE—Mr Clark, you mentioned beforehand that you had provided them to certain experts. I raise the question now, since we discussed this on the last occasion, of why it is that submissions made in respect of draft guidelines are not published. They are, for example, by the Australian Broadcasting Authority, which always publishes the submissions on draft guidelines and places those submissions and the recommendations on its web site—or the draft guidelines, at least.

Mr Clark—We conduct the guidelines review very much within the terms of the direction given to us by ministers, and so there is a process that is followed. The process does not require the publication of the submissions but it does require us to have the submissions to the guidelines review assessed by an independent expert. That assessment was done by Dr Brand,

and that document has been made public. It is a very strong reflection of the content of the submissions.

Senator HARRADINE—I am asking you directly. Have the ministers said no, it should not be as in the ABA; the submissions should not be published and there should be no public hearings? I am asking now whether it is the general position of the ministers to refuse to allow the OFLC to publish on its web site the submissions received by the public. And is it the decision of the SCAGS meeting that there be no public hearings on vital matters, such as the guidelines for films and videos and so on?

Mr Clark—There is a procedure that we have followed, as I have outlined to you. There is not a provision in the process to publish those documents.

Senator HARRADINE—I know; you have told us that. But is that because the ministers have said to the OFLC, ‘Do not include on your web site any of the submissions that have been made by the public’? Have they said, ‘OFLC, you must not have a public hearing of the issues, as the ABA do’?

Mr Clark—The issue of public hearings is one that you asked us to take to ministers. We did take that issue to ministers, and they considered the procedure adopted for the consultation process. Their conclusion was that there were only a very small number of requests for public hearings, with the people who were requesting public hearings having in fact made quite substantial submissions to the guidelines review. Their conclusion was that, in the next process of the guidelines review, we would not adopt public hearings but would have more targeted consultations with groups that may not be included effectively in the public consultation process.

Senator HARRADINE—So the Commonwealth Attorney-General and each of the censorship ministers of the states and territories say that there is to be no public hearing?

Mr Clark—There are no public hearings as in the ability of people to come and make presentations, but there is certainly the capacity of the people to be heard in public through their submissions to the review.

Senator HARRADINE—You know what I am asking. I am asking why—

Mr Clark—In terms of the scale of the review, the costs associated with public hearings, the impact on the budget of the OFLC and the question of the value that would come from public hearings when these bodies who are requesting them are already making significant submissions to the review, the ministers concluded they were not necessary but that we should target consultations with groups who may be missing out on that.

Senator HARRADINE—That is fine from your point of view. What about the public? The public do not know what has been submitted to the OFLC in respect of the very vital issue of film and videotapes. There may be a whole lot of people in the public arena who may be inspired to make further submissions and who would be interested in giving their view to a public hearing. Why the secrecy?

Mr Clark—Senator, I have outlined to you the reasons for the decision. That is a decision that ministers have made and that is a procedure that we must follow in terms of consultation on the guidelines. But the Brand report is a very good reflection of the content of the submissions that were made to the review.

Senator HARRADINE—I cannot get anything further; obviously you are under instructions from each of the state ministers not to have a public hearing—when in fact the Australian Broadcasting Authority has had no such instructions from the Commonwealth

minister. What procedures were used to engage persons for the review—for example, Dr Brand? What procedures did you go through to get the contracts for conducting the research for the OFLC?

Mr Clark—The procedure was a limited tender. There was a group of 24 academics who we considered would be qualified in this area. With respect to the tender process, we looked at the 24 people. I think we interviewed three people, and Dr Brand was selected as being a person who was very highly qualified to conduct that review.

Senator HARRADINE—There has not been an open process?

Mr Clark—It was a select tender process. It is an appropriate process, in that it is such a highly specialised area. But there were 24 people identified as being qualified to do that work.

Senator HARRADINE—What area are you talking about now? Are you also talking about computer games?

Mr Clark—Yes. The review was of the guidelines for films and computer games.

Senator HARRADINE—What was Dr Brand's view of the R-rated—

Mr Clark—Dr Brand was of the view that it would be appropriate to have an R rating for computer games, based on his assessment of the submissions.

Senator HARRADINE—That is the point I am getting to—'on his assessment of the submissions'.

Mr Clark—That is correct.

Senator HARRADINE—What about his view of the word 'harm', since it is part of your remit to consider the question of the harmfulness or otherwise of extremely violent interactive video games—which rating finally, of course, was rejected by the Commonwealth, the South Australian governments and presumably eventually by the rest of the SCAGs ministers?

Mr Clark—That is correct. The issue of an R rating for games was rejected at the meeting in Fremantle. Dr Brand's conclusion on the issue of harm—from recollection, and to summarise it briefly—was that the research in relation to harm, particularly in computer games, was inconclusive.

Senator HARRADINE—I have a stack of papers which indicate that. What I am trying to get at is: how come Dr Brand got his guernsey? It was under the selective process, was it?

Mr Clark—Absolutely, Senator. It is a very appropriate process and a very arms-length process, as far as I am concerned. It was conducted professionally and well.

Senator HARRADINE—And it was based on the submissions that were received?

Mr Clark—Yes.

Senator HARRADINE—How can people assess his report, when they do not know of the submissions that have been received, apart from what he said in his report?

Mr Clark—The issue of making all of the detailed submissions public has not been raised until now, but it is not part of the process adopted by ministers, as I have said.

Senator LUDWIG—Do you get many freedom of information requests?

Mr Clark—Very few.

Senator LUDWIG—Can you tell me how many you get for the online classification decisions?

Mr Clark—We have had one from Electronic Frontiers Australia, which was quite a substantial one. I think that is the main one in relation to online content, but I can take that on notice and give you the full information on the detail of the applications.

Senator LUDWIG—You have provided some information in your annual report, but I was looking for whether that was granted in full or in part and how much of it was refused.

Mr Clark—That particular application had been going on for some period of time before I became director. There had been a larger refusal and there were further discussions, and a great deal more information—as much information as possible—was made available in relation to that one.

Senator LUDWIG—What work has the OFLC and the ABA done to develop the protocols for making classification decisions available online?

Mr Clark—We have a draft agreement in relation to that, which has not been finalised. It has been somewhat overtaken by the guidelines review, but it is something that we have recently begun some further discussions on with the ABA.

Senator LUDWIG—Is that available to the committee? Is it in a draft stage?

Mr Clark—I do not see why not. I will try to make that available. I would need to discuss it with the ABA as well, in relation to releasing it.

Senator LUDWIG—Yes; I wanted you to at least check with them first—otherwise I can go around to their committee. When will those decisions be available online? You are working on draft protocols so I take it that is to allow that to occur. Has a time frame been put in place to make those available? Are you working toward a time frame?

Mr Clark—We are working toward a time frame. There isn't one at this stage.

Senator LUDWIG—What might be the time frame, then? Or are you just working ad hoc at it?

Mr Clark—As I said, we have been somewhat overtaken by larger projects, and so it has tended to be on the backburner for some time. But I shall take action to see what we can do with that.

Senator LUDWIG—It has been going on for some time, hasn't it?

Mr Clark—Yes, it has.

Senator LUDWIG—How long has it been going on for?

Mr Clark—The draft document has been there for at least 18 months.

Senator LUDWIG—And you do not know whether it is going to continue for another 18 months?

Mr Clark—I hope not. As I said, it has been overtaken by priorities. The actual day-to-day working relationship between the two organisations is quite smooth.

Senator LUDWIG—So it raises this question: there are no hiccups?

Mr Clark—No.

Senator LUDWIG—What is causing the delay there? What can you put your finger on to say that 18 months—

Mr Clark—In terms of priorities and things like the guidelines review, there has been a delay because it has not been a high priority. The operation is working quite smoothly with ABA, and so it has tended to fall onto the backburner.

Senator LUDWIG—So what are the priorities in front of that? Do you have a priorities list?

Mr Clark—Yes, we had the guidelines review. We have the advertising review in relation to cinema provisions, which is going to be an ongoing, rather large task. Associated with that is a range of projects. There is the need to determine markings for films and games, which we are looking at. There is the famous *Yellow Slide*, which we are looking at. There is a range of changes that we are trying to bring through that will make community understanding of the classification scheme better. The other one we will be engaging in this year, as part of the high priority items, is the consumer advice review.

Senator LUDWIG—When will the consumer advice review get under way?

Mr Clark—We have begun preliminary work on that in terms of focus groups and consumer research. Then we will move into the next phase of actually testing that. We want to work with the television stations in relation to the consumer advice, as well.

Senator LUDWIG—I might leave that until February. Is it a resourcing problem or a priority problem in having the decisions available online?

Mr Clark—It is just a priority problem. Part of that has been the other major project, our new web site, which we are launching in December.

Senator LUDWIG—Perhaps you can just take that question on notice and see whether you can actually pin down a date as to when you might be able to have it ready for me.

Mr Clark—That is fine.

Senator LUDWIG—Otherwise, I will be asking the question again in February.

Mr Clark—It is an incentive to move, Senator.

CHAIR—Given that it is after one o'clock, as there are no further questions for the Office of Film and Literature Classification, the committee will break for lunch.

Proceedings suspended from 1.02 p.m. to 2.01 p.m.

CHAIR—I welcome back the minister and Mr Cornall. We have reached the point of the HIH and Cole royal commissions. As Senator Ludwig wishes to consider the commissions together, at least to start off with, I ask that officers from both commissions come forward to the table.

Senator LUDWIG—I welcome the officers from both royal commissions. We asked questions in earlier estimates hearings about the costs, but it is worth while at this juncture to get an update. How much has each royal commission spent to date? How much do the royal commissions estimate they will spend in total? Has that figure been changed or revised upwards or downwards, as the case may be? Let us start with the HIH Royal Commission first.

Mr St John—To the end of September, the HIH Royal Commission had spent almost \$26 million of the amount which over two years would aggregate just short of \$40 million. So \$40 million has been allowed for the commission, which started in September 2001 and is scheduled to report in February 2003.

Senator LUDWIG—Could you provide a breakdown of that figure by salary, including accrued leave entitlements; superannuation; travel and living away from home allowances; air fares; Comcars, taxis or vehicle private hire expenses, as the case may be; accommodation expenses; and any personal expenses that may have been provided, if they amount to a significant amount?

Mr St John—I can provide broadly, if not precisely, all those amounts you mentioned. I think your question began with expenses for people and services. To the end of October, actual expenditure on legal services was 9½ million, which was in three main blocks: the Australian Government Solicitor; another law firm, Fisher Jeffries; and counsel. Then there is the commissioner and the direct staff and the secretariat administration. The broad figure for the commissioner and direct staff to the end of September was \$740,000. For what is described as forensic, investigative and actuarial—that is, basically accounting assistance, forensic accounting, expert accounting and actuarial—the total to the end of September was just under \$2¼ million—\$2,240,000. The secretariat expenses, which would be largely administrative staff, were \$1.4 million.

After that, the major components would be media liaison, which was \$206,000, and travel, which was \$390,000. The other major component was IT expenses, and that was approximately \$6½ million. Beyond that, there was some office administration of just over \$1 million, and there were earlier accommodation set-up costs. There are some ongoing accommodation costs up to the end of September of \$1.3 million. Those figures are the major components of the \$25.8 million spent to the end of September.

Senator LUDWIG—You might need to take this on notice. In particular, I wanted you to address the breakdown of the salaries into more manageable chunks I can understand and the travel and living away from home allowance, airfares, Comcars and taxis. In respect of the legal advice, I wanted you to do the same for the AGS, Fisher Jeffries and counsel—whether or not their costs are lump sums or whether they also show, as I expect they would, a breakdown of their fees as distinct from their travel or living away from home allowance, airfares, Comcars and taxis and the like. I also want to know whether you will authorise in advance that when we come to the AGS I can ask them the same question. It would be nice if you could, or at least you could perhaps stay back and I can talk to them at the same time.

Mr St John—I can give figures for actual disbursements that we have made. Certainly I have figures for the legal services for the Australian Government Solicitor and for Fisher Jeffries. The amount for the Australian Government Solicitor is \$16,000-odd; Fisher Jeffries is a much larger amount, at \$362,000. That is by reason of the fact that Fisher Jeffries is an Adelaide based firm and a number of lawyers are working substantially in Sydney.

Senator LUDWIG—I take it then that you can establish some of these figures by taking the question on notice and getting back to us, or do you have them on that sheet in front of you?

Mr St John—We have a sheet that shows the fees paid on the legal side and the disbursements where applicable. I have mentioned the major ones, and there will be some in the case of one or two of the counsel who have had to travel, but the others essentially go to fees and that is it.

Senator LUDWIG—Are you in a position to table that document which assist my line of questioning? I take it that you have guessed the questions we would like you to answer in any event.

Mr Cornall—There are two sheets, and it might just save time if I give you both sheets at once. One covers the HIH Royal Commission and the other covers the Royal Commission into the Building and Construction Industry.

Senator LUDWIG—Do you have a separate breakdown of Justice Owen's salary, expenditure, airfares and accommodation?

Mr St John—Justice Owen is a judge of the Western Australian Supreme Court, and under the arrangement when he was engaged to conduct the commission the state is reimbursed for the cost of his ongoing salary and other entitlements. My understanding is that the annual salary and entitlements amount to \$281,000 per annum.

Senator LUDWIG—To the extent of those questions that I have asked in relation to a breakdown of costs, perhaps we can deal with the building royal commission on the same basis. Do you have a table that you could tender that might demonstrate the costs that I have asked about?

Mr Thatcher—Yes. I think the answers to the questions are that the budget of \$60 million remains the same and that the expenditure as of 31 October is \$49,960,058. I have a schedule here that can be tabled. It gives a breakdown but perhaps not in all the detail that you have asked for.

Senator LUDWIG—That would be helpful. Would you also have a look at the transcript and take on notice that that is the sort of breakdown we are seeking.

Senator CARR—At the last round of estimates I asked a series of questions with regard to legal counsel, and you provided us with tables for fees for legal counsel. I asked a similar question in relation to HIH. Can those tables be updated to this point? Further, there were questions about accommodation and meals, accommodation and living away from home allowance. That was question on notice No. 18 from the last round and also question on notice No. 16. So there was a series of questions at the last estimates round that went to expenditures. I would like all of those to be updated where they are relevant to each of the commissions. Is that possible?

Mr St John—Yes, for the HIH Royal Commission we can update those figures.

CHAIR—Mr Thatcher?

Mr Thatcher—Yes.

Senator CARR—While we are on the topic, Mr Thatcher, I notice that in question No. 18 there is a list of expenditures for counsel assisting—accommodation and meals, accommodation and living away from home and then travel allowance. I note that for Senior Counsel Agius there was a figure of \$28,000 paid for accommodation, a figure of \$5,100 paid for living away from home, and then a figure of \$21,000 for travel allowance. Are these figures mutually exclusive? What do you get the TA for if it is not for accommodation?

Mr Thatcher—I have an up-to-date one of those which I could table today.

Senator CARR—I appreciate that; thank you. If you can table these today, it would be very helpful, rather than waiting for them to go through the system.

Mr Thatcher—The answer to that one is that that is correct; they are different in that this particular individual is Sydney based and the living allowance was paid whilst he was located in Melbourne.

Senator CARR—Does the travel allowance include accommodation?

Mr Thatcher—Yes.

Senator CARR—Why is there a separate category for accommodation in these tables?

Mr Thatcher—The individual was permanently located for a period in Melbourne, where he was paid the normal allowance rate, but then was travelling; he was temporarily located in Perth for a period.

Senator CARR—So he was paid a figure of \$28,000. Did you provide him with a house?

Ms Butler—Yes, while he was living in Melbourne he was entitled to furnished accommodation and a weekly living away from home allowance. While he was largely, in this case, based in Perth, he was paid a travelling allowance for the period and they were exclusive. So for the periods when he was receiving travelling allowance the other allowances were not paid.

Senator CARR—I take it from that that the same applies to Mr O’Sullivan, Dr Renwick and Mr Neill?

Ms Butler—It is slightly different in the case of Dr Renwick and Mr Neill. They are both Sydney based barristers. They are living in Melbourne. When they first came to Melbourne they chose to live in commercial accommodation and they were paid a daily rate. There are two options for barristers under the commission. After some time they decided to go into rented accommodation in a house, so they moved to a different basis whereby we paid rental. So their circumstances changed during the course of their time with the commission.

Senator CARR—Thank you. There was a question that described Commissioner Cole’s residence in Melbourne. Can I have a similar description of the accommodation provided for—

Mr Thatcher—I have a table which I can tender in that respect.

Senator CARR—That would be helpful as well.

Ms Butler—We do not have the description of the houses that those people occupied.

Senator CARR—I am more interested in knowing what the weekly rental is for this accommodation. Presumably that will come to us in due course. I turn to a statement that I read yesterday regarding the time line for the extension of the reporting date. I understand that the commissioner has announced that he has been granted a reporting date extension to 31 January. Is that correct?

Mr Thatcher—That is correct.

Senator CARR—When was the application for that extension of time made?

Mr Thatcher—The commissioner made a request for an extension of time to the Prime Minister on 20 September

Senator CARR—He made the application on 20 September?

Mr Thatcher—Yes.

Senator CARR—Who did he make the application to?

Mr Thatcher—The Prime Minister.

Senator CARR—What were the grounds for the application on 20 September?

Mr Thatcher—At that stage it became clear to the commissioner that hearings were not going to conclude according to our timetable until 18 October and, in light of the volume of work which was involved, he made a request to the Prime Minister for an extension.

Senator CARR—Seven discussion papers have been released in the last month; that was presumably after he sought the extension. Is that right?

Mr Thatcher—Yes. A total of 18 discussion papers have been released.

Senator CARR—Of those last nine in the last month, how many were delivered to the commissioner on time?

Mr Thatcher—If you go back to the June statement, where the commissioner foreshadowed what was happening in the future, he indicated then that there would be a second cache of discussion papers delivered. At that stage, he anticipated that that would be in September but, because of the volume of work and the nature of the task, there was a slippage which allowed them to be delivered to the commissioner at a later date. Then, subject to the commissioner's approval, they were released at the earliest possible time.

Senator CARR—Explain this to me, if you would not mind, Mr Thatcher: where was the volume of work that forced these reports to be delivered late?

Mr Thatcher—There was a series of discussion papers identified, by a mixture of external consultants and internal research capacity. It was that mixture of work which then allowed them to be provided according to the timetable which eventually applied.

Senator CARR—That is my point, Mr Thatcher. Where was this volume of work that caused the delay in the presentation of these reports to the royal commissioner? Was it with the tenderer or was it with the commission staff itself?

Mr Thatcher—It was a combination, I would suggest. I did not mean to give the impression that the request for an extension of time was only because of the discussion papers. It was because the hearing program was evolving and the nature of the timetable, generally speaking, which was used as the basis of supporting the application.

Senator CARR—It is just that what I am hearing from you is that there was a higher volume of work than you expected. Was that in the form of complaints? What was the nature of this higher volume of work that led the commissioner to realise back on 20 September that he would not be able to meet the deadline?

Mr Thatcher—At this stage perhaps I can refer to some of the facts. During the period we have sat, there were 171 sitting days, there were some 16,000 pages of transcript, there has been a total of 765 witnesses, there have been 1,900 exhibits and there have been various discussion papers. There has been a huge volume of work. When one starts a royal commission, one cannot anticipate what investigations are going to be involved. It is not that simple, so in many ways it is an organic approach.

Senator CARR—I understand the point you are making. In a normal royal commission I suppose that would be true, but I would have thought that the bulk of this report had been written for quite some time.

Mr Thatcher—No, that is definitely not the case. If you can remember, the September application was made just shortly after we had concluded our hearings in the Northern Territory and in Adelaide. Therefore, in front of us was a program, an OH&S conference, the national issues set of hearings, the whole terms of reference, letters patent B funds issues to be considered and so forth, as well as the various discussion papers which were being produced.

Senator CARR—The submission to the Prime Minister was finalised and sent on 20 September. What date was the decision taken to actually seek an extension of time?

Mr Thatcher—20 September.

Senator CARR—That was the date on which the submission was made to the Prime Minister. Did the royal commissioner make his decision to seek an extension on 20 September?

Mr Thatcher—Yes.

Senator CARR—He got out of bed one morning and said, 'I need an extension of time; I'd better write to the Prime Minister today.' Is that what you are saying?

Mr Thatcher—I will not speak for what is in the commissioner's mind. I know that prior to that stage no decision had been made, and that was the day the decision was made.

Senator CARR—It is obviously a very efficient operation if the commissioner can make a decision on that day and you get the application off on that same day.

Mr Thatcher—It is an efficient organisation.

Senator CARR—I understand that these seven discussion papers were published and released in the last month—that is, from 19 October. Can you explain why it has taken so long to have them produced?

Mr Thatcher—The commission released the first tranche of the discussions papers and, in the announcement which I have referred to, indicated that there would be further discussion papers prepared. They were allocated, and work commenced on those. They were released at the first available time after the commissioner had had an opportunity to approve them to his satisfaction.

Senator CARR—Let us go through some of them. What was last Friday's discussion paper called?

Mr Thatcher—Last Friday's would have been the second last one and was called 'Productivity in the building and construction industry'.

Senator CARR—Who prepared that?

Mr Thatcher—Tasman Economics.

Senator CARR—How did you get Tasman Economics to do that? Was it by way of open tender?

Mr Thatcher—Yes, by tender; it was decided through the panel which was established.

Senator CARR—What was the date of the contract for the delivery of that paper?

Mr Thatcher—I am afraid I do not have that information with me.

Senator CARR—I would appreciate it if you would take that on notice. Is it your recollection that the report was in fact delivered on time?

Mr Thatcher—That particular matter is managed by the director of research, and I am afraid that I do not have those details with me here today.

Senator CARR—Do you know what date it was delivered to the commission?

Mr Thatcher—That is what I was trying to convey by my last answer.

Senator CARR—There are two questions here: was it delivered on time, and what date was it delivered?

Mr Thatcher—I am sorry but I do not have that information with me.

Senator CARR—As the Secretary, you do not know what date it was delivered?

Mr Thatcher—I do not have that information with me today.

CHAIR—But you could take that on notice for Senator Carr?

Mr Thatcher—Yes, certainly.

Senator CARR—Let us look at last Wednesday's discussion paper. What was that called?

Mr Thatcher—Is that discussion paper No. 16?

Senator CARR—Was that released last Wednesday?

Mr Thatcher—Yes; that was released on the 13th. That was called ‘Demarcation issues in the building and construction industry’.

Senator CARR—Who prepared that?

Mr Thatcher—That was prepared within the commission by counsel assisting.

Senator CARR—So that is an in-house report, is it?

Mr Thatcher—That is correct.

Senator CARR—When was it completed?

Mr Thatcher—It was completed the day before it was released.

Senator CARR—Why did it take so long, if it was in-house?

Mr Thatcher—It is a question of managing priorities, and this was the date that it was completed. Many things happen within a royal commission, including hearing programs and the making of submissions by counsel assisting, which has also been another priority for the individuals concerned.

Senator CARR—The paper on Monday was prepared by Unisearch at the University of New South Wales, was it not?

Mr Thatcher—That is correct.

Senator CARR—What was that called?

Mr Thatcher—‘Workplace regulation, reform and productivity in the international building construction industry’.

Senator CARR—Was that paper delivered on time?

Mr Thatcher—If the question is the same as before, I would have to take that on notice, because I do not have those details with me.

Senator CARR—I would appreciate it if you could give me the dates that all these papers were due under their contractual arrangements, the dates that they were released and, if there is any significant gap between those two dates, an explanation of why. It has been put to me that some of these reports may well have been held in the commission for a while; is that true?

Mr Thatcher—No; that is not correct. I can certainly say that and assure you of that. As they came to press, they were released.

Senator CARR—That is very good. Do you intend, as a consequence of the extension of time, to provide an extension of time for people to respond to these discussion papers?

Mr Thatcher—Whenever we are contacted by someone who asks for an extension and it is within a reasonable time, the commission replies positively.

Senator CARR—There has been no announcement that there is an extension of time for the closing date of submissions. Wasn’t there a closing date for other submissions?

Mr Thatcher—I think you are referring to the advertisement for general submissions, which we advertised that date as 1 November. In response to your question, the extension was only granted yesterday afternoon. I heard about it just on 5 o’clock. I have not had a chance to discuss the implications of that with the commissioner, and so I cannot respond to your question. It only happened yesterday afternoon.

Senator CARR—I appreciate that point. It is just that I noticed a report in the *Age* on 12 November that you were going to get an extension of time. Do you recall that report?

Mr Thatcher—I am sorry, but I do not recall that report. The only correspondence I can recall is a letter to the Prime Minister.

Senator CARR—I know that that might not be the only correspondence or the only advice tendered to the press. The article says:

The report of the royal commission on the building industry is almost certain to be delayed beyond its designated December 6 completion date.

How would that get into the press?

Mr Thatcher—I can only say that it would not have come from the royal commission.

Senator CARR—Wouldn't it?

Mr Thatcher—No.

Senator CARR—So perhaps it came from the Prime Minister's office?

Mr Thatcher—I think it might have been speculation.

Senator CARR—It says 'almost certain to be delayed'.

Mr Thatcher—I can only speak for the royal commission—

Senator CARR—So you can categorically assure this committee that no-one in the royal commission media unit advised the press?

Mr Thatcher—There is only one person in the royal commission media unit, and I can assure you, as best I can, that I am satisfied that it did not come from that individual.

Senator CARR—Perhaps you could take that question on notice, if he is not here today. It is a Mr Rick Willis, isn't it? Is he here today?

Mr Thatcher—No, he is not.

Senator CARR—Perhaps you could ask him directly whether or not he provided this information to the press. That is his job, isn't it, to communicate with the press?

Mr Thatcher—In the answer to the question on notice from the last hearing, we set out clearly what his role is.

Senator CARR—It said that his role was to provide advice on witnesses and communicate with the press about the work of the commission, didn't it?

Mr Thatcher—I think it was very specific, and it certainly did not confirm some of the discussion which occurred at the last hearings.

Senator CARR—I raised this issue at the last estimates—

Mr Thatcher—It was question on notice No. 54. I could quote from our answer if you like. It said:

The Media Director is not party to investigations being conducted by counsel assisting the Royal Commission. The Media Director may provide advice to media representatives on such things as daily witness lists, tendered witness statements, the Commission's media protocol and, when relevant, non-publication orders which affect their reporting. Also, the Media Director briefs media representatives on the protocol of the venue in which the Commission is sitting that affect them.

The question was also asked:

Have any personnel of the Commission made an offer to witnesses ... of a trade off ...

The answer to that was no.

Senator CARR—Thank you. I take it, given that you have repeated those remarks, that you actually stand by the statement that you provided at the last estimates?

Mr Thatcher—Yes, I do.

Senator CARR—Can you tell me if Mr Willis at any time telephoned journalists in advance of hearings to alert them in general or specific terms about evidence that was likely to be aired at hearings?

Mr Thatcher—I do not believe so.

Senator CARR—Did Mr Willis ever write to the media organisation to complain about what journalists were writing in regard to the royal commission?

Mr Thatcher—I would have to take that on notice.

Senator CARR—I suggest that that would be very wise. I put it to you directly that Mr Ashley Crossland of the *Australian Financial Review* has been the subject of communication between Mr Willis, through Mr Crossland's editor, and the royal commission. Can you confirm that?

Mr Thatcher—There was an issue when a journalist reported on something which was the subject of a non-publication order, and I can recall referring that to the AGS. I am wondering whether that is the particular matter to which you might be referring. No; it is a different journalist.

Senator CARR—Perhaps you can tell us about the different journalist that you have just referred to—if I have not got the right one. We will come back to Mr Crossland.

Mr Thatcher—In June the *Daily Telegraph* published an article reporting on the previous day's hearing which touched on the subject of a non-publication direction of the commissioner. At the commencement of the hearing the commissioner stated that he would refer the matter to the Australian Government Solicitor to give advice to the Crown. Advice was obtained from the Australian Government Solicitor and referred to the Commonwealth DPP.

Senator CARR—What was the name of the journalist in that case?

Mr Thatcher—It was Mr Marcus Casey.

Senator CARR—What action was taken as a result of that reference?

Mr Thatcher—That was purely a decision for the DPP.

Senator CARR—Was any action taken, as far as you know?

Mr Thatcher—Action was not taken by the DPP.

Senator CARR—In regard to the *Financial Review*, can you confirm that there has been any contact with Mr Willis, the media officer with the royal commission?

Mr Thatcher—There would certainly be much—

Senator CARR—I expect you would have to say that; in fact you would want to know what he was doing if he had not been contacting them. Going to the particular question of your concerns about the alleged bias of Mr Ashley Crossland, was that ever the subject of communication between the commission and the editor of the *Financial Review*?

Mr Thatcher—I would have to take that on notice, as I said before.

Senator CARR—I will put a few other examples to you but I want to be clear: you are standing by the proposition that Mr Willis does not seek to comment on the evidence and is

not involved in briefings or background briefings of the media in regard to the evidence or the prosecution by the commission; is that right?

Mr Thatcher—I am standing by the answer to question on notice No. 54. His role is certainly to direct inquiries from media representatives about evidence to the relevant sections in the transcript. He does that frequently. That is my expectation of him.

Senator CARR—It has been put to me, Mr Thatcher, that your media adviser approached two journalists—a Mr David Potter of the *Courier-Mail* and another journalist from Channel 9—concerning the evidence to be presented to the Brisbane hearings and said, ‘Coming up, there will be some pretty damning evidence of Tim Nesbit on the picket line.’ Can you confirm that that event occurred?

Mr Thatcher—I am not in a position to comment. I do not have access to any such information. I would be most surprised if such a conversation took place. It is certainly my expectation that the conversation would not have taken place.

Senator CARR—Thank you. I seek from you, on notice, clarification of whether it was put to these journalists that a video would be provided in evidence before the commission at these hearings—when in fact, at the time this advice was given, no video had been tendered to the commission.

Mr Thatcher—I will take that on notice.

Senator CARR—I put to you another case. This relates to the Tasmanian hearings on 14 March 2002, where matters were raised concerning photographic evidence of an employer who had dumped uncovered asbestos in a bin near a schoolyard. It was put to journalists that the commission ‘will be calling someone who will say that there is no asbestos in the bin’. Later that day the employer was indeed called and he provided evidence that he had not dumped asbestos. Can you confirm, or can Mr Willis advise the committee, whether he provided briefings in regard to those Tasmanian hearings and the issue of asbestos?

Mr Thatcher—I am not in a position to comment. Senator Carr, as you have speaking I have been wondering whether there might be some misunderstanding. As you know, the media has access to CourtBook, on which witness statements are placed in advance of hearings. There could have been dialogue between bona fide media reporters and Mr Willis in respect of something which might have been on CourtBook. It would be quite appropriate and legitimate, if Mr Willis were referring journalists to those particular sections in response to their queries; and so that is not in itself a problem if they were parts of witness statements which are on CourtBook.

Senator CARR—In the transcript of the commission’s proceedings in Sydney at page 13427, it is in fact noted that the:

... media unit has advised journalists this morning that Mr Ferguson—

who is presumably from the CFMEU—

... is going to be ambushed with this material. That is why I regard it as a farce. Apart from that, forensically, nothing is being achieved, other than an attempt, I would suggest, to embarrass Mr Ferguson by ambushing him in the witness box.

Can you confirm that those statements were made?

Mr Thatcher—I cannot confirm that those statements were made.

Senator CARR—I put this to you in the context of you having provided evidence to this committee, and it would seem that there is a range of contradictory evidence. I want to try to

get an explanation as to what the role of the media unit is. By the way, how much are you spending on the media unit down there? What is the cost of it?

Mr Thatcher—I think it is going to be in the vicinity of \$530,000. It has come down—we have reduced it.

Senator CARR—It is still half a million dollars. It is a considerable sum of money, is it not?

Mr Thatcher—It was a public tender. The company was approved according to Commonwealth procurement guidelines.

Senator CARR—Yes, I understand that. We went through that last time—they got a special deal, and your recommendation was over that of the department's, if I recall rightly.

Mr Thatcher—No; I am sorry if I left you with that impression. It certainly was not my evidence, Senator.

Senator CARR—But they were not the preferred tender of the department though, were they?

Mr Thatcher—The department left it as a matter of discretion between two organisations.

Senator CARR—I do not want to go over that again. Mr St John, is it the case that the media unit that you are running is still going to cost about \$140,000?

Mr St John—It is something more than that figure for the total period. I think \$140,000 may have been for the period up to June.

Senator CARR—What do you think it will be now?

Mr St John—It is projected that it could be up to \$250,000. It is somewhere around \$200,000 at the moment.

Senator CARR—Even with the reductions at the Royal Commission into the Building and Construction Industry, it is still somewhat less than half the cost of that. How many people have you got working as media advisers?

Mr St John—One, essentially.

Senator CARR—So both have one—one working on one, one working on the other?

Mr Thatcher—No; there are two.

Senator CARR—There are two?

Mr Thatcher—There always have been: the media director and their assistant.

Senator CARR—It is not a bad income, is it—one quarter of a million?

Mr Thatcher—One of the things that should be factored into any comparison is the fact that we are a national royal commission, in that we have had hearings in all the states and territories.

Senator CARR—Is HIH not national?

Mr St John—Our hearings have been conducted in Sydney. There is national coverage of the hearings, but we have been in Sydney.

Senator CARR—I would have thought HIH would involve national coverage. Mr St John, does your media adviser telephone journalists in advance of hearings to alert them, in general or specific terms, of evidence to be presented in proceedings of the commission, before those proceedings actually occur?

Mr St John—That is not his task. I do not believe he does that.

Senator CARR—Would you be surprised to hear that your journalist was doing that?

Mr St John—We have a protocol relating to our dealings with people outside, including the media, and that would go beyond the protocol.

Senator CARR—Would your protocol go the issue of contacting, writing or ringing media organisations to complain about the coverage of the royal commission?

Mr St John—I do not believe that the protocol addresses that.

Senator CARR—Would you expect your media adviser to do that, though?

Mr St John—I would not expect our media adviser to do that. I do not think I can usefully comment in a hypothetical way.

Senator CARR—I appreciate that, Mr St John. I would be very surprised if they did it, too. Mr Thatcher, do you have a protocol covering the behaviour of your propagandists?

Mr Thatcher—I do not believe we have had a protocol. We have certainly had guidelines for the media—which have been made plain to media representatives—in respect of their access to CourtBook and their use of media facilities adjacent to hearings. But the media director reports directly to me. I have regular dialogue with him. I feel very confident that he understands the boundaries and that the terms of question No. 54 of the last hearings, of which I have given an indication, are correct.

Senator CARR—As to the report itself, when do you expect it to be published now?

Mr Thatcher—The report will be delivered to the government no later than 31 January. This is the date which was announced yesterday.

Senator CARR—Will there be any interim reports?

Mr Thatcher—There has been a first report.

Senator CARR—Yes, I understand that. Are any further ones planned?

Mr Thatcher—There are no plans at present that I am aware of.

Senator CARR—Have you organised the contractor for the printing of the report, or will that be done through the normal government printer?

Mr Thatcher—No, we have gone to public tender. I have a note on that. It went to tender in July, and an approval has been given for who is going to be doing that.

Senator CARR—What is the price for the printing of that?

Mr Thatcher—We do not have a firm amount, because we do not know the extent or the nature of the report.

Senator CARR—You do not know the size of the document—I see. Where will I find the printing in this budgetary summary?

Ms Butler—I would expect that it will be under ‘Other suppliers’. That was where it was before.

Senator CARR—So you have no idea at all of the price at this time? You have had an open tender and an open price; is that what happens?

Mr Thatcher—On 27 July 2002 we advertised a request for quotation in the *Melbourne Age*, the *Weekend Australian*, on the Commonwealth government tender web site and

commission's web. There has been a successful appointment, and negotiations are continuing with that organisation. But it will depend upon the nature, the size and the extent of the report.

Senator CARR—What is the cost of the tender?

Mr Thatcher—It was not a tender. At this stage, I actually cannot answer that question, because it will depend upon the volume and the number. Our role as a royal commission is for the commissioner to deliver a report to the Governor-General, and then we cease to exist. Letters patent are returned and we cease to exist.

Senator CARR—So it will be the department's responsibility, will it, to make sure of this?

Mr Thatcher—The dialogue between the government representatives and me has yet to take place on this. I have to finalise what the—

Senator CARR—I am sorry. I asked a question before about the contracting of the printing. I thought you indicated that a tender had been let. I thought you said that there had been, to use your words, a successful tenderer. Was that the expression you used?

Mr Thatcher—Yes. We were given indicative pricing on numbers of pages and things like that, the details of which I do not have with me.

Senator CARR—I am just wondering how you determined who had the lowest price.

Mr Thatcher—Through the tendering process, we obtained indicative prices and took that into account.

Senator CARR—So we are clear about this: there was a tender?

Mr Thatcher—Yes.

Senator CARR—How many people tendered?

Mr Thatcher—I cannot recall, I am sorry. I was not the person who did the assessment. I am afraid I would have to take that on notice.

Senator CARR—You have now calculated the price by page, have you? Is that how you have worked out the pricing arrangements—by page?

Mr Thatcher—I cannot answer the question in the detail that you want, because I do not know at this stage the size of the report.

Senator CARR—I follow that part of your answer.

Mr Thatcher—They gave us indicative prices, but the total cost will depend upon the report.

Senator CARR—I understand that. I would like to know how you have calculated the pricing of the publication and the printing. I thought you said that you had an indicative price per page. Did you or did you not?

Mr Thatcher—We were given indicative prices. I do not have the details with me. I will have to take that on notice if you wish for further information on that.

Senator CARR—So each of the tenders provided you with an indicative price per page.

Mr Thatcher—There may have been factors other than the per page price involved.

Senator CARR—What other factors were involved?

Mr Thatcher—I do not have that information with me. I would have to take that on notice.

Senator CARR—Can you tell us what the price per page is?

Mr Thatcher—I do not have that information with me.

Senator LUDWIG—Does it include artwork, or is it just a price per page?

Mr Thatcher—The successful tenderer is going to be undertaking not only the printing but also the desktopping. I do not have any further details with me here today.

Senator LUDWIG—But you can get that and provide it to us today?

Mr Thatcher—Whatever information we have, I will take on notice.

Senator LUDWIG—The successful tenderer has tendered for artwork including desktopping and then a price per page for printing; is that where we are at?

Mr Thatcher—Madam Chair, I was trying to be as helpful as I can be. I do not have the details with me. I was trying to say that we obtained indicative pricing and took that into account in respect of the allocation of the tender. I do not have any further details with me, but I am more than happy to provide full and comprehensive information on this to the Senate committee.

CHAIR—I am sure the senators will be grateful for that. That was what I understood you to be saying. Thank you.

Senator CARR—Thank you. I go back to the question of the request for an extension of time. Can we have a copy of the letter outlining the reasons for the extension of time?

Mr Cornall—I understand that the Attorney was asked if he supported the extension, but the correspondence was with the Attorney, and so I would have to speak to him about releasing it.

Senator CARR—Mr Thatcher said that the request went to the Prime Minister.

Mr Cornall—I think the Attorney was consulted about it. I do not think the request went to him.

Senator CARR—Mr Thatcher, how was the Prime Minister contacted, if not by letter?

Mr Thatcher—A letter went from the commissioner to the Prime Minister.

Senator CARR—Are we able to have access to a copy of that letter, outlining the reasons for the extension of time?

CHAIR—The letter from the commissioner to the Prime Minister?

Senator CARR—The letter to the minister. There were two letters, apparently: one to the A-G's Department and one to the Prime Minister.

Mr Thatcher—No.

Mr Cornall—No; I said that the Attorney was consulted about the request.

Senator CARR—Mr Thatcher, how long has Mr Cole known the Prime Minister? They have been old mates, haven't they, for quite a while?

Mr Thatcher—I do not believe so.

Senator CARR—You don't think so? They were actually at university together, weren't they? They were in the same law school and graduated in the same year.

CHAIR—That is probably a question not for Mr Thatcher, I would have thought.

Senator CARR—I just wondered. They know each other quite well, going back to 1961.

CHAIR—That is not a matter for Mr Thatcher.

Senator CARR—In fact, isn't it the case that a number of the senior counsels graduated in the same year from the University of Sydney law school?

CHAIR—I am not sure whether you are going to ask also for their academic transcripts.

Senator CARR—No, I have probably got those. I just wanted to be clear. It is a remarkably cosy little circle down there, isn't it?

CHAIR—I knew your research would be impeccable, Senator Carr. Given that your research is so impeccable, I do not think these are matters on which Mr Thatcher is able to provide you with answers.

Senator CARR—I just note that the commissioner, the Prime Minister, senior counsel assisting the commissioner—Lionel Robberds—and Roger Giles all went to the same law school at the same time. Is that not true?

Ms Butler—Roger Giles does not work for the royal commission.

Senator CARR—I see. What does he do there then?

Mr Thatcher—Roger Giles has no relationship with our royal commission.

CHAIR—Again, I do not think that that is a question for Mr Thatcher unless it pertains to the royal commission in a matter that you can demonstrate.

Senator CARR—So Mr Giles has no connection with the royal commission?

Mr Thatcher—I am not sure which Mr Giles you might be referring to. Do you have any further information?

CHAIR—I assume Senator Carr is referring to Mr Roger Giles.

Senator CARR—Roger Giles is what I said.

Mr Cornall—Are you referring to Roger Giles the judge?

Senator CARR—Is he not the same Mr Giles who is with the commission?

CHAIR—Perhaps I ought to take back 'impeccable'.

Mr Thatcher—Mr Roger Giles was a commissioner of the New South Wales royal commission into the building and construction industry about 10 years ago.

CHAIR—That is some considerable time ago now.

Senator CARR—Thank you very much.

CHAIR—I will have to withdraw 'impeccable'.

Senator CARR—I was making an incorrect assumption there. I want to ask you about the intercepts. How are we going on the telecommunication intercepts through the royal commission?

Mr Thatcher—The investigation stage of the royal commission is completed and there are no further investigations taking place. The question on notice from the last time did refer to this.

Senator CARR—That is right. You are referring to question 31, where you indicated that you were in fact using telephone intercepts through other agencies. That is correct, isn't it?

Mr Thatcher—There was an answer in the affirmative to the question which was asked, which was not of the characterisation that you just stated.

Senator CARR—How would you describe your use of telephone intercepts?

Mr Thatcher—We have no use of telephone intercepts at the moment. We are no longer undertaking any investigations. The commissioner is commencing the report writing process.

Senator CARR—In how many investigations did you rely upon information received from other agencies as a result of warrants issued under the Telecommunications (Interception) Act 1979?

Mr Thatcher—I do not have access to that information with me, I am sorry.

Senator CARR—I am surprised that you would not have anticipated that I would ask a question like that, given your response to question on notice No. 31. You cannot tell me how many investigations involved telephone intercepts?

Mr Thatcher—No, I cannot.

Senator CARR—Can you tell me this: did the information relate exclusively to serious criminal offences designated under federal law?

Mr Thatcher—I do not have access to that information. It is not the policy of the commission to comment upon the nature of the investigation processes, for the reasons which were outlined at the last hearings.

Senator CARR—Can you assure the committee that there have been no breaches of the Telecommunications Act to gather this information?

Mr Thatcher—Yes.

Senator LUDWIG—What is the audit process in place to ensure that?

Mr Thatcher—The provisions of that act are complied with. I do not have the act with me, but its provisions are fairly comprehensive and they are complied with.

Senator LUDWIG—Are you 100 per cent sure that you have complied with the act?

Mr Thatcher—I am satisfied. I do not personally undertake that. The director of investigations in our organisation has been responsible, but I have discussed it with him on numerous occasions. I am very confident that that is so.

Senator CARR—Minister, I note that on 9 July you put out a statement on the subject of the use of telecommunications interceptions by the royal commission. You say in that press release that the royal commission has been declared an ‘eligible Commonwealth authority’ for the receipt of this information. Have I understood that correctly?

Senator Ellison—Can I see the press release before I comment on it?

CHAIR—Certainly. I am sure Senator Carr will happily provide a copy.

Senator CARR—Unfortunately, I do not have multiple copies.

CHAIR—We do not need multiple copies; we will just borrow your one.

Senator CARR—I need it to ask my questions, that is all.

Senator Ellison—Perhaps you can deal with some other issues while a copy is made.

Senator CARR—I will come back to it.

Senator MARSHALL—Mr Thatcher, just over \$3 million has been spent on contractors and just over \$1.3 million on consultants. Can you give me a quick explanation of how you separate those two categories?

Mr Thatcher—I will defer to Ms Butler for that answer.

Ms Butler—We have categorised different groups of people under the organisation. We have employed a number of staff through temporary employment agencies—they are

providing clerical support and paralegal services. They are paid on contractor rates at an hourly rate when we engage them through an agency.

Senator MARSHALL—So they would be under the contractors line?

Ms Butler—Yes. Also, we have arrangements with a couple of other Commonwealth or federal agencies—notably, the Australian Federal Police and what was formerly the NCA—and we have arrangements whereby we pay those employers their salaries back to them, so they come under the contractor group. Consultants are others we have taken on on a contractual basis for a specific period. For example, the media adviser is a consultant to the commission and we have had other short-term advisers who have come on on a consultancy basis under that. These are people who are providing specific services to the commission.

Senator MARSHALL—So that would be on a fixed price basis.

Ms Butler—For a contract price, yes.

Senator MARSHALL—They would all fall under the consultants line?

Ms Butler—Yes.

Senator MARSHALL—Can you break that down into more detail for us—that is, what the consultancies are? I would assume that most of those have been out to the tender process.

Ms Butler—Yes, with consultancies they certainly were. A number of them were people we took on initially to establish the commission offices, including the media adviser, which is an ongoing arrangement.

Senator MARSHALL—Apart from the administrative support staff you were talking about earlier, what other functions does the contractor line cover?

Ms Butler—It included a number of people. As I said, we contracted when we were setting up the offices—people who were doing office fitout and furniture equipment, people installing electrical services and all that sort of activity, which was short term. It included architects who came in and did the design.

Senator MARSHALL—So none of that is actually under office accommodation.

Ms Butler—Office accommodation is mostly rent.

Senator MARSHALL—Just rent?

Ms Butler—Rent and maintenance activities—office cleaning, air-conditioning costs et cetera.

Senator MARSHALL—Is there anything else under the contractor heading?

Ms Butler—The commission has had a number of contracts that have run for short periods. In answer to one of the questions on notice in the last hearings we provided details of all the contracts that the royal commission has let over its period of operation. So that information is available. I could provide you with some updated information.

Senator MARSHALL—That would be great. Thank you.

CHAIR—Has the minister had an opportunity to look at the press release?

Senator Ellison—Yes. That media release of 9 July this year was put out in my capacity as Acting Attorney-General. The Attorney-General normally has responsibility for telephone interception. That is why I did not readily recall the press release referred to by Senator Carr, but if he has questions then let him put them.

Senator CARR—I have. I appreciate the comments you make about your role at that time, but the press release does refer to the conditions under which the royal commission can receive telecommunications intercepts. I have asked a question of Mr Thatcher about the circumstances under which they have used these telephone taps.

Senator Ellison—They cannot intercept. They can only receive information from an intercepted call.

Senator CARR—I also understand from your answers, Mr Thatcher, that you are not able to authorise phone taps. Is that right?

Mr Thatcher—That is correct.

Senator CARR—But you are able to receive materials?

Mr Thatcher—Yes.

Senator CARR—So agencies know to contact you, or do you contact them?

Mr Thatcher—For the reasons I have outlined earlier and on previous occasions, it is not our policy to comment on operational matters of that nature. That is a question for the investigation, and counsel assisting, that I could not comment on here today.

Senator CARR—What you can do is tell me whether or not you have met the criteria outlined in the minister's press release of 9 July 2002. That is why I have asked you to answer the question, 'Did the information relate exclusively to serious criminal offences designated under federal law?'

Mr Thatcher—I answered Senator Ludwig to the effect that any information that we have received, we have received lawfully, and have treated, kept and maintained lawfully in terms of that legislation.

Senator CARR—So when you take that question on notice and check your records, you will be able to answer, 'Yes'?

Mr Thatcher—I have no reason to disagree with that. I am just not in a position, as secretary of the commission, to answer.

Senator CARR—I would ask you to take this on notice as well: did any of the material gathered through these telephone taps relate to non-criminal industrial matters?

Mr Thatcher—I will take that on notice.

Senator CARR—Minister, what are the audit arrangements for the use of telephone intercepts?

Senator Ellison—Can you point to where that appears in the press release?

Senator CARR—You stated:

A Royal Commission can only receive telecommunications interception product ... from intercepting agencies where the information relates, or appears to relate, to the commission of a prescribed offence that the Commission may investigate in the course of its inquiry. Prescribed offences include offences punishable by imprisonment for a period of at least 3 years ...

These are offences such as serious fraud, corruption, coercion or violence. What are the audit arrangements to ensure that the telephone tap material that the commission has been using meet those criteria?

Senator Ellison—We are endeavouring to locate the officer who deals with telephone intercepts and who can go to the detail of this question. Certainly, that spells out the

parameters for which this material can be obtained. Obviously a royal commission which is looking into a certain subject cannot go beyond the parameters of that. That stands to reason.

CHAIR—And that would be limited in the warrant, I assume, Minister.

Senator Ellison—That is right. I think it is best that we wait—I think we can get the official who deals with this in detail, who can answer those questions—if there is something else we can go onto. I say that in an effort to accommodate Senator Carr's line of questioning.

Senator CARR—I appreciate the way you have tried to answer my questions.

CHAIR—Does it assist you, Senator Carr, to go on to something else?

Senator CARR—That is a reasonable course of action to follow, if the officer is not too far away.

Mr Cornall—He was here a short time ago. We are just trying to find him now.

CHAIR—Thank you.

Senator CARR—Can I raise another issue regarding South Eastern Constructions. Mr Thatcher, I understand that South Eastern Constructions have made a complaint to the commission, have they not?

Mr Thatcher—I am not sure I can identify the complaint to which you have referred.

Senator CARR—Can you indicate whether South Eastern Constructions have communicated with the commission regarding a complaint involving the royal commission mistakenly serving an adverse evidence notice on the proprietor? South Eastern Constructions of course is the company that got the notice, but in fact it should have been South East Constructions that received the notice. Can you confirm that?

Mr Thatcher—No, I cannot confirm that.

Senator CARR—Can you take that on notice for me, please. Can you confirm that the consequence of this was that the company South Eastern Constructions had to pay legal costs of \$500 before the mistake was actually discovered?

Mr Thatcher—Yes, I will take that on notice.

Senator CARR—And, further, that the recompense that the commission offered to the proprietor of this particular company was an apology—no recompense or compensation for the legal costs incurred.

Mr Thatcher—I have no knowledge of that.

Senator CARR—Can you confirm that there was just an apology? Will the commission examine whether an act of grace payment could be made under the Financial Management and Accountability Act, given that these legal costs were incurred by a company which had absolutely nothing to do with this commission—other than that they had a name similar to another company which was adversely named at the commission?

Mr Thatcher—I will take that on notice.

Senator CARR—The interim task force was established by the minister. Was that on the recommendation of the royal commissioner?

Mr Thatcher—I would refer you to the first report of the royal commissioner.

Senator CARR—Was there any assistance lent to the establishment of the interim task force?

Mr Thatcher—Yes. There was assistance provided in terms of paragraph 15 of the commissioner's decision in the first report.

Senator CARR—Can you detail the nature of that assistance?

Mr Thatcher—I will refer to the paragraph. Basically, in the decision the commissioner said that, if the recommendation were adopted by the government, the secretary and other officials of the commission would be available to ensure a smooth transition of information, processes and, if appropriate, personnel from the commission to the interim body. What has happened is that we were assistants with the agency in respect of the provision of CVs of personnel from the commission. We also, on request, gave referees reports, where appropriate, for applicants who were working with the commission. Generally speaking, we are considering at the moment the referral of information to the interim task force under section 6P of the Royal Commissions Act.

Senator CARR—So what is the nature of that particular assistance? Is it access to files, office space, personnel? What sorts of details are those?

Mr Thatcher—The interim task force advertised for personnel, and some of the royal commission staff or former officers of the royal commission were applicants for those positions. Where referees' reports were sought, the commission gave information to the task force, but I hasten to add that the commission was not involved in any decision making or selection process of those individuals. There has been some dialogue, certainly with Ms Butler, on some equipment which is no longer being used—particularly where we had an interstate presence such as Perth—and which has been made available from the royal commission to the department for their future use.

Senator CARR—Have you sold this equipment back to the department?

Ms Butler—No. We have made some furniture available on an ongoing basis to help the task force to set up their office in Melbourne.

Senator CARR—So it is just the furniture—some desks?

Ms Butler—Chairs, a few bookshelves and cupboards.

Senator CARR—No computer equipment?

Ms Butler—No IT equipment.

Senator CARR—How many staff have transferred to this new task force?

Ms Butler—We are aware of 10 former officers of the commission who are working with the task force, both in Melbourne and in Perth. None of those staff are on loan; they are former officers of the commission. So there are no commission staff who are working.

Senator CARR—At what level were they when they worked for the commission?

Ms Butler—They were a combination of investigators, paralegals and an administrative assistant.

Senator CARR—Were any police officers transferred to this body?

Ms Butler—There are people who were investigators with the royal commission who had a law enforcement background or were former officers of police forces.

Senator CARR—So they were former policemen?

Ms Butler—That is my understanding, in most cases.

Senator CARR—How many investigators have transferred over?

Ms Butler—Eight that we know of.

Senator CARR—You said 10 officers: eight are investigators, presumably one is a paralegal and one an administrator. Is that right?

Ms Butler—That is correct.

Senator CARR—What has been the cost of the assistance that you have lent to the establishment of the interim task force?

Ms Butler—It is virtually no cost to us. The equipment that we have lent to them was not being used. The task force met the cost of removal and—

Senator CARR—What is the value of the assets that have been transferred?

Ms Butler—From the budget, no value: they are fully depreciated.

Senator CARR—So you have written them off?

Ms Butler—Not entirely, but they would be of very little value for resale.

Senator CARR—Is there someone in the commission who liaises with the task force?

Mr Thatcher—No. Madam Chair, I would like to correct something that was said earlier about transferring files and so forth. No such practice exists. If any information is made available to the task force, it will be referred to the task force under section 6P of the Royal Commissions Act. We have no special relationship with that task force.

Senator CARR—Have the task force provided the commission with any information since their establishment?

Mr Thatcher—No information.

Senator CARR—Has any information been requested under 6P?

Mr Thatcher—By the task force? Certainly I have met with the head of the task force and the request has been made. The commission is in the process of considering that and, if appropriate, will refer information in terms of 6P.

Senator CARR—What is the nature of the request under 6P?

Mr Thatcher—The request was: ‘Are you going to be referring us any information?’ The response by me was: ‘Yes, I anticipate so. We will get back to you. We will refer cases under section 6P.’ It will be precisely that. We will not be giving files. Nobody will be going through our files. Information will be provided under that section.

Senator CARR—What is the nature of the information you are intending to provide, if you are not going to provide them with files?

Mr Thatcher—Can I refer you to section 6, which is very specific. It says:

(1) Where ... a Commission obtains information that relates, or that may relate, to the commission of an offence, or evidence of the commission of an offence, against a law of the Commonwealth, of a State or of a Territory, the Commission may, if in the opinion of the Commission it is appropriate so to do, communicate the information or furnish the evidence, as the case may be, to:

... ..

(e) the authority or person responsible for the administration or enforcement of that law.

Senator CARR—What law is the task force administering?

Mr Thatcher—As it has been explained to me and as I have now received in writing, the head of the task force has been appointed as an inspector under the Workplace Relations Act

and also as an authorised person under that act. What I said before was that the commission is in the process of considering whether referral shall take place. At the moment, we are awaiting certain legal advice from the Australian Government Solicitor, so I can go no further than that. No decision has been made, and I would not comment any further until we have got that advice.

Senator LUDWIG—Can we get a copy of the letter that was sent to you from the task force requiring or requesting information?

Mr Thatcher—No, it was just verbal. I met with the individual.

Senator LUDWIG—Did he ring you up one day and say, ‘Can I make an appointment to see you about what you might send over to me’?

Mr Thatcher—No, there was a request made to have a conversation, knowing of paragraph 15 of the commissioner’s first report. Of course, I undertook to meet with him and that is what happened.

Senator LUDWIG—You may want to remind me what paragraph 15 said.

Mr Thatcher—The commissioner indicated that he would ensure that officers were available to ensure a smooth transition.

Senator LUDWIG—Of what?

Mr Thatcher—Of appropriate personnel and so forth.

Senator LUDWIG—But we have moved from there to matters that might be referred under 6P.

Ms Butler—Senator, if I can assist, the commissioner wrote:

... to ensure a smooth transition of information, processes and, if appropriate, personnel from the Commission to the interim body.

Senator LUDWIG—What information, then?

Mr Thatcher—That information will be provided under section 6P.

Senator CARR—But you have just said you need legal advice to establish whether or not this information can be provided.

Mr Thatcher—I am saying that we have not had the final tick-off. There is nothing untoward here, Senator. This is just a straight referral of information to a body who is qualified under section 6P, and we will do it very lawfully. Nobody is going through files; there is no untoward issue here. The gentleman called, he wanted to talk about staffing, he wanted to talk about equipment, and this came up during the conversation. There was no correspondence. It was a very informal meeting. There were about four people in the room.

Senator LUDWIG—Has there been any determination as to how many matters will be referred under 6P?

Mr Thatcher—That has not been signed off yet. It can only be the commissioner who makes that determination—it cannot be delegated—and the papers have not gone to him yet.

Senator LUDWIG—So there has been no determination at this point?

Mr Thatcher—There has been no determination to this point.

Senator LUDWIG—When that determination is made, is it automatic that they get referred under 6P?

Mr Thatcher—No, it is a discretion. The commissioner has to sign off.

Senator LUDWIG—So there is a two-stage process. First the determination is made and then consideration is given as to whether there will be referral of any of the determinations made. Is that right?

Mr Thatcher—Yes, it has to be appropriate.

Senator LUDWIG—Who picks the appropriate body under 6P? Section 6P does not specify a particular body or agency, so why would it be the task force?

Mr Thatcher—There is a list of bodies which are prescribed. I went straight to (e) and our interim legal advice from the AGS is that with those appointments I referred to earlier it will qualify under (e). There are a couple of other items which we are waiting for clarification on.

Senator LUDWIG—Can you tell me what they are?

Mr Thatcher—It is the conditions which we will attach to the information, which will refer to natural justice. That is all.

Senator LUDWIG—Have the other bodies asked or been in contact with you?

Mr Thatcher—If you look at our terms of reference, there are findings to be made by the commissioner in his report and at that time there may be further referrals under 6P.

Senator LUDWIG—But no body, other than the task force, has come forward and said, ‘We might be a body that is under 6P who, subject to a determination, you may then consider for referral of a matter’?

Mr Thatcher—I think we have made about 10 referrals so far, during the life of the commission, under 6P. I just cannot remember. We have made a small number of referrals.

Senator LUDWIG—Have any of those been to the task force?

Mr Thatcher—No, the task force has only just been established.

Senator LUDWIG—I just thought that I would check. So where did those referrals go? Has that been made public?

Mr Thatcher—No, and I think it is probably best that I do not comment any further, if you do not mind. I think that is a matter for the commissioner’s report—but they went to the law enforcement agencies.

Senator LUDWIG—To those bodies that are prescribed under 6P?

Mr Thatcher—Correct.

Senator LUDWIG—Other than (e)?

Mr Thatcher—Yes.

Senator LUDWIG—So they would be identifiable?

Mr Thatcher—I have not got the details in front of me. I know there has been a smaller number referred and I know they include police forces, but I do not think it is appropriate that I comment any further. We are straying into the area of operations, and that is a matter for the report.

Senator LUDWIG—But surely we are not straying into operations if we talk about the determinations that were made; they must be on the public record.

Mr Thatcher—The commission have a policy, and I think it was contained in the responses to the questions on notice from the last hearing, that we will not identify, or confirm or deny, the nature of our investigations and how we are going about them.

Senator LUDWIG—I am not after details of the investigation; I referred to the determination that was made. If we look at the referral process under 6P—unless I have got this wrong—you said that the commissioner makes a personal determination as to whether a matter should be referred under 6P. They have got to make the determination and then they give consideration as to whether, given all the circumstances, the matter should be referred.

Mr Thatcher—Correct.

Senator LUDWIG—They then also consider whether conditions should be attached to that, such as you have indicated on natural justice. My question is not about operations; it is about whether there have been any determinations made by the commissioner to date.

Mr Thatcher—I answered before in the affirmative, but if you want further details I would have to take that on notice.

Senator LUDWIG—It would help if you could. And of those determinations, how many have been referred? In other words, has there been that second step where there has been consideration given to referral? There are two points: there is the determination and there is the referral. They do not necessarily follow, although they might.

Mr Thatcher—I think I would have to refer you to the wording of 6P. I may have read it a bit fast before. It says:

Where ... a Commission obtains information that relates, or that may relate, to the commission of an offence, or evidence of the commission of an offence, against a law ... the Commission may, if in the opinion of the Commission it is appropriate so to do, communicate the information ...

Senator LUDWIG—Yes, that is the second part. I think I am right, but if we are not working from the same premise you can tell me that I am wrong—I am happy for you to do that. There is a determination first and subsequently there is a decision on whether to refer, so there are two steps. Is that how you see it?

Mr Thatcher—I am the secretary of the royal commission; I do not make these determinations. I am happy to take a question on notice.

Senator LUDWIG—The question is this: have there been any determinations—and you have said that you are going to take that on notice—and, if determinations have been made, has there been a referral of each of those determinations and, in each case, to whom?

Mr Thatcher—I will take that on notice.

Senator LUDWIG—Thank you.

Senator CARR—I take it that the officers are not back yet, Mr Cornall?

Mr Cornall—We are in the situation where the person who has the extraordinarily detailed knowledge of telephone interception—Peter Ford, the First Assistant Secretary of the Information and Security Law Division—is, as I have explained to the committee, recovering from a serious operation.

CHAIR—Indeed.

Senator CARR—I am sorry; I was not aware of that.

Mr Cornall—Another officer who is also very much aware of all this legislation is presently overseas at an international meeting relating to the business of the department. So we are just a little bit stretched at present in getting you the information that you need, but we have other people looking into it.

It seems to me that this press release was setting out the structure that is contained in the TI legislation to protect the product of telephone interception. It refers on the second page to the provisions for storage, destruction and monitoring by the ombudsman as a protection in the system. So I think that our officers would only be able to confirm that that is what the legislation requires. The practical application in relation to any agency would be a matter for the agency to explain.

Senator CARR—Mr Cornall, I am interested to know how you determine whether or not the act is actually being enforced properly.

Mr Cornall—I understand that it is the role of the ombudsman to scrutinise the way the information is dealt with under the legislation.

Senator CARR—So if a person feels aggrieved about their civil liberties in this case, given the highly political nature and context of this inquiry, their only recourse is to go to the ombudsman?

Mr Cornall—I am not expert in this legislation. I wonder whether one option might be to offer to take these questions on notice and give you a proper and considered answer as quickly as we can.

Senator CARR—I would appreciate that. I am interested in whether or not there are any arrangements to audit the use of this material and what redress people have if they feel that their rights have been trampled upon by this royal commission.

CHAIR—Senator Carr, just to make sure that you get the information you are looking for, do you mean auditing post the use of the intercepts as opposed to auditing as a supervisory process?

Senator CARR—That is right. We have a press release that talks about the conditions under which the commissioner is using this material. I would like to know how the hell we know whether or not that is right.

CHAIR—Indeed. Senator Ludwig wanted to add something.

Senator LUDWIG—When the AFP use telecommunications interception warrants they have a process of ensuring that a follow-up audit, an assurance process, is in place to make sure that the warrant is used for the purpose that the warrant was required for. I can ask them again, but my recollection is that they have an extremely good process so that they do not step outside the bounds of the warrants and so that no-one asks for a warrant for a purpose—

Senator Ellison—There is an annual report, too, on telephone intercepts.

CHAIR—Yes, there is a report made to the parliament. That is true.

Senator LUDWIG—I want to know whether or not that same process is in place to ensure that once the information is outside of that agency's hands they are able to ensure that it is still used according to the warrants.

Mr Cornall—Madam Chair, I was suggesting that we take those issues on notice. The questions have been clearly spelled out.

Senator CARR—Thank you. I appreciate that.

Senator Ellison—If we can give that to the committee today, we will try to do that.

CHAIR—May I just clarify with the senators what period of time—

Senator CARR—Not long. Not long at all.

CHAIR—That is a good answer.

Senator CARR—I understand the pressure. Mr Thatcher, can you advise the committee who was the spokesperson that spoke to the *Melbourne Age* in a report published on 10 July by Mr Paul Robinson indicating the nature of the commission's work in regard to the use of telephone intercepts? The report said:

A commission spokesman said yesterday the inquiry into allegations of corruption and inappropriate behaviour by employers and unions within the industry had received "some material" but refused to give details.

Who was the commission spokesperson?

Mr Thatcher—I would imagine that it would have been the media director, but I cannot speak authoritatively. I will have to take that on notice.

Senator CARR—I have your notice here of the distribution of legal fees. Is it correct that Mr John Agius has received over \$1 million from the commission?

Mr Thatcher—That is correct.

Senator CARR—And Mr Robberds has received just under \$1 million?

Mr Thatcher—Yes.

Senator CARR—These are extraordinary levels of fees. Can you tell me how many days each of these legal counsel actually appeared in court?

Mr Thatcher—I think we canvassed this previously.

Senator CARR—Yes, I know, and you did indicate the number of days. I would like that to be updated.

Mr Thatcher—I will take that on notice.

Senator CARR—I find a million dollars to be an incredible amount of money to be paid to an individual. Mr Thatcher, I appreciate that you have enjoyed these proceedings as much as I have. I take it that this will be the last time you will be here. The next estimates will be at the beginning of February, and your operations close down on 31 January. Is that right?

Mr Thatcher—Yes, but there is something in my contract about being invited back by the department, so perhaps we will see—

Senator CARR—Back to the department?

Mr Thatcher—No, back to the estimates.

Senator CARR—So I can expect to continue this discussion in February?

Mr Thatcher—Possibly.

CHAIR—Mr Thatcher is a very lucky man, Senator Carr.

Senator CARR—I will look forward to it.

Mr Thatcher—I do hope so.

CHAIR—There being no further questions on the royal commissions, I thank Mr St John and Mr Thatcher and your officers for assisting the committee this afternoon.

Senator Ellison—Are there any agencies or areas that the committee can determine at this stage will not be required for questioning so that they do not have to hang around?

CHAIR—I am in the hands of the committee but, given that each has been specifically requested and because of the nature of supplementary budget estimates, I suspect that they may all be required.

Senator LUDWIG—I cannot imagine that there will be extensive questioning of the High Court, the Federal Court, the Federal Magistrates Service and the Family Court, so we should be able to get through them in a relatively short time. I might put some questions on notice to some of those agencies to try to keep to the timetable. If there are any agencies wanting to get away, you might reorder their appearance.

Senator Ellison—We do have Mr Bradley from the National Crime Authority, who has travelled from Sydney. I wonder, if that is an area of much questioning, whether the NCA could be called on before the AFP.

CHAIR—We can perhaps accommodate that. I will talk to my colleagues about it.

Senator Ellison—AUSTRAC is another one.

CHAIR—Yes. We will start questioning on the High Court and try to sort some of these out in the next break.

Senator Ellison—I appreciate that.

[3.37 p.m.]

High Court of Australia

Senator KIRK—My first questions relate to the increased workload of the High Court in the last financial year. Could you inform the committee how many applications for constitutional writs were filed in the financial years 2000-01 and 2001-02 respectively?

Mr Doogan—If you go to table 2 in annexure B to part VII of the annual report, which is at page 64, you will see that there were 81 in 2000-01 and that increased to 300 in 2001-02.

Senator KIRK—What percentage increase is that?

Mr Doogan—It is approximately four times the number.

Senator KIRK—How many of those applications in each year were migration related constitutional writs?

Mr Doogan—Of the 81 in 2000-01, 63 were migration applications. Of the 300 applications in 2001-02, 287 were migration matters. In percentage terms, in 2000-01 they were 78 per cent of the total number of matters filed and in the last financial year they had increased to 96 per cent of the total number of constitutional writs.

Senator KIRK—So a very significant number of the writs are related to migration matters?

Mr Doogan—Yes; it is very high.

Senator KIRK—How many of those migration applications were remitted by the High Court to either the Federal Court or the Federal Magistrates Service?

Mr Doogan—None to the Federal Magistrates Service. Of the matters filed and determined during 2001-02, 29 matters were remitted to the Federal Court.

Senator KIRK—So am I correct in saying that none were remitted to the Federal Magistrates Service because, at that point, that court did not have jurisdiction over migration matters? Would that be the reason for that?

Mr Doogan—Yes, that would be correct.

Senator KIRK—That was in 2001-02. Were any remitted this financial year?

Mr Doogan—That was for the most recent financial year.

Senator KIRK—Of those migration applications filed in the 2001-02 financial year, how many of those have now been disposed of by the court? How many have been finalised?

Mr Doogan—87.

Senator KIRK—That is 87 out of 300. Is that correct?

Mr Doogan—Yes.

Senator KIRK—How many migration applications have been filed since 1 July this year?

Mr Doogan—After checking the statistics in my papers here, I cannot say what the specific number is of immigration matters that have been filed from 1 July to the end of October. But in the last financial year—that is, the 2001-02 financial year—for the period up to 31 October, 51 constitutional writs were filed. For the same period this year—that is, the current financial year—that number has increased to 188. So it is three times more than last financial year, and the bulk of those are immigration matters.

Senator KIRK—You said you could not specify the number, but would it be reasonable to assume that a high proportion of those are migration matters?

Mr Doogan—Yes, it would. At the present time, as of 19 November, we have a total of 627 immigration matters.

Senator KIRK—Are they outstanding from various years?

Mr Doogan—They are all current matters yet to be resolved. In addition to that number, there is a possibility—and that is all I can say at this stage—that somewhere between 3,500 and 7,000 may become a group of individual matters, following on from the two cases of Muin and Lie decided in the court.

Senator KIRK—Yes. In fact, I was going to refer to that a bit further down the track. Thank you for that information.

Mr Doogan—At the present moment, it is next in the court on 25 November. It remains to be seen how those matters that were originally scheduled to those two cases will be disposed of.

Senator KIRK—I might come to those in a moment if that is okay with you. You referred to 627 matters which are in the court at the moment. Has the court estimated how long on average it will take to dispose of these applications—in the migration area, that is—given the present workload that you have described?

Mr Doogan—No, it has not. They are of variable types. There are some, for example, that have reached the stage of having had special leave to appeal granted, and so the appeals are yet to be heard. There are others that remain in the category that a special leave application has been filed. There are others that have been filed in the original jurisdiction of the court. I have a table that shows the breakdown of these matters, if it would be of assistance to you. It shows where they have come from as well in terms of the registry.

Senator KIRK—Is that going to be tabled?

Mr Doogan—I am able to table it.

Senator KIRK—That would be good. Thank you. I want to go back to those 627 matters. You said that, because they are in different stages, it is difficult to say how long it will take to dispose of them.

Mr Doogan—Yes, it is.

Senator KIRK—What is the average length of time for a matter to be disposed of, from the time that it enters the registry until the time it is finalised? Is it possible to get those figures?

Mr Doogan—Yes, table 28 on page 82 of the annual report shows the elapsed time for constitutional writs that have been finalised. Again, it is a case of, in a sense, coming back to start with the position that most of these matters are immigration matters before the full court.

Senator KIRK—I am trying to understand this table. Perhaps you could explain to me the difference between 2000-01 and 2001-02. It looks like more were completed in the previous year.

Mr Doogan—Yes, that would appear to be the case.

Senator KIRK—What is the reason for that? Does it just depend on the nature of the matter? Is that perhaps the reason why?

Mr Doogan—There are lots of reasons, many of them mixed and varied. For example, some cases may take longer from being reserved through to a judgment being delivered; others may take longer from the time that the action is commenced and in the parties getting the paperwork ready. As a general proposition for the High Court, a large percentage of the time is in the hands of the parties involved in litigation.

Senator KIRK—So it does not necessarily reflect on the court or its resources or anything, and you cannot really draw any conclusions from that?

Mr Doogan—No. Whilst there are time limits built into the rules—for example, for special leave applications—there are some parties that will file at the earliest possible opportunity and respond at the earliest possible opportunity, and there are others that will go right to the end of the allotted time.

Senator KIRK—You referred earlier to the cases that are being considered by the High Court at the moment arising out of Muin and Lie. I understand that, as you indicated, there are actually up to 7,000 cases there to be considered. You mentioned that it was coming on again for a hearing on 25 November. Is that when a decision is likely to be made as to how those cases are going to proceed? In other words, are they going to be heard in the High Court or will they be remitted to the Federal Court? Will that decision be made then?

Mr Doogan—I really could not answer that, because I cannot anticipate what the judge may do with those matters.

Senator KIRK—If the matters were to stay in the High Court, what implications would there be for your resources, given that you have said that you have 600-odd in there at the moment? If you were to take on another 3½ thousand or 4,000, what would be the resource implications for the court?

Mr Doogan—It really depends on whether or not they are dealt with as a class or a group or whether they are determined to become individual matters. What will happen remains to be seen. But, either way, I would say from experience only—without trying to prejudge what might happen—that it is unlikely that they would remain in the High Court. The justices of the court have said as part of their judgments on many occasions that the court is not resourced to undertake trial work. Therefore, the most likely event will be that some or all of them will be remitted either as a single case, if that is possible, or as groups of cases, and of course there is also an indeterminate number out of the group where it is possible that the department may reach an accommodation with the litigants. To summarise, we can only wait and see what happens after it has been back into court again.

Senator KIRK—I hear what you are saying and I agree with you that it is unlikely that they would remain in the High Court. But, if they were to, would the High Court be sufficiently resourced to deal with these cases in a short period of time? Obviously, anything can be done in a reasonable amount of time.

Mr Doogan—They would not necessarily be resourced to deal with them in a short period of time. But, again, it depends on precisely what the outcome is, because it may well be possible, for example, to engage staff on a short-term basis solely for doing the work associated with these cases.

Senator KIRK—Thank you for that. If I can now go to the matter of self-represented litigants in the court, I noticed from looking at the annual report that up to 50 per cent of the registry staff's time is now taken up with unrepresented litigants. The report refers to the fact that many of these litigants are abusive, intimidating and sometimes intoxicated. Arising from that, what steps have been taken to protect High Court registry staff from such litigants or to respond to such litigants?

Mr Doogan—There are security arrangements in place in all registries to ensure as far as is possible the safety of the staff.

Senator KIRK—Has it got to the stage where any of the staff have been injured or assaulted by these people?

Mr Doogan—No.

Senator KIRK—So there has been no need to bring in police or any other sort of law enforcement body?

Mr Doogan—There have been instances where it has been necessary to call for security staff and others, and we have called the Australian Federal Police; but in most instances it has been a matter of anticipation as to potential problems.

Senator KIRK—So registry staff are briefed as to the procedures to take, perhaps through guidelines, in such circumstances?

Mr Doogan—Yes, they are.

Senator LUDWIG—In your annual report at page 8, you say:

Very often this is a stressful experience for the staff as there is a growing trend for self-represented litigants to be very abusive and intimidating and sometimes intoxicated.

What safeguards have you put in place to ensure the safety and security of your staff?

Mr Doogan—Most dealings with litigants are across a counter—in a situation where you have litigants on the other side of the counter from the registry staff.

Senator LUDWIG—Are they high counters?

Mr Doogan—Yes, they are.

Senator LUDWIG—Do they have bulletproof glass and windows or can people jump the counters?

Mr Doogan—No, they could not jump the counters. They are high counters and have glass as well as metal shutters that can be pulled down.

Senator LUDWIG—What about counselling for staff? If you say that it is very often a stressful experience for staff, what remedial work are you undertaking to ensure that you can alleviate the stress either through counselling or through other strategies to ensure that your staff do not become workers compensation cases in the future?

Mr Doogan—We are in the position so far of not having had any actual assaults. We have had threats, but they have not been physically carried out. As a general rule, the staff are aware that they have access to security staff fairly quickly. For example, duress alarms are available that can be triggered without the persons on the other side of the counter necessarily being aware of them.

Senator LUDWIG—So the short answer is that you do not have any strategies in place to deal with persons who are intoxicated or intimidating and who might make threats to your staff?

Mr Doogan—You could perceive it that way.

Senator LUDWIG—That is what I am hearing. I am happy for you to correct the record.

Mr Doogan—In some respects, we are talking as well about people who are not engaged or employed by the High Court. We operate registries in all capital cities throughout Australia, but only three of them are operated and run by High Court registry staff. The others are by agreement with either the Federal Court, which acts on behalf of the High Court, or the Supreme Court of a particular state or territory. As to what strategies apply, it is necessary to distinguish between our own registries and the registries of other courts where the work of the High Court is integral to the work of those other courts. What I am saying is that the strategies which apply in places other than Sydney, Melbourne and Canberra are the strategies that are in place in those other courts.

Of our own three registries, we—and I am talking about me and Ms Rogers, as the two most senior registry officials—regularly discuss with our staff the problems that arise and how best to deal with them. In fact, it is a case really of consulting the staff on the ground in predominantly Sydney and Melbourne, which is where the bulk of the work comes from, as to what they feel are their own needs.

Senator LUDWIG—I did not want to particularly spend a lot of time on this, but it troubles me that you made a statement like that. I understand that you do not have any counselling experience. Would that be a fair statement?

Mr Doogan—That is true.

Senator LUDWIG—And your way of dealing with it, having made a strong-worded statement in your annual report, is to indicate that you have high counters, shutters and duress alarms and that you talk to your staff to allay any concerns—and that is about the extent of it. I am not being flippant but it worries me greatly, when you make such strong statements there, that the way you are going to set about resolving some of these problems is to pass the buck in some respects, saying, ‘I’ll look after my staff in my three registries, but they’—in terms of the Federal Court or other places which act as recipients—‘can look after theirs.’ But in terms of then only looking after your own area, you say, ‘I’ll talk to them.’ I would expect more after hearing strong words like that.

In the last paragraph, you also said, ‘This growing problem cannot be left unchecked.’ So you recognise that there is a problem in regard to the rise of self-represented litigants, and I understand it could apply to the problems that that creates, which you have highlighted. The challenge for the future will be to contain or to solve the problem without any adverse implications for access to justice. Your answer so far is, ‘I’ll talk to my staff.’ What do you mean by that?

Mr Doogan—In referring to the growing problem, it is not merely belligerent litigants in person that I am talking about; I am talking about the huge growth in the workload that they are producing. That is the predominant thrust. As I indicated elsewhere in that same section,

10 years ago litigants in person accounted for five per cent of special leave applications, which, in volume terms, is the largest category of work. In a five-year period it almost trebled to 14 per cent, and in the last five years that has again doubled to 28 per cent. These are not just words; we are actually looking to see what we can do about this trend.

For example, the situation 10 years ago, when this was five per cent of the work, was quite different from the way it is today in terms of fees. Ten years ago the situation which applied was that fees were payable for these matters but that there was provision in the High Court rules for a court or a justice or, in certain circumstances, the Attorney-General to waive the payment of fees for 'special reason'—they were the words used in relation to the discretion of a court or a justice—or 'exceptional circumstances' in the situation where it referred to the Attorney-General. Those rules were repealed after the government of the day introduced fee regulations, which currently apply, where automatic exemption from fees is given to various classes of person. There seems to be, at this stage of our analysis, a direct link between the removal of the fees and the growth in the number of self-represented litigants.

Senator LUDWIG—Have you done any work to see whether or not they are linked? Is there any independent study or analysis, other than an anecdotal feeling that it may be the case?

Mr Doogan—You will find that in the same section of the report there is also a reference to the lack of payment of fees.

Senator LUDWIG—I can assure you that I have read it.

Mr Doogan—Yes, I am sure you have.

Senator LUDWIG—Not all annual reports though, may I say. My concern in that area is that you indicated there has in fact been a rise of self-represented litigants, and that is also being found in the Family Court and is being mentioned in the Magistrate Service. Some of those have indicated that they are undertaking some work to try to address the problem. I think the Family Court has looked a little longer to see if it could try to tackle the issue of self-represented litigants. Rather than simply saying that the answer may be a rise in fees, to solve your problem, it seems to me that it is a more pervasive problem than one that just affects your court. I am curious as to whether or not you have looked more broadly, and perhaps also to other courts, to discover whether there have been rises there and what they are intending to do about them, or whether you have together set up a task force to have a look more broadly at the issue of self-represented litigants and how to deal with it. As I understand it, the Family Court has one particular path where they are putting together help for the participants in the process. They are also looking at whether the judges might be a bit more inquisitorial than the usual way they address themselves. That may not be available to the High Court, of course. I am interested in whether you have done more than just look at fees.

Mr Doogan—Yes, we have. It is necessary to go back and look at these cases to see what they are about. The truth of the matter is that, in most instances, these cases are completely devoid of any legal merit. They have already been dealt with previously, at a number of appellate levels, before they come to the court. As I have mentioned in this section, there is very little disincentive to bringing hopeless cases. It is conceivable, with the continuing volumes, that in the future these cases may have to be dealt with on the papers.

Senator LUDWIG—So you have at least considered something other than fees. We are getting somewhere, thank you.

Mr Cornall—May I interrupt on that point. I had a meeting with the Australian Institute of Judicial Administration, and this issue of self-represented litigants is recognised as a problem

by courts throughout Australia. There were representatives from many courts from different states and jurisdictions, and they all acknowledged it to be a problem. The AIJA is commencing work in this area to see if there is a broader response that can be suggested. I anticipate that will take some time to come to fruition, but you may be interested to know that it is recognised at that level and there is some work being done in that area.

Senator LUDWIG—In fact, it was recognised earlier than that. The ALRC looked at self-represented litigants as far back as 1987—I am happy to be corrected on that—in order to work through some of the solutions. I was going to wait for the portfolio questions within the department to ask what you are also doing about it. I am happy to wait until then, but I am going through the courts as we go, to see what strategies they are adopting. When I read the annual reports, the difficulty I am having is that it seems, to be kind, that they are addressing their own registry with their shutters on. It may work for them, but it is not going to stop unrepresented litigants or their growth, in my view. It seems to me that work such as that needs to be undertaken to try to look at how to address it, from a court's perspective, across the board.

Mr Cornall—Yes, except that there may well be different motivating factors in different courts that are peculiar to that particular court.

Senator LUDWIG—It is not one size fits all.

Mr Doogan—I think there is a difference. Once you have got to the ultimate appellate court in these matters, there is a vast difference between the Family Court and the High Court in the nature of the matters that are coming to the court. We have examined special leave applications going back over a 10-year period. These show that the number of self-represented litigants has grown enormously in that time. To put that into context, of all of the special leave applications filed in the last 10 years, which total just under 3,000—2,855—by both represented and self-represented litigants, of that number of 2,855 only nine in the 10-year period, which is less than one a year, have resulted in a success for the litigant in person in terms of an appeal being allowed.

Senator LUDWIG—I do not doubt that at all. I have always believed in good representation as a way of being able to defend yourself or to win a case. I understand that different circumstances might apply, particularly in your court. My question is: what are you doing about unrepresented litigants? I intend to ask—I am showing my hand early—the department how they are going to deal with it more generally. Anecdotally, it seems that unrepresented litigants start off in the Magistrates Service. From there they might go to the Federal Court, then to the full Federal Court and finally to the High Court, whilst always being an unrepresented litigant. If you could find a way to solve their problem earlier, they would not end up as an unrepresented litigant in the High Court, I guess. I am not offering my services to solve the problem, but certainly the Attorney-General's Department has the wherewithal to assist in that.

Mr Doogan—I can only draw on my experience with litigants in person in the High Court to say that it is very difficult to dissuade litigants in person from pursuing hopeless cases. It is my experience, and Ms Rogers' experience, of dealing with these people and looking at their cases closely that—putting it bluntly—9½ times out of 10 there is no merit whatsoever in what they are seeking to do. Often their motivation may be entirely unrelated to a desire to win the case; it may be, as some have admitted over the years, merely a delaying tactic. We are also getting to the stage now where the litigants in person are coming to the court, finding they are unsuccessful, going away and then saying, 'I think I will have another go, one way or another.' The one way is to seek to reopen the case. We are finding that occurring more

frequently. I was in Sydney on Friday, for example, where we had a special leave hearing. The result of one case I have in mind is an application to reopen the previously unsuccessful case. It was refused.

In some instances that will then trigger the commencement of legal proceedings against one or other of the judges or against me or against one of the registrars. I can say, for example, that I have been the subject of criminal proceedings in Western Australia on two occasions. One of the registrars is currently the subject of a Federal Court action by a litigant in person. The Australian Government Solicitor's office, acting on behalf of the High Court, has recently finalised litigation that was commenced against the chief justice by an unhappy litigant in person who had been unsuccessful before the court. And so it goes on. These are all real, live things that are happening today. We are not simply looking at fees: I raised that as one issue that is a possibility. Another issue is to deal with cases—and I do not distinguish litigants in person from represented litigants. Another way is to look at dealing with matters on the papers and that is also currently being examined, because of the sheer explosion in the number of these cases and the very low success rate.

Senator LUDWIG—Thank you.

CHAIR—Thank you very much for assisting the committee this afternoon.

[4.17 p.m.]

Federal Court of Australia

Senator LUDWIG—How many applications and appeals were made concerning migration matters in each of the 2001 and 2002 financial years? Do you have those figures available?

Mr Soden—In each of the two years?

Senator LUDWIG—Yes, the last two years.

Mr Soden—I refer you to page 136. This indicates the number of migration matters filed in the court, for more than the last two years. If I am not mistaken, you also asked about appeals.

Senator LUDWIG—Yes.

Mr Soden—I have those in a separate area. In 1999-2000, 146 appeals were made. There were 191 in 2000-01 and 360 in 2001-02.

Senator LUDWIG—Is that in the annual report?

Mr Soden—No, it is not. I do not think so.

Senator LUDWIG—I could not find it at the time.

Mr Soden—No, I am sorry. It is not.

Senator LUDWIG—What has been the trend in the first part of this financial year?

Mr Soden—I can summarise by saying that it has been very similar with respect to the number of filings coming in at first instance and on appeal. I should indicate—and it probably answers the question you are leading to—that we are transferring by far the majority of the first instance matters to the Federal Magistrates Court. That trend has really only occurred in the last three months and it came about as a result of a policy decision the court took that it was time to move the matters to the Magistrates Court even though the certainty of the law was still somewhat unclear. In policy terms, we had delayed a decision to transfer migration cases to the Magistrates Court prior to the NAAV matter, the five-judge bench. After that

bench gave its decision, we somewhat changed our policy and thought it would be better for us if we transferred matters to the Federal Magistrates Court.

Senator LUDWIG—So are you saying that the law is clear in respect of that or at least clear enough to be able to transfer those matters to the Magistrates Court?

Mr Soden—It was clear in the sense that there was jurisdiction that the Magistrates Court could exercise. You might recall that, prior to that decision, there was some doubt as to whether there was any jurisdiction.

Senator LUDWIG—Was it in respect of only the jurisdiction or were there were other matters that you relied on to transfer?

Mr Soden—No. The real value was the clarity of the jurisdiction. We thought it was better for our court to clarify the jurisdiction before remitting to the Magistrates Court.

Senator LUDWIG—How many matters have been transferred?

Mr Soden—According to our records, for the last four months—that is, July through to October—a total of 301 matters were transferred. I am sure the Federal Magistrates Court would have information that would verify that. By way of example, 87 were transferred in July, 74 in August, 94 in September et cetera. If we kept going at that rate, the Federal Magistrates Court would have about 70 per cent of the migration work at first instance.

Senator LUDWIG—How long is it taking for your court to dispose of migration matters?

Mr Soden—Again in our annual report, you will see that on page 29, in respect of the last financial year, we set ourselves two benchmarks: four months from commencement to completion for matters where persons were in detention and six months for others. This has resulted in 56 per cent of the matters in relation to detention being completed within the four months and 77.5 per cent of the other matters being completed in the six months. I know we could do a lot better, but we have set the benchmarks and have been gradually getting better and better in working towards them.

Senator LUDWIG—What are the implications for the actual court work that you currently have, if you are remitting the migration matters to the Magistrates Service? Has your workload, more generally, been growing, declining or staying steady, taking into consideration that migration matters are now departing, which the figures in the annual report may not show?

Mr Soden—Looking at just the migration case load, a few years ago we had about 500 to 600 cases and in the last year we had up to 1,200 to 1,300 cases. If it keeps going at the rate it is going, between our court and the Magistrates Court, it will be 1,400 per annum. When that growth was foreseen by us, it was at about the same time the Magistrates Court was being established. We could see that the strategic solution for us—that is, the Federal Court—was to advocate that the Magistrates Court should have jurisdiction in migration cases. Under the system that existed before they had jurisdiction, first instance matters were dealt with by one judge and appeals went to three judges, so, in effect, in the majority of cases you had four judges dealing with each migration matter, and there is a large majority of appeals. We could see that, if the Magistrates Court had jurisdiction, one magistrate could deal with the matters at first instance and, as we suggested, the full court jurisdiction of our court may be exercised by one judge upon the certification of the chief justice. That is occurring in the majority of matters—so, in effect, you have one magistrate and one judge dealing with the workload into the future, rather than four Federal Court judges. Although the workload has gone up, that strategic change has been beneficial for us. At the time all that workload was going up, we could see that, strategically, it was better to make that structural change, rather than to seek

additional resources. So, in terms of the workload we have, we are going back to where we were at a few years ago. In the broader context, a few years ago we lost Corporations Law—

Senator LUDWIG—Yes, I know.

Mr Soden—and now it is all coming back. So we had a bit of a gap there with no Corporations Law work. I think it is going to even itself out in the end.

Senator LUDWIG—Maybe we will leave that for analysis in February. Are you able to indicate, for the last financial year, what proportion of matters were dealt with before the court by self-represented litigants?

Mr Soden—It is not mentioned in the annual report because the precise figures are very hard to obtain, for the reason I mentioned on the last occasion, which is that people might commence being unrepresented and get representation to do one part of the proceedings. We are trying to get a better collection of statistics. Looking simply at whether or not people are represented when their cases are commenced, 41 per cent of the matters commenced in our court in the last financial year involved unrepresented parties. The bulk of those cases were in the migration and bankruptcy jurisdictions, and 59 per cent of the unrepresented cases were migration cases.

Senator LUDWIG—Do you have figures which show whether it was the applicant or the respondent or both parties who were unrepresented, or is there is a breakdown of what is more likely?

Mr Soden—I do not have the absolute breakdown, but there is no doubt that the great majority are applicants, not respondents.

Senator LUDWIG—So the great majority of those 59 per cent in migration matters are likely to be applicants who are unrepresented?

Mr Soden—I cannot imagine any of them being respondents; I cannot imagine a circumstance.

Senator LUDWIG—I guess the respondent in those matters is more likely to be the Commonwealth.

Mr Soden—True.

Senator LUDWIG—They might be going down that path; I will ask them later! What strategies are you putting in place to deal with self-represented litigants?

Mr Soden—We have had a collection of strategies over some time. We take the view that people are always going to be better off if they are legally represented. We work from that premise. You might be aware that, in order to try to assist in that representation, we were the first court in Australia to implement a formal pro bono scheme through rules of court. That scheme has been adopted by many other courts now. We commenced that in Melbourne, where we negotiated with the legal professional in relation to their willingness to accept formal referrals from the court under a pro bono scheme. That is where the court makes a decision that someone is in substantial need of legal assistance, whether it is representation at a hearing, assistance with pleadings or some other sort of assistance. We started it as a pilot in Melbourne, which was successful and had the support of the profession. That now applies across Australia. In many cases where applicants are unrepresented and we take the view that they would benefit from pro bono representation, we make those orders and, in cooperation with the legal profession, we administer a scheme that enables people to get legal representation. That was an early strategy.

We have another rule of court which enables a registrar within the court to bring to the attention of a judge of the court proceedings that are thought to be completely vexatious, inappropriate abuse of process et cetera. That order enables the judge to give a direction that the document not be filed or that the proceedings not be commenced. We have used that sparingly but appropriately to prevent the commencement of what could be foreseen as absolutely hopeless, vexatious, persistently unsuccessful applications. That would apply to both an application to commence proceedings and an application to appeal against the refusal to allow the proceedings to commence.

Senator LUDWIG—Have you picked up Casetrack yet?

Mr Soden—We will have a meeting on 2 December to make a formal decision on that. I do not want to pre-empt that meeting, but we have spent a lot of time and effort and some little cost in having a very close look at its functionality and fit. We are in a position to be able to make a fully informed decision, but that will not be made until 2 December.

Senator LUDWIG—Perhaps you could let the committee know post 2 December.

Mr Soden—We will.

Senator LUDWIG—It would be helpful to follow that up. That was a matter that we had been following for some time.

Mr Soden—Yes, I noted that. I should add, following your questions earlier about strategies, that it is true that we do the High Court work, the FMS work, and general and civil law as well. It is also true that we have a lot of litigants in person who are not easy to deal with. In regard to strategies, we have counselling facilities that are available to staff—they are rarely used—but we have more proactive strategies such as training courses to assist people in how to deal with difficult litigants. That included some special training on the psychological issues that might drive some of these people so that we have a better understanding of how we might approach them to help them.

Senator LUDWIG—Can I suggest—although the chair will overrule me—that perhaps you should talk to High Court about how they could assist in the process for their staff. I do not expect you to respond to that.

CHAIR—No, I do not think it requires a response actually. Mr Soden did not really need to be asked either, Senator Ludwig.

Senator LUDWIG—No, it was just a question sitting there. Do you guys still get performance pay? If not, when did that end?

Mr Soden—We abolished it in the certified agreement before last.

Senator LUDWIG—Has it gone out of favour for a while?

Mr Soden—It was not seen in our organisation to be producing performance that could not be produced by other means.

Senator LUDWIG—Will the Federal Court still be making judges available to hear appeals from the ACT Supreme Court in the new Court of Appeal?

Mr Soden—They will have to be judges of the ACT Court of Appeal, so we will in the sense that if any of our judges want to continue to be ACT judges of appeal—

Senator LUDWIG—They would have to put that hat on, wouldn't they?

Mr Soden—Yes, they would have to put another hat on.

Senator LUDWIG—Do you know whether there has been a request or will that still happen?

Mr Soden—Let me take that on notice. I think so, but I cannot confirm who has taken the appointments.

Senator LUDWIG—Perhaps we can then find out, if that is still going to be undertaken, who will do that and so be able to make clear what the position is.

Mr Soden—We can give you all of that information.

Senator LUDWIG—On the subject of appointments, I understand that Mr Bradley Selway QC was appointed a judge last week. I think I remember seeing a press release.

Mr Soden—Yes, there was a swearing-in ceremony yesterday morning.

Senator LUDWIG—I should then correct myself: it is now Justice Selway. Is that a replacement or a new appointment? I do not recall anyone resigning or finishing up.

Mr Soden—That is a replacement for Justice O’Loughlin. He turns 70 early next year. We only have three permanent judges in Adelaide, and losing one is a big loss. We sought an early replacement in order to enable Justice O’Loughlin to complete his docket—finish his judgments—rather than have a gap. That has worked out well for us.

Senator LUDWIG—I thought that might have been the case; I was just curious. Thank you.

Senator KIRK—I have a question following up a matter I was raising with the officers from the High Court in relation to the decision in Muin and Lie and the implications that are going to flow from that. As we heard earlier, the High Court is considering how to proceed with the several thousand cases that may well arise from that. It seems that one of the options is to remit those cases to the Federal Court. If this were to occur, how would it impact on resourcing in the Federal Court?

Mr Soden—If it was 7,000 cases, it would double our total workload, in annual terms, in one hit. It would have significant resource implications for us. However, if it was possible to deal with them as a class of cases or as groups of cases, the resource impact would not be as great. If it was necessary to deal with them individually and there was no capacity to transfer them to the Federal Magistrates Court, without any adjustment to our resources it would take clearly many years to work through those cases.

Senator KIRK—So would it just take a long time to work through or would there possibly be further appointments to the court or further appointments of staff?

Mr Soden—Whether or not we get additional appointments would be a matter for the government, but I personally would not see that as a solution to the problem of 7,000 cases unless it was the last resort.

CHAIR—Thank you for your time this afternoon and thank you for assisting the committee.

[4.36 p.m.]

Federal Magistrates Service

Senator KIRK—We have been asking questions up until now in relation to self-represented litigants. I want to follow that line of questioning with you as well. I wonder if you could tell me in how many family law matters were the applicant, the respondent or both parties self-represented in the last 12-month period.

Mr May—The rate of self-representation is fairly high. It is about 45 per cent across the board. While I have not got the figures here, we did a study over three months that showed that the rate of matters where both parties were unrepresented was, I recall, about 20 per cent. Then there were different rates for applicants and respondents. As Mr Soden said, some applicants go through being represented and not being represented, so it is a bit hard to know whether you have actually got an accurate picture. Sometimes we look at the representation and sometimes we look at what they put on the court papers, so it is a bit hard to know exactly what the accurate figures are. Certainly a high rate of parties do not have representation at some stage of the litigation. That is not just in family law; it is also in the human rights and some of the other general federal law areas.

Senator KIRK—I have a question on the number of migration matters being dealt with by the court. My understanding is that it is only been in the last 12 months that the court has had that jurisdiction.

Mr May—We have had the jurisdiction since 2 October last year. We did not have many applications in the first few months, but from 2 October up until 19 November the court finalised 248 matters. I should add that, of those 248 matters, six were allowed and three were transferred to another court. The court currently has 366 matters awaiting some form of hearing. Of those, 240 have been awaiting finalisation, 240 have been with us less than three months and another 103 less than six months. Most of those matters are in Melbourne and Sydney.

Senator KIRK—With the increase in matters arising out of the transfer of migration jurisdiction to the court, what resource implications has that had? I am thinking of the appointment of additional magistrates. Has that been necessary, or has it just been a rejigging of cases?

Mr May—One additional appointment was made at the time of the conferral of the jurisdiction. It was not conceived that that person alone would do the migration work; it was an addition to our resources. All federal magistrates share the workload. Migration matters are a very significant addition to the court's work, and it is characteristic of these matters that they all take up some hearing time. They are not matters that settle at the door of the court. So they are very resource intensive and they take up an enormous amount of the court's time. We are getting through the work at this stage, but it remains to be seen how many more people we will need, in addition to the other pressures on the court. The workload is growing, so the demand on the time of federal magistrates is a bit of a moving feast.

Senator KIRK—Would migration matters be the fastest growing area in the court?

Mr May—This year, yes, it is the fastest growing, but that is only because we are working from October of last year and there has been the change of policy that was described before of transferring to us what was a significant workload for the Federal Court. It is even more significant to us, because we did not have any of it before.

Senator KIRK—I have an interest in the Muin and Lie matter that I was speaking to the officers from the Federal Court about. I asked about resource implications for the Federal Court if the High Court makes the decision to remit those cases to the Federal Court, or possibly even to the Federal Magistrates Court. What would the implications be for the Magistrates Court?

Mr May—I understand that is the class action matter.

Senator KIRK—Yes.

Mr May—My understanding is that those matters are all pre 2 October cases and therefore cannot be transferred to the Federal Magistrates Court, although I have heard that some people have a different view. If we were to have them, we certainly would not have the resources to deal with 7,000 matters—or even 3,500 matters—within the sort of time frame that we set for dealing with litigation.

Senator KIRK—I was looking at page 25 of the annual report and noticed that some 178 trade practices matters were heard in the Melbourne registry whereas there were only 39 in the rest of Australia. Why is there such a discrepancy?

Mr May—I think you are looking at the filing figure. The court's jurisdiction in trade practices matters is limited to making an award of under \$200,000 in damages. The jurisdictional limit of the District Court of New South Wales—and I might be wrong on this—is either \$700,000 or \$750,000. In South Australia, the court has no limit. But most of this work is going to arise in New South Wales. In Victoria, the County Court's limit is \$250,000. So there is not the same disincentive for a solicitor to bring an action in the Federal Magistrates Court. The other thing that has driven those figures is that a significant number of those 170 matters are related. There is a series of cases that we loosely describe as the 'ostrich cases' that relate to some claims about ostrich farming.

Senator KIRK—It says in the annual report that a review of the court's operations following its first two years is being conducted and will be completed next year. Can you tell me about the nature of that review, who is conducting it, the cost of it and so on?

Ms Leigh—That review is being conducted jointly by the department, the Department of the Prime Minister and Cabinet and the Department of Finance and Administration in close consultation with the Federal Magistrates Service, the Federal Court and the Family Court.

Senator KIRK—Could you give me some idea of what the cost of the review is likely to be?

Ms Leigh—The cost is in officers' time. It is simply one of the many projects that the division is carrying out. So I have not separately costed it. I could do an estimate for you, but I would not be able to do that on the spot.

Senator KIRK—So it is an internal review; it is not being contracted out?

Ms Leigh—No.

Senator KIRK—Could you tell the committee about the methodology that is being used for that review?

Ms Leigh—Basically it is an evaluation of the effectiveness of the Federal Magistrates Service in achieving its objectives. There were terms of reference set by the Attorney-General that worked through the original objectives of the Federal Magistrates Service—namely, to provide a fast, user-friendly, simple and efficient service—and we have gone through to look at the performance of the Federal Magistrates Service over the first two years against those criteria.

Senator KIRK—When can we expect that report to be completed?

Ms Leigh—It is very close to finalisation at the moment. We are just going through final discussions. All of the courts have been providing us with comments and suggestions and we are just working through what I think will probably be the final set of those comments to produce that review.

Senator KIRK—So we are looking at early next year or later this year?

Ms Leigh—Yes. It will probably be later this year, but it will certainly be by early next year. It is a review for the Attorney-General, so that is when we would be expecting to provide to him.

Senator KIRK—Will the report be made public or will it only be for the Attorney-General?

Ms Leigh—That is an issue that has not been decided.

Senator KIRK—Could you make it available to the committee?

Ms Leigh—I would have to seek the Attorney-General's approval. I guess that, at the moment, he would say that he has not even seen it so it would be premature for him to decide that.

Senator LUDWIG—If, when it is finally reported, it is within the period that you would normally get answers back to the committee, could you ask that question then? If not, we will try in February.

Ms Leigh—Yes.

Senator KIRK—I also have some questions in relation to the pro bono committee established by the Federal Magistrates Court. Perhaps you could give us a bit of information about that.

Mr May—The court has modelled the scheme on the scheme that was previously described by Mr Soden and that has been operating in the Federal Court. It is not exactly the same scheme, and it operates differently in different cities. In Sydney, there is an arrangement with a number of firms to provide pro bono assistance, and similar arrangements have been developed in some other capitals but not all. The schemes are limited to general federal law work. They do not apply in family law work, where legal aid is the primary provider of assistance. On that note, I should say that we have been able to negotiate with some legal aid commissions to provide assistance in a way that matches the pro bono assistance in some places. There is a fairly good take-up of the pro bono legal assistance available, particularly in migration matters in the cities where the department of immigration scheme of legal advice does not operate. That scheme only operates in Sydney.

Senator KIRK—Are those figures provided in the annual report?

Mr May—There are no figures provided about the pro bono scheme. I could take that on notice.

Senator KIRK—That would be helpful. Thank you.

Senator LUDWIG—On page 33 of your annual report, under the heading 'Casetrack', it says:

The court is now working with the Federal Court to develop a system to replace the mainframe based system that now operates within that court.

I thought that they were going to Casetrack, too, or were making an evaluation of whether to go to Casetrack.

Mr May—I do not believe they have made a decision on that.

Senator LUDWIG—No, they have not. I am not trying to mislead you there. But you have implemented it. Have you finished finally implementing it in all of your registries or the Family Court registries?

Mr May—We have implemented Casetrack with the Family Court in relation to family law work alone. We still operate a system called MAGCAMS, which is a duplicate of FEDCAMS, which is the system that the Federal Court have to replace.

Senator LUDWIG—That is where my confusion was coming from.

Mr May—We obviously have an interest in the Federal Court going down the Casetrack path, because that will allow us to operate on one system across the country.

Senator LUDWIG—So you are hanging out for a decision?

Mr May—We are waiting on the decision, yes.

Senator LUDWIG—What will that decision mean?

Mr May—If the decision is that the Federal Court will use Casetrack, we will simply be able to alter what is called the metadata in Casetrack and basically operate it as our system, maybe with a few other application changes. There is a possibility that, even if the Federal Court does not use Casetrack, we will then be able to make changes in Casetrack as we operate it and then distribute that to the Federal Court's network. But that creates a problem for them in having to run two different systems side by side. Obviously, it would be better if we could avoid that.

Senator LUDWIG—You mention transcript arrangements. What are the costs of those? It is on page 39. It looks like it is a contract—

Mr May—I do not have with me a figure on transcripts alone. I can say that the cost of recordings and transcripts in this financial year, to the end of October, was just over \$304,000. Most of that will be recording costs. Our use of transcripts is relatively light compared with most other courts, because we do not have running transcripts. We do not generally have transcripts during a hearing. Our major use of transcripts is for transcribing judgments given extempore. Occasionally, if there is an appeal we need to transcribe—and very infrequently in the running of the case there will a transcript.

Senator LUDWIG—The interest I had was more about the actual client or the people who would access transcripts and the costs that they might have to bear—whether the transcripts were readily available and whether they were expensive.

Mr May—Our use of transcripts is solely for the court.

Senator LUDWIG—Yes, I know.

Mr May—If a litigant wants a transcript they have to go to the commercial transcript provider and obtain it at commercial rates.

Senator LUDWIG—And you do not monitor the costs of that?

Mr May—We do not have any details of the amounts that individuals have paid for a transcript. We do know how much they pay for each page, because that is what the contract with the transcript provider is.

Senator LUDWIG—How much is that?

Mr May—I do not have that detail with me. I could take that on notice and get back to you.

Senator LUDWIG—In part 2 on page 9 you make a comment which starts off, 'It is critical that further appointments be made'. What do you mean by that?

Mr May—The court is a growing court. In family law work we expanded the amount of new applications last year by over 60 per cent and this year by another 40 per cent. We are

getting new work coming through on the general federal law side. The court was initially established with 16 federal magistrates. Subsequently there have been three more appointments. We are regularly talking to the department and the minister about other requirements. The court has recently sought to form a view about where we might be in, say, five years time and to look at where we might need to provide additional resources. There is no doubt in our minds that the court needs to expand rather than have an expansion in other areas of the federal judicial system. How great that expansion is is really a matter for government, not for the court, but at the moment we have quite significant growth in both our family law work and our general federal law work. The court's view is that the only way that can be met and the court meets the targets it has of resolving matters within six months is by having additional people to do the work.

Senator LUDWIG—Have you made representations to the Attorney-General about this?

Mr May—Indeed.

Senator LUDWIG—In what form? Have you written a letter or did you ring him up?

Mr May—In discussions with the Attorney and with the department.

Senator LUDWIG—Who in the department?

Mr May—With Ms Leigh and other officers of the department with whom we converse regularly.

Senator LUDWIG—What is their answer so far?

Mr May—Perhaps that is a matter for the department.

Senator LUDWIG—I am happy to hear your answer now.

Mr May—It is a matter that is being considered regularly.

Ms Leigh—Senator, that is certainly a matter that is under consideration by the government. Indeed, I would note that in the government's election statement it said that it would appoint up to two additional magistrates.

Senator LUDWIG—Thank you.

CHAIR—As there are no further questions for the FMS, Mr May, thank you very much for assisting the committee.

[4.55 p.m.]

Family Court of Australia

CHAIR—Welcome, Mr Foster, Mr Phelan and Ms Filippello.

Senator KIRK—I have a question to begin with in relation to the reduction in the number of senior registrars in the Family Court as a consequence of the establishment of the Federal Magistrates Service. I notice at page 10 of the annual report that Chief Justice Nicholson states that, even though the court has lost 52 per cent of its capacity to handle interim matters, its workload has reduced by only 23 per cent. I wonder if you could provide the committee with some examples of the sorts of interim matters that were formerly dealt with by the senior registrars that are now being dealt with by judges?

Mr R. Foster—Ms Filippello will address that question.

Ms Filippello—By way of easy reference, order 37A(2)(1)(c) of the rules provides a series of powers that have been delegated to band 2 registrars, which includes all the interim parenting applications. So applications, for example, for interim residence, contact, location

orders would now be dealt with by registrars. Once we lose our registrars on 1 July 2003, they will have to be dealt with by judicial registrars and by judges of the Family Court.

Senator KIRK—How is the court going to accommodate that? I am trying to understand the impact of what the chief justice was saying in that 52 per cent of the capacity has been lost, yet the workload has reduced by only 23 per cent. So are there going to be additional burdens on those who are doing the work? Is that the consequence of this?

Mr R. Foster—I might deal with that question. The court has established a project called Project Mercury, chaired by Justice Brown, to review in a broad sense the way that the court has been dealing with, and will continue to deal with, its interim work. The objectives are to better manage the urgent applications—much more intensive management of those—to better address interim needs and to better deal with the procedural aspects of interim matters. So that has created a wide range of issues to consider, including the relevant legislation, the various rules and the relevant decisions of the full court and the like. The intent is, as far as is possible, to reduce the amount of interim work that the court has been dealing with within its own means. That is the intent of the project.

There has been a piloting of some strategies in that regard in Hobart, but I guess it is too early to make too many conclusions about how that is going at the moment. The court is very aware that we actually have a significant problem in dealing with interim matters with the significant reduction of registrars, and that is the way the court is dealing with it in as broad a way as possible, recognising that it is probably unlikely that we are going to get additional funding for it because we have already basically advised the government what the issues are in relation to band 2s. To be fair, that is being addressed in some way in the review of the FMS in terms of band 2 numbers. There is also a pilot strategy in Melbourne, as well as Hobart, so it is in two locations.

Senator KIRK—Is the Project Mercury to which you just referred mentioned in the annual report, or is this a new entity since then?

Mr Phelan—It is referred to on page 4 of the annual report, ‘Management of interim work’, particularly in the first couple of paragraphs.

Senator KIRK—My next questions relate to a reduction in the number of counselling staff in the court. How many staff presently provide counselling services in each of the registries of the court throughout Australia?

Mr R. Foster—We currently have a total of 82.3 FTE. There are 3.8 in Hobart and Launceston; six in Dandenong; 7.2 in Adelaide; three in Canberra; 15.6 in Melbourne and Albury; five in Townsville, Rockhampton and Cairns; 1.6 in Darwin and Alice Springs; seven in Brisbane; 7.6 in Newcastle, Coffs Harbour and Lismore; 13.2 in Parramatta and Dubbo; and 12.3 in Sydney and Wollongong.

Senator KIRK—How do those figures compare with those at the beginning of the 2001-02 period? I am trying to work out whether there has been a reduction.

Mr R. Foster—As at 1 July 2001, there were 84.7 in total.

Senator KIRK—There has been a slight reduction.

Mr R. Foster—Some of those services have also been picked up by contracts with non-government organisations. There has been some work done, particularly in Rockhampton, in relation to that. At the moment there has been a slight reduction, but it could just be a delay in filling positions. There has certainly been no decision by the court—quite the contrary—to reduce its mediation services any further.

Senator KIRK—I noticed that these people were located in such places as Townsville. Do counsellors who are located in those places take trips to surrounding areas—in other words, into the more regional and rural areas?

Mr R. Foster—I am advised that they do circuits from Townsville to various locations around Townsville.

Senator KIRK—Could you provide the committee with a schedule of visits?

Mr R. Foster—Absolutely. I will take it on notice and give you the various locations to which counsellors or mediators circuit around the whole country.

Mr Phelan—We also use a lot of video and telephone conferencing, particularly in rural and regional locations. That is another factor in the service we provide in those areas which we do not actually visit physically.

Senator KIRK—My next questions relate to Project Magellan. I see in the annual report that the Magellan project, or Magellan pilot, was first tried in the Melbourne registry. I understand that it was found to be worth while and that the court is working on an extension of that to other registries throughout Australia. Is that correct?

Mr R. Foster—Yes.

Senator KIRK—I also noted that it says on page 5 of the annual report that the approval of the Attorney-General may be required for ‘the waiver of legal aid guidelines in relation to the imposition of caps’. Could you explain to the committee precisely what approval would be required from the Attorney-General and why such approval would be required?

Mr R. Foster—Because of the specific nature of these cases, there is a view shared by some of the legal aid commissions that the commitment to resources that they might have to put in could go above their cap for a particular case. I think in some cases that is quite true. There needs to be some commitment from the Legal Aid Commission that they will fund these matters to the very end, otherwise the court is not in a position to introduce Magellan across the country. We are in negotiations with the legal aid commissions as we speak. The court is obviously anxious, because of the outcomes of the Magellan project in Dandenong and Melbourne, to extend the project as far as possible across the rest of our network.

Senator KIRK—Why is it that the approval of the Attorney-General may be necessary because of the involvement of the legal aid bodies?

Mr Phelan—The guidelines for legal aid provide limits on expenditure on individual cases. I was working in Melbourne when the Magellan project was undertaken by Victoria Legal Aid in consultation and cooperation with the court and Professor Thea Brown, who had written about this area and was involved in the whole project. The arrangement then was that those fee limits were waived so that the project could be fully sponsored by Legal Aid in assistance with the court. So a waiver of the limits and the guidelines is required to extend it to other places.

Senator KIRK—My final set of questions is in relation to self-represented litigants. We have asked these of a number of those who have been before us today. I wonder if you could tell me the proportion of matters where the applicant, respondent or both parties were self-represented during the last financial year?

Mr R. Foster—Again, we are in a similar position to the rest of the court. It is done by sample. But the court now believes that the figure is in the order of 30 to 40 per cent. That has been based on a range of research over recent years. We have the same difficulty that the other courts do in that there is partial representation. Some of them might be represented at different

stages during the proceedings. The good news is that our new IT system, Casetrack—our new registry system which has been implemented across the country progressively since 29 January—provides for capturing the data about whether people are represented or not at each case event. So in the future, when we have had 12 months' data from the system, we should be able to provide—in fact, we will be able to provide—information which is much more accurate about how many self-represented litigants there are and where people are self-representing during the whole family law process.

Senator KIRK—Again, the same type of question has been asked before: what strategies are you putting in place to deal with self-represented litigants, or is it not seen to be such a problem in the Family Court?

Mr R. Foster—We have in fact had some discussion with the chief justice, which is covered in the annual report. But the Family Court decided late in 2000 to adopt a much more strategic approach to the issue of self-represented litigants and set up a project, under the leadership of Justice Faulks of the Family Court in Canberra, to try and develop a whole range of approaches to deal with this on a national basis and not a piecemeal basis. As I said, the project commenced late in 2000 and a report from the judge's committee will be available to the court at the end of this year or early next year.

The goals of the project, which I think I have stated in these hearings before, are to develop a consistent national approach to providing services to litigants that are sensible, effective and, more importantly, understandable; that the court is conscious of the requirements of self-represented litigants; to improve the current court practices, court services, practice and procedure, protocols and pro formas; and to evolve deliveries that are clear, consistent and understandable to litigants. Much has happened, in fact, since the project started. It is not one of those projects where we wait two years to start introducing some initiatives. As an initiative is being identified, it is being assessed and then implemented. The court has put significant resources into this project—for this financial year, in the order of nearly \$80,000, and a significant sum of money, in the order of \$200,000, for the next financial year. So the court is really serious about doing something about SRLs.

We have many new plain English language products. Extensive consultations have taken place with individuals and with other service agencies that provide services to self-represented litigants. We have a good feedback mechanism with a whole range of stakeholders and others through our existing web site and regular project newsletters. As recently as last month, the chief justice launched a new web site—the Family Court of Australia step-by-step process web site. It not called a self-represented litigants web site because we believe that people are best served by being represented, but certainly that new web site is a significant step forward in providing clear information about all the processes of the Family Court. We are re-looking at all of our rules of court, and a project is under way to do all of that.

We have looked at all of our client service areas, where self-represented litigants and others come to the court to interface. We have moved away from the bulletproof glass and those sorts of things. Where we had airport type security in our buildings, we have now gone into more open-plan, sit down type client service areas to try to make self-represented litigants feel a bit more comfortable in what they do in courts. We have established duty solicitor schemes with legal aid commissions at Parramatta, Sydney and Melbourne. We have a longstanding scheme going in partnership with Monash University and Dandenong, where law students under supervision of lawyers from Monash University provide advice to self-represented litigants at the Dandenong registry. So we have done a lot, and we are continuing to do a lot

through this whole broad ranging strategy of dealing with self-represented litigants. But I share some of the concerns that the other courts have raised. It is a problem that is just not going to go away.

Senator KIRK—Thank you. I have no more questions for the Family Court.

CHAIR—Thank you very much, Mr Foster, Mr Phelan and Ms Filippello, for appearing today.

[5.12 p.m.]

Australian Transaction Reports and Analysis Centre

CHAIR—Welcome, Mr Jensen, Ms Atkins and Mr Mazzitelli.

Senator LUDWIG—I had the opportunity of reading an article in the *Financial Review* on Monday, 4 November 2002. It was headed ‘Terror-funding alert gives banks an identity crisis’. It seemed to suggest that the head of security at the Commonwealth Bank, Mr John Geurts, was criticising the 100-point test for identity cards used by banks. He said that the system was outdated and it was simple for criminals to fake their identity. You, Mr Jensen, as AUSTRAC director, gave an interview to the ABC’s *AM* program on 5 November—I have that transcript as well—in which you briefly discussed the bank’s criticisms. The Commonwealth Bank criticised the 100-point identity test, saying that it was outdated and it was simple to fake identities. Do you share those concerns about the 100-point identity test? Do you have any concerns about the 100-point identity test?

Mr Jensen—The 100-point system in itself is not a problem associated with identity theft or identity fraud. In fact, the issue is about the underlying documents and the ability to create them. The system itself is reasonably robust in having two or three different types of documents required to be produced for people to identify themselves. The ability to create those documents, through technology and other means, is certainly an issue that we are looking at and have looked at for a period of time both with the private sector—and the Commonwealth Bank has been involved in those discussions—and in partnership with the law enforcement agencies and other government departments as well. It is an issue that we are looking at and have been looking at for some time. Certainly, we are constantly looking at the 100-point system to make sure that it is operative and continues to be so.

Senator LUDWIG—What are your particular concerns about the 100-point identity test, if you are looking at it?

Mr Jensen—Part of the issue is up-front documentation as against a validation check of the documentation itself. There are validation checks available in the system, but ultimately what is happening in the financial sector is that people are looking at certain documents and validation checks are not being done. We are looking at the process, and one of the issues involved in that is the process of validating the information that is being provided to them in the documents.

Senator LUDWIG—How are you doing that? Is there a process going on?

Mr Jensen—We have a group called the Proof of Identity Steering Committee which, as I said before, comprises people from the private sector and from government. They are looking at these issues and making recommendations in respect of the matter. We currently have a group, funded both by the private sector and by government, that is looking at the extent and the cost of identity fraud. That group is currently researching that issue.

Senator LUDWIG—If forgery is easy, doesn’t that go to the heart of the 100-point identity test?

Mr Jensen—In the sense of forgery being a very small component of the overall identification process—

Senator LUDWIG—Isn't that the start of it?

Mr Jensen—Any small part is an issue—I agree with that. The difficulty is what you put in place if you were to replace something like the 100-point system. I do not think it is the 100-point system. It is getting to the nub of the issue, which is creating a system—which effectively is the 100-point system—but having some controls over the ability to create documentation; and, in many respects, that is a validation check. For example, if someone comes in with a drivers licence as identification, a validation check with the road authority to check that that information is correct and does relate to that licensee may be a way of looking at it. There are a number of different options that we are looking at at the moment to tighten up the 100-point system, but a lot of it does relate back to that type of validation process.

Senator LUDWIG—Minister Ellison said on the *AM* program:

We are looking at the 100 point identification system which is what you need to open a thing like a bank account.

But you are not actually looking at alternative models; you are looking at how to tighten up the 100-point system.

Mr Jensen—Yes.

Senator LUDWIG—At the heart of the 100-point system is the drivers licence, which seems to be easily forged.

Mr Jensen—Yes; so what we trying to do is work to tighten up the processes in terms of the originating documentation—and we are working with the state governments as well, who are represented on our committee. If those processes are tightened up, and then there is a validation check, the 100-point system will work in the majority of cases.

Senator LUDWIG—Can you give me an example? I am starting to lose the concept. Are there alternative models available to strengthen safeguards around identity checks by banks and other financial institutions that you are looking at or are you looking at how to develop safeguards around the 100-point identity check?

Mr Jensen—Ultimately, the identification checks around the world come back to identification documents. We are trying to extend that to validation of the information that is within those documents. We are trying to go a step further than just using the documents themselves—in fact, putting the bank in the drivers seat, if you like, in being able to check up on the information rather than the customer being in the driver's seat in providing a document that might be false. The basic focus is still on the 100-point system. We still believe that that is a good system. It is ensuring that it will work through the documentation or the validation checks or whatever else we can come up with in the process.

Senator LUDWIG—So you do not see the test being replaced; you see the 100-point identity check being maintained and you are looking at the safeguards to strengthen it, putting the bank in the drivers seat? I do not know whether or not that is a good idea.

Mr Jensen—Yes, definitely.

Senator Ellison—I must just say for the purposes of this discussion that, if a drivers licence, a passport and other primary documents were impossible to forge, that would strengthen the 100-point test. As Mr Jensen said, we are looking at working with the state governments. A number of them have already in place steps to make it very much harder to forge a drivers licence. We have steps in place at the federal level to increase the integrity of

an Australian passport to make that harder to forge. If these primary documents are made harder to forge, the basis of the 100-point test is of course very much stronger. That is one of the approaches we are taking.

Senator LUDWIG—So, on the one hand, the Commonwealth Bank is criticising the 100-point identity test—

Senator Ellison—With respect, I do not think that what the bank was saying was a criticism of the 100-point test, to the extent that it may not have been aware of the substantiation that was going on in relation to the documents which form the basis for that 100-point test. If you make those documents stronger, of course the 100-point test is made stronger.

Senator LUDWIG—I only gather that from a recent article in which Mr Geurts is said to have warned:

... it had become too easy for terrorists and other criminals to set up bank accounts. The '100 point test' for identity used by banks was outdated and it was simple for people to falsify documents.

Senator Ellison—I met recently with IFSA and representatives from Macquarie Bank, Colonial and National Australia Bank, and I do not think they shared his concerns about the 100-point test. I do not think it is a view which is representative of the financial sector.

Mr Jensen—The Commonwealth Bank are in our Proof of Identity Steering Committee and have been working with us over a long period of time on this very issue.

Senator LUDWIG—The Australian Bankers Association, which represents all the major players, is pushing, as I understand it, for electronic links to be installed between banks and government departments that issue documents such as drivers licences. This national electronic gateway would let banks automatically check the authenticity of documents presented by a customer. Is that an alternative to the 100-point test?

Mr Jensen—That is a validation process.

Senator LUDWIG—It is used to strengthen the 100-point test.

Senator Ellison—It backs up the 100-point test. It does not replace it.

Senator LUDWIG—Would that sit with the 100-point test?

Senator Ellison—Very much so, because it could validate the licence that is being presented to earn 40 points or 70 points or whatever it is.

Senator LUDWIG—Do you track figures which confirm reports of a rise in the incidence of identity fraud in Australia?

Mr Jensen—As I understand it, that is part of the research program that is going ahead at the moment to try to get to the nub of the issue—what is the extent of it. We do not have those figures at the moment, but hopefully we will be able to get that out of the research.

Senator LUDWIG—Is there a process going on at the moment?

Mr Jensen—That will be completed by June next year.

Senator LUDWIG—I can see how it is going in February. Is that the Proof of Identity Steering Committee? Does it have a role in that process?

Mr Jensen—Yes, it does. We have a research group that is doing that work for the group.

Senator LUDWIG—Who sits on that committee?

Mr Jensen—It is private sector, government departments, state government departments, and AUSTRAC. We can give you the full list of that group, if you wish.

Senator LUDWIG—Perhaps you could take it on notice. What I was after was how often—

CHAIR—I think Ms Atkins is providing it as we wait.

Mr Jensen—Ms Atkins can provide that.

CHAIR—Ms Atkins has the details.

Ms Atkins—I am the chair of that steering committee. The members are the Australian Bankers Association; the Commonwealth Bank; the National Australia Bank; ANZ; Westpac; New South Wales Registry of Births, Deaths and Marriages representing births, deaths and marriages registries around Australia; Austroads, which is the association of road transport authorities for Australia; the Australian Bureau of Criminal Intelligence; the Australian Taxation Office; Centrelink and FACS; and the Attorney-General's Department.

CHAIR—Thank you very much, Ms Atkins. I think that is very helpful for Senator Ludwig.

Ms Atkins—If there are more, I will let you know.

Senator LUDWIG—Thank you. Perhaps you could take it on notice to establish how often that steering committee meets. I would also like to know if it is considering any alternative models, if it has developed any public discussion papers to identify how it is going to go about its work in identifying fraud, and whether or not it has come up with any estimates to date of the extent of identity fraud in Australia. Is there a survey being undertaken by the committee?

Mr Jensen—That is correct.

Senator LUDWIG—Is that survey complete?

Mr Jensen—No, that will be completed in June.

Ms Atkins—There are two things. There is a study of the cost and extent of identity fraud, which will be completed in June next year, but there is also a survey that has been undertaken by the committee itself. That is a survey of both private and public sector organisations in relation to the types of frauds that they are seeing and the types of problems that they have with the current documentation. The results of that survey are only recently in and they have not yet been analysed.

Senator LUDWIG—When that analysis is complete, can that be made available to the committee?

Ms Atkins—Yes.

Senator LUDWIG—Is there a scoping paper on identity fraud prepared by the Attorney-General?

Mr Cornall—Yes, there is.

Senator LUDWIG—Is that available to the committee?

Mr Cornall—Yes. It is called *Scoping identity fraud* and it was published some time ago.

Senator LUDWIG—I thought it had. Is it on your web site?

Mr Cornall—I do not know the instant answer to that.

Senator LUDWIG—I trawled through your web site. I had not spotted it there, so I thought I would ask the question.

CHAIR—You should do that more, Senator Ludwig.

Senator LUDWIG—Perhaps I should. I was also interested in whether AUSTRAC made a submission to the scoping paper or whether you provided information to develop the paper which was put out by the Attorney-General.

Mr Jensen—There were no formal submissions, as I understand it, but we did provide quite an amount of information and worked closely with the people developing the paper. That is both AUSTRAC and the committee itself.

Senator LUDWIG—Have you done some work with the Australian Taxation Office on the integrity of documents used for identification purposes?

Mr Jensen—On which documents?

Senator LUDWIG—Documents used for identification purposes. Have you been commissioned by or undertaken any work with the Australian Taxation Office?

Mr Jensen—We have worked very closely with the Australian Taxation Office over a long period of time. In fact, the Australian Taxation Office together with Westpac were the organisations that came to us to initiate the Proof of Identity Steering Committee a number of years ago. In each of our annual reports, we have reported on the work of the committee, and again this year as well. So we have been working closely on their issues as well as the issues specifically relating to AUSTRAC and the steering committee.

Senator LUDWIG—Are there any outcomes from that? You say you work with them.

Mr Jensen—I would have to take that on notice. I am not sure at this point in time what the tax office outcomes are, but we can give you an answer to that on notice.

Senator LUDWIG—Thank you. In respect of AUSTRAC's role with the royal commissions, including both the Royal Commission into the Building and Construction Industry and the HIH Royal Commission, are you empowered to provide them with information?

Mr Jensen—Yes, we are.

Senator LUDWIG—Is it just those two commissions that you are empowered to provide information to? I suppose there might be some state ones, but are there any other commissions you are empowered to provide information to?

Mr Jensen—Yes, the royal commission into the Western Australian police.

Senator LUDWIG—Obviously you will tell me if this question is too sensitive, and you will not answer it at that point I suspect: how many financial transaction reports have you provided to each of these royal commissions? We will leave out the West Australian one for the time being and look at the HIH and building industry royal commissions.

Mr Jensen—We provide them with access to our data. We have not provided them specifically with transaction reports.

Senator LUDWIG—I think we have done this before—it is like *deja vu*, isn't it!

Mr Jensen—Yes, it is.

Senator LUDWIG—I think I have asked this of you before, too, when we have run into this problem: when you do not provide the report, you provide them with access to your database.

Mr Jensen—That is correct.

Senator LUDWIG—Do you track how many times they access the database?

Mr Jensen—We can do that. We do have audit figures.

Senator LUDWIG—Do you charge them by access time?

Mr Jensen—No.

Senator LUDWIG—It is freely available?

Mr Jensen—It is freely available to them.

Senator LUDWIG—So it is not a user-pays system yet?

Mr Jensen—No.

Senator LUDWIG—We should not let Mr Cornall know about that. The auditing process, then, determines how many times you access it or for how long or what data you access?

Mr Jensen—A range of information is available. It logs the person who is accessing, the number of reports they have accessed and—although we do not look at the information—further down the line, what they have actually accessed. As a matter of course, we do not pursue their line or look at the information that they have looked at, obviously. There are some 700,000 accessions or requests of the system in a year. We cannot keep looking at what everyone is doing and we do not want to, because that relates to an investigative matter. But, certainly, with regard to statistics relating to the number of times the system was accessed and the number of transaction reports or networks that have been accessed, we do have that information.

Senator LUDWIG—Perhaps you could provide that to us for each royal commission then—that is, just the statistical data at this point.

Mr Jensen—Do you want the state one as well?

Senator LUDWIG—No, not the Western Australian one.

Mr Jensen—Just the Commonwealth?

Senator LUDWIG—We may as well have the state one then, thank you. We may as well have the three, provided it does not put you to too much extra trouble, I guess, since it is there.

Mr Jensen—As a matter of course we provide this sort of information to the agencies themselves so that they can look at what is happening in their own organisations.

Senator LUDWIG—I understand that. I think I have chased that down before, but we get stopped at about the point where we try to work out what the information is. My recollection is that you will not say.

Mr Jensen—That is correct.

Senator LUDWIG—I was right. Were you involved in the preparations for the new Australian Crime Commission that will start up on 1 January next year? In other words, what involvement did you have with it?

Mr Jensen—We had limited involvement in the development through working groups that were established earlier this year. I think my involvement ceased in about May or June of this year.

Senator LUDWIG—What was the nature of that?

Mr Jensen—It was looking at the processes and procedures behind the establishment of the ACC and the work that it was going to be doing.

Senator LUDWIG—Has there been any work to date about what arrangements would be in place between the ACC and AUSTRAC about accessing your database, requesting reports—although I do not think anybody requests reports; they must go for your database first—understanding how your database works and training to ensure that they are competent to utilise it, and protocols that would have to be put in place to ensure security?

Mr Jensen—At this point in time we are looking at it as business as usual with what we have got in place for the National Crime Authority. We will need to sign a new memorandum of understanding with the agency when they officially come into being. We will then look at anything that would change in the way they have access at the moment. I do not believe that there would be any significant change in the way that the NCA is accessing it now to what the ACC would be doing in the future.

Senator LUDWIG—Do you have a view about whether or not you should have had greater involvement in the establishment or the development of the ACC?

CHAIR—I am not sure that is a question that Mr Jensen is in a position to ask, Senator Ludwig, as I suspect you well know.

Senator LUDWIG—It was worth a try. He was nearly going to answer me then, Chair. How has the Australian financial institutions responded to the information circulars distributed by AUSTRAC to keep them informed of their obligations to help detect terrorist financing. You can remember the problem that surrounded the Melbourne record store.

Mr Jensen—I think generally the response has been very good because we have been able to provide them with information. We work very closely with the financial sector, particularly the major banks, and the major representative organisations, so we are keeping them fully informed as we progress. I have not heard of any negative response from them in terms of what we provided to them. We are working closely with the Department of Foreign Affairs and Trade and the Federal Police in an interdepartmental committee to establish procedures relating to that for the financial sector. So I think we continue to have a very close working relationship with them, and they understand that we will do what we can to help them out.

Senator LUDWIG—Have you done any follow-up work with the banks about the circulars—whether, for argument's sake, they are complying with your standards?

Mr Jensen—Not specifically on the issue of those circulars, but we do have an inspection team that inspects banks and all the cash dealers that we have through the wider financial sector, and the gambling sector as well, to ensure that they have processes and procedures in place to report suspect transactions and other transactions that have to be reported under the legislation.

Senator LUDWIG—It is not proposed that you will be on the board of the ACC, is it?

Mr Jensen—That is correct.

Senator LUDWIG—What input will you have in the structure other than as a client to the ACC?

Mr Jensen—We will work closely with the organisation, probably at a range of levels from the very top down to the analytical levels within the organisation, and provide them with the information and the resource that they need.

Senator LUDWIG—So the only point of contact in reality will be as a client through a memorandum of understanding?

Mr Jensen—Yes.

Senator LUDWIG—You will not be integral to the operation of the ACC to the extent that discussions will not put you in the ACC with the knowledge and ability and technical know-how that you have?

Mr Jensen—We will be closely involved with the operational levels and the executive management of the organisation to ensure that our FTR information is utilised fully and efficiently. We have done that with the NCA and we will continue to do that with the ACC. We work closely with task forces providing analytical support and ensuring that they are using our data appropriately and getting the best out of it. We have worked in the Agio task force, which is the money-laundering task force. Our data is the primary source of information that goes into that. We will work in a similar way, depending on the priorities at the ACC, but I would imagine that we will be working very closely at a range of levels within the organisation, both operational and management.

Senator LUDWIG—Operationally, you will be. What about strategically?

Mr Jensen—Strategically, as well. We work with them at the moment in typologies of conduct for money laundering and developing processes looking into the future as to how our side of it can best fit with the changing criminal marketplace, if you like. I do not think that will change dramatically. We work with the ABCI now. They are one of our partner agencies; they have access to our data. We work with OSCA at the moment. I do not see that there will be too much change there.

Senator LUDWIG—Given that you presently operate with the NCA in an operational capacity and a strategic capacity and it is envisaged that that will continue with the ACC, did you request to be a member of the board?

Mr Jensen—No, I did not request to be a member of the board.

Senator LUDWIG—I am looking at a press release which was put out by the Prime Minister on Australian financial controls on terrorists and their sponsors, and the penultimate paragraph reads:

The Australian Transaction Reports and Analysis Centre (AUSTRAC) will provide its full support to the relevant US counterpart (FinCEN) in obtaining information in relation to financial intelligence.

What would be the details or the extent of the information sharing between AUSTRAC and FinCEN and other American agencies?

Mr Jensen—We have a memorandum of understanding with FinCEN to provide them with our FTR information and also to get information from them. That is at both an operational level and a strategic level. We can and do provide them, as we do a partner agency here in Australia, with reports, including analytical and transactional reports. Under the memorandum of understanding, if they make a request on behalf of a law enforcement agency, they need to advise us of that and I have the ability either to grant the information to them to be passed on to that law enforcement agency or to not provide the information to them. Equally, under the memorandum of understanding, they do so in reverse.

Senator LUDWIG—Is it a case of FinCEN having access to your database?

Mr Jensen—Not direct access, no. Upon request, or spontaneously if we find information that we believe may be relevant to them, we can provide them with reports of the information. They do not have access to our database.

Senator LUDWIG—In relation to another piece of legislation that was passed this year in support of a treaty obligation, which was the Suppression of the Financing of Terrorism Bill,

amendments were made to the Financial Transactions Report Act, as I understand it. Is that right?

Mr Jensen—That is correct.

Senator LUDWIG—Consequential to that bill passing. That allowed AUSTRAC to identify terrorist financing and to enable sharing of that information with overseas agencies. Is that right?

Mr Jensen—That is correct.

Senator LUDWIG—What details are available of the activities that have been undertaken by AUSTRAC using these new powers?

Mr Jensen—In terms of statistical information?

Senator LUDWIG—Activity that you do, I guess.

Mr Jensen—It is very difficult to answer that, because it may be operational material that we are providing, but in respect of requests they can request of us information relating to terrorist—

Senator LUDWIG—We could start with what I know you do, which is provide statistical information. I take it that you have not provided access to the database, so we will rule that one out. Have they asked for reports?

Mr Jensen—They have asked us, as they have over a long period of time since we have had a memorandum of understanding with them, for information. We have provided them with information over a long period of time.

Senator LUDWIG—I was more concerned with what that amendment allowed. It would not have happened before, because otherwise that begs the question of why you would have an amendment now. So it is only since then.

Mr Jensen—What the amendment has done is enable us to spontaneously provide information to them. Previously, it was upon request through the mutual assistance legislation.

Senator LUDWIG—I recollect the word ‘spontaneous’ now. How many spontaneous reports have you provided since that amendment?

Mr Jensen—At this point in time, I do not believe we have provided them with a spontaneous report but they have requested information from us. Through our analytical unit, we are gearing up to try to do more of that spontaneous work. It is something that we are changing the processes for. Obviously, there has been a lot of change this year and what I am trying to do is upskill our partner liaison and support people to provide greater support in our analytical unit to enable more work on the database in terms of the ability to provide information spontaneously. It is a big job to do that.

Senator LUDWIG—What arrangements have been put in place by AUSTRAC to accommodate any new obligations arising? What have you been doing to ensure that you can deal with the enactment of the Suppression of the Financing of Terrorism Act 2002?

Mr Jensen—What I have done is take our outposted partner liaison and support people, who train the law enforcement agencies and assist them in accessing our database, and put them through a month’s training within our specifically skilled analytical unit to give them the ability to do further work on the database itself. I am upskilling those people to accommodate the changes in the legislation so that we can provide the information spontaneously. It is a slow process because I need to take one person through the process at a time. The analytical unit itself only comprises three people.

Senator LUDWIG—Have you received requests from neighbours in the Asia-Pacific area for assistance in fighting not only terrorism but also money laundering and the funding of terrorism?

Mr Jensen—We are currently working on a number of memorandums of understanding. At this point in time we do not have memorandums with the major countries in South-East Asia but we have been working on them for some time. We are hoping to sign with Malaysia and Thailand early in the new year. We have been working on memorandums of understanding with Japan and Korea.

Senator LUDWIG—I am happy for you to take that on notice to ensure that it is accurate. Have you offered your services? Have you taken the lead in contacting Asia-Pacific countries to say, 'We would like a memorandum of understanding with you'? If that is the case, how many places have you contacted, what has the response been and where are you with the negotiations with those ones who have indicated a positive reply?

Mr Jensen—I can provide you with some of that information now. Since September we have signed a memorandum of understanding in the region with Singapore. We are currently negotiating with Malaysia and Thailand. We are well advanced in that and we will sign early in the new year. We have been working with Japan for quite some time and we hope to have that memorandum finalised in the not too distant future. It is currently with them; they are evaluating the latest draft. We are in the same boat with Korea. We are about to provide some answers to a list of questions that Korea provided to us. Earlier this year the minister signed an MOU with Vanuatu. We have signed 11 MOUs over a period of time and we are currently negotiating 19 around the world. A number of those, as I have mentioned, are in the region.

Senator LUDWIG—With, say, Vanuatu, what work have you undertaken? Have you signed the agreement?

Mr Jensen—Yes.

Senator LUDWIG—What has happened?

Mr Jensen—At this point in time, I actually have a person in Vanuatu training them up. Their financial intelligence unit is very new and we are training them up in basic electronic systems so that they can work on their data and then we can work more closely with them.

Senator LUDWIG—And that is designed to tackle terrorist funding and money laundering?

Mr Jensen—The whole lot, yes.

Senator LUDWIG—Have there been any results? Has that been successful? What indicators do you put in place?

Mr Jensen—At this point in time we are still working with them to develop their systems. At this stage there is no result as such other than trying to work more closely with them so that we can exchange the data. We have had data from them in the past which we have then made available to the law enforcement agencies. We do not get the results out of it; it is ultimately the law enforcement agencies that do. We pass the data on to them; they will then look at it. We have had some limited exchange there.

Senator LUDWIG—Have you had any detailed negotiations or activities with Nauru relating to an MOU to tackle—

Mr Jensen—No, we have not.

Senator LUDWIG—Have you contacted them to seek one?

Mr Jensen—No, we have not. They need to have in place a financial intelligence unit and, at this point of time, to the best of my knowledge, Nauru does not have a financial intelligence unit. It has been one of the issues in the region. A lot of these countries are only just now getting to the point of putting in legislation to put in place a financial intelligence unit. Once they get that in place, then we can start to negotiate in terms of exchange of information.

Senator LUDWIG—Has there been any work with Nauru to put in place the legislation? Who would take that lead?

Mr Jensen—There are a range of activities that could be undertaken there. The Australian government could provide some assistance. Other governments around the world could also provide some assistance. That is not our role at this point in time.

Senator LUDWIG—When you contact a country and find that it does not have that legislative base in place, do you pass that information on to someone else and say that it would be really helpful if they did?

Mr Jensen—The process is being run internationally by the Financial Action Task Force on Money Laundering. That group has been attempting to have countries around the world over a long period of time put in place legislation and develop financial intelligence units. They are really the primary mover in that. They are backed by a range of different organisations, including the United Nations Drug Control Program, the International Monetary Fund, the World Bank and a range of other organisations that are providing assistance to these countries to try and help them get the legislation in place and get their financial intelligence units. Stationed here in Australia, we have the Asia-Pacific Group on Money Laundering, which is also looking at the region. It is funded by the members from the region. Australia is a member of it and we provide funding to it as well. That organisation, through the secretariat, is also trying to assist these countries to put in place the legislation and develop their financial intelligence units. It is a worldwide push, if you like, to have them set this up. When they get their financial intelligence unit under way, then we can enter into an agreement with them to exchange information. But until that point in time we cannot do that.

Senator LUDWIG—You mentioned two organisations: the Financial Action Task Force on Money Laundering, and the Asia-Pacific Group on Money Laundering. What is your involvement with the first one?

Mr Jensen—Australia is a member of the Financial Action Task Force on Money Laundering. The work done there is primarily led by the Attorney-General's Department. We are part of a committee which we refer to as the Financial Action Task Force/Asia-Pacific Group Coordination Committee, because it involves itself in both of those groups. We are a member of that committee and we were the chair of that committee until late last year. That has been taken over by the Attorney-General's Department.

Senator LUDWIG—I can also ask the Attorney-General. Is it appropriate to ask at this point in time or should I wait?

Mr Cornall—I think it would be appropriate to wait. Miss Blackburn would be the most appropriate officer to assist you with your questions, and she has been to Sydney today to chair a meeting on hand guns. She will be back this evening.

Senator LUDWIG—I will ask a couple more questions in relation to AUSTRAC about this, but I will bear in mind that some of those might be better placed with Miss Blackburn.

CHAIR—How many is a couple more, Senator Ludwig? In terms of the time frame, I would really like to deal with the NCA and start the AFP before half past six.

Senator LUDWIG—I have only a couple left.

CHAIR—Okay.

Senator LUDWIG—He just keeps expanding the information I can seek to further ask. It is not my fault.

CHAIR—Never, Senator Ludwig. I would never have suggested that!

Senator LUDWIG—I am interested in the number of meetings that have taken place, where they have taken place and your involvement in those to the extent of how coordinated the action is within the South-East Asia region with the financial action task force and also the Asia-Pacific group. Miss Blackburn may be able to assist me, but if you could take that on notice too—

Mr Jensen—I can provide you with that information very quickly, Senator, if you wish.

Senator LUDWIG—Maybe you could take it on notice. It might save us all a couple of minutes—unless you really feel a burning desire to tell us now.

Mr Jensen—No, that is fine, Senator.

Senator LUDWIG—What representations have been made at those meetings either for or against the inclusion of particular countries on the OECD's list of countries that refuse to take action to counter money laundering and terrorist financing?

Mr Jensen—That is a question for the department, Senator.

Senator LUDWIG—When will the Asia Pacific Group on Money Laundering next meet?

Mr Jensen—The annual meeting is towards the end of May next year, from memory.

Senator LUDWIG—Miss Blackburn may be able to assist. Is there a draft program or objectives for the plenary meeting of the Egmont Group in Sydney in July 2003?

Mr Jensen—We have not developed that just at the moment. The Egmont executive committee met a couple of weeks ago and discussed it, but that will be developed over the next few months and be finalised at a meeting in late March next year.

Senator LUDWIG—Thank you.

CHAIR—There are no further questions for AUSTRAC. I thank Mr Jensen, Ms Atkins and Mr Mazitelli very much. You have taken a couple of issues on notice, and we would appreciate your assistance with those. I would like to ask officers from the National Crime Authority to come to the table please. We will certainly endeavour to begin with the Australian Federal Police before half past six.

[5.58 p.m.]

National Crime Authority

CHAIR—Mr Bradley, welcome to estimates in your capacity as Acting Chairman of the NCA. Mr Whiddett and Mr Hickman, thank you very much for joining us. I understand Senator Ludwig has questions in this area.

Senator LUDWIG—I asked a couple of questions at the last estimates or even before that in relation to the Swordfish initiative to fight fraud against the Commonwealth. That program is still alive. It is forward funded until when?

Mr Bradley—Until 30 June next year.

Senator LUDWIG—Will that program roll over into the ACC?

Mr Bradley—Yes.

Senator LUDWIG—What level of funding is provided to it?

Mr Bradley—Currently?

Senator LUDWIG—Yes.

Mr Bradley—It is a three-year program. The precise figure is—

Mr Hickman—About \$9 million in the current financial year, Senator.

Senator LUDWIG—That is what has been allocated?

Mr Hickman—That is what has been allocated to Swordfish.

Senator LUDWIG—That is in the program that had a forward budget when it first started, from recollection, and you are now in the final year.

Mr Hickman—Yes. It is to be considered by government in the budget context for the ongoing funding, subject to consideration in the budget context. It is a program the funding for which lapses at the end of this year.

Senator LUDWIG—When will the consideration be made as to whether it will be continued, concluded or redone?

Mr Bradley—The Swordfish funding arrangement was that two amounts were allocated in two separate three-year programs, the second of which expires on 30 June. The current proposal is that a modified version of Swordfish be undertaken from the beginning of the next financial year. As I understand it, whether or not that proposal is approved by the government for funding is a matter for the budgetary process, and we will not know until sometime next calendar year.

Senator LUDWIG—What do you mean by ‘modified, expanded or shrunk’?

Mr Bradley—We have a new proposal, which we have called Midas, which picks up some of the very successful aspects of Swordfish and enhances them with a view to improving the outcomes in that area. I could give you precise details in private, if you like.

Senator LUDWIG—I do not know whether we want to go in camera on that just yet.

CHAIR—It is an estimates hearing, so you cannot do that.

Senator LUDWIG—Perhaps, Minister, if at some point the shadow minister for justice and customs wanted a briefing in respect of that it could be made available.

Senator Ellison—Yes.

Senator LUDWIG—How many people are employed in the Swordfish program?

Mr Whiddett—You cannot actually put it down to the number of people. It is about money laundering and fraud against the Commonwealth, so it is a part of a number of programs. For example, Swordfish will come up in Blade, which is the South-East Asian organised crime reference, and also in Freshnet, which deals more widely with established criminal networks and contacts. There is a person assigned to Swordfish for coordination with other agencies, but the numbers vary from day to day.

Senator LUDWIG—I will ask the question in a different way, then. How much, in dollars, has been recovered and brought back to the Commonwealth? Is there a performance mechanism?

Mr Bradley—In terms of revenue as measured by the Australian Taxation Office, I think that the figure is in the order of \$184 million in assessments. The amount actually recovered is in the order of \$62 million. Neither of those figures takes account of the estimated increase in compliance, which is thought to be in the order of \$100 million per annum.

Senator LUDWIG—We have talked about the review of performance measures. Do you have any idea when the decisions as to the ongoing funding will be made?

Mr Bradley—As I understand it, the decisions on Swordfish are to be made within the government budgetary process in about March.

Senator LUDWIG—Post February, then.

Mr Bradley—Post February.

CHAIR—For those of us doing estimates again in February, Mr Bradley, that is the relevant point.

Senator Ellison—What about May?

CHAIR—May is always available.

Senator Ellison—A whole two weeks of it.

Senator LUDWIG—What level of funding is provided to the Sagan initiative?

Mr Bradley—I think Sagan has approximately \$9 million over two years, expiring at the same time as Swordfish.

Senator LUDWIG—So the questions are really the same—I thought we should put ourselves on notice about that. How many people are employed in Sagan? If that is not a proper way to establish the outcomes, is it being reviewed or is it going to be considered? Has there been an application to continue it, or will it end?

Mr Bradley—Because of the nature of the activities undertaken in Swordfish, I prefer not to give specific numbers as to how many are employed. I think it is fair to say that the full complement of officers intended to be employed in that area have not yet been employed. That is because of the problems with recruiting specialists in a fairly short time frame and a bit of uncertainty about what will happen in the ACC environment.

Senator LUDWIG—Do you want to expand on that? What do you mean by problems in the ACC environment? Correct me if I am wrong; I thought that at some point—31 December—the NCA was going to cease and the ACC was going to take over from that. Are these two initiatives, Sagan and Swordfish, going to continue under the auspice of the ACC?

Mr Bradley—Swordfish is a reference and, by operation of the statute, it will continue.

Senator LUDWIG—It is my understanding that, because of the reference, it will continue and that, because of the way the statute is now structured, it will be a seamless change.

Mr Bradley—Yes, whereas Sagan is part of the toolkit. It is a program which provides specialist resources in support of a range of things, including Swordfish. The future of it will depend upon precisely how the ACC aligns itself with its partner agencies—which is one of the fundamental principles upon which the ACC is being established—and who will provide what resources in that environment.

Senator LUDWIG—So Sagan could be reviewed post the ACC establishment—

Mr Bradley—I think it will be.

Senator LUDWIG—to determine whether it will continue, whether the funds can be utilised elsewhere or what might happen to it.

Mr Bradley—I would expect that to happen.

Senator LUDWIG—How much has been invested in the program since its inception?

Mr Bradley—I think I said before there was \$9 million over two years.

Senator LUDWIG—Yes.

Mr Bradley—We spent \$1.7 million in the first year. We are in the middle of the second year and we expect to spend in the order of three-point-something million dollars, which would leave an amount of four-point-something million dollars to carry forward into next financial year.

Senator LUDWIG—So you do not envisage the NCA reviewing Sagan, nor do you know what performance measures you might utilise to review it; it is a matter that you are going to leave for the ACC. Are those fair statements?

Mr Bradley—Yes, but I would not like it to be suggested that we had not looked at Sagan in the context of the NCA. Reviewing those sorts of processes is more or less an ongoing thing. I would expect that, once the new board is formed, and its views can be ascertained as to what should be done with Sagan and how Sagan should fit into the broader law enforcement environment, there would be a review by the board based on advice from the NCA, the ACC and others.

Mr Whiddett—There was funding for two years with the hope that it would be extended at the end of June 2003. There has been a lot of preparatory work done in ensuring that we have material available for whoever might review it in the future, in terms of whether the facility had proven its worth. That would be available to the new administration.

Senator LUDWIG—That is available under the act provisions, I take it. Is it information that can be handed across to the board?

Mr Whiddett—In the normal transfer from the NCA to the ACC it would be quite proper to provide that sort of information.

Senator LUDWIG—What was the total cost incurred by the NCA in co-locating with the AFP in Melbourne?

Mr Hickman—The cost was in the order of \$4.3 million: about \$3.6 million in fitting out the new premises and around \$700,000 as a payment in lieu of make good at the former premises.

Senator LUDWIG—Has the NCA been reimbursed for that expenditure?

Mr Bradley—No. It is described as a loan. It was paid out of cash reserves of the NCA initially, and whether or not the fund will come from the government has yet to be determined.

Senator LUDWIG—So it is a loan?

Mr Bradley—Yes.

Senator LUDWIG—And you are going to finish up on 31 December?

Mr Bradley—Yes.

Senator LUDWIG—Is it with interest?

Mr Bradley—Not as I understand it. I hope not.

Mr Hickman—If I can perhaps assist: it would be a loan from the department of finance and there would be interest applying to the loan but, as the acting chairman has said, the discussions are still going on as to whether the loan in fact eventuates.

Senator LUDWIG—So what happens with that on 31 December? Does the ACC immediately get a—

Mr Bradley—No, it is not an existing liability. It was paid out of the cash reserves of the NCA with a view to borrowing from the department of finance. Whether or not the loan funds are made available has yet to be determined.

Senator LUDWIG—So will the ACC be able to have dibs on that and call it in?

Mr Bradley—The ACC might choose to prosecute the request for the loan, but at the moment there is no loan. It is something that is being paid for out of the funds allocated to the NCA.

Senator LUDWIG—When you collocated, was there any understanding of how that money was going to be dealt with—that you were going to be reimbursed when you collocated? Was there an agreement or a deal struck?

Mr Bradley—As I understand it, there was an expectation that the funds would be provided by the department of finance as a loan.

Mr Hickman—There were discussions with the department of finance, and I think at officer level there was an understanding that loan funds would eventuate. But it did not progress to the level where it had been approved by ministers at the point where a relocation decision had to be made.

Senator LUDWIG—So the NCA have co-located, taken the money and spent it out of their own budget on the basis that a loan might eventuate. Is that right?

Mr Bradley—I think that is right, yes.

Senator LUDWIG—And the department of finance have said, ‘There’s nothing in writing, so there’s no loan.’

Mr Bradley—No, they are considering it.

Senator LUDWIG—Was there anything in writing when you co-located?

Mr Hickman—As recently as earlier this week, there was correspondence from the Minister Assisting the Prime Minister in relation to the loan, and the matter has been referred to Minister Ellison for him to take up with the minister for finance.

Senator LUDWIG—How does that affect your operation or your bottom line?

Mr Bradley—In the end, it may not at all. Currently, there is a projected operating surplus in the order of \$6 million for the NCA. If the loan does not eventuate, it will not be the case that the NCA carries forward a liability into the ACC.

Senator LUDWIG—Minister, what do you have to say about that? Is the ACC going to start its existence with a liability?

Senator Ellison—I have not got that brief yet, so I will have to take that question on notice. We anticipated that all assets and liabilities would transfer from the NCA to the ACC.

Senator LUDWIG—So the NCA has handed over \$3.6 million of its cash to the AFP, and the ACC is going to kick off with a liability in the order of \$3.6 million. Is that what is being said?

Senator Ellison—No, that is not what was being said.

Senator LUDWIG—I am happy for you to correct it. I thought that was basically the short story.

Mr Bradley—There is no existing liability. The money was paid from the cash reserves of the NCA, so if nothing is done in terms of lending the money to the NCA—in other words, making more funds available to it and creating a liability—then there will be no liability in the NCA and no liability would carry forward to the ACC. As to whether that impacts on the operating capacity of the NCA or the ACC, there is potential for the amount to be at least notionally met from the operating surplus.

Senator LUDWIG—How does that surplus come about? Has it come about because your staff have left?

Mr Bradley—I imagine it comes about through a lot of factors. It is a projection, of course, based on a four-month experience of this financial year. There are some areas where expenditure has not occurred to the level at which it was anticipated at the time that the budget was set. One of those areas is in employee related expenses and there are other areas.

Senator LUDWIG—How much is in relation to employee expenses? The difficulty I have is that there is no annual report, Minister.

Mr Bradley—That is because the annual report under the act has to be presented to the members of the intergovernmental committee of the NCA and they have to sign off on it before it goes to the responsible Commonwealth minister. That has not yet happened and I am told that it cannot happen in the case of Victoria until after the election because they take the view that they are in a caretaker role and cannot sign off on such documents.

Senator LUDWIG—When will the annual report be available?

Mr Bradley—I would imagine that the controlling factor will be the Victorians signing off. I would imagine that they would do so fairly soon after the state election. Subject to any comments which IGC ministers may wish to make and any amendments which might need to be made to the draft, it would then fairly promptly go to Senator Ellison. Then, as I understand it, it is tabled and there is a parliamentary committee called the Joint Parliamentary Committee on the NCA, which has a hearing into the annual report.

Senator ELLISON—I would hope to have it tabled by the end of year, depending on what Mr Bradley said, of course, in relation to Victoria.

CHAIR—It would be my observation that the IGC issue is not in anyone's control.

Senator LUDWIG—It is a fair point that the difficulty I have is that I do not have the annual report. This is a matter that we would generally utilise the annual report to question the agency about its performance. It is out of the agency's control, I understand that, but it is certainly not out of our control, when the annual report is made available, to ask the NCA to come in before the end of the year for a question. I might seek a time for that at some point.

CHAIR—We can take that at up at a later point, Senator Ludwig.

Senator LUDWIG—It certainly would not be for very long. Is there any way of obtaining or being provided with the authority's finances at the end of this financial year, such as its cash reserves, its current liabilities and its current assets as at, say, 30 June 2002? The questions go to some of these issues which would have been reflected in the statement. It would have shown up the 'loan', or at least it would have shown up the surplus that you mentioned. It would have shown the state of employee entitlements or the change in the figures that might reflect your downsizing or people leaving as a consequence of a change

being imminent on 31 December. I am assuming that has happened, but I can ask a question about that and you can tell me shortly. How can we proceed then, if that is not available at all?

Mr Bradley—There are a set of audited reports in existence. I am not sure how widely they are available. We will take that on notice and, if they are available, we will make them available.

Senator LUDWIG—So you would have audited accounts?

Mr Bradley—Yes.

Senator LUDWIG—And you will take it on notice as to whether they can be made available?

Mr Bradley—And if they can be, we will make them available.

Senator LUDWIG—In relation to the staffing, what has been the turnover rate in the last 12 months?

Mr Bradley—The turnover rate in the last 12 months is roughly consistent with the 12 months before that. Historically, I am told that it is slightly higher this year than it was a few years ago. The last two years have been periods of slightly higher turnover but not significantly, as I understand the position.

Senator LUDWIG—So it has been slightly higher in the last 12 months?

Mr Bradley—This year is roughly consistent with last year. Last year was slightly higher than the year before.

Senator LUDWIG—To try to short-circuit the process a little bit, I am really seeking the details of the positions held and the degree of seniority that you currently have compared to last year, if there are specialist levels or levels that people are placed in that reflect their degree of skill or knowledge within the industry and the years of service. I am looking for a breakdown of those figures in tabulated form. A lot of those would usually be in the annual report. Perhaps you could take that on notice. I am looking for a comparison between this year and last year so that we can have a look at what has actually happened to your organisation over the last 12 months, how many positions are currently vacant within the NCA and what arrangements have been put in place to ensure the smooth transition from the NCA to the ACC in relation to both staffing and how that transition will go. I am sure it will not just be a changeover to plain clothes on 31 December. I was wondering what transitional arrangements had been put in place. The other question on notice is the remuneration for the new CEO. Has that been established yet? That may be a departmental question.

Mr Cornall—Yes, it has.

Senator LUDWIG—What level is that for the new CEO?

Mr Cornall—Can I take that question on notice?

Senator LUDWIG—I am happy for you to take it on notice, yes.

Mr Cornall—I know the figures, but there is a salary component, a super component and a car. I do not want to give you the wrong figure.

CHAIR—Thank you, Mr Cornall.

Senator LUDWIG—I would appreciate that, so we could have a breakdown of the figures.

Mr Cornall—I should say that at this stage it is an indicative package, because the organisation does not exist.

Senator LUDWIG—I would take it as that.

Mr Cornall—There is certainly a figure that we have been talking to potential applicants for the position about, and I can tell you what that is.

Senator LUDWIG—And if that provides a package, the breakdown of that package or how it would be structured. I would certainly accept it on the basis of it being indicative.

CHAIR—Thank you very much, Mr Bradley, Mr Hickman and Mr Whiddett. Mr Bradley, you have been exceptionally helpful to the committee. Thank you very much.

[6.23 p.m.]

Australian Federal Police

CHAIR—I welcome the commissioner, the deputy commissioner and Ms Fagan. I apologise for the variation in the timetable. In trying to help some people, I seem to have created more of a problem than I solved, but at least we are now meeting. I have one comment to make. Commissioner, we have spoken in these meetings before about the process towards the Policing Women Globally conference which was held in Canberra just a couple of months ago. In fact, I should be addressing this to Ms Fagan. Having had the opportunity to attend that conference briefly, I just wanted to say that I thought the AFP did a very good job in hosting it here in Australia. I understand it was the first time it was held outside the Northern Hemisphere. From the people with whom I spoke, both international female police and others who were participating, it was very well regarded. I do not know what sort of feedback you got.

Commissioner Keelty—Thank you. We had an agreement that I would answer questions on the women's conference, because the automatic thing would be to get Audrey to answer.

CHAIR—I started with you, Commissioner.

Commissioner Keelty—It was very successful, thanks to a lot of work by the committee. Despite the fact that it was held post the terrorist incident in Bali, we were still able to maintain the conduct of over 650 delegates here for the conference. It was a very positive sign for the organisation, for the committee and for Chief Commissioner Christine Nixon. I think it was regarded as a very successful conference.

CHAIR—I certainly regarded it as a great honour to meet two female members of the East Timorese police, whom we assisted to come. I think that was a very important part of Australia's engagement in that process. I suspect Senator Ludwig might be ready to begin.

Senator LUDWIG—I was just going to deal with a couple of matters that arose earlier in the day. Is it the case that there are external accountability arrangements applying to the use of listening devices or are there no external accountability arrangements applying to the use of listening devices, video and tracking devices by the Australian Federal Police? It is not a trick question. I remind you that the Commonwealth Ombudsman recommended in his jurisdiction over the use of telecommunications interception by the Commonwealth that law enforcement agencies be extended to cover the use of other electronic surveillance devices, so this excludes telecommunications interception.

Commissioner Keelty—That is correct. Under the telephone interception legislation we are required to have the oversight by the Ombudsman. Because listening devices and other electronic tracking is done under different legislation, it does not have that section requiring oversight by the Ombudsman. So it is internally audited.

Senator LUDWIG—Did you respond to the Ombudsman's report?

Commissioner Keelty—I am not sure, Senator.

Senator LUDWIG—So there are still no external auditing arrangements in relation to the Commonwealth Ombudsman's report. Nothing has been done, at least from the AFP's perspective.

Commissioner Keelty—Not that I am aware of. If it is different from that, I will advise you.

Senator LUDWIG—What does the Attorney-General say about that? Have they responded to the Commonwealth Ombudsman's report?

Commissioner Keelty—I am sorry, I do not know the answer. We will have to deal with that a little later this evening.

Senator LUDWIG—All right. Turning to the annual report, has the new certified agreement for the AFP's human resource framework for the next three years been signed off and finalised?

Commissioner Keelty—No. Under the existing certified agreement there is provision for that certified agreement to continue until a new certified agreement is entered into, and we are still in negotiations with the association on the new one. There are some claims that the association has asked us to consider, and we are in the process of considering those as part of the negotiation process.

Senator LUDWIG—In your opening statement on the executive review it says:

... some measures have proved impractical in terms of administration and have not been effective in addressing specific working conditions.

Are those the matters which are now in contention with the association? I did not particularly want to go into detail. I was just trying to clarify whether it was practical difficulties with the operation, requirements and those sorts of things.

Commissioner Keelty—There were a number of difficulties raised with the current certified agreement that largely had to do with interpretation, because many of the people who worked on the negotiations for the current certified agreement had left the AFP shortly after its implementation. We found ourselves in conflict with the association on interpretation of the agreement for such things as allowances for people who are on call and time off in lieu entitlements. The interpretations made it very difficult to operate. Some of these have been sorted out by the external reference board, which is headed up by the industrial relations commissioner. But much of the material that was in the first certified agreement, we believe, does not need to be in the next agreement. We think that perhaps in the first agreement we were very ambitious in trying to cater for all things, which became impractical. That was understandable, given that it was the first certified agreement we had ever had.

Senator LUDWIG—When is it likely that you will come to a conclusion? Do you have a view about that?

Commissioner Keelty—I will be meeting with the association next week and with our workplace relations people. We had to have early settlement of the new agreement, but the operational demands that we are under at the moment might make that a little more difficult. I hope to have it resolved early in the new year. If I can speak for the association—

Senator LUDWIG—You are a member, aren't you?

Commissioner Keelty—No, I am not. As Commissioner, I cannot be.

Senator LUDWIG—You were before then.

Commissioner Keelty—Yes, that is right. From speaking with the president and the executive, we did not want to distract the organisation with a date some time in the future with everybody downing tools to wait until that date; we wanted to have this certified agreement evolve from the old certified agreement and from the decisions made by the external reference board.

Senator LUDWIG—On page 15 of the annual report you say that the AFP has established a strategic organised crime threat matrix based on international best practice. When was that developed? I do remember PROMIS and a number of other acronyms, but I do not think I have seen that one before. Can you tell me when that one was done?

Commissioner Keelty—it was done during the year as part of the crime management strategies. I am not sure whether Deputy Commissioner Davies has any more in-depth detail. I am aware of its production. It is not dissimilar to a risk management strategy in the level of threat and the amount of resources that we need to put into a particular issue.

Senator LUDWIG—In October 2001, new controlled operation provisions came into effect following amendment of part IAB of the Crimes Act. Prior to this amendment, controlled operations could only be conducted in relation to illicit drugs offences. Are you in a position to outline the controlled operations, the number of controlled operations that have been utilised and their usefulness? How useful has that legislation been?

Commissioner Keelty—The controlled operations are outside the drug area in relation to things like counterfeit credit cards. It was to extend the existing framework to items other than drugs. I would have to take on notice your question about the number and the type.

Senator LUDWIG—I was interested in the type and number of controlled operations. Is there a requirement to report that to parliament? If there was a requirement, it has now escaped me.

Commissioner Keelty—I am fairly sure there is.

Senator LUDWIG—I will take that on notice and look it up myself. The Proceeds of Crime Bill 2002 has been passed only recently, but have you been able to gain any experience in that area as yet?

Commissioner Keelty—No, because the bill does not take effect until 1 January 2003. But we have been commencing some learning and development training for the majority of our staff who will be accessing that legislation from the beginning of next year. At this stage, we are only in the phase of up-skilling the organisation to deal with the new legislation. In relation to your last question, there is a controlled operations annual report that comes to parliament. I apologise. I should have known that.

Senator LUDWIG—Has that been tabled?

Commissioner Keelty—Yes, it has.

Senator LUDWIG—I have the annual report on assumed identities. I apologise that I missed that one. I will chase that one up in the break. In relation to the performance of client level satisfaction with the AFP, which I have asked you questions about before, do you still use an independent survey of client satisfaction?

Commissioner Keelty—Yes, we do.

Senator LUDWIG—What is the cost of that?

Commissioner Keelty—I would have to take that on notice.

Senator LUDWIG—Have the results of the recent survey been provided to you?

Commissioner Keelty—The survey has been done, but the results are still being tabulated. I will make those results available once they are available to us.

Senator LUDWIG—Is this the third or the fourth one?

Commissioner Keelty—I think it is the third.

Senator LUDWIG—Has there been any consideration about another way of determining client satisfaction?

Commissioner Keelty—It is something that we are continually working on. We have a client liaison group that is based in Canberra but has elements in each of the states. We do examine the survey and look at the feedback. We actually go back and talk to those departments who readily identify themselves as having had a problem with the relationship with the organisation. We actively pursue any of the negative outcomes from the survey. We also use the survey as the basis for entering into service level agreements with departments and clients and, in fact, overcome negative outcomes by developing a new agreement.

Senator LUDWIG—In relation to your overseas computer system, do you call it AFPNet or an acronym that I always get wrong?

Commissioner Keelty—It is just AFPNet.

Senator LUDWIG—Is it right that \$3.6 million has been provided for that initiative to date? Where are we with that? I am interested in understanding how many overseas posts are now able to access PROMIS—the one I am familiar with—which is a part of the process they can utilise overseas. What firewalls or systems have you put in place to ensure that it is a safe computer system? How much has been spent on it to date, and what are the projected amounts likely to be spent on it? Will more than the number specified in the annual report be connected over time?

Commissioner Keelty—I will have to take the details of the finances on notice. The firewall is DSD standard. At the moment, it is as good as we can get. In the new year we are introducing SecretNet to upgrade the AFP systems to secret level so that we can have some interoperability with some of the intelligence agencies.

Senator LUDWIG—Is that an initiative that has come about because you will develop a memorandum of understanding with the ACC?

Commissioner Keelty—No. It is a gap that we recognised last year. We had sought additional funding to fund it. We were unsuccessful with that, but this year we have been able to find funding from within to pay for it. So we have commenced a process of building the system. It comes in stages. We hope to have it completed by the end of the year. The driver for it was the fact that we were dealing much closer with organisations such as ASIO. We were conscious of the level of classification for some of their material which could not be communicated on the AFPNet.

Senator LUDWIG—How much is that program? Has it been costed, or is it going to come in chunks?

Commissioner Keelty—It has been costed. It will cost about \$25 million over four years, which includes—

Senator LUDWIG—Is that \$25 million to secure your net?

Commissioner Keelty—Yes, that is right.

Senator LUDWIG—Where did you find that money?

Commissioner Keelty—Over four years?

Senator LUDWIG—That is from within your own budget?

Commissioner Keelty—That is right.

Senator LUDWIG—What have you been doing!

CHAIR—On that rhetorical question, Senator Ludwig, we will suspend the proceedings.

Proceedings suspended from 6.42 p.m. to 7.32 p.m.

Senator FAULKNER—I do not intend to delay the committee too long, partly because I have other committee responsibilities this evening. I just wanted to canvass one issue with you, Commissioner, if I could. I am not sure whether it is best to direct these questions to you or to one of your officers, but no doubt you will assist me with that. I wonder if you could inform the committee whether tracking devices or listening devices were used as part of the disruption program in relation to the anti-people-smuggling activities in Indonesia. I mean this in the context of whether these devices might have been placed in suspected illegal entry vessels.

Commissioner Keelty—If I can take that on notice, I can get an answer back for you.

Senator FAULKNER—Were you meaning this evening?

Commissioner Keelty—I think somebody has just left to make a phone call. We can try to get an answer this evening.

Senator FAULKNER—I thought it was possible that you personally may have had some knowledge of this. I accept it if you do not. I do accept it if you are not in a position to say.

Commissioner Keelty—I am just getting a phone call made to the operational people to get an answer for you.

Senator FAULKNER—There are a few follow-up questions I would like to ask. My constraint is that I have other committee responsibilities this evening. Minister, I just wondered if you or the Commissioner could assist with the timing that might be involved. Could we do it in a matter of minutes or are we talking about a longer period?

Senator Ellison—It depends on whether it can be located. If you can continue with another line of questioning—

Senator FAULKNER—I appreciate that there are a lot of constraints in terms of the committee's time and I also accept that there are a lot of constraints in terms of the current functions and responsibilities of the AFP. I was only keen tonight, in this particular estimates round, to explore this issue and not at great length.

Commissioner Keelty—I am getting phone calls made. I just point out that the operational people involved in the Bali investigation are now back in Indonesia and we are just trying to get hold of them to get the detail.

Senator FAULKNER—You are saying that the officers you are contacting in relation to this are not currently in Australia?

Commissioner Keelty—That is what I am saying. The officers who would have knowledge of this are currently not in the country.

Senator FAULKNER—Understanding that, are you able to give the committee any information or at least, in the broad, indicate whether that has been a practice at this stage?

Commissioner Keelty—No, I cannot. I am not sure what they were doing in terms of the precise questions you asked. My initial response is that we would not have been involved in listening devices because I do not think it is permitted under the legislation.

Senator FAULKNER—I expected you to say that. I suppose I used the terminology ‘tracking and listening devices’ because I wanted to be assured that my question was broad enough so as to be satisfied with the response. While I do not understand the technical definition for tracking devices, I am not surprised to hear that you are able to rule out listening devices.

Senator Ellison—In the inquiries that we are making on this one question, there might be some other questions Senator Faulkner wants to ask which, again, we will have to take up with the people concerned. If Senator Faulkner wants to give us those questions, we can pursue them all together rather than go back in a series of calls to answer the questions as they come.

Senator FAULKNER—I accept that those who might be able to provide answers to these questions are currently involved in operations outside Australia. You would understand, Minister, that it becomes difficult to conduct long-distance questioning, and I do not want to do that. It is better if the small number of questions I have, which are dependent on the answers I receive—they are follow-up questions, if you like—are dealt with in a sensible way. As you would appreciate, any subsequent questions I have would be dependent on the answers I receive.

Senator Ellison—They could be couched in the form of interrogatories: if the answer is no then you ask a certain question, and if the answer is yes then you pursue it in a different way. That could be given to us in that form and we could go away and do that.

Senator FAULKNER—I appreciate that. The threshold question is—understanding that, Minister, and I do accept that—whether the commissioner or other witnesses are able to say whether tracking devices have been placed on suspected illegal entry vessels.

Senator Ellison—We have taken that on notice, and I think that should be clarified. I assume the question is whether they have been placed on these vessels by the AFP or by anyone else to the knowledge of the AFP. There are a number of interpretations.

Senator FAULKNER—I did not specify that, but the qualification you raise is the sort of follow-up question that would be logical to ask depending on the answer to the threshold question.

Senator Ellison—That is why it is important to take this on notice—because the people who know about this are the ones to ask.

Senator FAULKNER—I do not think we can do this by remote questioning and, frankly, I do not want to engage in an exercise where I interrupt through questioning people who are involved in important work in Indonesia, on the Bali investigation, hear a response and then ask another question. It is not the best way of dealing with these things. I think you would appreciate that. I hope you would accept that and I am sure the Commissioner and any other witnesses would. We do, from time to time, not only at this committee but also at other committees—for example, the foreign affairs committee—deal with issues where questions are directed to witnesses who are not only not at the table but also not in the country.

Senator Ellison—I do not think we can take it much further, Madam Chair.

CHAIR—We do seem to be at a point of stalemate.

Senator Ellison—In view of that, we are seeking that information. We will get back with that as soon as we can. If Senator Faulkner needs to pursue it in that manner, then we will have to wait for the response before further questions can be lodged or asked.

Senator FAULKNER—It is not a question of lodging.

Senator Ellison—Asked. The logistics are that either we can sit here waiting or we can pursue another line of questioning from somebody else and come back to Senator Faulkner.

Senator FAULKNER—If the committee does receive an answer to that question, I am happy to try to follow it through. If we are likely to find ourselves in a situation where subsequent questions are also referred to officers who are overseas, it is going to be an extraordinarily long and drawn-out process and certainly could not be concluded tonight. I think you would appreciate and understand that. We are best off doing it when we are in a position of being able to do it, which does not sound like it is going to be tonight.

Senator Ellison—In that case, tonight looks like being a very difficult proposition for—

Senator FAULKNER—Do you agree with what I am saying or not?

Senator Ellison—The choice is yours as to how you want to ask the questions, and if you need to follow them that way then, in view of people being out of the country, I do not think we will be able to do it tonight. We might be able to answer a couple of questions, but if we need to get back to them and do it in that manner it will be difficult to do.

Senator FAULKNER—I would hope that the Commissioner might be able to, in the broad, give an indication of whether this was the case, but if he is unable to I fear we have no alternative.

Senator Ellison—It has been taken on notice and we have to pursue it in that way.

CHAIR—No alternative to what, Senator Faulkner? I am sorry, I did not hear you.

Senator FAULKNER—No alternative other than to wait until another occasion when we can have a process where answers are provided by witnesses at the table.

CHAIR—Understanding what you are saying now, I think that is the case.

Senator FAULKNER—I accept what the Commissioner is saying, that the key witnesses are currently not here. I also, by the way, certainly accept that they are obviously undertaking important functions there. I do not particularly want to take their attention away from that or intrude in that very important work of the Commissioner's officers and agents.

CHAIR—I appreciate that. Assuming that the commissioner does receive a response to the telephone inquiries that have been made so far this evening—

Senator FAULKNER—In that circumstance, perhaps the committee secretariat could let me know in Finance and Public Administration, and we can make a judgment about where we go.

CHAIR—Yes.

Senator FAULKNER—But I think the commissioner is indicating that there may be a reasonably quick response to that question. If so, I might be able to deal with it; I have other responsibilities.

CHAIR—Indeed.

Senator FAULKNER—Hence I was keen to try and conclude this by about now. The best laid plans! I am afraid we are not able to do it on this occasion.

CHAIR—At least to this point. All right, Senator Faulkner, we will advise you in Finance and Public Administration if and when an answer is received.

Senator Ellison—We will do that.

Senator FAULKNER—Thank you.

CHAIR—I know Senator Ludwig has questions to continue with, but I understand that Senator Collins has some questions which she would like to ask at this point.

Senator JACINTA COLLINS—Mr Keelty, I was hoping that you could update us on the pursuit of Abu Qussey.

Senator Ellison—The whereabouts of Abu Qussey?

Senator JACINTA COLLINS—The pursuit of Mr Keelty has previously given evidence on this point before the Select Committee on a Certain Maritime Incident, and I am interested in an update of the state of play, to the extent to which Mr Keelty is able to comment without compromising related cases.

Commissioner Keelty—There are three arrest warrants which have been obtained for Abu Qussey.

Senator JACINTA COLLINS—This was the case, I think, when you last—

Commissioner Keelty—Yes. Those arrest warrants relate to three vessels organised by Qussey that were detected and seized by Australian authorities whilst endeavouring to smuggle 440 illegal immigrants to Australia. Qussey is presently incarcerated in Indonesia on immigration related matters and is due for release on 1 January 2003. As I understand it, before the Indonesian parliament equivalent this month there was to be a presentation of people-smuggling legislation which would have allowed dual criminality to exist. An Interpol red notice for Qussey's arrest has been issued and lodged with Interpol and provisional warrants have been forwarded to both Thailand and Hong Kong should Qussey endeavour to flee those countries upon release.

Senator JACINTA COLLINS—Why only Thailand and Hong Kong?

Commissioner Keelty—I would suggest that they are logical places to go to upon his release from detention in Jakarta.

Senator JACINTA COLLINS—Not if he is aware of this fact.

Commissioner Keelty—An Interpol red notice is international, so it goes to all countries.

Senator JACINTA COLLINS—Do you have any expectation that this legislation will be processed in Indonesia within the next few months?

Senator Ellison—I can answer that one better, because I had discussions with the Indonesian government when I was there just recently. My understanding was that they are pressing ahead with it. The issue is one for the Indonesian parliament, but the government certainly gave me the impression that it was a matter which they were going ahead with. As the commissioner has mentioned, we are hopeful that this will be in the very near future.

Senator JACINTA COLLINS—You mentioned the three warrants regarding the three vessels detected. Which were the three vessels? I was aware of two vessels that then became one vessel, which is now regarded as SIEVX. I would be interested if you could explain how the other two relate to his activities in terms of what we know about various SIEVs.

Commissioner Keelty—As I mentioned before, the only detail I have here—and if you want further detail I will take it on notice—is that the warrants relate to three vessels

organised by Qussey that were detected and seized by Australian authorities while attempting to smuggle approximately 440 immigrants to Australia.

Senator JACINTA COLLINS—So presumably none of those three vessels was the SIEVX, which was not detected and seized. Is that a fair presumption?

Commissioner Keelty—That is right.

Senator JACINTA COLLINS—I remember on the last occasion when we discussed this there was some discussion as to what options there may be available to pursue Abu Qussey and whether it may be necessary to detect the location where the SIEVX sank, in terms of—in a crude sense—what your options might be. Have there been any further developments in that respect?

Commissioner Keelty—I have not got a progress report on that, but if anything has come to light I will inform the committee.

Senator JACINTA COLLINS—Let me see if I understood your evidence from the last occasion correctly first. I believe it was that, if this dual criminality legislation did not go through Indonesia, it may be necessary to establish the location of where the SIEVX actually sank, to determine whether it perhaps came within our jurisdiction in another legislative sense, which would enhance our case to pursue him. Is that a correct understanding?

Commissioner Keelty—I think that was a proposition at the time, if there was no prospect of dual criminality being established in Indonesia. But we might be talking at odds here, because in relation to SIEVX I think what I was talking about was the prospect of investigating whether there were any charges that could be laid against Qussey in respect of SIEVX. I have not got an update on where that aspect of the investigation is at.

Senator JACINTA COLLINS—I am assuming you can take that on notice and give us that update.

Commissioner Keelty—Yes.

Senator JACINTA COLLINS—I, like Senator Faulkner, would have further questions depending on what that update might contain, particularly questions related to the nature and character of the investigation conducted by the AFP in Indonesia on that point. One example, to give you some guidance in terms of the depth to which I want to follow this through, is that we had some media reports as to the arrival of one of the ships that collected survivors from SIEVX, and coordinates where they may have been collected from. I am interested in whether the Federal Police ever followed up those reports, whether the Federal Police ever followed up the second ship that we understand collected one survivor and three bodies, and whether we have coordinates with respect to where that ship collected those people and whether they corroborate the report of the other ship, as well as what further work has been done to conduct a proactive investigation as to where this tragedy may have occurred.

Commissioner Keelty—Can I just clarify something? Are you saying that your information is from newspaper reporting?

Senator JACINTA COLLINS—That particular element of it was. I cannot quite recall, off the top of my head, where the element about the second ship came from. It is certainly referred to in the report from the Select Committee on A Certain Maritime Incident. If the Federal Police know differently, obviously the Senate would like to hear that.

Commissioner Keelty—We would like to answer your question. The starting point for that would be the source of your information. That will help us come back to the committee with a response.

Senator JACINTA COLLINS—The source of that information is in the report from the Select Committee on A Certain Maritime Incident. The newspaper report that I am referring to was a discussion between a journalist and the harbourmaster at the port that the ship subsequently returned to. I would like to know whether the Federal Police have conducted an investigation to that level of detail.

Another element of your evidence on an earlier occasion was that the Federal Police were interviewing survivors in Australia. I would be interested in the detail of those investigations. I can understand why, in some respects, you may not be able to nominate the individuals, but I would certainly be interested in how many survivors you interviewed. My concern is to see how thoroughly we have sought to ascertain the detail of this tragedy and where that ship actually sank. I do not think there is anything further we can pursue on that until you come back on notice with a progress report on that issue.

I am also interested in what work the AFP officers in Indonesia may have done to ascertain details of the number of victims in the SIEVX tragedy and details of who they were. Is any of that information with anyone present from AFP at the moment?

Commissioner Keelty—It is not with me tonight, but we will endeavour to get that back to the committee.

Senator JACINTA COLLINS—Okay, then let me be a bit more precise on that point as well. We understand from an email within DIMIA that the UNHCR and/or IOM on 24 October last year were aware of approximately 210 of the people involved in this tragedy. I would like to know what knowledge the AFP has as to the individuals that may have been victims of this tragedy, and what role the AFP played in collecting that information.

Commissioner Keelty—We will get an answer for you.

Senator JACINTA COLLINS—There has been some questioning as to whether there was and is a list of the passengers. It is reasonably understood that these ships never included manifests, but survivors obviously were aware of a certain number of the passengers. With the AFP involved in some of the interviews with survivors, both at the time and then later in Australia and/or in the process of building cases against Qussey and others, I would like to know what knowledge you have of any lists of those that were involved, and the status of those lists.

Commissioner Keelty—We will provide an answer to the committee.

Senator JACINTA COLLINS—The final issue I have is in relation to the ministerial direction to the Australian Federal Police on people-smuggling activities. The details of that, as they exist on the web site, were provided to the Senate recently. Was there any attachment to or further detail of the supplementary directive of September 2001?

Commissioner Keelty—Not that I am aware of, but I may stand corrected on that. I am certainly not aware of anything other than the ministerial direction itself.

Senator JACINTA COLLINS—So apart from the statement that the AFP should also ensure that it provides an effective contribution to the implementation of the government's whole-of-government approach to unauthorised arrivals and that this is one of the special areas of focus, there is no further detail to the directives that the AFP have received in this area?

Commissioner Keelty—Could you give me the date again?

Senator JACINTA COLLINS—It was 27 September and signed by Senator Vanstone.

Commissioner Keelty—Yes. There is a supplementary direction under section 37(2) of the AFP Act that talks about special areas of focus. In addition to the criminal activities identified as special areas of focus in the 25 February 1999 direction, it says, ‘The government expects the AFP to give special emphasis to countering and otherwise investigating organised people-smuggling. The AFP should also ensure that it provides an effective contribution to the implementation of the government’s whole-of-government approach to unauthorised arrivals.’

Senator JACINTA COLLINS—We have the same one.

Commissioner Keelty—That is a supplementary direction.

Senator JACINTA COLLINS—Yes. I am asking whether there was any further directive to that supplementary.

Commissioner Keelty—No.

Senator JACINTA COLLINS—Was there an attachment to or further detail of those directions?

Commissioner Keelty—No.

Senator FAULKNER—Before I go off to another committee, Minister, you would have heard the question I asked of the commissioner. Are you able to throw any light on this? Are you aware of any practice to have tracking devices placed on suspected illegal entry vessels, for whatever purpose—it might be for the safety of the people on board or whatever?

Senator Ellison—I will take that on notice. Offhand, I am not aware of anything in relation to a tracking or listening device—operational details are not conveyed to me. But I will check to make sure that that is the case, and I will get back to the committee if it is any different.

Senator FAULKNER—I appreciate your taking that on notice. And, Commissioner, you are not aware of any such practice?

Commissioner Keelty—I am sorry; could you repeat the question?

Senator FAULKNER—I am just following through on my question to Senator Ellison. Just to be clear, were you aware of any practice to place tracking devices on people smugglers’ boats—that is, suspected illegal entry vessels?

Commissioner Keelty—I think I undertook to get that information on notice.

Senator FAULKNER—I appreciate that, but I was asking whether you were aware of any such practice?

Commissioner Keelty—I have undertaken to get the answer for you.

CHAIR—The commissioner has taken that on notice.

Senator Ellison—I have taken that on notice too. Offhand, I am saying that I do not think I have been advised, or I am not aware, but I will take it on notice and get back to the committee.

Senator FAULKNER—While I appreciate you have taken it on notice, you have also indicated that you are not aware of such a practice.

Senator Ellison—I have said it with some qualification, but I am not involved in the operational aspects of it.

Senator FAULKNER—To the commissioner I am asking directly whether he has any awareness of such a practice, to which I think the committee is entitled to an answer. I

appreciate that further questions of detail may be appropriate to take on notice, but I want to ask again of the commissioner whether he had any awareness of such a practice.

Senator Ellison—Madam Chair, that question has been taken on notice and the commissioner has made it clear that that is the situation. I think we can take it no further. The inquiries have been conducted as far as we can take them.

CHAIR—Thank you for that, Minister. I think that the commissioner has, in relation to both aspects of Senator Faulkner's question—

Senator FAULKNER—With respect, Minister, all I am—

CHAIR—Senator Faulkner, let me finish. I think the commissioner has indicated that he has taken both aspects of your question on notice. That is his answer, and he will provide you with a response.

Senator Ellison—I do not think you can say that, because I have answered the question in one way, the commissioner is duty bound to answer it in the same way. I am in a very different position.

Senator FAULKNER—I am not suggesting that for a moment. I respect the right of witnesses to answer questions any way they will, but I do think a question that is framed in the way I have framed my question as to whether or not the commissioner is aware of it can be answered. Either the commissioner has an awareness of it or he has not. It seems to me an odd response to take it on notice. That is the point I am progressing at this stage. I have indicated that I will come back to the further detail and progress it, but the issue of awareness seems to me a straightforward matter.

Senator Ellison—I have just indicated myself that it is not, because I have just given a qualified answer. Just from my situation, I know that many things come across your desk, some of which you take notice of and some of which you do not. In the interests of accuracy, I have said that I am taking it on notice to go back and check. I have given the committee a preliminary response, but the commissioner is quite entitled to take this question on notice. It goes to a matter of some detail and sensitivity. He has taken it on notice and inquiries are being made. I really do not think we can pursue this much further.

CHAIR—Senator Faulkner, both the commissioner and the minister have now made their respective positions in answer to your question quite clear several times.

Senator FAULKNER—With respect, Madam Chair, it seems to me that a question in relation to awareness of such an issue is something that can be answered. There may be issues of detail that can be followed through, and I have indicated that I am happy to do that, but I do not understand why an answer in relation to broad awareness—or lack of awareness—of such an issue cannot be indicated to the committee.

Senator Ellison—As I said, I think it is in the interests of accuracy. It is only reasonable that a person giving evidence before a Senate committee wants to make sure that the answer they give is accurate.

Senator FAULKNER—But I am not asking a question of detail or great specificity; I am merely asking about general awareness, and that is why I hoped I might be able to receive an answer to that question.

CHAIR—The commissioner has indicated the method by which he intends to answer it, Senator Faulkner, as I think the minister has made it reasonably clear. I am not sure how much further we can progress this now.

Senator FAULKNER—Is the minister able to give the likely timing of the response? The commissioner may be able to say that; I do not know.

Senator Ellison—Which answer are you talking about? I have taken this on notice too.

Senator FAULKNER—I know, but the commissioner indicated a little earlier that he is likely to get some response. I think the intent of his answer was that that would perhaps be at some stage this evening. If I am wrong, he can correct me about that. I am merely asking now, because I have to go another committee, if there is any indication about the likely timing; that is all.

Senator Ellison—I understand attempts are still being made to get in touch with the people in Indonesia. That is being done now.

CHAIR—The committee appreciates that, Minister.

Senator FAULKNER—The committee secretariat can let me know.

CHAIR—Yes, Senator Faulkner, in your Finance and Public Administration Committee.

Senator Ellison—We still have some time to go, so hopefully we will meet with success.

Senator FAULKNER—You may or may not; I appreciate that.

Senator Ellison—There is a time difference; it is earlier over there, so it is not so bad.

Senator FAULKNER—Yes, but people are busy, Minister—

CHAIR—I am sure the Federal Police will continue to pursue making the telephone contact and we will advise you.

Senator FAULKNER—Given that my question is whether the commissioner has a general awareness—

CHAIR—Yes, I understand what your question is.

Senator FAULKNER—Hang on. Given that my question is whether the commissioner has a general awareness of this matter—that is, whether tracking devices have been placed on suspected illegal entry vessels—I am not sure how much this will be able to be advanced since that I am asking the commissioner a question about his own awareness. How that can be referred to other people I am not sure. That is what I do not understand. That I do not comprehend. Others may; I do not. But, anyway, if the commissioner is unable to assist me and it is going to be dealt with in this way, so be it. But I do not know how taking it on notice and referring to people anywhere, whether it be inside this room or outside it, will help. With the best will in the world, I do not know how they can assist me with that second question I have asked in relation to the commissioner's general awareness. It does sound rather illogical. I think you would probably agree.

CHAIR—I note your views, Senator Faulkner.

Senator JACINTA COLLINS—When we previously discussed evidence related to the SIEVX and other SIEVs, one of the difficulties that you took advice on and that constrained your ability to provide information to the Senate was various investigations and cases that may be afoot. Have any of those investigations or cases since been resolved?

Commissioner Keelty—I will get an answer on that for you. I might need to know the actual cases that you are referring to. But it might help you that I now have advice on the issue you asked me about before, about Abu Qussey and SIEVX. The AFP has sought and received advice from the Attorney-General's Department that it is not possible to prosecute a homicide brief—which I think I raised before—because of the lack of ability to prove

jurisdiction. However, a brief of evidence is being put together for Migration Act offences for smuggling five or more people in regard to the SIEVX voyage.

Senator JACINTA COLLINS—Does the lack of ability to prove jurisdiction relate to the lack of ability to prove where the SIEVX sank?

Commissioner Keelty—That is correct.

Senator JACINTA COLLINS—So you are able to tell me that the concluded view is that we cannot prove where it sank, but at this point you have taken on notice the detail of how that conclusion was reached.

Commissioner Keelty—For the purpose of a prosecution, we would have to prove beyond reasonable doubt that we were able to prosecute within a jurisdiction.

Senator JACINTA COLLINS—Yes, but were it proven beyond reasonable doubt that the SIEVX sank within our jurisdiction then presumably that case could proceed. Is that correct?

Commissioner Keelty—That is hypothetical. I am saying that the advice we have received is that it is not possible to proceed with a homicide brief because of the lack of ability to prove jurisdiction. However, it is possible to prosecute under the Migration Act offences for smuggling five or more people.

Senator JACINTA COLLINS—And what I am asking is: in relation to the homicide brief, is the lack of ability to prove jurisdiction solely related to an inability to prove precisely where the SIEVX sank?

Commissioner Keelty—I would have to take that on notice and find out what was in the correspondence that went to the Attorney-General's Department, upon which they based that decision.

Senator JACINTA COLLINS—That fits in the same sense as my other question, which is: please detail the nature of the investigations to ascertain where precisely the SIEVX did sink and then, further to that, what other factors were relevant to a lack of ability to prove jurisdiction. So you have taken that on notice?

Commissioner Keelty—Yes.

Senator JACINTA COLLINS—With respect to other cases that may or may not have been afoot back when you appeared before the certain maritime incident inquiry, I do not think we ever got from you the detail of what investigations and/or cases you felt might constrain your ability to answer questions at that stage. So we are probably in your hands as to which investigations and/or cases you might have been referring to then.

Commissioner Keelty—I would have to go back and refer to my previous evidence to put it in context with what I was saying at the time.

Senator JACINTA COLLINS—If it refreshes your memory, I think it related to the advice you had from the Clerk as well. We do not know what particular cases you had in your mind at that stage, but we obviously respected that you did not want to compromise the potential to pursue any people involved with particularly the SIEVX tragedy. With respect to what might have been one of the relevant cases, the case in relation to the inquest regarding the two deaths on SIEV7, can you apprise us of your understanding of where that case is at?

Commissioner Keelty—We will have to take that on notice. We do not have the detail here. Was it the SIEV7?

Senator JACINTA COLLINS—Yes. Perhaps in that context you could take on notice what investigations and/or legal cases relate to the milieu of issues around the various

SIEVs—I think we got up to No.10—during the period of our investigations in the certain maritime incident inquiry. In that sense, we may eventually get to a picture of when that particular predicament has then expired and we may be able to get answers to some of the questions we could not get answers to from the AFP during the certain maritime incident inquiry.

Commissioner Keelty—Yes, Senator.

CHAIR—That was one question, Senator Collins! We are going back to the annual report, Senator Ludwig.

Senator LUDWIG—Thank you.

CHAIR—I am just clarifying that for the commissioner.

Commissioner Keelty—Senator Ludwig, I have some other answers for you from your questions prior to the evening break.

Senator LUDWIG—Thank you.

Commissioner Keelty—I apologise, but I should have been aware that there is a report on controlled operations that has been tabled. There were 47 controlled operations in the reporting period. Of the 47, 44 were narcotics related and two were related to child pornography. The third one was discontinued for a technical reason. They are outlined in the report, and there is a set of reports here that you can have if you do not have a copy of them.

Senator LUDWIG—Thank you, but I managed to get hold of the report during the break as well. If there are any questions that comes out of that, I can certainly put those on notice in any event. I notice that during the reporting period you had a service agreement with ITSA and DFAT—this is on page 57—which was signed in 1999-2000 and will be reviewed and renewed for a further two years. What do those service agreements entail?

Commissioner Keelty—I do not have the actual agreements with me, but some of them relate to doing a quantum of work with DFAT, for example, where there are issues about false passports—which is a major issue for DFAT. Those issues might not be, in terms of our priority system, the highest priority, but then we do negotiate a quantum of work that we do for them. It would be the same with ITSA. Some of the work is not of the highest priority; however, under the service level agreement, we agree to do a quantum of work that then forms part of the business plans for each of the business units in the organisation.

Senator LUDWIG—Would that show up in appendix 1 on page 113 of the annual report under economic crime investigations where, for ITSA, bankruptcy and intellectual property is shown with 56 in 2001 and 34 in 2002, or would that be a combined total of both the service agreement and other matters that might have been prioritised under promise and therefore undertaken without a service agreement?

Commissioner Keelty—The service level agreement sets the framework for the amount of work that would be done. Depending on the actual crime investigated, it would appear here in the table, but it would not necessarily be under only economic crime; it may well be under general crime investigations.

Senator LUDWIG—It is possible to unpack those figures in relation to the service agreement for ITSA to quantify how many investigations were conducted in accordance with that service agreement?

Commissioner Keelty—I will take that on notice and see whether the data is available.

Senator LUDWIG—On page 113 of the annual report, what would be the nature of the types of investigations on the matters that go to bankruptcy? Is it possible to say what they are?

Commissioner Keelty—Generally speaking, in the absence of advice of the contrary, they are matters that relate to trading, conducting business, whilst a declared bankrupt.

Senator LUDWIG—Perhaps you could take that on notice. I was not looking for information going to operational requirements; I was looking for more the type or nature of the offences or the investigations that come under the heading of bankruptcy.

Commissioner Keelty—I will undertake to provide that information.

Senator LUDWIG—As an aside from the annual report, are the Australian Protective Service now fully part of the AFP with their own division? Has that been completed?

Commissioner Keelty—That is correct.

Senator LUDWIG—Have they got a certified agreement up and running, finalised or completed?

Commissioner Keelty—I will ask our Executive Director Protection, Audrey Fagan, to answer that question.

Senator LUDWIG—You might remember that when it was outside your area of influence there was a long gestation period for the certified agreement, and I think it ended up in the commission.

Commissioner Keelty—I think that is the case, but Ms Fagan will be able to give you the detail.

Ms Fagan—The Australian Protective Service is still operating under what is known as the 170 MX award for protective security officers. The administration staff are working under AWAs.

Senator LUDWIG—For how long will that continue?

Ms Fagan—The 170 MX award expires in November 2004. There are provisions in the Workplace Relations Act to change that. At this point, the Australian Protective Service remain under the Public Service Act. We are still in the analysis phase about any changes to the legislation that might affect that.

Senator LUDWIG—Is it a fair comment that it will be a little while before you need to make a decision about it?

Ms Fagan—That is an accurate summation. Obviously, we will go back to government with some proposals about the way forward in further integration.

Senator LUDWIG—You say ‘further integration’. What else has to be done?

Ms Fagan—It is in the context of further alignment, particularly with questions such as maintaining the Public Service Act arrangement or, as we presented the last time we were here with the legislation changes, the possibility of integration within the AFP Act.

Senator LUDWIG—Has any work been done towards that yet or is it still in the early stages?

Ms Fagan—Much work has been done and we are in the process now. The subgroups complete their analysis phase at the end of this month, with recommendations coming up in December. Some further recommendations will be brought forward early in the new year.

Senator LUDWIG—When do you expect those recommendations to be available? Who will they be made available to?

Ms Fagan—We will report to our minister before the end of the financial year. As I said, the analysis is due for completion by 30 November. It will be a matter of going through those options, deciding on a number of options which we may take and presenting those to government. I would imagine that would be between March and June next year.

Senator LUDWIG—I might leave it till then. Thank you. Let us go back to the general area of telecommunications interception and surveillance. Can you confirm that it is now possible for the AFP to seek telecommunications interception warrants for persons suspected of terrorist offences established by the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002.

Commissioner Keelty—Yes, we are.

Senator LUDWIG—Do you have a memorandum of agreement in place with ASIO to allow coordination in relation to intercept activity?

Commissioner Keelty—We have an AFP officer who is situated in ASIO. In terms of the mechanics of putting on a telephone intercept, because we all go to the provider we would be aware if another agency in the intelligence community had already put an intercept on. As I was saying, we have a full-time officer seconded to what is called the joint counter-terrorism intelligence coordination unit within ASIO. It would be through that process that we would become aware of our mutual interest in a target. If that were to occur, then the Director-General of ASIO and I have an understanding that we would discuss the most appropriate way forward.

Senator LUDWIG—What happens if you are both independently conducting an examination or a case at a particular time and you decide to operate jointly? Who would then seek the telecommunications interception if one were required? Would the AFP always do that? Is there a protocol as to who uses the power first?

Commissioner Keelty—No, there is not. It would depend on the specifics of the individual case. The AFP would only put a telephone intercept on to gather evidence for the purpose of a future prosecution. As I said, the protocol is that the Director-General of ASIO and I would discuss the issue and the most appropriate way to take it forward.

Senator LUDWIG—There is a board, is there not, that looks after interception and electronic surveillance which was established in July 2000? Is that still about? I might be wrong, but I thought I read it somewhere.

Commissioner Keelty—I am not sure what you are referring to.

Senator LUDWIG—Is there a board?

Commissioner Keelty—Not that I am aware of. We have this joint counter-terrorism intelligence unit in ASIO that commenced following September 11.

Senator LUDWIG—What is its full name or do you have an acronym for it?

Commissioner Keelty—No, I use the name.

Senator LUDWIG—Who is on that?

Commissioner Keelty—ASIO is the director; ASIS, Defence Imagery and Geospatial Organisation, the Defence Signals Directorate and ourselves.

Senator LUDWIG—When was that established?

Commissioner Keelty—I do not know that I have got the actual date, but it was established following September 11, and one of the ideas of that group is to ensure that we are channelling the intelligence into one area, that we are not duplicating and that we are not missing out on holdings in any of our individual organisations. I cannot give you the actual date it commenced, but it was post September 11.

Senator LUDWIG—I do not know whether it is that critical. Post September 11 is close enough. Does it meet regularly or just as issues arise?

Commissioner Keelty—It might be the way I answered the question. We might be at cross-purposes. This is a standing group. What you may be referring to is where ASIO and ourselves are pursuing the same target there is provision for ourselves to meet with the Attorney-General's Department to agree on the most appropriate way to disrupt the activity that is under investigation. On 10 December last year the National Security Committee of Cabinet agreed to the formation of that joint counter-terrorism intelligence coordination unit.

Senator LUDWIG—Does that determine electronic surveillance? Is that one of its functions?

Commissioner Keelty—No, those sorts of operational decisions will be decided really at the operational level, albeit that that group there would identify the mutual interest in the matter. Obviously the telephone intercept legislation applying to the AFP for the purpose of gathering evidence is a different outcome for the purpose to which ASIO or other agencies might put it.

Senator LUDWIG—I might leave that until February. I can get a better and clearer picture out of the annual report. Those matters will not be canvassed in here—or will they?

Commissioner Keelty—Perhaps not at that level, although I did describe it in some detail when I appeared before this committee to discuss the ASIO Bill last week. I cannot remember whether you were there.

Senator LUDWIG—I was not there. I might have had to go down for chamber duty. That is why I am asking them to try to clarify. I will go and read that transcript and see if I can work it out from there, and if I need to I can put questions on notice to cover some of the issues that I had. That might be the easiest rather than take up our time now. Do you have investigations on foot in relation to the Attorney-General's Department?

Commissioner Keelty—Do you mean are we investigating the Attorney-General's Department?

Senator LUDWIG—I was trying to establish whether there were any investigations on foot. I know there is a limit to what you can talk about them, as I understand it, but we can start with the number, type or nature of investigations that might be on foot and the areas in which A-G's is involved.

Commissioner Keelty—I am not aware of any investigation into the Attorney-General's Department. There was a matter, I think—and it might well be historical now—in relation to a computer. It is about the only matter I can recall off the top of my head, but I will check.

Senator LUDWIG—I had a lead, but obviously it was a false trail and it has gone cold. I am interested in another area. Unlike the last time when we had an inquiry and were looking for money, there now appears to be a variation. If you go to page 112 of the annual report—I guess you can assist me in trying to understand the financial accounts—it has budgeted revenue, actual revenue, actual expenses and variance, and this time it has \$20.235 million. I got excited because I thought it might have been the \$20 million we went looking for last

time—probably not. What is a variance? It has a note at (a) which says that the figure is correct at 1 July 2002 and includes seizures, awaiting analysis to confirm both weight and presence of illegal substances.

Commissioner Keelty—Can I just qualify something. I thought you were talking about the variance being the \$20.235 million. The footnote there—

Senator LUDWIG—That is the bottom one. The footnote above says that it is represented by increases in revenues from the sale of goods and services, including criminal history checks. It only talks about \$1.4 million and \$1.5 million, whereas that is \$20 million. How is that made up?

Commissioner Keelty—I will ask the chief financial officer, Brian Cooney, to answer that.

Mr Cooney—There are a range of accrual transactions in any one year that go to the operating result. Part of that \$20 million is made up of revenue received during the year that was applied to capital purposes, which does not appear in the operating statement; it goes to the balance sheet. It might be easier if I spell out for you all the details of that on notice.

Senator LUDWIG—Yes, that would be helpful. So what you are saying is that, if you take away the \$1.4 million, which is excess funding for East Timor, ex gratia payments and the \$1.5 million for CHOGM, the rest is what—capital?

Mr Cooney—Not completely. There are a range of different types of accrual transactions, but a major element is the amount of capital that that revenue has been applied to.

Senator LUDWIG—For example?

Mr Cooney—You might recall in the portfolio budget statement that we went to a range of infrastructure projects that the AFP is undertaking: the enhancement of our PROMIS case management system, a range of buildings and fitout of accommodation, and operational equipment. They are the sorts of things that make up the capital program of the AFP.

Senator LUDWIG—It might be easier if you take it on notice and provide an overview.

Mr Cooney—Page 201 in the PBS is the one that identifies the range of capital proposals, but we will take it on notice.

Senator LUDWIG—Will you be doing any rephrasing?

Mr Cooney—No, rephrasing generally relates to administrative appropriations, not departmental. The AFP does not have administered appropriations.

Senator LUDWIG—I will await A-G's to ask that. I do not have any further questions of the Australian Federal Police.

CHAIR—Thank you very much, Commissioner.

Commissioner Keelty—I do have an answer to an earlier question from Senator Ludwig. I was asked how much was spent on the establishment and maintenance of AFPNet. It is \$1.213 million per year over the next four years. Senator, when I explained SecretNet to you, it is not a new system but an enhancement of our current case management system, PROMIS, which you correctly identified, to carry material which is secret or above. The other question I was asked was how far AFPNet had been put into overseas posts, and the answer to that is every post except for Rangoon and we are coming online in Rangoon in January 2003.

Senator LUDWIG—Thank you very much.

CHAIR—Commissioner, given our previous discussions, I would ask you to speak to the committee secretary, Mr Hallahan, about when you may come back, if it is possible to do so

this evening, to respond to the first question you have taken on notice about making contact with your agents in Indonesia and, if that is not possible, the arrangements we might make to bring a response back to the committee on both the questions. I thank the commissioner, the deputy commissioner, Mr Cooney and Ms Fagan for their assistance this evening.

[8.42 p.m.]

Office of the Director of Public Prosecutions

CHAIR—I will ask the officers of the DPP to come to the table, please. Welcome Mr Bugg, Mr Delaney, Mr Thornton. Senator Ludwig, are you commencing in this area?

Senator LUDWIG—Looking at page 40 of your annual report, you state:

Instead of preventing federal offenders serving longer sentences, the section now results in federal offenders serving shorter sentences ...

Then the next part goes on:

The unintended effect that the section now has is illustrated by the recent case of the R v O'Connor ... where the NSW Court of Criminal Appeal rejected an appeal instituted by the DPP against sentence because of the application of the section. The DPP has recommended to the Attorney-General's Department that section 16G be repealed.

Where is that up to now?

Mr Delaney—We have certainly had discussions with the department, Senator. I think a cabinet submission is being prepared. That might be a question that could be directed to the department as to precisely where the matter is at, but it has been agreed.

Senator LUDWIG—That is the point. There is broad agreement to—

Mr Delaney—There is broad agreement to fix it.

Senator LUDWIG—I guess it is not an oversight. It is an eventuality that has occurred as a consequence of New South Wales changing its law.

Mr Bugg—It is a consequence of most states changing the laws. This section was placed there to create uniformity around the country as far as Commonwealth offenders were concerned. Now we have a discount for Commonwealth offenders, whereas state offenders charged with similar conduct under state legislation do not get that discount.

Senator LUDWIG—Similarly, in the next section, is there a broad agreement to alter 135.2 of the code—that is, obtaining a financial advantage? Has that matter gone to the Attorney-General?

Mr Bugg—There has been recent correspondence about that but Mr Thornton is more fully—

Senator LUDWIG—It applies an absolute liability as a requirement that financial advantage is obtained from a Commonwealth entity.

Mr Thornton—I think that is in the same category as the other amendment. I think it has been agreed to and it will be fixed.

Senator LUDWIG—When would we be likely to expect legislation in that area?

Mr Delaney—Senator, that is probably more appropriately directed to the departmental officers because they will ultimately have control of that process.

CHAIR—Mr Cornall, did you hear that question?

Mr Cornall—Yes. I am having inquiries made of the policy officers, Senator. I have been at the discussions we have had about section 16G and so forth, but I am not sure of the exact position with the policy development on it.

Senator LUDWIG—We are seeking what your position now is in respect of that. Do you intend to change or attempt to change the statute books to remedy the matter?

Mr Cornall—I am asking for the relevant policy officers to be able to answer that question for you, Senator.

Senator LUDWIG—You can take it on notice. It is not that critical.

Mr Cornall—We may well be able to answer it tonight.

Senator LUDWIG—The same goes for the next part in section 135.2, if you could take that on notice.

Mr Cornall—Yes, I will ask about that as well.

Senator LUDWIG—In respect of the building industry, I notice on page 67 of the annual report you described a case called Operation Tubu—I don't know whether my pronunciation is right—which involved a scheme to avoid the payment of income tax in the New South Wales building industry. Did the DPP conduct any prosecutions for tax avoidance or other fraud in the building industry in the last financial year?

Mr Bugg—Yes, we did. In fact, if you go back to the section 16G which you referred to, O'Connor was one of the prosecutions out of Tubu, and the most recent prosecution in that area was finished in about May, I think. I cannot remember the name of the person prosecuted, but there were some pleas of guilty, and O'Connor was a plea of guilty. That was an appeal against his sentence which I, in fact, argued myself. There were two trials where guilty verdicts were returned. I just cannot remember the names of those persons.

Senator LUDWIG—There were two prosecutions and two successful convictions?

Mr Bugg—In the last 12 months?

Senator LUDWIG—Yes.

Mr Bugg—Yes, that I am aware of. I would need to take that on notice to give you the full details of the product of Operation Tubu.

Senator LUDWIG—I am happy for you to take that on notice. Did the DPP conduct any prosecutions for breaches of immigration law in the building industry in the last financial year?

Mr Bugg—I would have to take that on notice as well. As a preliminary indication, I am not aware of any, so I will take that on notice as well, Senator.

Senator LUDWIG—I suspect you would have put it in your annual report, but I could not find it there. Could you also find out, if there were any prosecutions for breaches, how many there were, and the number that resulted in a successful prosecution which led to a conviction?

Mr Bugg—Senator, on page 68 is the finishing portion of the section relating to Operation Tubu. It says in the final paragraph:

The trial of the fifth defendant has not been completed.

That has now been completed successfully.

Senator LUDWIG—A conviction was recorded?

Mr Bugg—Yes.

Senator LUDWIG—Do you recall what the sentence was?

Mr Bugg—No. I am sorry, I cannot.

Senator LUDWIG—It is not germane; it was by the by.

Mr Bugg—Do I need to take that further on notice?

Senator LUDWIG—No.

Mr Bugg—Are you happy with that?

Senator LUDWIG—Thank you. What can you tell me about where the case of Martin Kingham is now?

Mr Delaney—That is the matter in Victoria?

Senator LUDWIG—Yes.

Mr Delaney—It has been mentioned a couple of times before the court. I am not sure whether it has been fixed for hearing but a plea of not guilty has been indicated and it will ultimately go to trial. That is a general description. If you wanted more detail we could get that for you.

Senator LUDWIG—Do you keep a per trial or per case cost of these things? If so, what costs have been expended in relation to that matter?

Mr Bugg—Other than in-house costs or the retention of counsel?

Senator LUDWIG—It was both I was trying to turn my mind to. A lot of this work you obviously do in-house.

Mr Bugg—Yes.

Senator LUDWIG—I suspect it is very difficult to put a cost to it. The information I was trying to ascertain was: do you have cost indicators? If not, how do you gauge your work and, in addition, have any counsel been engaged?

Mr Bugg—Whilst the matter is still pending I would be a bit hesitant about talking about what costs cases are coming to.

Senator LUDWIG—I understand that.

Mr Bugg—If we could put that on long-range notice and resubmit it on another occasion when the matter is complete.

Senator LUDWIG—When you can.

CHAIR—I do not think we should introduce the concept of long-range notice into estimates. That is a terrifying thought, Mr Bugg.

Mr Bugg—Sort of a resubmit notice to that question.

Senator LUDWIG—I accept that. In respect of the building industry royal commission, have any other matters been referred from them to the DPP? I am not sure of the process. I was trying to understand how section 6P operates. I suspect, without looking at the section, the DPP is one of those named bodies but I beg to be corrected on that.

Mr Delaney—I think, Senator, there is only one other matter besides the matter we have just been speaking about.

Senator LUDWIG—Can you tell me anything about that?

Mr Delaney—It is under consideration.

Senator LUDWIG—That is why I framed it in that way.

Mr Delaney—Yes.

Senator LUDWIG—I will put that on long range then. I will ask next time.

Senator FAULKNER—Mr Bugg, what is the current situation in relation to former Senator Colston?

Mr Bugg—As far as his status is concerned, the charges—as you know—were dropped approximately three years ago. I had previously indicated at one of these hearings that I would review the matter as and when it seemed appropriate or necessary, from my perspective. That review is currently being undertaken. There is an independent medical examination being undertaken. I do not have the final results of that yet. Until I have, I really cannot make a decision on the matter.

Senator FAULKNER—When did you decide to commence this review?

Mr Bugg—Back in July of this year.

Senator FAULKNER—Can you explain to the committee why you decided to do that?

Mr Bugg—There were a couple of reasons. The first one was purely and simply that a substantial period of time had passed since the previous review, which was slightly more than 12 months. I brought the file forward in late April, which was about 12 months from when I had looked at it previously. I then started it on the path of a review in July purely and simply because of, firstly, the passage of time and, secondly, there had been a report of some air travel by the former senator. I wanted to, first of all, find out what the nature of that travel was and how extensive it was. If it seemed to be relevant to the purpose of the review, then I would feed that into the process as well and have the medical practitioner examine that aspect of it.

Senator FAULKNER—I did question officers from the Department of Finance and Administration at another Senate committee about Colston's use of his gold pass and other entitlements. Did you refer to that evidence?

Mr Bugg—I was aware of what was being discussed as a result of the questions. There was some reporting of it. I did not go directly to the evidence. In fact, I sought some clarification of it departmentally so that I had the precise dates, the details of the travel and the other usages.

Senator FAULKNER—I think that is appropriate. In other words, you were able to be provided with precise details from the relevant department which is responsible for administering the entitlements.

Mr Bugg—Yes.

Senator FAULKNER—But that was provoked by the press stories about Colston's use of his entitlements, was it?

Mr Bugg—Yes. I think I had started the review before then but I factored the additional material into the review. But certainly I became aware of it because of that.

Senator FAULKNER—The decision for the review is yours, and yours alone, isn't it?

Mr Bugg—Yes.

Senator FAULKNER—You didn't feel pressured by press coverage or commentary at all?

Mr Bugg—No. I was under way without any pressure. I had a concern myself that it was some considerable time since I had last looked at the matter. Therefore, I felt it incumbent upon me to undertake the review anyway.

Senator FAULKNER—What is the time frame for this review into Colston?

Mr Bugg—It is dependent on the availability of the expert and the availability—

Senator FAULKNER—Did you say ‘expert’?

Mr Bugg—Yes.

Senator FAULKNER—Not experts; expert?

Mr Bugg—Yes. We have retained an expert to look at the matter.

Senator FAULKNER—I hope it is not one of the other experts you have had.

Mr Bugg—No, it is not.

Senator FAULKNER—Is it a new expert?

Mr Bugg—Yes.

Senator FAULKNER—Is it fair to say that this is a medical expert?

Mr Bugg—Yes.

Senator FAULKNER—That is what we are talking about.

Mr Bugg—Clearly, yes.

Senator FAULKNER—You are absolutely satisfied about their independence and professionalism?

Mr Bugg—Absolutely. That was one of the starting points which took some little time: first of all, finding an expert—finding one who was available and able to take on the medical aspect of the review that I was requiring. Then, of course, you have to have appointments made and that sort of thing. I would have liked it to have happened a little more quickly but I wanted to be thorough as well.

Senator FAULKNER—But it kicked off in July this year?

Mr Bugg—Yes.

Senator FAULKNER—It is now mid-November. When do you expect this review to conclude?

Mr Bugg—I would certainly like to have an answer before the end of this year.

Senator FAULKNER—But what you have to do, obviously, is have reports of the independent medical examiner before you before you make a decision. That is fair enough. Is that right?

Mr Bugg—Yes; that is correct.

Senator FAULKNER—Are there other things that you have to have before you in order to make this decision?

Mr Bugg—I would obviously take into account all the material we have to date, evaluate that against what is the most current information we have and then make a decision about the matter.

Senator FAULKNER—Are you able to say—I do not know whether you can; you will no doubt tell me if you do not feel it is appropriate—apart from reports from the independent medical examiner, what other material you will take into consideration?

Mr Bugg—At this stage, no, I cannot. If the report raises matters that I have to take further or make further inquiries about, I will. Obviously it will be very much dependent initially on what that report says, and that may open up other areas that I have to look at. I am speculating but, as I said to you, it will be a thorough examination and review of the matter.

Senator FAULKNER—I accept that the buck stops with you. I hear what you say about the independent medical examiner. I suppose I am asking you whether there is other advice you think you might be likely to seek or receive before you make your assessment. As I say, you may not be able to answer that but, if you can, I am sure the committee would appreciate it.

Mr Bugg—At that stage, I think not, but it is dependent on what is said to me in the reports that I get from this examiner—the medical practitioner or expert who is undertaking the examination for me.

Senator FAULKNER—Has your office been embarrassed by this?

Mr Bugg—No, it has not. The decision was made in July of 1999, about a month before I commenced office in August.

Senator FAULKNER—I know that, Mr Bugg.

Mr Bugg—I am not running for cover.

Senator FAULKNER—I did not say you, did I? I said ‘your office’.

Mr Bugg—What happened was that on my first day in the job I reviewed the file and concluded that the right decision had been made, on all the material that was available.

Senator FAULKNER—What was the date of your first review?

Mr Bugg—I looked at it in the first week of August 1999. I then reviewed it in April 2001. That was the second review, as far as I personally was concerned.

Senator FAULKNER—You have commenced a third review?

Mr Bugg—I have commenced a third review. When you say ‘embarrassed’, some people have reported that it has been suggested that the decision to discontinue the matter was based on a fairly pessimistic prognosis of the potential life span of former Senator Colston. It was not that at all. The reason the matter was discontinued was that it was the considered opinion of a number of medical experts that he was not fit to stand trial, not that he was about to die. And that was the nature of the review that I undertook the second time around—that is, in April last year. The issue was not one of saying, ‘Well, he’s not dead now, but everyone has reported that he was going to die by Christmas.’ That is not the case. As I say, there were some pessimistic prognostications, but the fundamental basis for the advice and the opinions which caused the decision to be made was his fitness to stand trial, not his pessimistic outlook.

Senator FAULKNER—I understand the distinction and I appreciate it. I think I have always understood the distinction. But I would respectfully suggest to you, equally, that a lot of people do not understand how someone be seen to be fit enough to be jetting around the country using their gold pass and the like but not fit to stand trial. That is what people do not understand, Mr Bugg.

Mr Bugg—Yes.

Senator FAULKNER—I do understand and accept the distinction you make. As I say, I think I always have. Nevertheless, I think some reasonable and objective people have come to the conclusion that they do not understand how you can not be fit to stand trial but you can be fit to continue with your snout in the trough of parliamentary entitlements.

Mr Bugg—I understand. Let me just briefly explain. As I understand the travel that you talk about when you say ‘jetting around the country’, earlier this year the former senator and his wife took a car from their home to the airport in Brisbane, flew from Brisbane to Canberra, took a car from the airport to an address in Canberra and, about a fortnight later, returned the same way. So ‘jetting around the country’ was, in fact, a flight from Brisbane to Canberra and a flight from Canberra back to Brisbane about a fortnight later. That is the most recent travel. Before that, there was no travel for some considerable period of time.

You must draw the distinction between someone sitting in a plane seat and travelling and someone being able to sit in a court from 10 o’clock in the morning when the court starts, with a break in the middle of the day, and finishing at four o’clock; being able to concentrate on the evidence, give instructions to the instructing solicitor and counsel; and being alert and able to concentrate through that period of time for the estimated duration of the trial. That is the distinction. But they are factors that are now going into the process of review that I am undertaking.

Senator FAULKNER—I acknowledge that these are professional assessments that you have to make. There is also a great deal more parliamentary travel paid for by the Commonwealth taxpayers that occurred in the last financial year than previously. What concerns me in what you say is that, if it had not been exposed at another Senate committee—and you said that travel is a consideration—would you even have been aware of it?

Mr Bugg—I certainly would have been aware of it, through the process of examination which would inquire into the recent physical activities of the former senator—that is, what is he doing with his day? What is he doing with his week? What has he been doing in the last 12 months? Has he travelled? I would expect that the process of medical examination and the thoroughness of the review would take that into account.

Senator FAULKNER—Anyway, you are saying to us that you are expecting to be able to conclude your review by Christmas. That is correct, isn’t it?

Mr Bugg—Yes.

Senator FAULKNER—Are your plans going to be to make the outcome of that review public as soon as possible?

Mr Bugg—A decision will have to be made at the conclusion of the review and that decision will certainly be announced. If there is anything flowing from it, the detail of that announcement will be adjusted accordingly.

Senator FAULKNER—Yes, but they are two different issues, aren’t they, Mr Bugg? One is the outcome of the review and, perhaps, whether things flow from it or not. That is your decision. But one thing you can say to us is whether you are able to make the outcome of that review public at the earliest possible opportunity. That is your call, isn’t it?

Mr Bugg—Yes, it is. When you say ‘the outcome’, it will depend on what the decision is at the end of the review as to the extent of any announcement that can be made, if you understand what I am saying.

Senator FAULKNER—Yes, I do. You can give this committee an assurance, can’t you, that your review will be thorough?

Mr Bugg—Yes, I have said that three times.

Senator FAULKNER—You can give us an assurance that the medical examination will be both rigorous and independent.

Mr Bugg—Yes.

Senator FAULKNER—And you can assure us that the outcome will be made public prior to Christmas this year.

Mr Bugg—You keep using the word ‘outcome’.

Senator FAULKNER—Yes.

Mr Bugg—What my decision is at the end of the review I will make an announcement about.

Senator FAULKNER—We are on the same wavelength, Mr Bugg.

Mr Bugg—Yes.

Senator FAULKNER—If I am using the wrong terminology in saying ‘outcome’, decision is, as far as I am concerned, the same thing. You are drawing a distinction there. I accept that.

Mr Bugg—Yes.

Senator FAULKNER—I do not necessarily understand it but the decision is made public.

Mr Bugg—Yes.

Senator FAULKNER—That is the important thing.

Mr Bugg—Yes.

Senator FAULKNER—And that will be done in the time frame that we have discussed.

Mr Bugg—I anticipate that I will be able to make a decision before Christmas. It is dependent on my receipt of the material. If the expert says, ‘I require a further examination,’ or ‘I want to make further inquiries,’ then of course I am very much tied to that. As I say, I will not hurry it because I want it to be thorough.

Senator FAULKNER—That is the fourth time you have said that.

Mr Bugg—Thank you, Senator.

CHAIR—I do not believe there are any further questions for the DPP. Mr Bugg, Mr Delaney and Mr Thornton, thank you very much for assisting the committee this evening.

[9.11 p.m.]

Office of Parliamentary Counsel

CHAIR—I should advise the committee that Ms Penfold had indicated that she was available all day but unable to be here this evening, so we appreciate that. Welcome, Ms Collins and Mr Quiggin. Senator Kirk?

Senator KIRK—In relation to the latest drafting directions, could you provide to the committee the drafting directions on gender specific and gender neutral language in bills, commencement provisions and provisions about public employment? You may have to take that on notice.

Mr Quiggin—All of the drafting directions are available on our web site. The committee could access them there or we could take it on notice to provide those. The drafting direction

on gender specific language is a number of years old now. It has been used in our office for quite a considerable period of time.

Senator KIRK—Perhaps you can also provide us with when they came into effect and also the dates that the other two came into effect. Will you take that on notice?

Mr Quiggin—Yes, we can do that.

Senator KIRK—I am looking at page 21 of your annual report, paragraphs 72 and 73, headed ‘How realistic is the legislation program?’ For the benefit of other committee members, paragraph 72 states:

The figures suggest the speculative nature of many of the Bills included in the Government’s legislation program at the beginning of each sittings.

Paragraph 73 states:

For the Autumn and Winter 2002 sittings, there were nearly 60 Bills for which OPC received no instructions.

Are you suggesting that the government is padding out its legislation program with phantom bills? What is the suggestion there that you are trying to get across?

Mr Quiggin—The way the program works is that each department or portfolio has to put in a bid for the bills that they will require for the following sittings. That is put in about halfway through the preceding sittings. The bills are then each allocated a category which is set out on page 14. The categories are T, A, B and C, and each bill will then be allocated one of those categories. T is time critical; A, B and C are then in a decreasing order of priority. You will notice that the tables on page 13 and page 14 have more detail about the bills for which instructions are not received, and you will notice from those that it is mostly the lower category bills for which instructions are not received.

The annual report notes in paragraph 75 that the fact that we do not receive instructions for those lower category bills would be an indication either that the Parliamentary Business Committee’s assessment of relevant importance and urgency is fairly correct, or that the ministers or agencies abandon or cut back efforts on bills that are given a lower category. In other words, if a bill is given a category C, as those are fairly unusual to get drafted, it may be that the departments do not then do a large amount of work in preparing instructions, and similarly for category B. Looking at the tables on page 13 you will notice that it is mainly those category B and C bills for which instructions are not actually received.

Senator KIRK—From what you have said, category B is a higher category than category C, yet in the period February to March 2002 there were 36 bills in that category. You are saying that is not unusual?

Mr Quiggin—No. If you total the figures across the rows, they would be the total that were on the program, so there would have been 15 category C bills on the program. Of those, instructions were only received for one—so one-fifteenth. Whereas, with category B, six bills actually were introduced, on nine we received instructions—that is 15—and on 36 we did not receive instructions. I suppose the total shows that the higher up a bill is on the program, the more likely it is that departments will produce the instructions for them.

Senator KIRK—What occurs when you do not receive instructions? Is it then just a matter for the office to proceed as normal and try to work out what it is that the government wishes? If you do not have instructions, exactly how do you go about drafting?

Mr Quiggin—If we do not have instructions, we do not commence work on the bill. Occasionally, for very urgent bills, the instructions would be oral instructions, but for a

standard project, unless we have received written instructions, the bill would not be allocated to a drafting team; therefore, it has no effect on the operations of our office.

Senator KIRK—I was also interested in paragraph 79 on page 22, where it talks about the demand for non-tax drafting not returning to normal levels during the year. I imagine this is after the election. The paragraph states:

... there was some demand for small urgent Bills to be drafted to very tight deadlines ... there remained a relatively low level of demand for substantial non-urgent Bills.

Can you explain what that means? Does that mean you are waiting around for something to do? What exactly does that mean?

Mr Quiggin—There has been a substantial amount of demand for tax bills, which is mentioned in paragraph 81. Paragraph 79 is trying to point out that, in areas other than tax and probably other Treasury legislation, the demand for legislation has been lower than in previous years. The effect of that is that the office has been doing proportionately more work on tax and other Treasury legislation. Is that sufficient?

Senator KIRK—Yes, I understand. You are saying the emphasis has shifted towards more tax type legislation rather than other areas?

Mr Quiggin—Yes. I think paragraph 80 mentions that it is not clear whether this is an enduring change or merely a lull. There tends to be a change in the focus of the legislative program over years, depending on priorities.

Senator KIRK—Thank you.

CHAIR—Mr Quiggin, thank you very much for assisting the committee.

[9.20 p.m.]

Australian Government Solicitor

Senator LUDWIG—If you recall—and I am sure you do—last time I think we were talking about the royal commission, so we might start there again. The building industry royal commission indicated that you were one of the suppliers of legal services to them. How would you express what work you have done, in terms of either amount or cost, for the building industry royal commission?

Ms de Gruchy—We have continued to supply legal services to the royal commission in a similar way to the way we were providing those services the last time we were at estimates. We again have a core team working, dedicated to the commission, at the commission's premises and, in addition, from time to time lawyers within AGS also provide some additional services in relation to specific matters. We do have an update in relation to the make-up of the team—the numbers of people—in a similar fashion to the information that was provided at the last estimates, if that would be of assistance to the committee.

Senator LUDWIG—It would be helpful, thank you, if you are in a position to table that. Does that also include the HIH?

Ms de Gruchy—We do have that for the HIH Royal Commission.

Senator LUDWIG—That would be appreciated, thank you. Whilst that is being tabled, are you aware of a completion date for your work for each royal commission?

Ms de Gruchy—We have been advised of the announcement of an extension in relation to the building and construction industry royal commission to 31 January 2003. In relation to the HIH Royal Commission, the proposed reporting date has not changed. In terms of the services that we supply, they have been flexible in terms of the number of personnel that are needed

for the purposes of the commission. We anticipate that, as both commissions come closer to the reporting date, the number of people we have working with the commission will reduce slightly to perhaps a final team that will assist both commissions through to the end.

Senator LUDWIG—In relation to the building industry task force, have you been contracted by it to provide any legal service?

Ms de Gruchy—We understand that the interim task force has been in some form of operation for some time. We have provided some legal services to the Department of Employment and Workplace Relations in which the task force sits, but now that the task force is moving from an interim stage to a more settled stage, we are not yet in a position to say that we are contracted to provide legal services.

Senator LUDWIG—Perhaps you could detail what work you have provided to the department as part of the building industry task force and the cost of that and the nature of the work.

Ms de Gruchy—Would it be possible to take that question on notice?

Senator LUDWIG—Yes. In relation to the department, was there any work done on how the AGS would have the task force structured? It is within the department and now it is moving, as we heard. You may not be aware, but it is in its own premises now, it appears. It has borrowed some furniture, which it coopted from the royal commission, so it is now a separate entity or at least has a separate address. Have they contacted the AGS to provide a contract or to go into an understanding or a memorandum of agreement between the building task force and yourselves for ongoing work?

Ms de Gruchy—There has been contact between the Australian Government Solicitor and the department in relation to how the task force might obtain legal services, but there is no conclusion to any of those matters. I do not believe at this stage there have been any settled arrangements proposed in relation to legal services.

Senator LUDWIG—Thank you. Can you detail the costs incurred to date by the AGS for work done for the Commonwealth in respect of the Ansett administration, including things like the establishment of the special employees entitlement scheme for Ansett group employees?

Ms de Gruchy—There are many facets to work that has been involved in the Ansett situation, relating to the many different interests that the Commonwealth had in relation to what evolved out of the Ansett collapse. Senator, if possible, I would appreciate being able to take the question on notice, as I am not in a position to detail the extent of the involvement, but I will endeavour to assist the committee as well as I can.

Senator LUDWIG—The figures that you have provided to us just now are as at 31 October for both. They detail the number of staff and, so that we are clear, you are then going to take on notice, of course, the costs of all those and a reasonable breakdown of the costs. Is that what you are also going to undertake to do?

Ms de Gruchy—I understood that earlier—I am not quite sure what time it was—both commissions tabled the amount of fees that had been paid to the Australian Government Solicitor. We are aware of the amount of the figure that was disclosed and, broadly speaking, that accords with our records of the figures.

Senator LUDWIG—But you are still happy to go away and get your figures and provide them to the committee.

Ms de Gruchy—We can certainly provide the amount of fees that have been paid to us by both royal commissions.

Mr Riggs—They are the same figures, I think, as the ones that were given by the two commissions earlier in the day.

Senator LUDWIG—Have you been able to look at the tabled documents by the commissions?

Mr Riggs—We have looked at those, yes.

Senator LUDWIG—You have seen those?

Mr Riggs—Yes, we have.

Senator LUDWIG—And you can say that they are what you would provide?

Mr Riggs—As at that date and on the basis set out, yes. We might have produced a figure on a slightly different basis of reporting to the committee, but I think it would be more confusing than illuminative for us to give you a different set of numbers on a different basis.

Senator LUDWIG—I give up then, thank you.

Senator KIRK—Are you are familiar with the Federal Court case of Hamberger v. Williamson and CFMEU, known as the Abigroup case, in which the AGS represented the Employment Advocate?

Ms de Gruchy—I believe that is a case in which we did act on behalf of the Employment Advocate. I do not have details or personal knowledge of the matter.

Senator KIRK—As you said, you represented the Employment Advocate. I was going to ask whether or not the AGS also represented two witnesses in the case, Messrs Lyten and Carson, in a costs application that was brought by the CFMEU.

Ms de Gruchy—I would not be in a position to answer from my own personal knowledge but would be able to take on notice any question relating to the matter.

Senator LUDWIG—When would you be able to come back and tell us? It worries me all the time that you take everything on notice. Either you are not prepared for these matters or you like to take them on notice. I do not know which. It seems a relatively simple question. Can you come back tonight and tell us the answer?

Ms de Gruchy—If I can raise the people who might be able to assist me with the information concerning the case, that may be possible.

Senator LUDWIG—Do you come along unsupported?

Ms de Gruchy—No. As you would probably appreciate, Senator, we try to be as prepared as we can in order to answer questions. But there are some questions on which I may not have personal knowledge sufficient to answer the question that may be asked. That is a matter that is some time ago and it is not a matter I have been fully briefed on.

Senator LUDWIG—Thank you.

CHAIR—Ms de Gruchy and Mr Riggs, thank you very much. Obviously there are a number of issues that you will come back to the committee on.

[9.32 p.m.]

Insolvency and Trustee Service Australia

CHAIR—We will now move to ITSA.

Mr Cornall—Madam Chair, there were some questions earlier about the sort of work that is undertaken between ITSA and the AFP under their memorandum of understanding. Mr Gallagher will be able to make some comments about that, if that would be of assistance.

CHAIR—I am sure that would be of assistance. Thank you, Mr Cornall. I suspect Senator Ludwig will be grateful for that assistance.

Mr Gallagher—I understand the question before was about the criteria for the selection of matters that are referred to the AFP—

CHAIR—Yes. That was one of Senator Ludwig's earlier questions, Mr Gallagher.

Mr Gallagher—under the service agreement between ITSA and the AFP.

CHAIR—Yes.

Mr Gallagher—In addition to the serious and complex matters which are referred to them as a matter of course, the criteria break the other matters into four categories: failure to disclose property under section 265(1)(a) of the act, contracting a debt without expectation of being able to pay, contracting credit or incurring liability without disclosing bankruptcy, and transfer of property to defeat creditors. Under those four categories there are certain additional factors that would lead us to refer on those matters rather than conduct the investigation in-house. In the last financial year there were 407 referrals to ITSA, 196 of which we decided to investigate. Just by way of comparison, 13 matters were referred to the AFP.

CHAIR—Thank you very much, Mr Gallagher, particularly for the prompt response to a question asked earlier today.

Senator LUDWIG—I have asked a number of questions previously on notice. One of them related to how you decide when to attend part X creditors meetings. You indicated, at a question that you returned on notice, that there were five main instances when bankruptcy regulation officers would consider attendance. They were detailed in the answer. You then indicated it was not exhaustive. I was trying to ascertain the methodology you use to determine whether or not you will attend part X or other creditors meetings. The methodology you have highlighted here is: (1) examination of the section 189A report; (2) when there is a history of poor meeting; (3) when the debtor has a high public profile; (4) when a concern has been raised; and (5) as part of an ongoing assessment of practice standards.

That is not, in my mind, a methodology. They are indicators that might draw your attention to a problem that needs attendance. Other organisations we have had before the estimates process, perhaps like the AFP, utilise various modelling techniques to determine whether or not they will investigate, or what they will do—in other words, whether they will look further or not at a particular issue. Customs also, I think, have processes in place, from recollection. Do you have anything like that in place to determine whether or not you should look further into a matter, other than the broad indicia you have mentioned?

Mr Gallagher—They are the criteria we use. All of the surveillance work or audit program work we do in the bankruptcy regulation area is based on a risk assessment. The criteria referred to there are related to an assessment of the risk associated with the particular matter.

Senator LUDWIG—It seems that when you do decide to go, the amount of remedial action is high. There are two things that could flow from that: when you go you find something, irrespective of what criteria you utilise; or your method of determining whether to go is very good. Perhaps you could try to resolve that inconsistency with me. Is it the case that when you go you always find something wrong? Doesn't that set you on notice that, in fact, if you attended more, there would be more problems? Is that a necessary corollary?

Mr Gallagher—I do not know that it is a necessary corollary. The fact that we have identified a relatively high incidence of matters requiring attention does indicate that it is an effective area of our regulatory activity. In the end it is a judgment call on where we allocate the resources we have for the regulation work. The information that is available from the report and the other information we have in relation to the trustee or the profile of the debtor does provide, we think, a pretty good guide as to where we should direct our attention.

Senator LUDWIG—Are the criteria that you utilise, which I have been talking about, documented in a protocol or a memorandum? Is it written down anywhere that officers utilise?

Mr Gallagher—It is documented internally. I am pretty sure it is not something we disclose or publicise to the trustee community. We have, in the past 18 months to two years, endeavoured to move our regulatory effort from one that was essentially based on sampling to being risk based. It is based on the number of complaints that are made against trustees, the nature of the trustee firm, things that we might have identified in previous audits of those trustee firms, and the value of the debts involved in the bankruptcy or the part X arrangement. They are all factored in to a risk profile.

Senator LUDWIG—Where is the risk profile kept? Do you have a risk profile manual or a computer model?

Mr Gallagher—As I say, it is kept internally. I can obtain that document for you. It is kept internally by our BR unit.

Senator LUDWIG—What is it? Is it a loose-leaf folder? Is it a computer model? What is it exactly?

Mr Gallagher—I know that it is documented, but I do not know the exact form it takes, offhand.

Senator LUDWIG—I am happy for you to take it on notice to try to establish what it is and to let the committee know.

Mr Gallagher—Yes, I can obtain the information for you.

Senator LUDWIG—Have you been able to ascertain, in percentage terms, the rate of return in part X agreements? Has that position been able to be remedied or are you still in the dark about that?

Mr Gallagher—I think the question was raised before. In our response, we said we did not have the information, which is the case. As you know, there has been an announcement of a review of part X, which has now commenced, and we have determined that in the course of that we will obtain that information. Because we do not collect it routinely, it can only be obtained by going back to the individual matters on the files and collecting it, which we propose to do as part of the review. It is not available at the moment.

Senator LUDWIG—Is it one of those matters that you are considering obtaining or trying to work out?

Mr Gallagher—In the context of the review, it is one matter we think is relevant.

Senator LUDWIG—Is there a discussion paper being released tomorrow in relation to part X or bankruptcy more generally?

Mr Gallagher—The discussion paper for the part X review has been released and we are now in the process of consulting with industry stakeholders. In fact, I think in three of the six

states we have already had consultations and the remaining three are scheduled next week or the week after next.

Senator LUDWIG—Have there been any public hearings?

Mr Gallagher—Not public hearings, no.

Senator LUDWIG—You have not advertised for public hearings?

Mr Gallagher—Not for public hearings, no. I am trying to recall whether the discussion paper invited submissions. We certainly invited submissions from the industry. It is on our web site.

Senator LUDWIG—I am happy for you to take it on notice. I was curious about whether or not you could supply where you have been and what organisations you have spoken to in relation to the part X review.

Mr Gallagher—I do not know the individuals, but I know that the three states we have attended are South Australia, Western Australia and Tasmania. The people who have attended the consultations are trustees, solicitors for trustees and creditors.

Senator LUDWIG—Are there any associations that would normally be interested that you have contacted and had discussions with?

Mr Gallagher—We have advised the members of the consultative forum of the part X review and effectively communicated through them to the industry groups.

CHAIR—I indicate, Mr Gallagher, that there will be some questions put on notice by Senator Ludwig in addition to those he has asked you verbally. Thank you both, Mr Gallagher and Mr Lowe, for your assistance this evening.

Mr Gallagher—Thank you.

CHAIR—Senator Ludwig, I am going to be most admiring of how you manage to fit the Attorney-General's Department and the Australian Customs Service into the space of one hour and 15 minutes, but I am sure you will manage it!

Senator LUDWIG—I do know the task ahead of me!

[9.45 p.m.]

Attorney-General's Department

CHAIR—Mr Cornall, I believe you have some information for the committee.

Mr Cornall—Thank you, Madam Chair. One matter that we referred to earlier was the indicative Remuneration Tribunal determination for the salary package for the Chief Executive Officer of the Australian Crime Commission. The details are that the total remuneration package value was estimated at \$244,160, comprising salary of \$167,900, supplementary remuneration in lieu of performance remuneration of \$11,500, estimated employer superannuation contribution of \$26,910, executive vehicle including car parking of \$19,000 and overseas accompanied travel allowance of \$18,850.

CHAIR—Thank you for setting that out for the committee, Mr Cornall.

Senator LUDWIG—In relation to judicial complaints, there was a matter I raised with you last time where you were developing a protocol for judges. Has that been finalised yet?

Mr Cornall—I will ask Ms Leigh to answer that question.

Ms Leigh—No. The department has been undertaking work on that, but it is still under consideration by the government.

Senator LUDWIG—When is that likely to be completed?

Ms Leigh—I am not sure that I can give you a definite time frame on that, Senator.

Senator LUDWIG—You know it has been eight months since Senator Heffernan made those comments in respect of Justice Kirby; you know that it was a matter I raised last time; it was a matter that had been on your web site, I recall, as an issue that you were going to deal with before that; yet you are still in the process of progressing the matter. Are you serious about it or not?

Ms Leigh—Yes. The government is still considering that matter and that is why I am unable to give you a time frame. It is a matter that the government is considering.

Senator LUDWIG—When can we expect a concrete proposal from the government?

Ms Leigh—I cannot answer that.

Senator LUDWIG—If I ask you in February, are you likely to have a response by then?

Ms Leigh—I am unable to predict that.

Senator LUDWIG—It is not very good, is it?

CHAIR—For the benefit of the minister, the question is in relation to judicial complaints issues which Senator Ludwig has been pursuing.

Senator LUDWIG—For some time, I must say, and it was a matter that you guys started! It was put on your web site; something you were going to do, from memory.

Mr Cornall—Senator, Ms Leigh has said that the matter is with the government and we are in the hands of the government as to the timing with which it wishes to advance the matter further.

Senator Ellison—Madam Chair, I am the government. I will take it on notice and get back to the committee as soon as I can. The Attorney is overseas at the moment, so I cannot speak to him tomorrow, but I will certainly try and get some word back to Senator Ludwig. It is not a question that the officials really can take any further. The buck stops with the government and that is me!

CHAIR—Thank you, Minister.

Senator Ellison—I will pursue this.

CHAIR—I appreciate that undertaking.

Senator LUDWIG—I do as well. In relation to the age discrimination bill, I understand the department has been working since August with the consultative group on developing that bill. Can you briefly describe where we are up to with respect to that?

Ms Leigh—Yes. The department undertook extensive consultations at the request of the Attorney in relation to that legislation. First of all, we met with over 80 organisations to discuss the issues relating to what might be included in such legislation. Subsequently, we wrote to a further approximately 180 organisations and the Attorney then established a core consultative group of the key organisations with an interest in the issue. That comprised 30 organisations and we met as a group with all of those organisations. We met first of all as a plenary and identified all of the significant issues. We then identified five working groups in relation to the particularly complex areas and those working groups each met separately. Then we held another meeting of the plenary to try to come to a consensus on what would be appropriately included in such legislation. The work of that group has now been provided to the Attorney and it is under consideration by the government.

Senator LUDWIG—Are you in a position to say when legislation is likely to be introduced into the parliament?

Ms Leigh—I, of course, cannot indicate exactly when the government intends to do that, but I would think it is quite likely to be in the autumn sittings. If not, it would certainly be in the following sittings.

Senator LUDWIG—In relation to bankruptcy and tax avoidance—I think Senator Allison may remember this—it is now 11 months since the joint task force on the use of bankruptcy and family law schemes to avoid the payment of tax reported to the Attorney-General. There seems to be a problem with telling me about the report; we seem to get caught in a catch-22. Is it the intention of the government ever to make it public?

Mr Anderson—Senator, as you know, the government has decided not to release the task force report itself as it contains material which might indicate possible loopholes and avoidance mechanisms. The government is, however, considering releasing a discussion paper for public comment which will hopefully suggest changes to harmonise family law and bankruptcy law, and also look at some issues with respect to tax law to address those issues.

Senator LUDWIG—Is that the one you are going to release tomorrow? I knew there was something coming out shortly.

Mr Anderson—I am not sure if it is going to be released tomorrow, but certainly the government is intending to release a paper soon.

Senator LUDWIG—Then will it be Friday, do you think? It is just that they always seem to come out on Friday afternoon at four o'clock. I have to say that earlier in the day would be better or not on a Friday.

Mr Anderson—I am not sure what the intended release date is.

Senator LUDWIG—Are the model litigant guidelines in your area? We are now in output 1.2, which I suspect is still within your area. The annual report states:

The department identified two breaches of the model litigants guidelines by Commonwealth agencies and remedial action has been taken.

Which agencies are they?

Mr Anderson—Unfortunately, I am not in a position to identify those immediately. We could seek to come back subsequently during this hearing or take that on notice.

Senator LUDWIG—You can take that on notice. Tell us which agencies, what breach was identified in each case and what litigation took place in respect of it—for instance, was it referred to the DPP?

Mr Cornall—We will take that on notice, Senator, if that is okay by you.

Senator LUDWIG—That would be fine, thank you.

[9.54 p.m.]

CHAIR—That finishes output 1.2. We will move to output 1.3, Family law and related services.

Senator LUDWIG—Where is the response by the government to the Family Law Pathways Advisory Group?

Ms Lynch—There is an IDC being chaired by the Department of the Prime Minister and Cabinet which is preparing the government response. It is not finalised at present.

Senator LUDWIG—That is the most encouraging news I have heard. I have been asking for this for some time now. It has been 16 months, I think. There is light at the end of the tunnel. You intend to provide a response. Is that right?

Ms Lynch—That is my understanding, yes.

Senator LUDWIG—We nearly got a direct answer. When is that likely to be finalised?

Ms Lynch—I do not have a date. To the extent that it might raise funding issues, those issues would need to be considered in the budget process. I do not have a date for a response at present.

Senator LUDWIG—Do you have a rough quarter of a year? I won't hold you to it, I promise!

Ms Lynch—No, I am sorry, I do not think I am in a position to give you that sort of date at present.

Senator LUDWIG—Will I get a response?

Ms Lynch—Will there be a government response to the pathways report? That is my understanding at present, yes.

Senator LUDWIG—We will wait until February. Thank you. On the community based counselling services, there are, I think, seven community based conciliation services being funded under the Family Relationship Services Program. Is that right?

Ms Lynch—I am told that seven is correct, Senator.

Senator LUDWIG—How much has been spent to date on each service and where are they located?

Ms Lynch—My colleague Ms Pidgeon can answer that question.

Ms Pidgeon—The estimated expenditure for all seven conciliation services together is \$1.7 million in the current year. They have been located in metropolitan areas: two in New South Wales, one in Queensland, one in South Australia and three in Victoria.

Senator LUDWIG—How much has been spent to date on each service?

Ms Pidgeon—I do not have the figures for the individual services because the actual payment to them is done through the Department of Family and Community Services. I can obtain from them the actual figures.

Senator LUDWIG—If you would not mind, it would be helpful.

Ms Pidgeon—We can do that.

Senator LUDWIG—Thank you. What outreach did they undertake?

Ms Pidgeon—The conciliation services?

Senator LUDWIG—Yes.

Ms Pidgeon—They are essentially there for what we call pre-filing counselling, which is counselling of people before they file in the Family Court, hopefully to divert them from filing by assisting them to reach agreement without having to go to court over family law issues. They are people who might otherwise end up in the court but, we would hope, can be prevented from doing so.

Senator LUDWIG—In your annual report you note:

More work is required to encourage legal practitioners to refer clients to the new community services.

Has there been a problem identified by the government in that area?

Ms Pidgeon—Yes. A lot of this work was previously done in the Family Court—some of it still is—and the practitioners have been very used to referring people to the Family Court. But in those metropolitan areas where these conciliation services are set up, the Family Court does not do as much of that pre-filing work now, so it has been identified as a problem. We are working with the family law section of the Law Council of Australia and with the community organisations that provide these services to try and improve that situation. We also, with the family law section, have a project for them to employ a dispute resolution liaison officer, which will be advertised shortly. It is a position for a 12-month trial to see whether having a liaison officer within the practitioners' organisations can assist to build the sort of relationship they need to refer people to the community organisations.

Senator LUDWIG—Where will they be placed?

Ms Pidgeon—The liaison officer?

Senator LUDWIG—Yes.

Ms Pidgeon—That depends on who is appointed. They will be with the family law section, but the family law section is in a number of places in Australia, so it will depend on where they are located. They will be travelling to other states, though, wherever they happen to be based.

Senator LUDWIG—It sounds like a very difficult job. That is going to be trialled, so we might come back and ask you some more questions when that gets under way.

Ms Pidgeon—We will be happy to answer them, Senator.

Senator LUDWIG—Thank you. Is Law by Telecommunications within your area?

Ms Pidgeon—Yes.

Senator LUDWIG—I think you have already answered a number of questions on notice about Australian Law Online after the last budget, but could you update your answers, particularly for the entire 2001-02 financial year and the current financial year to date. You may recall that the questions that were asked dealt with how many calls have been taken by the Family Law Hotline, by year, by month and by region; how many calls have been taken by the Regional Law Hotline, by month and by region; and how many page impressions have been recorded for Australian Law Online, by year and by month, and for how many unique users.

Ms Pidgeon—I believe I do have the statistical information that you are seeking. I can hand it up now. I have the expenditure by year, including the complete expenditure for last year and the estimated for this year. I have the current monthly hit rates. I also have the call centre staffing level by month and calls handled by month up to the end of October. They are the most recent figures.

Senator LUDWIG—When you go to the Attorney-General's web site, Australian Law Online does not seem to figure as prominently as it did in the old Attorney-General's web site. Why is that?

Ms Pidgeon—I think that is something that we need to look at to make sure that it is prominent enough and that people can find their way easily enough to the information they need.

Senator LUDWIG—In fact, I am having trouble finding it now.

Ms Pidgeon—In the Attorney-General's web site, you need to go into the family law area. However, I take that as an indication that we do need to make sure that it is more prominent.

Senator LUDWIG—I see. You can go through it into former web sites. Is that an indication that you are no longer supporting it?

Ms Pidgeon—Not at all, Senator. In fact, the actual web site is now hosted within the department rather than with Centrelink, so we certainly are continuing to support it.

Senator LUDWIG—You have developed a new web site but it is now hard to find. I am having difficulty reconciling that with your answer.

Ms Pidgeon—I had not realised it was hard to find. I guess when you know where something is, you do not realise for someone else it is hard to find.

Senator LUDWIG—I remember the previous web site.

CHAIR—But it rather defeats the purpose if it is hard to find, doesn't it?

Ms Pidgeon—However, it is not intended that people would go in through the Attorney-General's web site.

CHAIR—It could just be the operator, of course.

Ms Pidgeon—The Australian Law Online web site and the family law part of it are advertised for people to directly link in. They do not need to go in through the Attorney-General's web site.

Senator LUDWIG—No, I have it. It is saved in my favourites to go in directly, but I just thought I would check how easy it is. If most people think of law, I guess they go to Attorney-General's, I would hope, or AFP, but we will not go there. It does not seem that easy.

Ms Pidgeon—My first task tomorrow will be to go and make sure there is an easier link from the beginning of the—

Senator LUDWIG—Email me if you think I am failing in my skills. I am happy to be corrected. I am happy for you to take on notice to provide those figures in relation to the additional points that I have raised.

Ms Pidgeon—Yes, I will certainly do that.

Senator LUDWIG—Also, in relation to the page impressions for the Internet sites, can you separate the SCALEplus of people looking for legislation so that they do not take that as a page impression for your site?

Ms Pidgeon—There is no overlap between them.

Senator LUDWIG—Sometimes the counters do not show that, but sometimes they do.

Ms Pidgeon—There should not be any overlap between SCALEplus and our count, but I will certainly check that when we take that on notice.

Senator LUDWIG—I will put the rest of my questions on that output on notice.

[10.05 p.m.]

CHAIR—We will move to output 1.3.

Senator LUDWIG—Are legal assistance schemes within your area? For the royal commissions, how much has been spent on financial assistance to witnesses appearing before the HIH and the building royal commissions?

Ms Lynch—According to the department's SAP records when we ran a report on Monday for this financial year to 18 November, \$657,808 had been spent on assistance in relation to the building and construction royal commission and \$704,448 in connection with the HIH Royal Commission.

Senator LUDWIG—Are the statistics available per case, per person, per application, or is there payment to solicitors or counsel appearing?

Ms Lynch—I do not have that broken down, Senator. They are simply amounts paid out as per SAP records.

Senator LUDWIG—Could you have a look at that for the committee and see how you can present that information so that it might be a little more meaningful?

Ms Lynch—I will take that on notice, Senator.

Senator LUDWIG—In relation to financial assistance that has been refused, perhaps you could add a column to indicate if there have been any refusals and what grounds were given for the refusal for financial assistance.

Ms Lynch—I will take that on notice as well.

Senator LUDWIG—In relation to the Workplace Relations Act, in the last financial year how much was spent on legal assistance under that act?

Ms Lynch—I do not have that figure available to me at the moment. Can I take that on notice?

Senator LUDWIG—Yes, by all means. What is the status of the reviews of the Western Australian and the New South Wales community legal services?

Ms Lynch—The review in New South Wales has yet to start, although I understand terms of reference have been agreed between the Commonwealth and the states. In WA, work has commenced, although the terms of reference have not yet been finalised.

Senator LUDWIG—Who is on the steering committee in WA?

Ms Lynch—The steering committee in WA is chaired by Mr George Turnbull. The other members are Lea Anderson from the Federation of Community Legal Centres, representative for the Women's Law Centre; Cheryl Vernon from the Federation of Community Legal Centres, representative for the Youth Legal Services; Kevin Hogg from the Federation of Community Legal Centres, representative for the Rural Community Legal Service; Neville Jones, state representative from the Department of Justice; Gary Burlingham, who is from the Commonwealth Attorney-General's Department; Bevan Warner from Legal Aid Western Australia; and Allison Currie, who I think is the secretariat person from the Community Legal Centre Funding Program, Legal Aid WA.

Senator LUDWIG—How were those selections made? Was there a process, or were they the significant bodies or persons that you would put on a—

Ms Lynch—I do not know if I am in a position to answer that just at the moment. Can I take that on notice?

Senator LUDWIG—Yes, by all means. What about New South Wales? You said that they are not under way, but have they established a steering committee yet?

Ms Lynch—From my brief, I do not think the steering committee has been established. I do not have any names for that steering committee.

Senator LUDWIG—Perhaps you can check that. If it has, you can provide that detail. If not, we will leave it until February.

Ms Lynch—I will get back to you tonight if I can.

CHAIR—Thank you very much. That completes output 1.3.

[10.08 p.m.]

CHAIR—We will now move to output 1.4, International law.

Mr Cornall—Senator Ludwig, did you ask about the *Westralia* as well?

Senator LUDWIG—Yes.

Mr Cornall—The briefing that we have is that the financial assistance section has offered advice to the Department of Defence about the mechanics by which assistance could be offered to the families of those people who died, but specific questions about the actual arrangements are really matters for the Department of Defence and not for this department.

Senator LUDWIG—Thank you. In respect of output 1.4 and the International Criminal Court, can you provide an update on the status of negotiations with the United States for a bilateral agreement under article 98 of the ICC?

Ms Blackburn—Are you referencing the article 98.2 agreement?

Senator LUDWIG—Yes.

Ms Blackburn—Those negotiations are continuing.

Senator LUDWIG—Have you been asked whether or not that agreement would be consistent with the Australian international obligations?

Ms Blackburn—Any agreement that Australia enters into with the United States will be consistent with our obligations under the International Criminal Court. We have ratified the statute.

Senator LUDWIG—I knew that was going to be a rhetorical question, so I apologise. Where are you with those negotiations? Are they likely to be concluded? Do you have a time line?

Ms Blackburn—No, I do not. I cannot give you a time line. There is a continuing process of negotiation between Australia and the United States.

Senator LUDWIG—I note that the president of the commission issued a media release on 5 June calling on the government to ratify the statute. Of course, the commission is aware that the government has given its in-principle support for the bilateral. Has anything happened since then? We have certainly ratified it and we have gone down that track, but can you update me as to where we are in terms of Australia's representation on the International Criminal Court?

Ms Blackburn—Australia has ratified the statute and it is in force for Australia.

Senator LUDWIG—Yes.

Ms Blackburn—Since the representation on the International Court there is a process going on at the moment for the election of judges and the appointment of a prosecutor.

Senator LUDWIG—Has Australia nominated anybody?

Ms Blackburn—Australia has not nominated a person for a position of judge on the International Court.

Senator LUDWIG—Does it intend to nominate anyone?

Ms Blackburn—Australia does not intend to nominate a judge in this round. This is in view of an extremely strong candidate being put forward by Canada. We are not nominating a candidate at this election, but Australia is seeking an agreement that positions as ICC judge are rotated between Canada, New Zealand and Australia. Australia is considering nominating a candidate for prosecutor or deputy prosecutor.

Senator LUDWIG—When will a decision be made in respect of the second and third nominations, if we can call them that?

Ms Blackburn—The nomination for prosecutor?

Senator LUDWIG—Yes, prosecutor and deputy prosecutor.

Ms Blackburn—The process for appointment of a prosecutor is a consensual one. It was agreed that states should attempt to appoint the prosecutor by consensus. This is a process whereby states may informally float names of possible candidates to be the prosecutor. In the event that consensus is reached, that person would be nominated. Australia has not yet floated the name of a possible candidate for either of those positions. I am sorry, I cannot just quickly lay my hand on what the time line is.

The 18 judges and the prosecutor will be elected by the assembly of state parties at its next meeting, which is scheduled from 3 to 7 February 2003. At this stage it will be some time between now and the commencement of that meeting that the answer to whether Australia has floated a candidate and who is the consensual candidate will become known.

CHAIR—Ms Blackburn, were interested parties invited to submit applications or curriculum vitae to the Attorney for these positions?

Ms Blackburn—No.

CHAIR—Has there been a process whereby interest has been gauged or assessed in Australia of individuals who may be appropriately qualified and interested in becoming either a judge or, in the case apparently of our position, a prosecutor or deputy prosecutor?

Ms Blackburn—Not a public process.

CHAIR—Not a public process, but perhaps an informal process?

Ms Blackburn—As I am sure you would appreciate, if the government is considering putting forward names in these forums, it engages in a process whereby it forms a view on available candidates and suitable candidates.

CHAIR—How long has the government's position in relation to the question of whether or not Australia would nominate a judge been known in the form in which you advised the committee this evening?

Ms Blackburn—I cannot answer that question, Senator.

CHAIR—Is it a public position, or has it been made public before tonight?

Ms Blackburn—I had understood Australia had publicly stated it would not be nominating an Australian for the position of judge on the court.

CHAIR—Could you take on notice for me a question as to when our position on that matter became public and how, if at all, that was communicated publicly?

Ms Blackburn—Certainly, Senator.

Senator LUDWIG—I thought just then.

CHAIR—That is the point of one of my questions, Senator Ludwig.

Senator LUDWIG—What was the meeting that you attended today about?

Ms Blackburn—The meeting was of Commonwealth and state officials which form a group called the Senior Officials Group which provides advice to the Australian Police Ministers Council.

Senator LUDWIG—In relation to any topic, or a broad range of topics?

Ms Blackburn—The subject of discussion today was the question of hand guns.

Senator LUDWIG—Was anything resolved at that meeting?

Ms Blackburn—Senior officials had a meeting and reached some conclusions which will be put forward to the Police Ministers Council.

Senator LUDWIG—Was it only a senior officials meeting?

Ms Blackburn—It was a meeting of officials from Commonwealth and state and territory departments and ministries.

Senator LUDWIG—Are those discussions documented or minuted? Are there any discussions papers that might come out of, for argument's sake, today's meeting?

Ms Blackburn—The product of Senior Officials Group meetings is not published. It is advice to the ministerial council and it is provided to the members of that council.

Senator LUDWIG—So they cannot be made available to this committee.

Ms Blackburn—I cannot make them available to you at this stage, no.

Senator LUDWIG—When can you?

Ms Blackburn—Sorry, let me qualify that. I cannot make those available to you. The Senior Officials Group provides advice to the Police Ministers Council.

Senator LUDWIG—Who would I have to ask?

Senator Ellison—The Police Ministers Council.

CHAIR—Does that mean you, Minister, by chance?

Senator LUDWIG—I think we are getting to you, Minister.

Senator Ellison—They are government to government negotiations which are not normally revealed—in fact, they are not revealed. As you would appreciate, there are eight other governments involved in this, and if we were to give something out we might incur the wrath of some of your state and territory colleagues. But from the APMC meeting next week in Sydney, on Thursday, 28 November, there will be a communique no doubt. It will be a written communique outlining the decision of the APMC. There is one available from the meeting in Darwin and that outlined quite extensively the resolutions. This is a working paper which is advice from the Senior Officers Group to the APMC and, therefore, it cannot be divulged. It could be divulged with the consent of all nine ministers, I guess, but you are missing eight.

CHAIR—You make your decision, Minister. Senator Ludwig could ask the other nine.

Senator LUDWIG—I am not sure I would be game! In relation to the proposed gun controls, how many legal hand guns are registered in Australia? Is there a figure available?

Mr Cornall—Yes. I am not sure if I can produce the figure right now.

Ms Blackburn—The figure I have comes from the records held by CrimTrac. My recollection was 208,000 registered hand guns.

Senator Ellison—That is an approximate figure, 208,000. I think there were another 12,000 on top of that which are in stock.

Senator LUDWIG—Is there a figure on how many illegal hand guns circulate in Australia?

Senator Ellison—No, there is not. You do not register illegal hand guns.

Senator LUDWIG—No.

Senator Ellison—It is only an estimate.

Senator LUDWIG—A guesstimate.

Senator Ellison—What I can tell you is that there are 4,200 firearms stolen each year. There is an estimate as to how many hand guns have been stolen which might be in the papers there. I think a figure of 30,000 springs to mind.

Ms Blackburn—There is an AIC paper, which is a public document, copies of which can be made available to the committee. It had some figures in it based on the AIC's research of the number of hand guns that are stolen each year in Australia. The figure, as I recall it, was 4,000 per year.

Senator Ellison—I think it is firearms.

Ms Blackburn—Sorry, that is firearms.

Senator Ellison—Firearms, yes. There is a component in there of hand guns. I do think there is a figure, but perhaps we can check that. I will take it on notice to make sure it is accurate.

Senator LUDWIG—You released a statement on 7 November listing 250 hand gun models that have been identified as falling outside of any legitimate sporting activity and which should be banned. As I understand it, that is now on the public record. How many registered hand guns are within the 250 hand gun models? Has any work been done on that?

Ms Blackburn—Senator, there is work being done on it. It is information which is held in the state firearms registries. There is no information available to me on those numbers.

Senator Ellison—I think all those are registered models, but as to how many there are that are registered, that is in the domain of the states and territories. That is something we are working on—to get a national figure—because their registries keep them. Trying to collate that information is difficult.

Senator LUDWIG—There is an intention, as I understand it, from the Prime Minister to ban certain hand guns. How many hand guns would be banned as a consequence of that action? It is a bit early, I guess.

Senator Ellison—Yes, because we have not settled that.

Senator LUDWIG—We have 250 models identified and we have the intention to ban. What I am trying to ascertain is how many hand guns would then fall within that proposal.

Senator Ellison—The trouble is that that was a draft list, as was stated. I think 257 was the precise number. The list could be expanded, which would mean there would be a wider or broader class of hand gun caught. Really it is just too early to say what number of hand guns would be the subject of any banning or buyback.

Senator LUDWIG—How many of those 200-odd thousand are in circulation?

Senator Ellison—That includes law enforcement and security?

Senator LUDWIG—Yes. Are we looking at some thousands or tens of thousands or hundreds of thousands?

Senator Ellison—There have been varying estimates. The Sporting Shooters Association, through one of its representatives, estimated between 20,000 and 30,000 hand guns could be outlawed. Mr Fleetwood stressed that this was only a guesstimate in view of the fact that it was still early days. When you look at the 208,000 hand guns, you have to remember that there is a percentage of those which are in the hands of security, the police and military, and they will not be subject to the banning or the regulation.

Senator LUDWIG—Do you think that the number is more in the thousands or less?

Senator Ellison—I expect it to be in the thousands.

Senator LUDWIG—Has any work been done on the costs of a proposed buyback?

Senator Ellison—Work has been done at the senior officers level in relation to that. That was one of the things the Police Ministers Council determined in Darwin—that there should be work done on how you might have a strategy to take these guns out of circulation. Estimates have been made of, on average, about \$1,000 a hand gun, but I think that is still early days as well. That is being worked on at the moment.

Senator LUDWIG—All right. I would like to move on to output 1.6.

CHAIR—I just want to ask Ms Blackburn one other question in relation to the ICC, if I might, before we go off this output. Ms Blackburn, one of the subjects for discussion around appointments to the ICC pertaining to both judges and prosecutors has been that, given the subject matter of the jurisdiction and its significant impact in many parts of the world on women and children in particular, a lot of attention has been paid to the number of women—whether women in any significant number of appropriate experience, of course—will be appointed to the court in either of those capacities. I wonder whether the department has had any experience of those discussions and has any observations to make on that point.

Ms Blackburn—Senator, as I recollect—I am sorry, I do not have the text of the statute here—there are one or more provisions in the statute itself which set out the representative outcome that is to be achieved in the appointment of judges. There are 18 judges to be appointed to the court.

CHAIR—Yes.

Ms Blackburn—I am sorry, I do not have that text here. I can, of course, provide that to you.

CHAIR—I have read the text.

Ms Blackburn—I am unable to recall whether that text specifically references women and children.

CHAIR—Do you know whether Australia has a particular position on that matter?

Ms Blackburn—No, I do not.

CHAIR—Would you take that on notice, please.

Ms Blackburn—Yes.

CHAIR—Thanks, Ms Blackburn. Which output did you wish to move on to, Senator Ludwig?

Senator LUDWIG—Output 1.6.

CHAIR—Thank you very much, Ms Blackburn. Are you 1.6 as well?

Ms Blackburn—No, I am not 1.6; I am 2.1.

CHAIR—You may have to move momentarily to allow 1.6 to join us.

Senator LUDWIG—I can assure Ms Blackburn that we will not call her again tonight.

CHAIR—Ms Sheedy, welcome. Senator Ludwig has indicated that after these questions we will end A-G's and go on to Customs.

Mr Cornell—Just before Ms Blackburn leaves, there were a couple of questions about changes to section 16G and section 135.

Senator LUDWIG—I thought we could take those on notice. Ms Blackburn has obviously had a long day.

Ms Blackburn—The answer is very similar. The issues that are raised in the DDP report have been the subject of discussion with the department. There are proposals to make changes to accommodate the concerns they have raised. At the departmental level they have been agreed. They are yet to be approved through the normal government approval processes for inclusion in a bill. Subject to that process, it is possible to have them included in a bill for introduction in the last two-week sitting period of parliament.

Senator LUDWIG—In respect of output 1.6, Information law, it is now, as I understand it, two years since the House of Representatives *Cracking down on copycats: enforcement of copyright in Australia* report was tabled. When does the government intend to provide a response to that?

Ms Sheedy—Senator, as you will appreciate, the recommendations in that report covered a wide range of matters. The government has a proposed response under consideration. In the meantime there have been a number of activities undertaken outside of the response, including the setting up of a consultative group with the AFP and industry, which has met on a number of occasions. It has proved a valuable resource for the AFP, the state law enforcement bodies and the industry. In terms of when the government response will be forthcoming, that is a matter for the government.

Senator LUDWIG—What are the implications of the proposed free trade agreement with the United States for the existing and proposed regime for parallel importation under the Copyright Act?

Ms Sheedy—I understand that the US government—in particular backed by some of the industries in the US—are opposed to the proposed parallel importation legislation. But at this stage the government is proceeding with its parallel importation legislation.

Senator LUDWIG—Minister, we were looking for a response in relation to the House of Representatives *Cracking down on copycats: enforcement of copyright in Australia* report. It is some two years now and I was hopeful—although it seems events are overtaking it—that the government might be of a mind to provide a response.

Senator Ellison—I understand there is an involvement here of two ministers, two departments, of course. I understand that Attorney-General's has done its part but we are awaiting advice from Communications.

Senator LUDWIG—At least I now have a better target. Thank you, Minister. In respect of the consultative work with the AFP, was that in the annual report? I missed that. Perhaps you could take that on notice and provide a little more detail about the work and what it is achieving.

Ms Sheedy—Yes, certainly.

Senator LUDWIG—Thank you, that would be appreciated. I have finished my questions in respect of the Attorney General's.

CHAIR—Thank you very much. As Senator Ludwig has indicated, a number of questions will be placed on notice in other areas. Mr Cornell, I thank your officers, particularly those who have waited some considerable period and not been called, but I suppose there is a bonus in that process at the same time.

[10.32 p.m.]

Australian Customs Service

CHAIR—Good evening, Mr Woodward, Mr Jeffery and Mr Drury.

Senator LUDWIG—Welcome, Mr Woodward. I am sorry about the late hour, but we seem to have filled up all the available time in any event, without trying to save some and get to you a little bit earlier. We will try next time to get you on a bit earlier. Next time we will swap the order around. In respect of the Customs annual report, investigation of employee misconduct, on page 51 it is indicated that the APC has done a privacy audit with the results available at 30 June 2002. It notes that, 'Customs has amended its practices to reduce the risk that information may not be in accordance with the information privacy principles.' How have you amended your practices to ensure that information is in accordance with the privacy principles?

Mr Woodward—Senator, we are having a bit of difficulty hearing the questions.

Senator LUDWIG—We have had it all day, unfortunately.

CHAIR—I suspect the bottom line is that we have to speak more closely to the microphones.

Senator LUDWIG—I was interested in the privacy audit. It indicated that the APC had done a privacy audit. What have you done about it, in short?

Mr Jeffery—The results of the report required us to amend a number of practices, particularly in relation to advising staff that documents could or would be used in putting a reference on files that had been accessed to indicate that they had been accessed for a particular purpose, a number of practices in relation to security of documents and security of areas where documents were held, and some tightening up of access procedures and provisions for access to personnel records.

Senator LUDWIG—Has that all been finalised?

Mr Jeffery—The privacy report has been finalised. We responded to it and I believe it has been published. We certainly have the final version of it.

Senator LUDWIG—So you now say you are in compliance with the privacy principles?

Mr Jeffery—I am saying we have agreed with the Privacy Commissioner that we will be complying in any areas that he raised. There may be a couple of areas where we had to make some investment and where that is still in the process of being done, but we believe we are.

Senator LUDWIG—Perhaps you could take it on notice, but could you indicate what work has been done to comply and how long it will take to comply.

Mr Jeffery—I certainly can, Senator. The main one I can recall is that we had to purchase some lockable cabinets and put some barred locks on some cabinets. I am not sure whether that work has been done. We will take it on notice and respond.

Senator LUDWIG—In relation to pages 114 to 115, relating to forward investigation, it seems that cigarette smuggling detection continues to grow. Is it more a question of cigarette detection growing, or is it that cigarette smuggling is growing?

Mr Woodward—My suspicion is that it is probably both, but the check that I made a short time ago suggested that the figure for this calendar year—if the trend so far this calendar year continues—would suggest it will be a slightly lower number of cigarettes and tobacco detected. The figure is still very high. I think last year it was something of the order of 100 million. When you think of 21c for each stick, it is a lot of money.

Senator LUDWIG—Yes. What strategies are in place to combat this activity? It seems that it has suddenly grown in the last couple of years. It seems to be on the rise in exponential fashion.

Mr Woodward—I think the subject came up a couple of hearings ago. A view that I expressed then—and it may be wrong—was that some of the criminal elements that had invested in other criminal activity, such as the importation of cannabis, had discovered that tobacco and cigarettes are a highly profitable enterprise, and some of them may have moved into that. It is profitable. From the work we have done in conjunction with other authorities it appears that it is certainly tied in with other criminal activity, but there is a whole host of complex reasons.

Senator LUDWIG—In relation to diesel fuel fraud, also in that section of the annual report, you note that there is a fine or term of imprisonment for an individual guilty of diesel fuel fraud. How do you detect that? Is that a substitution like toluene, or is that something else?

Mr Woodward—If it is substitution it is not ours. That is the tax office.

Senator LUDWIG—I did not think it was. It worried me, though.

Mr Woodward—It went in 1998 to the tax office.

Senator LUDWIG—You gave that away.

Mr Woodward—It was taken away.

Senator LUDWIG—Sorry, I am being terrible here. It was taken away.

Mr Jeffery—Senator, I would have to confirm this but I suspect that was a case dating from some time ago that we still followed through after the responsibility for diesel fuel went to the tax office. I will check that, but I think that might be what it is. It came to fruition this year.

Senator LUDWIG—That is what struck me—that it was a fuel substitution. But you no longer do that.

Mr Jeffery—No, it would be a diesel fuel fraud.

Senator LUDWIG—The taxation department does it so I could not quite gather what it might otherwise be.

Mr Woodward—There were quite a few large cases that we initiated towards the end of the period that we had responsibility for but which we carried over pursuing.

Senator LUDWIG—I recall asking you questions about how many tail offences were still out there. I would not like to put a figure on it, but there were a couple, and so that is one of them. Are there still any more in the pipeline?

Mr Woodward—I am not sure. We will let you know if there are any more.

Senator LUDWIG—Just so that I do not have to try to remember again when I see it and ask you the same question.

Mr Jeffery—There is at least one that we are aware of, Senator.

Senator LUDWIG—In relation to the new X-ray equipment over the last 12 months, could you indicate the categories you examined or the type of percentage coverage you gave that question back in estimates in May. I think Mr Hawksworth did, at the time, provide some information on the extent of coverage of X-ray examination of goods which entered Australia. At the time it was passenger baggage, which had over 80 per cent; postal items had close to 100 per cent; high-value, low-volume was very close to 100 per cent; general air cargo was less than 10 per cent; and sea cargo containers were less than one per cent, increasing to five per cent when the three container X-rays were in place. I wonder if you could update those figures, if that is possible.

Mr Woodward—As you have gone through them very quickly, the only one I can remember that has changed is the airport figure, which I think you said was 81 per cent. That was the target at that time. It is now over 90 per cent and, of course, that is using Customs and AQIS X-rays—in other words, that is the totality of examination and/or X-ray at airports. That figure is now over 90 per cent. I think all the others are pretty accurate. Would you just repeat the air cargo figure?

Senator LUDWIG—General air cargo was less than 10 per cent.

Mr Woodward—We now have a figure after a discussion with the Prime Minister, following his concern about firearms importations. We embarked on a program to increase the percentage that we applied to high-volume, low-value to 70 per cent. In other words, what we are saying is that we then had a figure in relation to high-volume, low-value and that percentage has now increased so the total air cargo figure is around the 70 per cent mark. Obviously, it varies between regions. I am not sure whether there are any other variations.

Senator LUDWIG—Do you have targets? They are the percentages that you provide, but is there a target that you try to achieve, or is that the same?

Mr Woodward—Using air cargo as an example, that is the target and that is what we are achieving. When we first set the target a few months ago, obviously we were way below that and we have moved up to 70 per cent. As I say, it varies a little bit between regions. In some regions we are getting about 100 per cent of air cargo.

Senator LUDWIG—Do they change when what you call the physical checks are involved? Do these percentages change again?

Mr Woodward—Again, I am not sure what you mean.

Senator LUDWIG—I have been trying to visit Customs to learn. It is still very elusive, I have to say, but I do thank the minister for the opportunity in Townsville.

Mr Woodward—I think in the last figure you mentioned you used the words ‘less than one per cent’ for sea cargo.

Senator LUDWIG—Yes. It says that in relation to sea cargo containers it was less than one per cent, increasing to five per cent when the first three container X-rays were in place. Is five per cent your target?

Mr Woodward—At the moment, we do not X-ray sea containers because we do not have the equipment. The less than one per cent figure applies to physical examinations of sea containers, so human effort is involved. When the new sea container X-rays come on stream—and they will be progressively coming on stream from next week in Melbourne, then through Sydney and Brisbane and moving on to Fremantle—we will achieve five per cent.

After we have X-rayed containers, our assessment at this stage is that there could be something like 10 per cent of the containers we X-ray that we will want to actually physically examine. Roughly 90 per cent of the sea containers that we look at through the X-ray machine we will have no further interest in. The other 10 per cent we will put into a covert search facility and the containers will be opened. In those major centres, we will have pallet X-rays, which will involve less manpower for many of the consignments. We have targets, but there is the reality involved in it as well.

Senator LUDWIG—Are you able to put a table together about what the reality is and what your targets are, to give us an understanding? You can put a caveat on it.

Mr Woodward—Yes, we can certainly do that.

Senator LUDWIG—Then what would happen?

Mr Woodward—In case I have missed any of the figures you mentioned, we can update those as well for you.

Senator LUDWIG—That would be helpful. When are the X-ray machines going to be in place?

Mr Woodward—The Prime Minister is—I use the word ‘commissioning’—launching or opening the first facility.

Senator LUDWIG—Not breaking a bottle of champagne on them, I hope!

Mr Woodward—Next Tuesday, the Prime Minister will be turning the key and off it will go.

Senator Ellison—Madam Chair, when Customs launches a vessel, they don’t break the bottle of champagne, they drink it—unlike the Navy, who break it. It is much more sensible.

Senator LUDWIG—It is much more sensible, I have to say. The Australian National Audit Office report No. 54 made eight recommendations to improve customs system and processing for detecting illicit drugs. As I understand it, Customs agreed with all the recommendations, with a qualification to one of them. Perhaps you could take it on notice, given the time we have, but I would like an update of where you are up to in implementing those recommendations.

Mr Woodward—We will do that, yes.

Senator LUDWIG—You may not have seen it, but there was an *Australian Shipping News* note from the US Customs Service implementing a new advanced manifest rule that would require significant changes to shipment processes for all cargo on vessels that call into the United States. They seem to be in the process of changing their manifest rules. First of all, have you have seen that? Also, is it the intention of the ACS to implement similar regulations for cargo on vessels calling into Australian ports? I have a copy of that if you want it. There was a new US customs regulation outlined.

Mr Woodward—We are quite familiar with the new US approach. It does require the transmission of manifest information 24 hours before the cargo is loaded. That relates also to a broader container security initiative. In other words, there are two compounding or complementary initiatives being adopted by US customs. Under our new trade modernisation legislation, we have a set of requirements in relation to the reporting of cargo. Obviously, there is a lot of work going on internationally. At this stage, we are not proposing to change the current reporting arrangements, but there may be international moves that would cause us to reconsider that position and raise it with ministers.

Senator LUDWIG—In relation to the cargo re-engineering project, phase 2 is due to commence this month. What progress has been made in meeting that phase—or will you meet it?

Mr Woodward—There is a program that takes us right through to March 2004.

Senator LUDWIG—Is it 2004, where you import cargo?

Mr Woodward—Yes, when the last part of it is ready for the—

Senator LUDWIG—In November you are supposed to be trialing the integrated cargo system pilot project, initially with one air express courier. Are you doing that?

Mr Woodward—My recollection is that there have been some minor slippages in a couple of parts of that. Some of the phases have been reshaped and put together in different ways. Perhaps Mr Drury can continue on that.

Mr Drury—Yes, we have slipped a little. The phase you mentioned with DHL kicks off in December.

Senator LUDWIG—You say that you have ‘slipped a little’. I wonder if you could just update the committee with where you are up to. If the phases which were announced in April 2002 are going to be departed from, I wonder if you could advise the committee of where you are at. I am happy for you to take that on notice.

Mr Woodward—We will provide that information to you. It is in material we put out publicly.

Senator LUDWIG—Is it a resource issue? Are there sufficient staff and resources to meet it? Or are there other compounding factors which have caused the slippage, in your terms?

Mr Woodward—The major compounding factor is that it is a huge exercise. I have mentioned to this committee previously that the United States is attempting to do something similar from different starting positions. They will be taking much longer, with a budget—depending on how you look at it—something like 10 to 20 times what we are proposing to spend on this exercise. It is massively complex. It involves gaining and keeping the enthusiasm of a very large number of experts, including our own customs experts. We have something like 250 or 300 people—contractors and our own people—working on this exercise. It is a huge undertaking. As we continue going through it, we—as the Americans have—are finding complexities that have to be dealt with.

Senator LUDWIG—I guess you will provide details as to those minor slippages in the answer on notice.

Mr Woodward—Yes.

Senator LUDWIG—What training will be provided by the ACS for industry? Have you had to consider that yet?

Mr Woodward—It is a major component of the work that we are undertaking. We have already been involved in numerous seminars, workshops and group sessions. If you want more in the way of detail, we can provide that for you separately. We have bent over backwards to inform the business community and the transnational trading community and to gear them up. There is still a lot more to be done; I am not suggesting it is all over. There is a lot more to be done.

Senator LUDWIG—It would be helpful if you could provide some information about what work has been done. Certainly there are some concerns out there in the marketplace about it.

CHAIR—Some more questions on notice, Senator Ludwig.

Senator LUDWIG—Thank you. In relation to Customs accessing the airline reservations system, has a site visit to Customs occurred yet? The Privacy Commissioner was concerned about that area.

Mr Woodward—Yes, a lot of work has been done. In fact we are going to turn the first one on in a formal sense in a couple of days, but Ms Batman can tell you more.

Senator LUDWIG—If you remember, that was in relation to a line of questioning about whether or not there had been consultation.

Mr Woodward—Yes.

Senator LUDWIG—I thought you would remember it.

Ms Batman—We have had some site visits by a number of officers from the office of the federal Privacy Commission. They have been to the passenger analysis unit in Canberra and to the airports to see those in operation. They are currently scoping the audit. We have reached agreements about the general principles, but they are now working on the detailed scoping. It will be an ongoing program over a number of years, but they have not yet undertaken the formal part of the report, or provided a report.

Senator LUDWIG—The OPC concept of a monitoring role for the new Customs power provided some concerns to you?

Ms Batman—It did.

Senator LUDWIG—Is that available?

Ms Batman—Yes. I will take it on notice but, yes, their concerns and our response are available.

Senator LUDWIG—Yes, I was more interested perhaps in how you were going to address them, whether the monitoring role had yet been finalised and the nature of any agreement that might have to be struck as a consequence.

Ms Batman—Certainly we have had quite a number of discussions and we currently do not have any differences between us. It is the ongoing audit that is to continue. I will give you a detailed brief on those issues.

Senator LUDWIG—The last time I was talking to you it was about the airline reservations system and the costs that were associated with those. It was a question I asked in the May estimates, No. 673. You were looking at getting the first six airlines connected by January 2003. Can you update whether that is still on target and also provide a progress report on those connections to Customs, together with an estimate of what you then say are the costs involved in that, if they have been able to be established by now.

Ms Batman—Certainly. We have gone live just this week with the new software. One of the complications for us was that one of the major airlines was changing its reservations system at this time and we had to make that transition as well. We have successfully made that transition. It was quite a complex undertaking, but that is now working with our new software. We are now setting about connecting the other airlines.

Senator LUDWIG—Will the X-ray machines that are going to come online all be operational at the one time?

Mr Woodward—No, they will not be—these are in relation to the sea container facilities?

Senator LUDWIG—Yes.

Mr Woodward—The first one will be commissioned next week and then there will be a gradual wind-up. There is quite a complex set of arrangements that need to be worked through, getting containers out of ports into the site and back again. We will be doing it in a way that moves up to 100 a day in Melbourne and Sydney and a lesser number in Brisbane. Remember that Sydney will be the next one, which will probably be in February, and Brisbane will probably be in March. There will be wind-up in relation to each of those. In Fremantle it will be later still. It is not that one day this is what we will do and the next day there will be another set of arrangements and then a total five per cent figure will be reached.

Senator LUDWIG—Former Senator McKiernan asked a question on notice, No. 169, at the last estimates. I think you provided a timetable of those times. I wonder if you can update that, particularly with regard to when the Melbourne container X-ray facility will be operational and the commissioning date for the Sydney one, which we think we now know. What process are you going to follow to get to the Fremantle one, perhaps in analysing business needs?

Mr Woodward—There will be a little bit of subtlety in the wording. When a site is ready for commissioning does not necessarily coincide with when it will actually be commissioned. It will, in all of the major ones, involve ministerial presence. The formal launch of them might be a little later than when we actually have the buildings and equipment ready.

Senator LUDWIG—Have the pallet X-rays been purchased?

Mr Woodward—If my recollection is right we have the first two and we have made arrangements for the other four.

Mr Hawksworth—The first two have certainly been purchased. One is operational in Sydney. One will be installed in December in Melbourne. The others have not yet been purchased. We are still looking at which particular model we will buy.

Senator LUDWIG—Where will they be located—the ones you have purchased and the ones that you will determine to purchase?

Mr Hawksworth—We oscillate between placing them in the same locations as the container X-rays—so they can operate in a complementary fashion—and thinking that perhaps they might be more useful in an air cargo environment. If I had to put money on it, I would say they would be going in the same locations as the container X-rays, but I am not absolutely ready to guarantee that.

Senator LUDWIG—When that solidifies, perhaps you can make that information available to the committee and also when you think the new pallet machines will all have been determined and purchased. If not, I will wait until February as well.

Mr Woodward—Can I add one qualification in relation to location. There is quite a lot of state government pressure to have X-ray facilities. We need to take that into account in the disposition of X-rays.

Senator LUDWIG—I will not get in the way of that.

CHAIR—Is that a good point, Senator Ludwig, at which to remind you that it is 11 o'clock? Under the committee's arrangements we are required to conclude at 11 o'clock. Could I perhaps invite you to place further questions to Customs on notice. In closing this evening's session, I thank both you and Senator Kirk and your other colleagues for ensuring that we could complete today's program in the time available, or as close to it as possible. The minister, the departments and I are very grateful for that. I would like to thank Mr Woodward and his officers for staying until very late in the evening to participate in this hearing. I thank the minister for his assistance. I declare this meeting of the Legal and Constitutional Legislation Committee supplementary budget estimates closed.

Committee adjourned at 11.01 p.m.