



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION  
COMMITTEE

**Consideration of Budget Estimates**

MONDAY, 10 FEBRUARY 2003

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE**  
**LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE**  
**Monday, 10 February 2003**

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

**Senators in attendance:** Senators Carr, Jacinta Collins, Greig, Kirk, Ludwig, Mason, Payne and Scullion

**Committee met at 9.07 a.m.**

**ATTORNEY-GENERAL'S PORTFOLIO**

Consideration resumed from 20 November 2002.

**In Attendance**

Senator Ellison, Minister for Justice and Customs

**Attorney-General's Department**

Mr Robert Cornall, Secretary  
Mr Ian Govey, General Manager, Civil Justice and Legal Services  
Mr Ian Carnell, General Manager, Criminal Justice and Security  
Mr Bill Campbell, First Assistant Secretary, Office of International Law  
Ms Kathy Leigh, First Assistant Secretary, Civil Justice Division  
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  
Mr Geoff McDonald, Assistant Secretary, Criminal Law Branch  
Ms Robyn Warner, Assistant Secretary, Criminal Law Branch  
Ms Dianne Heriot, Assistant Secretary, Crime Prevention Branch  
Mr Craig Harris, Acting Assistant Secretary, National Law Enforcement Branch  
Mr Chris Meaney, Assistant Secretary, Strategic Law Enforcement Branch  
Mr Richard Humphrey, Office of Legislative Drafting  
Mr Noel Bugeia, Director, Legislative Services and Publication, Office of Legislative Drafting  
Ms Philippa Horner, First Assistant Secretary, Native Title Division  
Mr Peter Ford, First Assistant Secretary, Information and Security Law Division  
Mr Keith Holland, Assistant Secretary, Security Law and Justice Branch  
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 Iain Anderson, First Assistant Secretary, Office of Legal Services Coordination  
Mr James Faulkner, Assistant Secretary, Office of Legal Services  
Mr Paul Griffiths, Assistant Secretary, Office of Legal Services Coordination

Mr Ed Tyrie, Director, Protective Security Coordination Centre  
Mr Trevor Clement, Assistant Secretary, Policy and Services Branch  
Mr David Templeman, Director-General, Emergency Management Australia  
Mr Morrie Bradley, Director, Knowledge and Business Management, Emergency Management Australia

**Royal Commission into the Building and Construction Industry**

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

**Royal Commission into the failure of HHH Insurance Group**

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

**Australian Federal Police**

Mr Mick Keelty, Commissioner  
Mr John Davies, Deputy Commissioner  
Ms Audrey Fagan, Executive Director Protection  
Mr Trevor Van Dam, Chief Operating Officer

**Australian Crime Commission**

Mr Phillip Bradley, Acting Chief Executive Officer  
Mr Jon Hickman, National Director, Corporate Services

**Australian Customs Service**

Mr Lionel Woodward, Chief Executive Officer  
Mr John Drury, Deputy Chief Executive Officer  
Mr John Jeffery, Deputy Chief Executive Officer  
Rear Admiral Max Hancock, Director-General, Coastwatch  
Mr Tom Marshall, Deputy Director, 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

**Australian Government Solicitor**

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

**Australian Security Intelligence Organisation**

Denis Richardson, Director-General  
Robert Campbell, Acting First Assistant Director-General  
Susanna Kiemann, Chief Financial Officer

**CrimTrac**

Mr Jonathan Mobbs, Chief Executive Officer

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Mr Stewart Cross, Manager, Business Operations and Deputy CEO  
Ms Nicole McLay, Director, Finance and Business Services

**Family Court of Australia**

Mr Richard Foster, Chief Executive Officer  
Ms Jennifer Cooke, General Manager, Client Services  
Ms Dianne Carlos, Chief Finance Officer

**Federal Court of Australia**

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

**Federal Magistrates Service**

Mr Peter May, Chief Executive Officer

**High Court of Australia**

Mr Christopher Doogan, Chief Executive and Principal Registrar  
Mr Lex Howard, Marshal

**Human Rights and Equal Opportunity Commission**

Ms Pru Goward, Sex Discrimination Commissioner  
Dr William Jonas, Aboriginal and Torres Straight Islander Committee  
Dr Sev Ozdowski, Human Rights Commissioner  
Ms Dianna Temby, Executive Director  
Ms Rocky Clifford, Director, Complaint Handling  
Ms Susan Roberts, Director, Legal Services  
Mr Stephen Duffield, Director, Human Rights Unit  
Ms Robyn Ephgrave, Manager, Finance and Services

**Insolvency and Trustee Service Australia**

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

**Office of Film and Literature Classification**

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

**Office of Parliamentary Counsel**

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

**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 the Privacy Commissioner**

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

**CHAIR**—I declare open this public meeting on the Senate Legal and Constitutional Legislation Committee. On 11 December 2002 the Senate referred to the committee the

particulars of proposed additional expenditure for the year ending 30 June 2003 for the Attorney-General's and Immigration and Multicultural and Indigenous Affairs portfolios. On 6 February 2003 the Senate also referred the issues from the advance to the minister for finance for consideration as part of this additional estimates process.

The committee will consider the portfolios in the order in which they appear on the circulated agenda. In relation to the circulated agenda, for today it is somewhat complicated due to the ceremonial sittings of the High Court both today and tomorrow, at which, amongst others, the Chief Executive and Principal Registrar of the High Court, Mr Doogan, must be present. So the committee will commence proceedings today with the High Court, followed by general questions, and then continue with interstate and local agencies. Questions to the department itself will be at the completion of questions to the agencies.

I also note for the record, and will formally do so again later, that Mr Bill Campbell of the Office of International Law is amongst those who will be attending the ceremony at the High Court this afternoon as he has just been appointed a Commonwealth Queen's Counsel—only the sixth since Federation. The committee particularly extends its congratulations to Mr Campbell on that appointment. In order to allow Mr Campbell to attend his own ceremony this afternoon, at 11 a.m. the committee will switch to output 1.4, Legal services and policy advice on international law, before we return to the general order of business. We will also switch to the Indigenous affairs part of the IMIA portfolio after lunch, as is shown on the program, and that will take approximately one hour.

The committee has authorised the recording and rebroadcasting of its proceedings in accordance with the rules contained in the order of the Senate, dated 31 August 1999. Bearing in mind that budget estimates will occur in May, the committee has agreed to the date of Wednesday, 19 March for receipt of answers to questions taken on notice and additional information.

I welcome Senator the Hon. Chris Ellison, Minister for Justice and Customs and Minister representing the Attorney-General; Mr Cornall; and officers of the Attorney-General's Department and associated agencies. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. I also remind officers that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege. I also remind you that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. Minister, do you or Mr Cornall wish to make an opening statement?

**Senator Ellison**—Madam Chair, I do not have an opening statement. Thank you for your remarks about Mr Campbell. The government certainly shares the sentiments of the committee in relation to him. Also, thank you for the cooperation of the committee in setting the times and readjusting the schedule, which has saved a good deal of inconvenience and time wasting for officials.

**CHAIR**—The committee is very happy to do that. Mr Cornall, do you wish to make a statement?

**Mr Cornall**—No, thank you.

[9.11 a.m.]

### High Court of Australia

**CHAIR**—We will begin with questions to the High Court.

**Senator LUDWIG**—We on this side of politics also share your remarks about Mr Bill Campbell. Mr Doogan, how many constitutional writs have been filed relating to migration matters? Perhaps we could start from this financial year and go back a year. As you are aware, we have been following migration matters and what seems to be an exponential rise in them in the High Court. Could you update that for us, please?

**Mr Doogan**—Certainly, Senator. Before I do could I, through you, Senator Payne, express my appreciation to you and the other members of the committee for the assistance in bringing my appearance forward today. It is very much appreciated. In terms of the current financial year I can say that, from 1 July through to the end of January, 73 constitutional writs were filed. Of that number, I cannot say precisely how many are immigration matters, but I can say that the vast majority of them are.

**Senator LUDWIG**—How difficult is it to separate those 73 out into what they are—be they immigration or other matters? I am happy for you to take that on notice.

**Mr Doogan**—If I take that on notice, I can provide that. In terms of previous years, I recall that we dealt with this on the last occasion. I have the same tables with me. I have a table here that breaks down the various types of migration matters from 1997-98 through to 30 June 2002. If I could table that, it might be of assistance.

**Senator LUDWIG**—Thank you, that would be helpful. How many of those 73 matters remain outstanding?

**Mr Doogan**—I would need to take that on notice. In recent times, a great many matters have been sitting waiting for a decision of the court which was given on 4 February, that being in the matter of Plaintiff S157/2002 v. Commonwealth of Australia. Following the delivery of the judgment in that matter, call-overs were held last Thursday and Friday in both Sydney and Melbourne for the purpose of determining the consequences and effect of the decision in S157 on those matters. On those two days, 688 matters were dealt with and, of the 688, 586 have been remitted to the Federal Court. The balance comprises 84 that were discontinued or are to be discontinued, 13 that were stood over to another day and three applications that were dismissed; and there were consent orders in two matters.

**Senator LUDWIG**—Did any go to the Federal Magistrates Court?

**Mr Doogan**—No. They were all remitted to the Federal Court.

**Senator LUDWIG**—Were all the parties involved in those 586 matters advised? I am trying to understand the way in which it was decided. With respect to the decision in relation to the privative clause by the High Court, was the view taken that, as a consequence of that decision, all of those matters could then be remitted to the Federal Court; a decision by the High Court was then made to have a call-over day to undertake to remit them, and the parties were so advised?

**Mr Doogan**—Yes, Senator. Prior to the call-over dates, in between setting the date for the delivery of the judgment and holding the call-overs, letters were sent to the parties in each and every one of those cases. In that correspondence they were informed of the date of the decision and the fact that the call-overs would be taking place, and they were asked to be ready to say on the day what they believed the consequence was—not to argue the merits of

their particular case; rather, merely to be familiar with the decision and to be able to say to the court what they believed the consequence of that decision was.

**Senator LUDWIG**—Of the 688, are there any remaining?

**Mr Doogan**—Any remaining?

**Senator LUDWIG**—You mentioned there were 688 and that 586 were dealt with. Is that the sum total of all the migration matters or were those the ones identified as a consequence of the—

**Mr Doogan**—No, those are the matters that were waiting on a decision relating to the privative clause.

**Senator LUDWIG**—So there are still migration matters?

**Mr Doogan**—There are other migration matters, yes.

**Senator LUDWIG**—How many?

**Mr Doogan**—I would have to take that on notice.

**Senator LUDWIG**—Is there a flavour as to what they constitute?

**Mr Doogan**—There is a total mixture. I could not say that they fell into one particular category or another.

**Senator LUDWIG**—On another topic, how many special leave applications have been filed in this financial year?

**Mr Doogan**—From 1 July 2002 to 31 January, 308 civil special leave applications and 82 criminal special leave applications have been filed, making a total of 390.

**Senator LUDWIG**—My colleague has a question in relation to the earlier migration matters.

**Senator KIRK**—You said there are other migration matters still outstanding and that you would take that on notice?

**Mr Doogan**—Yes.

**Senator KIRK**—Do you have an approximate figure as to how many remain outstanding?

**Mr Doogan**—The table that I handed over will show a breakdown of the various categories.

**Senator KIRK**—Is it in the same vicinity as the ones that were dealt with last week or is it a smaller number?

**Mr Doogan**—No. I think on one previous occasion we mentioned the cases of Muin and Lie. In those two matters there were schedules attached, and they too were sitting and awaiting the outcome of the decisions on those matters. In total, the schedules attached to those two matters number a little over 7,000. Those matters were last before the court at a call-over in November and at that time the parties were given six months; so next May will be the next call-over. At that time it will become clearer what the status of those matters are. Some, for example, would have been dealt with by consent I would imagine, others would wish to discontinue and there may be some cases in which parties may no longer be in the country. So we really cannot say until May what the likely number might be. All I can say is that it is somewhere between zero and 7,000. Likewise, it will become clear whether those matters then become individual cases in their own right and whether they are to be dealt with in the High Court or remitted to the Federal Court.

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**Senator KIRK**—So those cases were not affected by the privative clause decision? There was no need to bring them on last week to deal with them?

**Mr Doogan**—No, that is right. With the sheer number of them it was difficult for the parties, because the legal representatives are in relatively small number compared to the total number of parties. It is just a question of them needing the time to work their way through them all.

**Senator KIRK**—Sure.

**Senator LUDWIG**—When will that be done?

**Mr Doogan**—They have been asked to have it done by May so that they can come back in May and then, essentially at a call-over hearing, decide what are the categories that these matters fall into.

**Senator LUDWIG**—Are there any self-represented litigants in there?

**Mr Doogan**—Yes, as there were last week.

**Senator LUDWIG**—How many parties?

**Mr Doogan**—How many are self-represented?

**Senator LUDWIG**—Yes.

**Mr Doogan**—Of the 7,000, I could not answer that. At the time, we were talking about numbers less than 100.

**Senator LUDWIG**—Of the 7,000?

**Mr Doogan**—Yes. Likewise, with the matters that were dealt with last week, I think at the time prior to them actually being heard the number was less than 60.

**Senator LUDWIG**—Of the 688?

**Mr Doogan**—Yes.

**Senator LUDWIG**—In respect of the 73 matters that were constitutional writs, how many were self-represented litigants?

**Mr Doogan**—I could not answer that, Senator. I would have to take that on notice. My recollection is that most of them are represented.

**Senator LUDWIG**—Right. Perhaps you could have a look at that. What I was seeking also to track is whether or not there has been or continues to be, if that is the right way of phrasing it, a rise in self-represented litigants appearing before the High Court.

**Mr Doogan**—I would like to make a general comment on litigants in person. The percentage of self-represented litigants in immigration matters is quite low compared to the general percentage. I think the reason for that is that, largely, a relatively small number of firms are dealing with these matters, so they represent literally hundreds at a time.

**Senator LUDWIG**—Going back to the special leave applications, how does that number compare perhaps in proportion to last year? Clearly, we have not finished this financial year, but are we on track to come in—

**Mr Doogan**—For special leave?

**Senator LUDWIG**—Yes. I just needed to come back to that area.

**Mr Doogan**—They are on the rise. As of 31 January 2002, there were 230 civil special leave applications, and that number has increased in the same period to 308. On the criminal

side, for criminal special leave applications, the 31 January 2002 figure was 53. These are the new filings that we are talking about?

**Senator LUDWIG**—Yes.

**Mr Doogan**—That number had increased to 82 at 31 January 2003.

**Senator LUDWIG**—Are you aware of how many of those are litigants in person?

**Mr Doogan**—No, but going back to the annual report it was 40 per cent.

**Senator LUDWIG**—I have asked a number of questions from those separate areas in relation to litigants in person. Could you take it on notice to refine the figures a bit more than you have to date so that the committee can examine whether it has been rising. You feel that it has been rising, and it certainly looks like it has been rising.

**Mr Doogan**—Yes, I have no doubt that it is rising. I just cannot be extremely precise for you as to the percentage.

**Senator LUDWIG**—I understand some of that is because some people might start off as litigants in person and then seek legal advice or vice versa, so it becomes a little difficult sometimes, I suspect.

**Mr Doogan**—I have to say—and I have said this on a previous occasion—that very often the matters are self-represented because they are just hopeless cases that are devoid of legal merit. The people concerned take their case to a solicitor or barrister who says to them, ‘This is a hopeless case. You have no prospect of winning this case.’ But they simply do not take the advice and they proceed with the case.

**Senator LUDWIG**—Has the strategy that the High Court is now adopting, of self-represented litigants, progressed from what you told the committee last time? Can you give us any new information about what you are doing to assist them?

**Mr Doogan**—We certainly assist them to ensure that they know what the rules, the procedures, the processes and so on are that need to be followed. There is also an arrangement in place, which is a relatively informal arrangement, whereby if it appears that there may be merit in the case that the self-represented litigant is bringing then that person is referred to—depending on the location—the relevant bar association to seek pro bono assistance.

**Senator LUDWIG**—Has the Judicial College been in contact with you to assist or to be plugged into the loop?

**Mr Doogan**—No, not as yet.

**Senator LUDWIG**—Are you aware of their work?

**Mr Doogan**—I am aware of their work, yes.

**Senator LUDWIG**—Have they been in contact with the High Court to explain what their work will be?

**Mr Doogan**—The High Court has been actively involved in the creation of the college.

**Senator LUDWIG**—Yes, I know that. I am trying to establish this on a more practical level in terms of pro bono work and being able to assist self-represented litigants.

**Mr Doogan**—Not as yet. I think perhaps Mr Cornall could assist you there. My understanding is that, to date, the college has been focused on getting up and running.

**Senator LUDWIG**—Yes, I thought it might have been a bit early but that I would try anyway.

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**Mr Doogan**—I think in due course it is highly likely that there will be a close connection between the courts and the college.

**Senator LUDWIG**—Having asked the question now, it will put you on notice for next time.

**Mr Cornall**—If I could just interpose there, the board of the college has met on several occasions. It met most recently on Saturday morning here in Canberra. There was also a meeting over the weekend between the board and representatives of the consultative committee set up under the structure of the Judicial College, and the purpose of that meeting was for the judges themselves, who represent judges and magistrates all around Australia, to have a considerable input into the focus and development of the program of the college for the coming year and the future. So it is very much in its initial stages, as Mr Doogan said. It has a broad policy of looking at all ranges of judicial education for judges, so this would be only one aspect of it. At this stage the college has not focused down to that level of detail.

**Senator LUDWIG**—Thank you; that saves a little bit of work. Mr Doogan, if I can turn to the centenary of the High Court, which is this year: what work is progressing on celebrating that occasion?

**Mr Doogan**—The main activity for the centenary will be a conference to be held here in Canberra from 9 to 11 October. The conference is being jointly organised by the Australian Bar Association, the Australian National University and the High Court. It is anticipated that most chief justices from around the world will represent their countries at the conference. A great deal of time and effort has been put into ensuring that it will be a unique event in terms of the speakers that have been assembled for the conference. It essentially will not just look back historically but will also look to the future as far as it can. The expectation is that there will be in excess of 400 people attending that conference. I will just mention what we have included that might be of interest to you, Senator. It will not be limited to the high-flyers of the legal profession.

**Senator LUDWIG**—I am chasing them in another place!

**Mr Doogan**—It will also include a number of students from, hopefully, every law school in Australia. On Monday, 6 October, the court will be sitting in Melbourne in the Banco Court, that being the court in which the High Court first sat, on 6 October 1903. There is an exhibition due to be created in the National Archives building here in Canberra. The National Archives have expressed an interest in doing that. There is a short video being made about the High Court which will be used in conjunction with the conference but will also be available for general use, for students, for schoolchildren and so on. There is a book being produced on the High Court, not of the textbook type but rather, if I can call it this, a coffee table style book, the aim of which is to create interest in the High Court for the population at large—so it will not be the type that is beside the bed at night.

**Senator LUDWIG**—I am not going there!

**CHAIR**—It could be quite diverting, though, Senator Ludwig.

**Senator LUDWIG**—Are the costs being met out of your existing budget, or is there a special fund being made available?

**Mr Doogan**—No, the funds were made available in the current financial year and the last financial year for this purpose.

**Senator LUDWIG**—Will they be expended?

**Mr Doogan**—I anticipate they will, yes.

**Senator LUDWIG**—We might leave it until May to follow up a bit further on those costs.

**Mr Doogan**—I am sorry, Senator, I am just reminded that the funding is in the current financial year and the next financial year, hopefully.

**Senator KIRK**—I have a further question in relation to the special leave applications that we were discussing earlier. You previously indicated that judges were considering dealing with some of these leave applications on the papers. I wondered whether or not there had been any movement in that direction at all?

**Mr Doogan**—There has been movement in the sense that the proposal has been put to the profession through the Law Council of Australia and the Australian Bar Association, and their views will be taken into account, I would expect this year.

**Senator KIRK**—Are you saying that there is a process that has been put into place, that there have been consultations seeking the opinions of these bodies?

**Mr Doogan**—Yes. Because both of those bodies are made up of constituent bodies spread around the country, it is their usual practice to then go back to each of the bar associations and law societies and to seek their views before producing a consolidated view which is referred back to the court.

**Senator KIRK**—What sort of time frame do you think we are looking at? Or is it too hard to judge?

**Mr Doogan**—I would think it would be this financial year.

**Senator KIRK**—Before June?

**Mr Doogan**—Yes. The matter will be dealt with and finalised this financial year.

**Senator KIRK**—Thanks.

**CHAIR**—Mr Doogan and Mr Howard, thank you very much for your assistance to the committee this morning. I am glad we were able to fit it into a timetable that worked for everybody, and I hope today and tomorrow are very successful for the High Court. The committee will continue with general questions at this point. We will start with Senator Ludwig.

**Senator LUDWIG**—I am not too sure which portfolio output my question might come under. The Attorney-General's Department has vehicles for SES officers, as I understand it. Is there a mechanism whereby people can take a car or not take a car or convert it to superannuation when they are close to their retirement? Has that option been taken up?

**Mr Cornall**—The first part of your question is whether SES officers can choose not to take a car and take cash in lieu. The answer to that is yes, that is the situation. The way we establish our remuneration arrangements for SES is that there are various payments, depending on the level, and they are entitled to a fully maintained vehicle for both business and private use. But, if they choose not to have a vehicle, there is a set figure for the cash-out of the vehicle and that is paid to them as salary in lieu of the use of the vehicle. I am not quite sure of the second part of your question.

**Senator LUDWIG**—If they can choose not to take the car, is there a standard value that that is made up of?

**Mr Cornall**—Yes, there is.

**Senator LUDWIG**—What is that?

**Mr Cornall**—I will have to get Mr Oliver to bring me up to date with the current figure.

**Senator LUDWIG**—I am happy for that portion of the question to be taken on notice so that he does not have to do that.

**Mr Cornall**—It is a figure that I do not have in my mind.

**Senator LUDWIG**—I appreciate that. So there is a set amount that is taken that can be included as salary.

**Mr Cornall**—Mr Oliver reminds me that it is \$18,000.

**Senator LUDWIG**—And that \$18,000 then becomes part of their annual wage?

**Mr Cornall**—It is part of their remuneration, yes.

**Senator LUDWIG**—Does that then go towards a defined benefit or an accumulation for their superannuation?

**Mr Cornall**—They will be a member of either the Public Sector Superannuation Scheme or the old Commonwealth Superannuation Scheme, and those schemes provide for the accumulation of a lump sum or a pension, and there is an entitlement for the officer to choose how the benefit is taken when they retire.

**Senator LUDWIG**—If they are in a defined benefit scheme, it would be a multiplication of their final average salary for a period before their retirement, and they could then work out the pensionable amount. That is my understanding of it, very simplistically.

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

**Senator LUDWIG**—If you were close to retirement you might choose the cash option at that point where the years kick in—sometimes it is three, five or seven, depending on what the defined benefit scheme allows for, in terms of multiplying your final average salary.

**Mr Cornall**—Yes.

**Senator LUDWIG**—I might not have that quite right. What I am trying to ascertain is how many salaried SES officers nearing retirement have chosen not to take a car but have taken a cash payment, which then increases their superannuation amount.

**Mr Cornall**—Under the Commonwealth employment arrangements a salary for superannuation is specified. That is not dependent on whether you take the cash payment or the car. The salary specified for super purposes is whatever that salary is.

**Senator LUDWIG**—So if you choose not to have a vehicle it does not increase your superannuation payout?

**Mr Cornall**—We have changed the arrangements for how we specify the superannuation salary for SES officers. I am not able to bring instantly to mind the details of that and I do not want to mislead the committee by answering your question incorrectly, but we do specify a salary for superannuation purposes and that is the salary which is used for the purpose of calculating superannuation entitlements and so forth.

**Senator LUDWIG**—So it is X amount. Is that for both defined benefit and accumulation?

**Mr Cornall**—It is for the purposes of the superannuation scheme, and how you take your benefits under the scheme is a matter between the superannuant and the trustee.

**Senator LUDWIG**—If you decide to take a cash payment will that affect your superannuation amount? Or can you then elect to pay that into your superannuation?

**Mr Cornall**—I keep coming back to the fact that there is a specified superannuation salary, irrespective of whether you take the cash or the car. That does not change, whether you do one

or the other. You do have the option, under the PSS and I assume also under the CSS, to make payments in addition to the minimum payment that you are required to make, and that can therefore increase your accumulated benefit in the fund and have an effect on the lump sum benefit that you can take out of the fund as well. But these are quite complicated questions, and I have spent a lot of time trying to understand the Commonwealth PSS scheme. You need someone from Finance to explain the details to you.

**Senator LUDWIG**—So Finance is the department I should clarify these issues with?

**Mr Cornall**—ComSuper, which is part of the Department of Finance and Administration.

**Senator LUDWIG**—I am trying to ascertain—and I think we have done it to death—whether, by choosing cash rather than a car, you can increase your superannuation payment, which to my mind does not seem to be why a car is supposed to be provided or not provided. It is obviously a benefit of the employment sphere, not a post-retirement present.

**Mr Cornall**—The answer to the question is no, it does not. Your superannuation salary is a specified amount. Whether you take the cash or the car does not alter that. You can see the same thing in the secretary's determination from the Remuneration Tribunal. If you care to look at that, you will see there is a total remuneration but there is a basic salary for superannuation purposes, and that is the way those schemes work.

**CHAIR**—Are there any further general questions? Minister, I had indicated that we would move to output 1.4 at 11 o'clock, but in view of the time we will deal with that area now and then come back to the program as it is printed, if that is agreeable to you and Mr Cornall.

**Senator Ellison**—Yes, that is fine.

[9.44 a.m.]

#### **Attorney-General's Department**

**CHAIR**—We now move to output 1.4, Legal services and policy advice on international law, within outcome 1, An equitable and accessible system of federal civil justice. I ask Mr Campbell to come to the table. This gives the committee an opportunity to congratulate you in person on your appointment as Commonwealth Queen's Counsel, a very distinguished appointment. We are very pleased to be able to congratulate you this morning.

**Mr Campbell**—Thank you for your remarks and the remarks of the committee. I also thank you for facilitating my early appearance before this committee.

**CHAIR**—It is an absolute pleasure.

**Senator LUDWIG**—Similarly, we associate ourselves with the chair's remarks, Mr Campbell. According to the International Criminal Court web site—unless it has changed—the deadline for nominations for the ICC prosecutors passed on 8 December 2002. Have any nominations been made? At the last estimates we were advised that there was not going to be any judicial persons put up for nomination and that there was consideration, if my memory serves me correctly, for the prosecutor's role. Perhaps you could update us on that position.

**Mr Cornall**—Within the department, we treat the International Criminal Court as a matter under the criminal justice outputs, which is why Ms Blackburn and Ms Warner have come to the table. But I can deal with that question now. The process the United Nations is following is that it is endeavouring to get to a point where there is a consensus about the appointment of a prosecutor. As you rightly say, the period for nomination of judges has closed and the election of judges was to be held last week on 7 February, but I am not personally aware of the outcome of those elections yet. In relation to the prosecutor, the Head of the Assembly of State Parties, Prince Ra'ad Zeid Al-Hussein, has adopted another process which is that he

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wants to consult with state parties about a possible consensus candidate for appointment as prosecutor and he has asked that no-one formally nominate for that position at this stage.

**Senator LUDWIG**—Who has asked for that?

**Mr Cornall**—Prince Zeid. If a consensus is not reached, my understanding is that his current expectation is that it may then have to go to a vote at the next meeting of the assembly, which I think is in April.

**Senator LUDWIG**—I take it that that has been communicated by letter or in a manner such that the view of the prince is able at least to be ascertained.

**Mr Cornall**—It has been largely done by face-to-face discussions with the prince in New York, and the Attorney-General has also spoken to him about Australia's wish to have a person considered for the appointment as prosecutor.

**Senator LUDWIG**—What happens if there is not an agreement? Is it still our intention to put a nomination up?

**Mr Cornall**—That is the government's intention, and we have informally spoken to the prince in support of that proposal. He has specifically asked at this stage not to have formal nominations put forward.

**Senator LUDWIG**—Has a latest date been given for when the period for consensus being reached expires?

**Mr Cornall**—Only in the sense that the matter is expected to be resolved at the latest at the next meeting of the Assembly of State Parties, which I believe is in April. It was also the prince's intention to return to this matter after the election of judges, which has just been held.

**Senator LUDWIG**—And who the judges are will be communicated to you shortly?

**Mr Cornall**—I am sure it will be a matter of public record.

**Senator Ellison**—We have it here.

**Mr Carnell**—It is up on a web site. Eighteen were appointed. Ms Warner has the web site reference.

**Senator LUDWIG**—Are we still within output 1.4 if we go to the article 98 agreement?

**Mr Cornall**—The ICC is a criminal justice matter. But we can deal with that now.

**Senator LUDWIG**—What is the status of those negotiations with the United States in relation to the article 98 agreement?

**Mr Cornall**—Those negotiations are still continuing.

**Ms Warner**—We have passed to the US a text of proposed amendments to the article 98 agreement with the US and we are still continuing negotiations with them.

**Senator LUDWIG**—What text have you passed to them?

**Ms Warner**—The text of proposed amendments to the text that they passed to us.

**Senator LUDWIG**—Is that available to the committee?

**Ms Warner**—No.

**Senator LUDWIG**—Why isn't it?

**Mr Cornall**—It is presently the subject of negotiation between governments.

**Senator Ellison**—It is a principle, Madam Chair, that we do not reveal—whether it is a state government, the Commonwealth government, a foreign government or the national

government of Australia—government to government negotiations. It is a longstanding practice not to reveal the detail of those—for obvious reasons, because we might embarrass another country.

**Senator LUDWIG**—I was not pressing for it. I just always like a reason to accompany it.

**Senator Ellison**—Yes. That is the principle, one which I think the previous government imposed.

**Senator LUDWIG**—I am not cavilling. When do you expect the negotiations to be completed? Is there a date by which you expect to conclude negotiations?

**Ms Warner**—No, not at this stage. We are just continuing with them.

**Senator LUDWIG**—Twelve months?

**Ms Warner**—It is difficult to say at this stage.

**Senator LUDWIG**—Has the United States expressed a preference for article 98 to be agreed prior to any military action against Iraq?

**Ms Warner**—No, not at this stage.

**Senator LUDWIG**—In relation to Mr Hicks and Mr Habib, is that still over that side?

**Ms Warner**—No.

**Senator LUDWIG**—I just had to check that.

**Mr Cornall**—No, that is a matter of security law, which is not Mr Campbell's area, but we can deal with that now if you would like to.

**Senator LUDWIG**—Thank you. I take it that Mr Hicks and Mr Habib are still in detention at Camp X-ray?

**Mr Cornall**—No; Camp Delta in Guantanamo Bay, but otherwise that is correct.

**Senator LUDWIG**—I am sorry; that is my error. I think Australian consular officials visited Mr Hicks and Mr Habib in May 2002.

**Mr Cornall**—I think that if we are going to get into the detail we would probably be wise to have the relevant officers at the table. I have just been told that there have been no consular visits to Mr Hicks and Mr Habib. That has been a specification of the United States, as the detaining authority. But there have been visits by officers from ASIO and the Australian Federal Police. As a course of their face-to-face meetings with Mr Hicks and Mr Habib, they have obviously been able to make assessments about their general health and wellbeing.

**Senator LUDWIG**—Just as an aside, I have been asked by the chair something in relation to output 1.4 concerning international law. I think we are at a point where it is obvious that our initial error was to confuse criminal and security law. I think we can allow Mr Campbell to go about his business. I am sure it is quite necessary for him to be somewhere else.

**CHAIR**—Thank you very much, Mr Campbell, for assisting the committee this morning, and our very best wishes again for this afternoon.

**Mr Campbell**—Thank you.

**Senator LUDWIG**—Just to go back to that issue, no consular officials from Australia at all have visited Mr Habib or Mr Hicks?

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



**Senator LUDWIG**—Is it correct that Australians have had contact with Mr Habib or Mr Hicks?

**Mr Cornall**—As I said before, they have certainly been visited by ASIO and AFP officers. They have had extensive discussions with them.

**Senator LUDWIG**—We are aware of ASIO and AFP visits. Has anybody outside ASIO and AFP visited Mr Hicks or Mr Habib?

**Mr Cornall**—I am not sure.

**Mr Ford**—I believe the Department of Foreign Affairs and Trade had an officer there, but it was not a consular visit.

**Senator LUDWIG**—When was the last visit to Mr Hicks and Mr Habib that the Attorney-General's Department is aware of?

**Mr Cornall**—I will ask Mr Holland to come to the table, because he has more details at his fingertips. I think it would be useful if he could address some of these detailed questions.

**Mr Holland**—I understand that there was a visit in November by security officers.

**Senator LUDWIG**—When you say security officers, is that ASIO?

**Mr Holland**—Officers of ASIO.

**Senator LUDWIG**—What about their welfare? Who from Australia has been in contact with them in relation to their personal welfare?

**Mr Cornall**—The International Red Cross has people at Guantanamo Bay to look into and be responsible for issues of the welfare of all of the prisoners held at that facility.

**Senator LUDWIG**—So you do not see a role for Australia in that?

**Mr Cornall**—It is really a question of whether the United States is prepared to let other countries have any role at all. It is their detention facility. We have access to it on the basis that they permit us to, which has been for the purposes of law enforcement and security investigations, and on limited terms. They are the bases on which we have access to those facilities.

**Senator LUDWIG**—So have you or have you not made a request in relation to their welfare?

**Mr Cornall**—We have observed their state of health and we have spoken to them about medical issues. We know, for example, that Mr Hicks had an operation and that that went very well. He has written to his family about that, if my recollection is correct. We have no reason to suspect that there is anything untoward about his welfare.

**Senator LUDWIG**—But you have not inquired?

**Mr Cornall**—The officers have inquired.

**Senator LUDWIG**—Only ASIO.

**Mr Cornall**—But they are the people who have been to Guantanamo Bay. They sat down and talked to him for several hours, observed him face to face and covered a wide range of issues with him.

**Senator LUDWIG**—Has the Attorney-General's Department been in contact with the Red Cross to determine their position in relation to the welfare of Mr Hicks or Mr Habib?

**Mr Cornall**—I do not believe so. I should say that they are also entitled to write to their families and to receive correspondence from their families through the Red Cross facility.

**Senator LUDWIG**—Has the Attorney-General's Department made any effort in relation to access to legal advice?

**Mr Cornall**—The United States' position is that none of the detainees, at this stage, are entitled to legal advice. Clearly, they are not being charged with criminal offences, so these circumstances are different from the normal circumstances where you are entitled to legal advice when you are detained when charged with a criminal offence. Again, these are the conditions imposed by the United States as the detaining authority.

**Senator LUDWIG**—How are those conditions communicated? Are they in writing somewhere that is available to the committee?

**Mr Cornall**—It is my understanding—and Mr Ford or Mr Holland can add to this—that when, for example, we seek access to see them for various law enforcement or security purposes, they specify the time at which we can come, which officers who can come and the conditions under which we can see them. They are done, as I understand it, on a visit by visit arrangement.

**Mr Ford**—That is right.

**Senator LUDWIG**—Is that advice available?

**Mr Ford**—It is my understanding that it is oral advice between the embassy and the relevant United States officials. It is not available by letter.

**Senator LUDWIG**—I was wondering how it was communicated. So, it is simply oral advice from one embassy to another stating that these are the conditions that will be provided.

**Mr Ford**—Yes.

**Senator LUDWIG**—How is that communicated to ASIO or the officials themselves who undertake the visit? Does the embassy—that is, the Australian embassy in Washington—write that down and say that these are the conditions that have been communicated, and then is that communication given to ASIO?

**Mr Holland**—I think those questions are better directed to ASIO. It is my understanding that it involves direct discussions between the organisation and the authorities in Guantanamo Bay. It does not actually pass through the embassy. I may be wrong about that and ASIO would be better able to assist you on how those discussions take place.

**Senator LUDWIG**—I appreciate that. I asked you only to avoid asking ASIO and thought perhaps the Attorney-General may be able to assist me. I am happy if you cannot answer it. I can certainly ask ASIO and remind them about your answers as well. What efforts are being undertaken in relation to securing the release of Mr Hicks or Mr Habib?

**Mr Cornall**—So far the United States has said that it will release people from Guantanamo Bay when it believes that they are no longer of security interest or concern. Several people, not a lot, have been released. Coming back to your question of welfare, it is my understanding that the people who have been released have said that they were quite well treated in Guantanamo Bay, and I think they were not critical of their direct treatment. Obviously, they could be critical about being detained but they were not critical of their treatment while they were in detention.

**Senator LUDWIG**—Does the Australian government possess evidence or any information that may implicate either of these men in terrorist or other criminal activities?

**Mr Cornall**—We know, for example, that Mr Hicks has trained with al-Qaeda. But the whole purpose of the visits of the intelligence and the security officers was to pursue inquiries

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in relation to whether they had committed offences under Australian law. Those investigations are not yet complete and, given that they relate to activities in another country which is in a state of confusion and conflict, it is not surprising that the normal principles about collecting evidence are very difficult to apply.

**Senator LUDWIG**—How long do you think those investigations will take?

**Mr Cornall**—They are not concluded yet, and I am not sure that we can answer that because we are not directly involved in the investigation. It think it might be a matter more for the Australian Federal Police.

**Senator LUDWIG**—Are you aware of any decision that has been made, taken or communicated to the DPP in relation to whether to prosecute either of these two men?

**Mr Cornall**—Not that I am aware of.

**Senator LUDWIG**—Do you know how long these people have been in detention?

**Mr Cornall**—I am not quite sure of the exact date. I can ascertain that for you, but I do not have it at my fingertips. It is a lengthy period.

**Senator LUDWIG**—It is certainly longer than a year, is it not?

**Mr Cornall**—I believe so, yes.

**Senator LUDWIG**—Do you have a view about the appropriateness of those people staying in detention for that long?

**Mr Cornall**—It is difficult to express a view about that. The position the United States has taken is that these people, and this applies certainly to Mr Hicks, were detained in a war situation. You can go back to the Geneva Convention on the treatment of prisoners of war—and I know we get into arguments about whether they are or are not prisoners of war—but the Geneva Convention contemplates that enemy combatants can be detained for the duration of hostilities.

**CHAIR**—In fact, Senator, it does not really matter whether Mr Cornall has a view or not; he is certainly not required to give his opinion to the committee.

**Senator Ellison**—It is more a policy question for the government.

**Senator LUDWIG**—Senator Ellison, from the government's perspective, do you have a view about whether or not they should remain there indefinitely, which seems to be the case to date?

**Senator Ellison**—The government's view has been expressed on several occasions: this is a matter for the Americans. As the secretary pointed out, in Mr Hicks's case he was apprehended in a conflict situation. Certainly the government would want these men to be treated in accordance with the principles of the Geneva convention and our inquiries and assessment are that that is being done. Certainly the government has said that this is a matter for the Americans and not one over which we have jurisdiction.

**Senator KIRK**—Going back to the International Red Cross and its involvement, what kind of communication has there been, if any, between the Red Cross and the government in relation to the welfare of Mr Hicks and Mr Habib? Have they sought to write to the government or has the government sought to write to it to try to ascertain their welfare?

**Mr Cornall**—I am not aware of any such correspondence but it may be that if they were to write, they would write to the foreign affairs department rather than this department.

**Senator KIRK**—So Foreign Affairs is the department—

**Mr Cornall**—I am only making an assumption. We are not aware of any such correspondence.

**Senator Ellison**—That normally would be in the area of Foreign Affairs.

**CHAIR**—That concludes questions on output 1.4 and the associated areas that we have traversed. With the agreement of the committee we will move to consideration of the Federal Magistrates Service.

[10.07 a.m.]

#### **Federal Magistrates Service**

**Senator LUDWIG**—If I recall correctly, at the supplementary estimates hearing in November you indicated that the report of the review of the Federal Magistrates Service was being finalised and would be provided to the Attorney-General. Has it been completed yet?

**Mr May**—The review has happened but it is a review being conducted by the Department of the Prime Minister and Cabinet, the Department of Finance and Administration and the Attorney-General's Department. The question is perhaps more appropriately addressed to the department. My understanding is that the review is not formally completed yet.

**Senator LUDWIG**—So the review is completed; it is finalised?

**Mr May**—My understanding is that it is not formally completed in that there is no report of the review available yet.

**Senator LUDWIG**—Have you got a copy of the final report?

**Mr May**—No, I do not.

**Senator LUDWIG**—Who has a copy of it?

**Mr Govey**—I confirm what Mr May has said; namely, that while we have completed all the consultations and meetings that we expected to have, we are waiting for final sign-off on the draft report. So it is not formally concluded at this point but it is very close to completion.

**Senator LUDWIG**—When that is done can a copy of that be made available to the committee?

**Mr Govey**—That will be a decision for the Attorney-General as to where the report goes and whether it is released publicly or to the committee, but we can certainly take that on notice.

**Senator LUDWIG**—Do you track the number of migration matters that are filed in your court?

**Mr May**—Yes, we track both the number of matters that are filed and the number of matters that are transferred to the court, month by month.

**Senator LUDWIG**—Can you identify which migration matters have been both filed or transferred to the court and from where in the last review of decisions period under the Migration Act in the last financial year?

**Mr May**—Perhaps it is best that I take that on notice and give you the accurate figures. My understanding is that in the last six months 540 migration matters in the Federal Magistrates Court were either filed or transferred.

**Senator LUDWIG**—Do you recall the break-up? Are they mainly new matters that have been filed or are they transfers?

**Mr May**—They are mainly new matters. The court can only take matters that had been commenced after 2 October last year. In a sense they have to be new matters.

**Senator LUDWIG**—More broadly, have the implications for the court of the decision of Plaintiff S157 of 2002 v. The Commonwealth of Australia been examined? In other words, do you expect matters to be transferred or started there as a consequence of that decision?

**Mr May**—I think it is too early to say what the impact of that decision might be. I have heard the chief executive of the High Court say this morning that a large number of matters have been transferred to the Federal Court. It is not clear whether any of those matters will come to our court. Really it is not clear what approach applicants will take to the High Court's decision and what it says about the relevant legal principles.

**Senator LUDWIG**—So it is a little hard at the moment to anticipate whether there will be an increase in new applications or transferrals?

**Mr May**—It really depends on the approach that the applicants take and how they want to argue their cases.

**Senator LUDWIG**—I might come back to that during the next estimates period. Have you made a decision about the future of your case management system?

**Mr May**—It was not a matter of us making a decision so much as the Federal Court making a decision on what it did with the development of its new case management system.

**Senator LUDWIG**—Yes, you were going to consider whether you would pick it up as well.

**Mr May**—We are already operating the Casetrack system used by the Family Court. The question was whether the Federal Court would adopt Casetrack and therefore facilitate our adoption of Casetrack for our general federal law work. I understand that the Federal Court has made a decision to go with Casetrack. Work is occurring with the other courts to facilitate that. I understand that Casetrack will be rolled out in the Federal Court from the middle of this year in a process that perhaps the Federal Court can give further information about later.

**Senator LUDWIG**—I can ask the Federal Court about that. Are you continuing to use Casetrack?

**Mr May**—We use Casetrack for our family law work at the moment. We use a system called MAGCAMS, which is a mirror of the Federal Court's FEDCAM system, for our general federal law work at the moment. We are hopeful that we will be using Casetrack for our general federal law work from some time during the 2003-04 financial year.

**Senator LUDWIG**—In relation to the FMS, has a decision been made about it picking up Casetrack from some time in 2003?

**Mr May**—We will work with the Federal Court to ensure that that happens. It is certainly one of our key objectives to have all of our case management operating on Casetrack.

**Senator LUDWIG**—Are you working to have the funds set aside for that or has a budget been allocated already?

**Mr May**—We have funding within the court to do that. Our contribution is not substantial; it is really a matter of making staff available to ensure that we can pick up the system as and when it is developed.

**Senator LUDWIG**—Has there be any consideration about appointing further judges to the FMS? Have you been asked about that?

**Mr May**—The appointment of federal magistrates is a matter for the government, so perhaps I could refer that question to the departmental offices.

**Ms Leigh**—The government made a statement prior to the last election that it would appoint up to an additional two magistrates and it has that under consideration.

**Senator LUDWIG**—When will it finalise its decision?

**Ms Leigh**—I am not able to give you a precise time.

**Senator LUDWIG**—And you do not have a decision as to where they would be located if they were appointed? I suppose we are getting a bit hypothetical now.

**Ms Leigh**—No, I do not—obviously that is an issue that has been considered, and there are a range of factors that would be taken into account, but there has been no decision made.

**Senator KIRK**—Going back to the number of applications that have been filed in or transferred to the court seeking a review of decisions under the Migration Act, you said there were 540 and I wondered what the total number was. I am trying to gauge the percentage of migration matters in total.

**Mr May**—The bulk of the work of the court in raw numbers is made up of bankruptcy matters and, now, migration matters. To give you a guide, in the six-month period there are approximately 800 bankruptcy matters in each court, so that is roughly 1,600 bankruptcy matters for the six months, the 540 migration matters and about 100 matters of other types.

**Senator KIRK**—That is in the six-month period?

**Mr May**—In the six-month period.

**Senator KIRK**—How does that compare to the six-month period of the previous year?

**Mr May**—The significant change is the addition of the migration matters. The other work has remained fairly constant.

**Senator KIRK**—That is because that only came on in October of the year before; is that right?

**Mr May**—That is right.

**Senator KIRK**—I am trying to think about how this impacts upon the workload of the court and relates to the question of the appointment of further magistrates.

**Mr May**—It has certainly had an impact in that federal magistrates are quite a lot busier than they had been, and we are having some difficulty in meeting the demand for dates to be allocated for migration matters and balancing that with the demand for work certainly on the family law side. We would welcome some further appointments. But we do have the capacity to balance workload or demand and supply by negotiations with, in particular, the Federal Court about what work gets pushed down to us or remitted to us. It is not as if the cases will come to us and there is nothing we can do about them.

**Senator KIRK**—So there is discussion between the Magistrate's Court and the Federal Court as to division of workload?

**Mr May**—That is mandated by the legislation—there has to be a discussion about whether or not matters get remitted. If we feel that we do not have the capacity then we will tell the Federal Court that we do not have that capacity. The history is that they respond positively to that.

**Senator KIRK**—In relation to the recent decision, S157, no doubt there will be some discussions between the Federal Court and the FMS in relation to that.

**Mr May**—I do not know whether there will be or not. I could speculate that there might be, but certainly there has been no discussion to date.

**Senator KIRK**—But, from what you have said, if there were discussions about removing some of the matters from the Federal Court to the FMS, then there are going to be resource implications and you would have something to say about that, no doubt.

**Mr May**—There will be some resource implications in the short term for us about whether or not we have the capacity to take additional matters, yes.

**Senator LUDWIG**—How are you coping then? Is there a tail or a growing tail of matters that are not being dealt with in the Magistrate's Court or are all matters being dealt with within the times that you set yourself?

**Mr May**—I think it is fair to say that the tail is growing. We had set ourselves a target of dealing with matters within six months. In the family law area in some locations we are increasingly not being able to meet that demand. In Newcastle we are now listing out to November of this year and in a number of other locations we are out in September-October where we would prefer to be listing back around July-August.

**Senator LUDWIG**—If you do not have the figures available by location, could you take on notice to provide the areas which are falling outside the target of six months, the number of them and the time it is expected to take for those cases to be resolved? I did not particularly want to identify individual judges, but I wanted to ascertain the way you are progressing through your work as an FMS service.

**Mr May**—I will take that on notice.

**CHAIR**—Thank you for your assistance and your presence this morning, Mr May.

[10.21 a.m.]

#### **Attorney-General's Department**

**CHAIR**—We will move on to the Royal Commission into the Building and Construction Industry. Good morning, Mr Thatcher and Ms Butler. I know the committee is meeting with you earlier than you had expected, so we are grateful that you are able to assist us. We will begin with questions from Senator Carr.

**Senator CARR**—Good morning, Mr Thatcher. I am surprised to see you here today. I thought our last estimates round would be the last opportunity I would have to engage in discussion with you about the work of the commission. Can you tell me when your commission is likely to report?

**Mr Thatcher**—The commission will report on 24 February on the amendments to the letters patent.

**Senator CARR**—That is an extension of time, isn't it? Is it a further extension of time?

**Mr Thatcher**—That is correct. The original letters patent was 6 December. It was then extended to 31 January and a further extension was granted to 24 February.

**Senator CARR**—Thank you. You told me last time that the extension from 6 January to 31 January was made substantially before 6 December. When was that done? Can you refresh my memory?

**Mr Thatcher**—Do you mean when was it announced?

**Senator CARR**—On what date was that 31 January extension sought?

**Mr Thatcher**—It was sought on 20 September. The extension was granted on 19 November.

**Senator CARR**—Who was the application for the extension made to?

**Mr Thatcher**—The commissioner wrote to the minister responsible, namely the Prime Minister.

**Senator CARR**—So the commissioner writes directly to the Prime Minister on these matters?

**Mr Thatcher**—That is correct. The Prime Minister is the minister responsible for administration of the Royal Commissions Act.

**Senator CARR**—I take it that the second extension was made in a similar way?

**Mr Thatcher**—That is correct.

**Senator CARR**—Was that request made in writing?

**Mr Thatcher**—The commissioner wrote to the Prime Minister on 24 December.

**Senator CARR**—What was the reason for the extension?

**Mr Thatcher**—At that stage it became clear that the large amount of work would not be able to be completed appropriately within the time frame; therefore, the commissioner wrote seeking the further time. The background, as I am sure you are aware, Senator, is the large volume of work: the large number of hearing days, the large amount of evidence and number of submissions which had to be considered and finalised as well as the thought needed to be given to terms of reference (c), which talks about making recommendations for the future.

**Senator CARR**—Do you think the recommendations component of the report is delaying the completion of the report?

**Mr Thatcher**—I am sorry. I might have given you the wrong impression. The request was made in totality. At that stage, a number of things were happening at the same time and to have the task completed overall, in the commissioner's view, further time was going to be required.

**Senator CARR**—Will Commissioner Cole be providing his report directly to the Governor-General?

**Mr Thatcher**—That is correct.

**Senator CARR**—On what date do you think the report will be made public?

**Mr Thatcher**—I am sorry, I cannot answer that for obvious reasons. I know that the commissioner is planning to deliver the report to the Governor-General on 24 February. At the moment we are waiting for confirmation as to the exact time the Governor-General may be available.

**Senator CARR**—But we cannot assume that the report will be made public on that day?

**Mr Thatcher**—That is not a question which I am in a position to respond to either way.

**Senator CARR**—Can the secretary assist me in that regard?

**Mr Cornall**—No, Senator, I am sorry, I cannot.

**Mr Govey**—The release of the report would obviously be a matter for the government. Arrangements will be coordinated by the Prime Minister and his department, I would expect, to have that matter considered.

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**Senator CARR**—So is that a question that should be directed to the Prime Minister's department directly?

**Mr Govey**—That is correct.

**Senator CARR**—Thank you for that. You have had no indication, Mr Govey, of when it is likely that the report will be made public?

**Mr Govey**—No, I do not.

**Senator CARR**—Mr Thatcher, I take it there has been an increase in the costs associated with the commission as a result of the extensions?

**Mr Thatcher**—The best way to say it is that the extension was granted on the basis that there would be no increase in the appropriation of the \$60 million remains, as it has remained all the way.

**Senator CARR**—How much of the \$60 million has now been spent?

**Mr Thatcher**—At the end of January, the figure was approximately \$57,090,000.

**Senator CARR**—Do you have a figure as of today?

**Mr Thatcher**—No, I do not. Unfortunately, the accounting system that we rely on gives us an accurate figure as at the end of January. At the end of January, obviously that was still 2.91.

**Senator CARR**—Are you confident that the commission will come in on budget?

**Mr Thatcher**—I am confident that the commission will come in on budget.

**Senator CARR**—In fact, shouldn't there be some money sent back to the government? There should be a saving here somewhere.

**Mr Cornall**—There will be some wind-up costs and things of that nature that need to be taken into account.

**Senator CARR**—Mr Cornall, do you keep an eye on the budget lines, given that the commission is within your portfolio?

**Mr Cornall**—The primary responsibility is with the officers of the commission.

**Senator CARR**—Does the department monitor the budget or the expenditures?

**Mr Cornall**—Yes, we do, in our finance department. Mr Govey also keeps an eye on that. We have had meetings from time to time with Mr Thatcher to ensure that we are within the budget, and we are expected to conclude within the budget. The position has been made clear to the royal commissioner that the budget is the budget and that that has to be complied with. I am sure that is, as Mr Thatcher says, the way it is going to work out.

**Senator CARR**—What sort of wind-up costs would you anticipate the commission will be faced with?

**Mr Cornall**—I think the most significant issues to wind up the commission are to finalise arrangements with staff and to sort out the premises issues.

**Senator CARR**—Premises—rentals and those sorts of issues?

**Mr Cornall**—Yes.

**Senator CARR**—You have no indication that the commission will overrun its budget?

**Mr Cornall**—I am relying on Mr Thatcher's advice on that.

**Senator CARR**—Could I get an update on some of the figures you have provided to date, Mr Thatcher? Last November you provided me with information on the salaries of staff. Are you able to update that information at this time? How much has been spent on salaries?

**Mr Thatcher**—I have a breakdown of the budget to date.

**Senator CARR**—Could you table that? It would save the committee a lot of time.

**Mr Thatcher**—Certainly.

**Senator CARR**—I note in this table that legal and audit expenses have now reached the figure of \$21 million. Would that be a fair description of the table?

**Mr Thatcher**—Yes.

**Senator CARR**—So more than a third has essentially been spent on lawyers; is that right?

**Mr Thatcher**—Essentially that is right. The legal and audit expenses item includes the remuneration payable to counsel assisting, the solicitors and other legal advice.

**Senator CARR**—If I were to include the moneys paid to legal counsel for travel, taxis and other supporting expenditure, what would the figure be then?

**Mr Thatcher**—I think on the last occasion there was a question taken on notice and we sent a table—

**Senator CARR**—Yes, you did.

**Mr Thatcher**—There was a table which broke that down. I have a table which could update that.

**Senator CARR**—Thank you very much. When I look at this table, which is headed ‘Fees and allowances’, there is a figure of \$10 million.

**Mr Thatcher**—This is expenditure as at 31 January.

**Ms Butler**—Senator, the table we have just provided to you excludes the AGS.

**Senator CARR**—So the AGS have received \$10 million?

**Mr Thatcher**—In that vicinity. I have the figure here.

**Senator CARR**—\$11 million. The allowances now would be totalling the better part of a million dollars.

**Mr Thatcher**—The allowances payable to?

**Senator CARR**—The allowances paid to legal counsel, excluding the Australian Government Solicitor’s office, would total a million dollars, or very close to that figure.

**Mr Thatcher**—The figures are the ones shown in the table.

**Senator CARR**—What I am trying to get to is this: the total legal costs, including allowances paid to legal counsel, are now in excess of \$22 million.

**Ms Butler**—I am assuming, Senator, you are making some allowance for the couple of weeks since 31 January. Is that the additional amount you are factoring in?

**Senator CARR**—You have given me a figure for legal and audit expenses of \$21.002 million. I would like to know the full amount of money paid to the lawyers. To get that figure, I think it would be a reasonable proposition to include the allowances paid to the lawyers. My recollection of the discussions we have had in the past is that the number of counsel assisting—

**Ms Butler**—The total amount paid to counsel assisting to 31 January was \$10.36 million. That excludes the amount paid to the AGS staff.

**Senator CARR**—Can you give me the figure of the amount the AGS staff received?

**Ms Butler**—The actual costs, paid again to the 31st, for dedicated staff, are \$10.38 million.

**Senator CARR**—Should I add to that figure the cost of allowances?

**Ms Butler**—The figure I gave you for counsel assisting included allowances for solicitors.

**Senator CARR**—I would like to know the total amount of allowances paid to solicitors, legal counsel and whatever description of lawyers you choose to use.

**Ms Butler**—I can provide you with that. The total travel allowances to solicitors—and that is basically the allowances they received—was \$257,936. There was an additional amount of \$12,800 paid to the Director, Legal Services, who is also an AGS employee.

**Senator CARR**—I would like the total figure, please. In the last round of estimates, we had moneys paid for accommodation and meals, accommodation—these are the separate categories you have given me in the past—living away from home allowances and travel allowances. I would like to know the total amount of allowances and other expenses paid for legal advice, solicitors, counsel assisting—however you wish to define that. I want the total amount of money. How much is that?

**Ms Butler**—Senator, I cannot give you the exact figure, but I think your quick arithmetic is correct: it is in the order of \$22 million.

**Senator CARR**—Just to make sure I have this correct I would like you, if you do not mind, to update the relevant tables to show the amount of money paid to each legal counsel to date, including fees, living allowances, travel allowances, airfares, taxis and motor vehicles; and—as part of the same table perhaps—including the dedicated services and collateral services for the Australian Government Solicitor to date.

**Ms Butler**—We can probably provide you with those. The table we have just handed to you provides all of that information for counsel assisting. Airfares are not reimbursed; airfares, taxis and those fees are paid direct to the company. So they are not an allowance, if you like; payments are made in respect of those.

**Senator CARR**—I am trying to work out how much of the \$60 million has gone to the lawyers. I come back to that simple proposition. We think it is \$22 million, but I am wondering whether that is an accurate assessment.

**Mr Thatcher**—I think the question is whether it was paid to the lawyers or paid in respect of the employment of lawyers. That is the difference.

**Senator CARR**—I can see the subtlety of that line of argument, and perhaps I am not being clear here. What I want to know is: how much of the \$60 million has the government paid to lawyers and/or persons performing services on behalf of lawyers? I would like to know whether or not it includes reimbursements. What is the total cost of the legal bill associated with this commission? Does \$22 million cover the bill? Is it more than that?

**Ms Butler**—It would cover it, with the exclusion of air and taxi fares.

**Senator CARR**—So should we get to \$23 million? How much more is it than \$22 million?

**Ms Butler**—I cannot provide that figure.

**Senator CARR**—How much of it is air and taxi fares?

**CHAIR**—Ms Butler, could you take that figure on notice for Senator Carr if you cannot provide it right now?

**Ms Butler**—Yes, we could take it on notice.

**Senator CARR**—Thank you very much, I appreciate your assistance in that regard.

**Senator LUDWIG**—Does that also include additional security measures, or is it a different pot of money in relation to that?

**Ms Butler**—Security measures in respect of?

**Senator LUDWIG**—How much is being paid by the royal commission? Is there a separate agenda item for that? We have dealt with lawyers.

**Senator CARR**—There is the figure of \$384,000 that they have given me in this table.

**Senator LUDWIG**—Has that been updated?

**Senator CARR**—Is \$384,359 right?

**Ms Butler**—It seems you are reading from the response to a question on notice.

**Senator CARR**—Yes. That is till 31 January, Senator Ludwig. I would be interested to know whether or not these figures can be updated—because you will have to take this on notice—as at the point at which the report was handed down.

**Senator LUDWIG**—That is the point that I am trying to get to. Those figures are valid up to that date, but what of post that date?

**Ms Butler**—Senator Carr, the figures that we gave you in the answer to question on notice No. 12 were, as you say, up to the date of 20 November. In the table that we have provided for you today, which was on the actual expenditure to 31 January, there is an amount for travel which includes all airfares and other forms of travel, which is \$2.99 million; and for taxis and motor vehicles there is a figure of \$577,000. You will see there is a figure for security there. That is the figure you quoted, which is \$384,000, and that is the figure to 31 January.

**Senator CARR**—The travel figure would primarily be for counsel assisting?

**Ms Butler**—Counsel assisting and solicitors and, as this is a total commission cost, others who were working interstate, which sometimes included investigators and our analysts who were working with the teams who were interstate—

**Senator CARR**—But weren't they servicing the lawyers?

**Ms Butler**—They were doing the work of the commission: conducting the commission's inquiries interstate or work for other purposes.

**Senator CARR**—That is what I am saying. The estimate of \$22 million I made before seems to be somewhat conservative. If we were to include the full cost of travel here, the bulk of which is undertaken by persons acting on behalf of counsel assisting or by investigators prosecuting the commission's business, which was run by lawyers, then the figure should perhaps be closer to \$24 million.

**Ms Butler**—If we were to go down that path, I think you would want to be adding in the stationery and consumables. There are other costs that are obviously associated.

**Senator CARR**—Yes, that is my point.

**Ms Butler**—But they are the running costs of the commission.

**Senator CARR**—The big beneficiaries of this commission may well have been the legal profession. Just before the last state election in Victoria, on 29 November, there was an article

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published on the front page of the *Herald Sun* detailing allegations which it was said were before the commission by way of a submission from counsel assisting, Mr Richard Tracey. Mr Thatcher, can you explain to me how that submission found its way to the *Herald Sun*?

**Mr Thatcher**—I cannot comment on that particular—

**Senator CARR**—This is the day before a state election, I might add, so I am particularly interested in the timing of it.

**Mr Thatcher**—I cannot make any comment on that. What I can say is that there were several occasions in the last couple of months when matters—and I can think of a Western Australian example—relating to submissions which had been made to the commissioner and forwarded to the parties for comment, in respect of the potential for adverse notices and so forth, appeared to be given to the media. I can only say that they certainly were not given to the media by royal commission counsel assisting or other personnel. I have only assumed that the parties who had been given these submissions for comment and for response to the commissioner—after all, it is the commissioner who then factors that in, along with the counsel's submissions—were provided to the media through the persons who had given them.

Unlike the HIH submission—where they had a public hearing, as I understand it, and the submissions were dealt with on a sitting basis—for this royal commission the decision was made to forward those to the parties, and orders were made by the commissioner to that effect. The parties then had the opportunity to respond. That is why it happened. All I can say in summary is that, whilst there have been several occasions when I have noticed what appear to be matters which presumably are in submissions to the parties, in terms of natural justice implications, that have ended up in the media, they certainly have not come from the royal commission, because there was not a public hearing.

**Senator CARR**—Mr Thatcher, what led to you reach the conclusion that the leaked submissions have come from persons adversely named in those submissions? I take it that that is whom you send the submissions to, isn't it?

**Mr Thatcher**—What I was saying was that I could not answer the question specifically, but I was trying to be helpful by saying that I have noticed it in the generality. Please accept it on that basis. I certainly did not do an inquiry; I did not satisfy myself. I read the paper, I came to that general conclusion on my own and it does not reflect anybody else's version of it.

**Senator CARR**—This is your private view.

**Mr Thatcher**—I am trying to be helpful to you, knowing the processes within the commission as I do.

**Senator CARR**—Thank you, Mr Thatcher. I appreciate that you are trying to be helpful. Has Commissioner Cole sought to investigate the leaks of these submissions to the press?

**Mr Thatcher**—I am sorry, Senator. It would be inappropriate to use the word 'leak'. These submissions are not given to the parties under any confidential order. It is quite legal for a party who receives such a submission to seek such advice and do anything that they want with that submission. All I am saying is that it is not the policy of this royal commission to give those submissions to anybody other than the parties who are generally authorised to appear or persons who are named and could be adversely affected by those submissions. There is no question of 'leak'. 'Leak' is not an appropriate term.

**Senator CARR**—Thank you, Mr Thatcher. So you would not describe that as a ‘leak’. How would you describe it? What word would you use to describe the publicity associated with these submissions?

**Mr Thatcher**—I do not think I have any particular word to describe it. As I said, I cannot say with confidence how those submissions were received by the media. I can only say with confidence that they did not come from the commission and that they were sent to a range of parties in all these cases, as I have explained, and not on a confidential basis. In the HIIH royal commission, for example, there was a very public hearing where the submissions were made. In the building and construction one, for various reasons the commissioner chose to do this in writing.

**Senator CARR**—The allegations that were contained in Mr Tracey’s submission to the commission went to matters that affected the Victorian government. Would you agree?

**Mr Thatcher**—Senator, I could not speak authoritatively without seeing the particular newspaper article. I am probably starting to get into dangerous ground, because the matters to which you refer will be the subject of the commissioner’s report.

**Senator CARR**—Of course.

**Mr Thatcher**—That will be available to the government in two weeks time.

**Senator CARR**—I would be interested to know the mechanisms by which the commission operated, whereby the counsel assisting makes a submission which ends up in the press the day before a Victorian state election and allegations are contained in that submission which I think a reasonable person could conclude were calculated to adversely reflect upon the performance of the Victorian government.

**Mr Thatcher**—I will try and explain again. The process is this: at the completion of hearings, or sittings, in any particular state, the commissioner made an order which had several parts. The first order was that counsel assisting would complete their submissions by a certain date, and those submissions would be provided to persons generally authorised to appear before the commission or persons adversely affected by those submissions. The other part of the order was that there was a time limit for those persons to respond, and the information was then to be provided to the commissioner.

When the information was provided to the parties, it was not done in a public way. It was just done privately. Information was not published; it was forwarded to those parties to whom I have referred. I do not know authoritatively, and, whilst I might have been speculating in an attempt to be helpful, I could only rule out the fact that they did not come from the royal commission. They certainly were not available to anyone outside the royal commission, other than the persons to whom those submissions were sent.

**Senator CARR**—So you think Mr Tracey sent them across to the *Herald Sun*?

**Mr Thatcher**—Senator, I have done the opposite—

**Senator Ellison**—Madam Chair, I think we have taken this as far as we can. Mr Thatcher has said that he can say one thing—it was not the royal commission that was responsible for this—and that the parties are quite capable of disseminating the information they received. There is nothing unlawful in that. The questions that Senator Carr is pursuing now really need to go to the parties who received the submissions, I would have thought.

**Senator CARR**—Mr Thatcher, can you just explain to me what action you have taken to satisfy yourself that no officer, no employee, no-one associated with the royal commission leaked these documents to the *Herald Sun*?

**Mr Thatcher**—I am satisfied by a number of ways. First of all, all persons engaged enter into an oath of confidentiality. When people leave the commission, they are counselled in respect of the obligations which they had, and certainly people do not walk away from the royal commission with documents which are of an official nature. I am satisfied on the basis of where these documents are held securely within the commission. They are not available to everybody in the commission; they are worked on by counsel and solicitors. I have never seen such a document. On that basis, I have every confidence. The issue goes to a broader one. There has been no evidence, authoritatively, that any information has ever been leaked from the commission. So, all in all, I am satisfied that it has been a very secure environment.

**Senator CARR**—So you are satisfied because you say people have signed a confidentiality agreement. Did you take any steps to establish whether or not that confidentiality agreement had been breached?

**Mr Thatcher**—The confidentiality agreement in respect of individuals?

**Senator CARR**—Yes.

**Mr Thatcher**—There would be only a limited number of people. I did not do anything. I have contact frequently with the media director, and my conversations with the media director are such—I think I said this on the last occasion—that I am confident that he would not have forwarded the information. He would have no reason to. I cannot really add anything further except the fact that the royal commission has, during its term, operated in a very secure way. I could talk to you about all the security arrangements that we have: physical, personal, information technology and so forth. I think they have been touched on in previous hearings.

**Senator CARR**—Thank you, Mr Thatcher. So you took no steps, when that article appeared, other than to read the paper? So what a surprise it was to you, the day before the state election, that these allegations had been aired. You took no further action within the commission itself?

**Mr Thatcher**—I think there was some general discussion on the floor as to how this had happened but I did not take any further action because Mr Tracey was the counsel assisting who was responsible for those submissions. We certainly did not do an internal inquiry because it was known to me that the information is generally available to the parties. I am very confident—and I can further explain why—that the commission has operated during its terms in a way whereby it has maintained confidentiality where appropriate.

**Senator CARR**—You said there was some general discussion on the floor. Could you explain to the committee what you mean by that expression?

**Mr Thatcher**—In respect of the Western Australian example I think I had a discussion with one of the counsel as to how this could be. It was explained to me that, because of the number of people who had access to it, there could be no way of possibly tracing who might or might not have given the information to the media. In any case, it would not have been inappropriate for anybody who had received the information—and we are not talking about one or two parties; we are talking about numbers of parties—to provide that information.

**Senator CARR**—Just refresh my memory: what is the Western Australian example that you are referring to?

**Mr Thatcher**—I cannot recall the case; I can only recall that in early December there was some reporting in the *West Australian* daily newspaper which appeared, on the surface, to be—and I did not check because I do not look at the submissions—statements from the submissions that had been sent to various parties in Western Australia.

**Senator CARR**—That concerned the prosecution of the assistant secretary of the Western Australian branch of the CFMEU. Is that the one you are referring to?

**Mr Thatcher**—I cannot recall. I have not got the papers with me here today. It was to do with a submission in respect of the proceedings held in Perth.

**Senator CARR**—In that case, if I recall, there was a dispute as to whether evidence would be given. Is that the case you are referring to?

**Mr Thatcher**—I cannot recall. This is not my role, of course; it is one for counsel assisting. We certainly do have a policy, and it is a very strong policy, that nobody speaks to the media—I am talking about the building and construction industry royal commission—other than the media director. I have spoken to him on several occasions, and certainly did after the last estimates hearing, and I am more satisfied than ever that he keeps to the role which he is engaged to perform.

**Senator CARR**—You have only one media officer, don't you?

**Mr Thatcher**—Mr Willis. We have a media assistant—his assistant.

**Senator CARR**—That is Network Four?

**Mr Thatcher**—That is correct.

**Senator CARR**—That is the company that is engaged to perform media services? How many people are involved in Network Four?

**Mr Thatcher**—The only two persons that we have been involved with are Mr Willis and his employee, Ms Collette Black.

**Senator CARR**—Mr Willis and his assistant are the only ones who talk to the media?

**Mr Thatcher**—The policy is that Ms Black does not speak to the media—she certainly does not ever speak authoritatively or about matters of case. She answers the phone and is the vehicle sometimes between Mr Willis and the media if Mr Willis is not there. There was an example touched on at a previous hearing of where she gave information to a reporter that was not accurate. But she had asked the reporter to contact Mr Willis and he did not, and there was an unfortunate incident where he published information which was not correct. The answer is clearly—and I would like to be very clear on this—that nobody in our royal commission speaks to the media other than Mr Willis.

**Senator CARR**—I can hear the gales of laughter from journalists when they hear that only the director of the media unit talks to the media. None of the counsel assisting talk to the media?

**Mr Thatcher**—That is correct.

**Senator CARR**—None of the counsel assisting talk to the media?

**Mr Thatcher**—That is right.

**Senator CARR**—For instance, it was only the director that spoke to the editor of the *Financial Review* with regard to the alleged bias of Mr Ashley Crossland?

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**Mr Thatcher**—The question and the response were in the questions on notice from the last hearing and that response, I can assure you, is accurate.

**Senator CARR**—You mentioned that only a small number of people actually had access to the documents that were leaked. Could you indicate who those persons were?

**Mr Thatcher**—I do not mean to pick up what you said, but I cannot accept the term ‘leak’. They may have been made available—

**Senator CARR**—Yes, we have had this discussion before, but I am calling it a leak and you are yet to describe it to me, so I am sticking with my description that the documents were leaked to the *Herald Sun*. Who had access to those documents? You have indicated to us now on several occasions that a small number of people were involved.

**Mr Thatcher**—The persons responsible for those documents are Mr Richard Tracey and his small legal team.

**Senator CARR**—No-one else within the commission was involved?

**Mr Thatcher**—I really cannot answer the question specifically. We do have a system whereby I could check who has access to documents, but I have not checked that.

**Senator CARR**—You have not checked that?

**Mr Thatcher**—I am not even sure that I would find that—I have just been corrected: I would not be able to find out who was actually—

**Ms Butler**—You could tell from our electronic system but, obviously, people may well be using print copies.

**Senator CARR**—It is just that Mr Thatcher has told the committee several times today that a small number of persons had access to this document, and I am wondering who those persons were.

**Mr Thatcher**—The persons who were working on the document are a particular legal team under the leadership of Richard Tracey QC.

**Senator CARR**—Will you take that on notice? I would like to know the names of the persons who had access to these documents.

**Mr Thatcher**—I will take the question on notice.

**Senator CARR**—Thank you. You also indicated that the security record of the commission was very good. We are now coming towards the end of the commission but there was an event early in the work of the commission where it was alleged that an officer of the commission was, in return for financial favours, prepared to provide documents to the CFMEU. Was that matter ever investigated?

**Mr Thatcher**—I am aware of the matter. We referred the matter to the Australian Federal Police for investigation and did receive a report from them.

**Senator CARR**—What was the nature of that report? If I recall rightly, the matter was actually referred by the CFMEU. Are you able to table that report?

**Mr Thatcher**—I have it here and it reads:

The Australian Federal Police has recently completed an investigation of the unauthorised removal of a sensitive royal commission planning document which was left at the home of Martin Kingham, the Victorian Secretary of the Forestry, Mining and Energy Union, CFMEU, on 13 January 2002. The investigation included the forensic examination of a number of documents and the interview of Royal Commission staff, Kingham and several other persons.

Additionally, a comprehensive search was conducted by the Commission's current and previous computer databases in an effort to identify an audit trail that might assist in identifying the person who released the information. It is possible that the document was stolen or unlawfully removed from commission premises by a tradesman, a contractor or even a Royal Commission employee.

Despite extensive inquiries, the method by which the document was removed from the Commission and the person responsible for that crime has not been identified. The refusal of Kingham to assist a proposed AFP undercover operation, and the subsequent release of information to the media, ultimately meant that there was very little likelihood of identifying and prosecuting the offender.

In the absence of further information, the AFP has finalised its investigation and will return the various documents previously provided by the Commission to your office. Should further information come to hand, the AFP will review it in accordance with its case prioritisation model and consider whether it should be subject of further investigation.

Please do not hesitate to contact the undersigned if you have any inquiries in relation to these matters.

**Senator CARR**—What date was that letter?

**Mr Thatcher**—It is 11 November 2002.

**Senator CARR**—No further information has since become available?

**Mr Thatcher**—No further information.

**Senator CARR**—Do you still have confidence in the security of the commission, given that particular incident?

**Mr Thatcher**—I have confidence in the security of the commission, yes.

**Senator CARR**—Don't you think that letter and the events surrounding that letter give cause for concern that perhaps your confidence is misplaced?

**Mr Thatcher**—Senator, the incident occurred over 12 months ago; there have been no repeats. The letter refers to a range of options since that time. I think we talked, at the time before last, of a range of security measures which had been implemented. I am very confident, as confident as I can be, of the arrangements which have been operating.

**Senator CARR**—Except that we have had all these leaks to the newspapers which cannot be accounted for.

**Mr Cornall**—Which leaks are you referring to?

**Senator CARR**—We have discussed two this morning, Mr Cornall.

**CHAIR**—At some length.

**Senator CARR**—I know; I am winding this up, Madam Chair.

**Mr Cornall**—It seems to me that in a lot of these matters Mr Thatcher has said that the material was simply information. If people care to give information to the press there is no reason why they should not do so.

**Senator CARR**—It is just that the proposition we have been asked to accept is that the persons adversely named, adversely affected by the allegations, go off to the press and tell the world about these allegations. I find that an extraordinary proposition: that the Victorian government, the day before the election, would publicise material which adversely affects its reputation. Don't you find that an amazing proposition?

**Senator Ellison**—Madam Chair, there is a flaw in the premise put by Senator Carr which I would draw to his attention. It is not just the people who have been adversely named or possibly affected who get a copy of this but other parties as well who may not be. So, while

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you say it is odd to assume those people who received the submission would leak it or give it to the press when they have been adversely named, there are other people who would have received it who had been authorised to receive it and who were not adversely named or affected.

**Senator CARR**—I see; I appreciate the clarification. Therefore I would ask for a list of all persons that received that submission other than those in the commission that I have already asked for.

**CHAIR**—Is that what you already have on notice?

**Senator CARR**—No, I have asked for all persons in the commission that had contact. The minister has now drawn my attention to the fact that others received the submission, and I think we are entitled to know who those persons were.

**Mr Thatcher**—The other persons, as I said earlier, are persons who are generally authorised to appear before the commission. The names of those parties are on our web site.

**Senator CARR**—I ask you to take that on notice because it is a particular question relating to a particular incident. The inference you put to me was that it was those persons adversely named to this point. If you are saying that it is not just those persons but that it is others, let us have a look at who they are.

**Mr Thatcher**—We are more than happy to take that on notice.

**Senator CARR**—Thank you very much.

**Mr Cornall**—Just before we leave that point, there is the issue that the people to whom the information was directed may in turn have passed it on to others. So the list will not necessarily be—

**Senator CARR**—That is right. You know the story in *Yes, Minister* on the famous leak inquiry: it is notoriously difficult to identify who is responsible. We can look to those that have an interest. What strikes me about this, Mr Cornall, is that there has been a pattern of public releases, leaks of information that are adverse to the interests of the labour movement. That leads me to the conclusion that this is a highly political inquiry. Prove me wrong, and no doubt we will look forward to the report to demonstrate that I am wrong. Mr Thatcher, with regard to the media, could you indicate to us how much money has been paid to Network Four, or Mr Ric Willis?

**Mr Thatcher**—For Network Four, to 31 January the amount is \$581,818. In the very first hearing there was the figure in the vicinity of \$700,000, as you will recall.

**Senator CARR**—Do you have any estimate of the likely total of moneys to be paid to Mr Willis by the time the commission completes its work? Will that be one of the winding up matters that is required?

**Mr Thatcher**—I do not think it will be. The total figure—for Mr Willis plus other factors, such as Media Monitors and the other media-related activities—we estimate will be, by the end of the royal commission, that is 24 February, \$637,000 in round figures.

**Senator CARR**—Are you able to tell me the date on which Mr Willis will complete his work with the commission?

**Mr Thatcher**—Mr Willis will be terminated on 28 February.

**Senator CARR**—I take it he will play a role in the release of the report itself?

**Mr Thatcher**—Mr Willis has been answering media inquiries, and his role is clearly one for clarification of the evidence. He will not be playing any role, under my direction, relating to the release of the report. His role is clearly as it has been defined to date.

**Senator CARR**—Are you aware of whether his services have been seconded to the department or any other agency within government?

**Mr Thatcher**—I am not aware that that is so.

**Mr Cornall**—He has not been seconded to this department.

**Mr Govey**—I am not aware of any discussions or proposal that he be seconded to Prime Minister and Cabinet. Again, they will be the department that is primarily responsible for that next phase.

**Senator CARR**—So we cannot assume that he will be responsible for the media liaison at the time of the release of the report. In regard to a number of referrals I sought advice on last time, you indicated to us that the commission has made 10 or so referrals to other law enforcement agencies throughout the life of the commission. Did you answer a question on notice on those matters?

**Ms Butler**—There was a question on notice.

**Senator CARR**—I could not find it in the book—it may be an oversight on my part. Do we have an indication of what number that question was?

**Mr Thatcher**—Yes, it was question 29.

**Senator CARR**—I take it that answer gives the total number of occasions on which information under section 6P of the Royal Commissions Act has been sent out to another agency? Is that right?

**Mr Thatcher**—That was the figure as at 20 November. I can update that figure.

**Senator CARR**—Would you, please?

**Mr Thatcher**—As at 31 January, the figures are: National Crime Authority, 3; Australian Taxation Office, 5; City of Port Adelaide, 1; New South Wales Police Service, 1; Australian Federal Police, 2; Office of the Employment Advocate, 1; interim building task force, 2; and ACCC, 1. That is a total of 16.

**Senator CARR**—I take it the ACCC is the only event that relates directly to a company?

**Mr Thatcher**—I am not in a position to comment on the actual referrals, for obvious reasons.

**Senator CARR**—How many commission staff or former royal commission staff have now obtained employment with the interim task force?

**Mr Thatcher**—That question would best be directed to DEWR, who are the employing authority for the interim task force. My role was purely in terms of the last paragraph of the commissioner's first report, which I have described previously. I know there are some but I do not know who.

**Senator CARR**—I presume, though, that you would have refereed all those persons who transferred.

**Mr Thatcher**—The answer to that is no. Where I was asked, I expressed an opinion but I certainly did not referee.

**Senator CARR**—Finally, on the matter I raised with you last time regarding South Eastern Constructions and the act of grace payment, you said that you were seeking legal advice on the act of grace payment.

**Mr Thatcher**—Yes.

**Senator CARR**—Have you received that legal advice yet?

**Mr Thatcher**—The advice we received was that it was probably not appropriate for an act of grace payment; rather, that settlement should be made using what is called technically the legal directions vehicle. At the moment, we have written to the legal representatives asking for details on the legal fees. Provided they are reasonable, it is my intention to recommend payment of that amount.

**Senator CARR**—When was that advice sought from South Eastern Constructions' legal advisers?

**Mr Thatcher**—I do not have the letter with me. Ms Butler will be able to tell you authoritatively. She spoke to them—

**Ms Butler**—We have not written to them. I rang the representative who had been previously in contact with the commission last week and I am waiting for him to get back to me.

**Senator CARR**—Can the committee please be advised of what the claim is and what payment you will be making to South Eastern Constructions by way of compensation? I take it you appreciate that this is a form of compensation.

**Ms Butler**—We are taking it as a claim, Senator. We do not have a delegation; it has to go to the department to be approved. Our recommendation, provided Mr Thatcher agrees, would be that provided the claim is reasonable—

**Senator CARR**—But in effect you are acknowledging that there is a problem here.

**Ms Butler**—In our letter to the legal representatives, we admitted our error in the initial letter, and then—

**Senator CARR**—You got the wrong company—that's the essence of it, isn't it?

**Ms Butler**—We issued a notice to a company that had a very similar name to the one we were seeking. We wrote and apologised to the company. We had no capacity under the Royal Commissions Act to make any form of compensation, so at your instigation, Senator, we reconsidered the position.

**Senator CARR**—I appreciate that. Thank you very much. I think it is one of the great joys of the estimates process that people are able to make representations through this process and, when they are wrongly treated by officials, are able to get some recompense for it.

I am sorry, I have misled you. I have two other matters; I trust that they will be brief. Question No. 15 went to the issue of the dates of and the reasons for various reports being commissioned by the commission and the reasons for their delay in publication. Question No. 6 on workplace health and safety in the building and construction industry was delayed. You said that the reason for the delay was that editorial changes were requested. What editorial changes were requested?

**Mr Thatcher**—I would have to take that on notice.

**Senator CARR**—Could I have the details of the editorial changes that you requested?

**Mr Thatcher**—I am not sure how that information will be provided. What happened is that this work was undertaken under the direction of a Queen's Counsel who is no longer with the commission and also a junior counsel who is finishing very shortly, within the next couple of days. The director of research has also left the commission, but the normal process—as I understood it when I made inquiries in respect of this—was that the information came in and certain suggestions were made to tidy it up before it was released publicly. I satisfied myself that the changes requested were not matters of substance because it was our determination to ensure that the discussion papers, which had been externally prepared—

**Senator CARR**—So these are minor matters that took three weeks to sort out?

**Mr Thatcher**—I am not sure. It could have gone back once or twice or three times; I do not know, but it is possible.

**Senator CARR**—How many times did they go back? Given that they are such minor matters, I would be surprised if they needed to go back a few times.

**Mr Thatcher**—I can do my best to find out the details of that.

**Senator CARR**—Although the work was due on 1 July, it was not released until 23 July. But that does not necessarily indicate the date on which the reports were received from the commission. It may well have been some weeks prior to 31 July; is that right? Can you tell me the date on which the reports were actually received for paper No. 6 *Workplace Health and Safety in the Building and Construction Industry*. Surely that can be provided relatively easily?

**Mr Thatcher**—I think I will be able to gather that information.

**Senator CARR**—As I say, provide it to the best of your ability—where you can identify why it was that you sought the editorial changes. Paper No. 7—*A History of Recent Industrial Relations Events in the Australian Building and Construction Industry*, a report commissioned by the CSIRO Building, Construction and Engineering—is a matter that I have raised with you on a number of occasions. We have already discovered in past discussions that the CSIRO does not employ historians. Therefore, I am not surprised that you sought editorial changes to the report. I would like to know the date on which the report was received, the reasons why the editorial changes were requested and the nature of those changes.

**Mr Thatcher**—I will do that to the best of my ability.

**Senator CARR**—Thank you. Finally, I have a question in regard to the process of auditing the use of material derived from telephone intercepts. On how many occasions have you relied on work derived from the Telecommunications (Interception) Act 1979?

**Mr Thatcher**—This has been raised in previous hearings.

**Senator CARR**—Yes, I know, but we are updating this information. How many times have you relied upon material referred from other agencies, which has been gathered by use of the Telecommunications (Interception) Act 1979?

**Mr Thatcher**—I am sorry; this has been canvassed in previous hearings and I do not have that information with me.

**Senator CARR**—Could you please provide information on the number of occasions on which that has occurred.

**Mr Thatcher**—I will take that on notice.

**Ms Butler**—We will give you an update on the last answer we have given.

**Senator CARR**—That is right; that is what I would like to know. The commission is now coming to an end, and I would like to know, during the course of the commission's work and up to the point at which you answered the question, the number of times interception material was relied upon. I trust the answer will be provided before the 24th. I am sure the department will be anxious to have these matters resolved because I will be coming after the department officials to answer these questions if the commission is not able to do it. You refer to the audit procedures. I asked a question about the audit arrangements that are undertaken and you gave me a long explanation about how the act is used. I would like to know specifically whether there were any audits undertaken to ensure that the law was complied with in the use of material arising from telephone interceptions or phone tapping.

**Mr Thatcher**—There was a question—

**Senator CARR**—Yes, you gave me an answer in which you failed to answer the question—namely, what audit arrangements you undertook. You gave me a long explanation of how the law works. I would like to know what audit arrangements were undertaken to ensure that, with regard to the use of material that the commission gathered, the law was actually complied with.

**Mr Thatcher**—I think the question last time was directed to the department.

**Senator CARR**—Okay, if I have got the wrong agency—

**Mr Thatcher**—It relates to the Telecommunications (Interception) Act 1979.

**Senator CARR**—I appreciate that; that is a reasonable response. I ask the department: what audit arrangements were entered into?

**Mr Ford**—The inspection arrangements under the Telecommunications (Interception) Act apply to the agency giving information to an eligible authority rather than to a body such as the royal commission which receives it. So any intercepting agency which passed on intercept product to the building commission would have those records audited by the relevant authority. If it is the Commonwealth, then it would be the Ombudsman; if it is a state agency, it would be the relevant state agency. But that does not apply to the building commission itself. I add that the commission itself, under the TI Act, is limited to the use of that material for a permitted purpose.

**Senator CARR**—I accept that. Is it an automatic process or does a person who feels aggrieved by the way in which a Commonwealth officer has acted, or a person working for a Commonwealth agency has acted, actually have to apply to have the audit undertaken?

**Mr Ford**—It is an automatic process in that the obligation on the Ombudsman or other agency to carry out those audits is something imposed directly by the statute and it has to be done at regular intervals. It is not a complaints based mechanism.

**Senator CARR**—So it is an automatic procedure?

**Mr Ford**—Yes. If a complaint were made, no doubt the relevant authority would follow it up, but it is not a complaints based system.

**Senator CARR**—I presume that the Ombudsman has not reported any irregularities.

**Mr Ford**—I would have to check but I am pretty sure that is the answer because if there were irregularities I would be very likely to know about it.

**Senator CARR**—At previous hearings I have sought information about information derived from these telephone intercepts which related to non-criminal industrial matters. You have indicated that your definition of non-criminal industrial matters meant that there were no

non-criminal industrial matters involved. Therefore I ask the question in another way: could you indicate to me how many criminal matters were brought to the attention of the commission as a result of telephone intercepts?

**Mr Ford**—I am not sure that I understand the question. The permitted purposes in the TI Act are limited to use in investigation of criminal offences generally carrying a penalty of at least three years.

**Senator CARR**—How many offences were uncovered, within the meaning of the act, that would justify the use of an intercept?

**Mr Ford**—That kind of information is not provided to the department. The disclosure of information to an eligible authority is a matter that has to be reported on annually to parliament in terms of the statistical requirements set out in the TI Act, but there is no authority to give information of that kind to the department.

**Senator CARR**—Who is responsible for the publication of that report?

**Mr Ford**—The department is responsible for the publication of the report. The draft is prepared with input from various agencies. It then goes to the Attorney-General for approval and it is the Attorney-General's report to parliament. But the matters reported upon are the matters set out in the TI Act, and they are almost exclusively of a statistical nature.

**Senator CARR**—Mr Ford, how do you know that those statistics are accurate, since your department is responsible for the publication of the report?

**Mr Ford**—The statistics are provided to us by the intercepting agencies and those agencies are also subject to inspection by the Ombudsman or by whatever oversight agency has been approved in relation to them. If there were a discrepancy it would be likely that it would be picked up in the oversight agency's examination of their records. The department itself is not an inspecting agency in relation to any intercepting agencies.

**Senator CARR**—Are you able to tell me on how many occasions telephone intercepts were in fact used for matters referred to the royal commission?

**Mr Ford**—No, Senator.

**Senator CARR**—Only the commissioner can tell me that.

**Mr Ford**—Yes, that is right.

**Senator CARR**—Could you, or perhaps Mr Thatcher, tell me the number of occasions breaches of the Industrial Relations Act were brought to the attention of the commission as a result of the telephone intercepts?

**Mr Thatcher**—All I can do to be helpful is to repeat the considered answer to the question on notice No. 25 from the last occasion. I thought that might have been what the assumption was.

**Senator CARR**—The last time I asked the question was with regard to non-criminal industrial relations matters. Mr Ford has been very helpful in explaining to me that the only reason you can get an intercept is that you believe an offence with a penalty greater than three years has been committed. Have I understood you correctly?

**Mr Ford**—Yes, that is correct.

**Senator CARR**—So, by definition, to get an intercept, someone must believe that a serious offence is being committed.



**Mr Ford**—Can I just add that it is not a case where an eligible authority, such as the royal commission, can request an intercept to be carried out.

**Senator CARR**—I am not a lawyer, so you will have to explain things slowly to me. I thought you said that a warrant can only be issued if it is believed, that an offence with a penalty greater than three years has been committed.

**Mr Ford**—I may not have been clear enough. Interceptions can only be carried out by properly approved intercepting agencies, and only then if they get the relevant warrant satisfied in terms of the conditions set out in the act, which are pretty stringent. Those conditions generally apply to offences which are more serious than three years. There is generally a seven-year threshold requirement in order to get an intercept warrant. It is for things like murder, kidnapping, drugs and so on. But if the intercepting agency, in carrying out its own work, has material which it believes is relevant to the work of an eligible authority, such as the royal commission, it is authorised to pass that on to the eligible authority, at its initiative.

**Senator CARR**—So are you saying that information may be passed on to the relevant authority that does not involve offences carrying a penalty greater than three years or seven years?

**Mr Ford**—The authority to pass it on is set out pretty clearly in some detail in the TI Act. There you get the lower threshold of three years.

**Senator CARR**—I understand that, but it may be the case that, if you put a telephone tap on somebody's phone—I take it that is how you do it and that it covers computer work as well now, or any use of telecommunication facilities—and you get a warrant because you believe that an offence has been committed which carries a penalty of greater than seven years, and in the course of your inquiries you discover offences which you believe are being committed which carry penalties less than seven years, that information may well be communicated to another agency within the Commonwealth.

**Mr Ford**—It may be communicated to another agency to which it is relevant.

**Senator CARR**—For instance, if there was a breach of the Industrial Relations Act, that matter could be referred to another agency of the Commonwealth.

**Mr Ford**—It would still have to satisfy the other criteria in the TI Act.

**Senator CARR**—It would have to be a serious breach of the Industrial Relations Act.

**Mr Ford**—It would have to be an offence which carries a three-year penalty.

**Senator CARR**—Knocking off the milk money at the tuckshop does not meet that sort of criteria; is that what you are saying?

**Mr Ford**—Yes, that is right. In any particular case, you would need to look carefully at the limitations in the act. I do not have them off the top of my head.

**Senator CARR**—You can only communicate intelligence gathered from an intercept for serious matters.

**Mr Ford**—Yes, that is right.

**Senator CARR**—It might not be your area of expertise, but I would not have thought there would be too many areas within the Industrial Relations Act that would have a penalty of three years.

**Mr Ford**—I think that is right.

**Senator LUDWIG**—Do you know of any? I cannot recall any offence that would. They are usually penalty offences that would have to be prosecuted and default imprisonment would be the normal way—

**Mr Ford**—I would have to check with—

**CHAIR**—I think Mr Ford is being very helpful but I am not sure whether this is—

**Senator CARR**—He is; I agree with that. I am interested to know, Madam Chair, how it is that the commission ends up these phone materials.

**Mr Ford**—I could take it on notice, Senator.

**Senator CARR**—Would you?

**Mr Ford**—Yes.

**CHAIR**—Thank you, Mr Ford.

**Senator CARR**—I ask Mr Thatcher to advise the committee about the number of occasions in which breaches of the Industrial Relations Act were brought to the attention of the commission as a result of telephone intercepts?

**Mr Thatcher**—We have said previously that none of the information derived from telephone intercepts received by the Royal Commission into the Building and Construction Industry related to non-criminal industrial matters, assuming that non-criminal industrial matters means discussion of industrial issues which do not evidence a criminal offence.

**Senator CARR**—Mr Thatcher, that is not my question, I am sorry.

**Mr Thatcher**—I will take the question on notice.

**Senator CARR**—How many breaches of the Industrial Relations Act were referred to you as a result of telephone intercepts?

**CHAIR**—Mr Thatcher has agreed to take the question on notice, Senator.

**Senator CARR**—How many other criminal matters carrying a penalty of greater than three years were referred to your commission as a result of telephone taps?

**Mr Thatcher**—I will also take that on notice.

**Senator CARR**—Thank you.

**CHAIR**—Mr Thatcher and Ms Butler, thank you very much for assisting the committee this morning.

[11.38 a.m.]

#### **Office of Film and Literature Classification**

**CHAIR**—We now move onto the consideration of additional estimates for the Office of Film and Literature Classification. I welcome Mr Clark and his officers. We will begin with questions from Senator Ludwig.

**Senator LUDWIG**—You may recall during supplementary estimates in November that I asked you when Internet classification decisions would be made publicly available in your online classification database. My recollection is that you indicated the matter would be dealt with in a memorandum of understanding or an agreement with the ABA, which you estimated would be completed by the end of August 2003. Does that remain the time frame for the completion of the memorandum?

**Mr Clark**—That is the outside time frame. We have a current draft of what we are calling a service level agreement, about which we have begun preliminary discussions with the ABA. We expect that it should be finished before then, but there are a couple of considerations that we will need to keep in mind. There is a review of schedule 5 to the Broadcasting Services Act taking place at the moment, and that could have an impact on the time frame, but we are expecting to have it finished well and truly before that date.

**Senator LUDWIG**—Do you have a date in mind?

**Mr Clark**—At this stage we are sticking with August but I expect it will be sooner. I do not have a specific date in mind at the moment.

**Senator LUDWIG**—In November I asked you how many FOI requests you had received relating to your Internet classification decisions. Your answer then was one. Does that remain the case?

**Mr Clark**—That is still the case.

**Senator LUDWIG**—In answering that particular FOI request, did you release the URLs or names of any Internet sites that have been classified MA, R, X or refused classification?

**Mr Clark**—We are not given the URLs for those; we are given a number generated by the ABA. The ABA is subject to an international agreement in relation to the release of those addresses. The general international agreement is that they are not made available.

**Senator LUDWIG**—So, what are you given?

**Mr Clark**—We are given a randomly generated reference number for the material which is submitted for classification.

**Senator LUDWIG**—Was there any material blacked out in that information?

**Mr Clark**—On the information given to—

**Senator LUDWIG**—Yes. Was the FOI request completed in full?

**Mr Clark**—Seventeen documents were released in full, 17 documents were released in part and 26 documents were considered exempt in full and withheld.

**Senator LUDWIG**—What was that international agreement that you spoke of?

**Mr Clark**—This is really a matter for the ABA, but the Internet Hotline Providers in Europe Association, INHOPE, of which the ABA is an associate member, requires that:

... member hotlines protect the confidentiality of such information, and member hotlines will not exchange report information with another hotline if confidentiality is not assured.

**Senator LUDWIG**—That is an international agreement, is it?

**Mr Clark**—It is really a question for the ABA.

**Senator LUDWIG**—I can chase the ABA about it but I need enough information from you so that I can ask them the right questions.

**Mr Clark**—That is in fact a quote from their response to a similar question. That is the protocol they observe in relation to this.

**Senator LUDWIG**—And that response is to you from the ABA?

**Mr Clark**—Yes, we sought that information from them.

**Senator LUDWIG**—Can I get a copy of that?

**Mr Hunt**—When we were having initial discussions about the agreement that Mr Clark just mentioned, the ABA advised us that their reasons for release or not of URLs et cetera were explained in the submission to the review of schedule 5 of the Broadcasting Services Act. They referred us to that document as a point of reference from which to extract the material.

**Senator LUDWIG**—And that submission would be on their web site?

**Mr Clark**—That is correct.

**Senator LUDWIG**—Does it have a title—so I can save us all time and I can go and find it?

**Mr Hunt**—This is only a recollection, but I think the title is ‘A submission by the ABA to the review of Schedule 5 of the Broadcasting Services Act.’

**Senator LUDWIG**—I am sure I can find it from there. That is much appreciated.

**Mr Hunt**—I understand that it is perhaps on the ABA web site or it may be on the departmental web site—the DCITA web site. I cannot recall which one it is.

**Senator LUDWIG**—I am sure that with your assistance I can locate it. Can you clarify whether the FOI request that you have received—the one you responded to—is now closed? Is the file finished?

**Mr Clark**—Yes, that is now closed. There was a significant amount of negotiation with EFA in relation to finalising that. At the end of it they were quite satisfied with our response, as I understand, although they are not necessarily happy with some of the outcomes.

**Senator LUDWIG**—With respect to the OFLC, yourselves and the ABA, is that memorandum of understanding available?

**Mr Clark**—We will make the draft available to you after we have completed the initial discussion with the ABA. It is a document which really talks about service levels. It is about turnaround times and things like that. The principal provisions in relation to the decision making process are covered both in the Broadcasting Services Act and in our own legislation for classification. This document will relate certainly to the publication of information and to turnaround times and more procedural issues that are not covered, but they exist in practice already.

**Senator LUDWIG**—I think we went through that in the sense that it is a draft document, but you have existing procedures.

**Mr Clark**—We have existing procedures that we follow which have evolved over time.

**Senator LUDWIG**—And you are going to write that down in a new memorandum of understanding at some point?

**Mr Clark**—That is right. That is the August document.

**Senator LUDWIG**—So that is the intention. When will you make those Internet classification decisions open to the public? Will they be put on your web site? How will you make them available?

**Mr Clark**—We have agreed with the ABA that we will be putting them on our web site but that we will not be publishing them with URLs. We will publish them with the numbers generated by the ABA. It is one of those problems where you are making available information which could lead to criminal activity, so we are not about to publish that form of information.

**Senator LUDWIG**—When will that start, or has it started?

**Mr Clark**—It has not started. It will start as soon as we have finished the protocols within the service agreement.

**Senator LUDWIG**—Is that separate from what we were talking about?

**Mr Clark**—No, it is the same as what we were talking about.

**Senator LUDWIG**—So there are protocols within the—what do you call it? Do you call it a service agreement?

**Mr Clark**—We are calling it a service level agreement. It is a very practical—

**Senator LUDWIG**—So what I was calling a memorandum of understanding would be more correctly called a service agreement?

**Mr Clark**—Yes, for the purposes of this, because it more accurately reflects what we are seeking to achieve with them and because the principal work is covered legislatively, not at this sort of working level.

**Senator LUDWIG**—So there is no agreement at this point in time, or is there an operational facility?

**Mr Clark**—Operations are continuing, but we have some written words that we have given to the ABA and they will respond to those. I hope that very shortly we will have a finalised service level agreement that we can publish.

**Senator LUDWIG**—And until that is done you are not going to do it?

**Mr Clark**—Until that is done we are continuing to work as we have, and we do not expect that will change radically. With regard to the publication of numbers in relation to ABA applications, we have not yet finalised the detail of that, but that will happen.

**Senator LUDWIG**—So how long after the completion of the service level agreement would it take to make the Internet classifications available?

**Mr Clark**—I do not expect that that will take very long. Mr Hunt may be able to help me.

**Mr Hunt**—It is a technical IT matter and I would rely on our experts for that. The indications are that new decisions will be very easy to put up almost immediately that we come to an agreement with the ABA. Our technology is still being assessed as to the ease of putting past decisions up.

**Senator LUDWIG**—In the sense that you are looking in that basket, how many decisions would be past ones?

**Mr Hunt**—I would have to take that on notice, but I have the figure for the last couple of years, which may be fairly representative. I think it is around 90 a year, but I can check that quickly now if you would like.

**Senator LUDWIG**—So you are looking at how you would then be able to establish a web site with 90-odd decisions in the historical data?

**Mr Hunt**—Sorry, for the last two years there have been about 90 decisions each year. Those are contained in a database and there are links to an external database that need to be established by technical IT people. I am not sure how they do that with things that have been closed off and finished with, as it were. Senator, I can now tell you that there were 93 decisions in the 2001-02 year.

**Senator LUDWIG**—Thank you.

**CHAIR**—As there are no further questions, I thank Mr Clark, Mr Hunt and Mr Tenison for their attendance and assistance this morning.

[11.49 a.m.]

**Office of the Privacy Commissioner**

**CHAIR**—I welcome Mr Crompton and Mr Pilgrim.

**Senator KIRK**—At the supplementary estimates in November, the Attorney-General's Department indicated that it was supporting an application by the Privacy Commissioner for increased resources and that the application was still being processed through the government's procedures. I wondered whether the application was successful or not.

**Mr Crompton**—I believe it is still part of the budgetary process.

**Senator KIRK**—Are you saying you are expecting that in May?

**Mr Crompton**—If it going to be considered through the budgetary process then we will all learn about it on budget night, yes.

**Senator KIRK**—Okay. Can you tell me how many complaints the office has received since the start of this financial year?

**Mr Crompton**—Since 1 July 2002 we have received 602 complaints.

**Senator KIRK**—How does that compare with the same time last year?

**Mr Crompton**—Comparisons are very difficult because we still do not have full-year figures. We can tell you the figure for the whole of the previous financial year, but the rate at which complaints came in accelerated dramatically after 21 December 2001, when the new private sector privacy law came into place. In that period—in other words, the whole of that financial year—we received 632 complaints. To try and give you a feel for the comparison: if the rate at which complaints came through after 21 December was actually the rate at which they came through all the way through the year, then we would have received about 960 complaints through a full year like that. Interestingly, that still seems to be about the rate at which complaints are turning up—in other words, we seem to have jumped up to a new level of receiving complaints. Other than a little bit of a peak a couple of months after the new law came into effect, it has settled down to a very steady new plateau.

**Senator KIRK**—What do you expect in terms of the numbers of complaints for the rest of this financial year? You say there have been 602 to date. Are you expecting that plateau to continue the way you have described it?

**Mr Crompton**—If you do a straight extrapolation of the 602 complaints that I was talking about before, then it would come out to about 1,022 complaints a year. On a full-year basis for last year it would be about 960 complaints. At the current rate of receiving complaints it would extrapolate to about 1,022. But that is, as near as damn it, the same as each other.

**Senator KIRK**—So similar sorts of figures?

**Mr Crompton**—Yes, very similar figures. That is about a fivefold increase on the kind of complaints rate that was coming through in previous years, before the new law came in, when we would get of the order of 200 complaints a year.

**Senator KIRK**—What sort of impact is that increase you describe having on your resources?

**Mr Crompton**—We can take you through some impacts on office structures in more detail in a minute—the deputy commissioner is in a better position to do that than I am. It does

mean that we have had to significantly staff up in the complaints handling area in order to handle those complaints and that has meant we have had to destaff in other areas of the office, particularly in the area that is, for example, writing submissions to parliamentary committees and providing advice and comment to individual industry sectors that may need some help.

**Senator KIRK**—You are saying there has been a shifting of staff from the policy areas through to the complaint areas?

**Mr Crompton**—Yes.

**Senator KIRK**—Is it only in the policy and submission writing area that you are having to divert staff?

**Mr Crompton**—There is not much left.

**Senator KIRK**—What are the other areas?

**Mr Crompton**—The office has only three areas, broadly speaking, aside from the deputy commissioner and myself—the executive area. There is a corporate and public affairs area, which has a very small number of people in it, there is the policy and advising area, and there is the complaints and compliance area. One of the other areas we are winding back on, by the way, is our audit function: there will be at least a period when we will not be conducting any audits at all because we will be using those staff on handling complaints.

**Senator KIRK**—How many audits would you normally conduct?

**Mr Crompton**—It has varied quite a lot in recent times. The deputy commissioner has those numbers.

**Mr Pilgrim**—In the 2000-01 financial year we commenced 24 audits. In the 2001-02 year we reduced that to only being able to commence 14 audits. We predict that for this financial year we will undertake only four audits. Those are audits of Commonwealth and ACT agencies and people who fall under the credit provisions of the act.

**Senator KIRK**—Who will be conducting those audits that will not be conducted by you, or are you unaware of who?

**Mr Pilgrim**—I cannot answer as to who will be conducting them in the absence of our office doing it, but I am aware that all Commonwealth agencies, for example, do have some internal structures. Many organisations in the Commonwealth have internal audit sections and they do at times look at privacy issues as part of their work. But I would not have any figures on how often or how regularly they do that.

**Senator KIRK**—Going back to complaints again, how many complaints has the office closed or finalised this financial year?

**Mr Crompton**—Since 1 July we have closed 636 complaints. We have been able to close marginally more complaints than we have opened in that period. Because the rate at which the complaints came in accelerated more quickly than we were able to adjust the staffing levels, we developed a backlog through that time. Essentially, we have a number of complaints that are not being addressed sitting with complaints handlers and a number of other complaints that are literally sitting on a desk unallocated to complaints handlers. At the moment 154 complaints are in the latter category of ‘unallocated’, which means that we are doing our best to try and clear up that backlog and close the gap between the time a complaint arrives and the time we are able to address it. One of the reasons that number is high, though, is that we have done our best to look through the complaints as they come in and, where it is pretty clear that there is really nothing we can do about the complaint—for example, it is out of jurisdiction because it relates to a small business or it is out of jurisdiction because it relates to employee

records or it is out of jurisdiction simply because it relates to information collected prior to 21 December—then it is obviously better for all parties concerned to quickly tell them that that is the case. Our clear-up rate is enhanced for the moment because we have gone through our backlog and tried to clean up all those very obvious ones, so the tail of complex cases has probably still not fully matured through our system.

**Senator KIRK**—You said that 154 are unallocated. Is the reason for that simply lack of staff, essentially?

**Mr Crompton**—Correct.

**Senator KIRK**—You just do not have people to allocate them to?

**Mr Crompton**—Correct.

**Senator KIRK**—What sort of number of staff would it take to deal with that number of complaints?

**Mr Pilgrim**—Without having the exact figures to hand, I suggest that we would probably need in the vicinity of another four complaint handlers to reduce the backlog and then, at the current rate that the complaints are coming in and we are able to close them, to maintain a zero backlog.

**Senator KIRK**—How many staff do you have at the moment dealing with the complaints?

**Mr Pilgrim**—I can check; I do have that figure. We have six complaint handlers at the APS6 level. To handle some of the less complex matters we have two complaint handlers at the APS5 level.

**Senator KIRK**—So, if you were talking about four more, you would be talking about 50 per cent more or so that you would need to handle the complaints?

**Mr Pilgrim**—Yes, that would be correct.

**Senator KIRK**—How old are some of the complaints that you have? How long ago were they lodged? I am thinking of these 154. What sort of time frame?

**Mr Pilgrim**—Of the 154, the older of those complaints are in the vicinity of five months old—not quite six.

**Senator KIRK**—What is the normal kind of turnaround time for a complaint? Or is it difficult to say? What is the target that you have?

**Mr Pilgrim**—It can be difficult to say. We of course would like to clear up most complaints as quickly as possible, as the commissioner says. It varies. Those complaints which are easily identifiable as being out of jurisdiction we can clear up with either a short letter or a short phone call. So that could take a matter of days or a week perhaps. Then you get into a category of complaints which may need a bit more research, a few more contacts with the individuals involved. We would like to think that the majority of complaints are being cleared up by three months, but we are finding that it tends to be three to six months for the average complaint to be resolved. Of course, that is at the stage where—if we leave the Commonwealth sector aside for the moment and just look at the new jurisdiction—at the moment we are not having too many complaints come in of what could be described as a more complex nature.

**Senator KIRK**—So your target is now three to six months in order to resolve complaints?

**Mr Pilgrim**—We are certainly targeting three to six months, with our best endeavours.

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**Senator KIRK**—You talked about how the number of audits that you can conduct is decreasing due to staff numbers. I just wondered about the nature of those audits. You mentioned that in 2000-01, I think, 24 audits were conducted. What came out of those audits? Were there prosecutions or anything similar that might have arisen from them?

**Mr Pilgrim**—First of all, Senator, I would point out that, under the structure of the Privacy Act and the powers that are provided, we do not actually have a power that allows for prosecution as a result of an audit in the case of Commonwealth agencies. In the case of the credit audits we carry out, there are powers available to us to refer matters to the Federal Police or to the DPP, should we think there is criminal activity taking place. But they are fairly rare.

The majority of the Commonwealth agency audits are looking at particular processes. For example, if an agency is starting to collect information in a new way, under a new scheme or a new policy directive, we will tend to want to go in and have a look at those structures that are in place around collecting the personal information. So we see it as an educative process rather than as one that is going and looking to find fault, for want of a better description. We find that in most cases the agencies we go into are very receptive to having those sorts of audits undertaken in that case.

The kinds of things we look at in government agencies are: what security measures are in place in new computer systems to protect the information as it is being collected, how the information is being used or disclosed by those agencies and whether they have the requisite powers to actually undertake those uses and disclosures, and the sort of notification they are giving those members of the public whose information is being collected and whether they meet the standards required by the Privacy Act. That is a very general way of putting it, because it is going to be specific to particular cases and agencies that we are looking into, and their activities. But that is a general rule of thumb, the sort of thing we look to.

**Senator KIRK**—Have these agencies been advised that this year there will not be many audits being conducted—down to four, as you have said? Have they been advised of this, or is it not your role to advise them?

**Mr Pilgrim**—We have not specifically undertaken to advise the agencies. The act has been in place for some 14 years now with Commonwealth agencies, and they have the knowledge that we do undertake an audit process. We have not found it necessary at this stage to advise them of that, given the fact that the audits have not been that numerous with regard to Commonwealth agencies for some time, for resourcing reasons. We have not felt it was necessary to undertake a specific advice that we would not be doing that.

**Senator KIRK**—Perhaps I can just ask the department about this question of auditing, and whether or not it is going to be undertaken by any other department if the Privacy Commissioner is unable to do so.

**Mr Ford**—The Privacy Commissioner is the only body that would carry out audits of this kind, under the act.

**Senator KIRK**—How are the checks going to be done, then, if the Privacy Commissioner is only going to be able to conduct, say, four this year?

**Mr Ford**—If the Privacy Commissioner is unable to do those audits, the audits will not take place.

**Senator LUDWIG**—This is a matter that we followed up last time with the Privacy Commissioner, when he was seeking additional funding. I think your answer at that time, Mr Crompton, was that it was a matter for the budget. We have not got to that point, so I did not think it was necessary to ask the question again, otherwise we might have got the same answer. But so far we have heard that the Privacy Commissioner's auditing process has ceased, they have been able to swap their resources to try to meet the growing demand, their complaints handling is now going beyond what their target resolution date would be, and it seems to be getting worse, not better, since last November. What is it the intention of the government to do in relation to this? It is a serious issue in terms of ensuring the confidence of the public in their Privacy Commissioner's work and that the staff do their work—that people have confidence that their privacy is being well looked after by Mr Crompton.

**Senator Ellison**—When you look at the private sector amendments which were introduced last year, we did provide funding for that. The question of increased resources is being considered in the budgetary context. The government is well aware of what Mr Crompton has said and the matter is being considered in the budgetary context. But certainly there was funding in relation to where we made those amendments relating to the private sector, as I understand it. I think that demonstrates that the government does take privacy issues seriously. But this budget, as the Treasurer has said, is going to be a tight one because of other demands of the budget, and everything will have to be considered in that light.

**Senator KIRK**—Going now to the question of small business, I wondered what your total budget was for making small businesses aware of their new obligations under the Privacy Act.

**Mr Crompton**—We did not set aside a separate budget for small business. Rather, where we could we tried to use other processes to help increase small business awareness. But on top of that we did do some small business specific activity. Our major expenditure in terms of community awareness last year was something over \$100,000 in terms of staff costs and advertising costs to run an advertorial process through the middle of last year, which was essentially a two-page spread in a number of Sunday newspapers in different capital cities over a few months. We had four articles of substance in the advertorial, and one of those four articles was specifically aimed at small business, to help them see what was going on. The alleged readership of those papers all up is about six million.

The other major initiative that we undertook was to prepare three small documents for small business. The plea from small business all the time is to simplify and make small; so smallness is a measure of success, not a measure of anything else, when it comes to writing these documents. This was a small tick and flick questionnaire to help a small business work out if it was going to be covered by the act or not, another brochure—which is almost a first aid brochure, in a sense—about 'What should I immediately do in relation to my small business?' and a slightly bigger document for the more interested, to help them unpack the Privacy Act from a small business perspective in a little bit more detail.

Those documents were written in very wide consultation with small business representative bodies, when we could find them, with the Office of Small Business in the department of industry and with state fair trading bodies or the like which had interests in small business, and there were various other kinds of tests for those documents. That alone was resource intensive. We then printed and circulated to a number of those bodies copies of those documents, and we have finally put together a small business page on our web site where all

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of that comes together. So it has been a combination of brochure writing, web work, the advertorial—being the flagship of our effort last year—and literally using every media opportunity that we can to remind people that some more small businesses were brought in by the Privacy Act from 21 December 2002.

**Senator KIRK**—You mentioned some figures there. What sort of total cost would you estimate it at? I know you say you have a specific budget.

**Mr Crompton**—I have numbers in the way of numbers, but I am not sure I have gone back and converted them to dollars. We can give you some dollars relating to the advertorial process all up. I can give you some numbers of documents made, but I am not sure I have converted them to dollars for these purposes.

**Senator KIRK**—Perhaps you could take that on notice and provide those figures for us.

**Mr Crompton**—Yes, we will.

**Senator KIRK**—The way you have described it, quite a lot of money has been spent in relation to advising small business about this and, together with the increased number of complaints, I wonder how your money is going in terms of your budget.

**Mr Crompton**—A bit of background might help. One of the things that I was looking out for after 21 December 2002 was whether in some way the number of complaints would go up. It has not. As I said, the numbers have levelled out. As my director of compliance said to me, ‘Complainants aren’t going to know or even care whether or not the thing they are complaining about is within our jurisdiction and, hence, increase the number of complaints.’ Probably what we will now find is that more of the complaints we receive will fall within our jurisdiction. It is still too early for us to give you any meaningful statistics on that, but that shows how it is shaking out. What we have to do after that, like any other Commonwealth agency, is to not spend any more than we have been allocated. As I said, we have had to do internal resource reallocation to fund the kinds of events that I have described.

**Senator LUDWIG**—Have you considered requesting any advances?

**Mr Crompton**—I will ask the deputy commissioner to take that one on board. Essentially, I do not think the kind of thing that we are talking about would pass the advance criteria put out by the Minister for Finance and Administration.

**Mr Pilgrim**—We are not seeking to go for an advance for the specific issue of running the budget this year. The sort of thing that we are talking about here, with regard to the general administrative running of the office, would not necessarily be something we would get an advance for. So my understanding is that it is not the sort of thing we would plan to go for an advance for. We are certainly running the budget in a way that makes sure that we will break even at the end of the financial year.

**Mr Crompton**—More to the point, it really would be only putting off the problem. This looks like it is a new level of business in an ongoing way. Even if we were able to borrow from the future, all we would be doing would be putting off the problem.

**Senator KIRK**—To go back to the web site that you described to us, how many page impressions has the small business web site recorded since it became operational?

**Mr Crompton**—On the small business page directly? I can tell you how many downloads of some of the documents there have been off the web site. The small business web page has received about 15,000 hits since we set it up. I think there have been a corresponding number of downloads of the documents. There is a web page from which you can download different documents, and, coincidentally, the numbers are about the same.

**Senator KIRK**—Are they the brochures that you referred to earlier?

**Mr Crompton**—Electronic forms of those brochures are available, yes. A number of other documents are linked to that page. It is trying to bring together as a resource for the small business person a number of the documents that we think are most relevant to them, in a small number of words of context. The three documents primarily aimed at small business are the ones that I mentioned before. They are on that page, along with others.

**Senator KIRK**—How many inquiries have you received from small business seeking information or assistance in relation to the new laws?

**Mr Crompton**—I have a page with a large number of numbers on it, but I think it would be better to take the question on notice and give you the right analysis.

**Senator KIRK**—Thank you. What was the nature of those inquiries? Were they telephone or Internet inquiries? How do they break down?

**Mr Crompton**—The vast proportion of the inquiries that we receive are over the phone to our hotline. For example, in the financial year 2001-02 we received about 21,000 inquiries. So far this year we have received about 12,000 inquiries, which will probably pan out again to be about 21,000 inquiries. The dominant proportion is probably from individuals who have a problem that they want to complain about or be more informed about. There is always a stream of inquiries from an organisation, big or small, wanting a bit of help. But I cannot easily lay my hands on the precise break-up.

**Mr Pilgrim**—One of the break-ups we do have is a category that deals with those organisations we have received an inquiry about that would appear not to be covered by the act because they are a small business. We have had in the vicinity of 550 of those this financial year. The way the categories are broken up under our recording system, there could be other specific issues that fall under, say, disclosure issues that may be about a small business and we may need to do a bit more refining in that regard to answer your specific question.

**Senator KIRK**—Perhaps you could take that on notice if possible.

**Mr Pilgrim**—We will do that.

**Senator KIRK**—How many complaints have been received about small businesses since they came under the Privacy Act?

**Mr Pilgrim**—I think we would need to take that on notice. As a result of our break-up of categories, and as small businesses have only cut in since December last year, we have not refined it down to that level of detail. However, we are happy to take it on notice.

**Senator KIRK**—Thank you. On another matter now, has the office received a complaint from Senator Bill Heffernan about Justice Michael Kirby?

**Mr Crompton**—Under circumstances such as that, quite properly we do not comment on the status of complaints that we have received. Sometimes the complaining party talks about that in the press, but that is all we are at liberty to say at this stage.

**Senator KIRK**—So you can confirm that a complaint was received?

**Mr Crompton**—No I cannot. To be as clear as I possibly can be, I am neither confirming nor denying that we have received that complaint.

**CHAIR**—The point you make, Mr Crompton, is that you are not commenting on an individual complaint as raised by Senator Kirk.

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**Mr Crompton**—Correct, as I would not with any other complainant.

**Senator Ellison**—It is inappropriate for there to be comment on a complaint generally. That is the point that has been made.

**CHAIR**—Thank you, Minister.

**Senator LUDWIG**—That would also include whether the complaints of others have been received. Is it the case that the Privacy Commissioner will not inform the committee of any other complaint? Is there a policy on that and, if so, where would I find it?

**Mr Pilgrim**—It is a longstanding policy with a number of complaints handling bodies that I am aware of that, given the nature of individual complaints, you will find they would neither confirm nor deny the existence of a complaint—

**Senator LUDWIG**—Yes, that is where the debate comes from.

**Mr Pilgrim**—unless there were exceptional circumstances. I can get you a copy of the general policy or approach that we use; I just do not have a copy now.

**Senator LUDWIG**—That would be helpful. I was trying to identify where. If you have a policy and you identify in it the nature of that issue, it would be helpful if you made that available to the committee as well.

**Mr Ford**—In addition to it being policy, there are legal requirements in the act which restrict what information can be conveyed to anyone else.

**Senator LUDWIG**—It would be helpful if you could point me to those as well. Clearly we will not press it.

**CHAIR**—Anything further for the Privacy Commissioner?

**Senator KIRK**—Yes, just one more matter. How many complaints have you received relating to conduct by employers in their capacity as employers?

**Mr Crompton**—Did you say received by employees?

**Senator KIRK**—Relating to the conduct of employers, I suppose from employees.

**Mr Pilgrim**—Perhaps I can answer that in two ways. First, I would like to check some of the exact numbers about complaints because, as you would be aware, there is an exemption for some employee-related matters under the act. I can advise you that this current financial year we have had 495 telephone inquiries regarding issues relating to employment. During those inquiries, we would undertake to advise the individual about the exemption. My understanding is that we would have received very few, if any, formal complaints. I would hope that the inquiry staff would advise the person of the exemption and that it was unlikely that we would have been able to investigate it. Having said that, I will take it on notice and check whether we have received any formal written complaints. However, as I have said, it is probably unlikely that we have received many, if any, at all.

**Mr Crompton**—It proves to be very difficult to gather the statistics. The table we are reading from has essentially placed each telephone inquiry into just one category which, if you like, is the dominant category of that phone call. The calls you get are often not complicated calls. A number of issues arise. It is really saying that those are the 495 that the deputy commissioner was talking about as primarily relating to employee records, but there may be employee record issues elsewhere through those complaints. It is very difficult to pull out the kind of number that you are talking about, but at least it is prima facie evidence that it is a matter of interest to people who are contacting us through telephone inquiries. We will come back with the answers with regard to complaints.

**Senator KIRK**—Are you aware whether the government has begun to review whether the Privacy Act should extend to employee records?

**Mr Crompton**—The Attorney announced during the parliamentary debate on the legislation that there would be such a review. Its exact status is probably best answered by the department.

**Senator KIRK**—Perhaps I will ask the department the status of the review.

**Mr Ford**—This review is being undertaken jointly by the department and the Department of Employment and Workplace Relations, and it will commence with the publication of an issues paper. We hope that that will be fairly soon.

**Senator KIRK**—What time frame are you looking at?

**Mr Ford**—We expect that a report will be furnished to ministers later this year.

**Senator KIRK**—Will the Privacy Commissioner be involved in that review? Will he be consulted?

**Mr Ford**—Yes, the Privacy Commissioner will be consulted and consultations will also take place with business, unions, state and territory governments and other key stakeholders.

**Senator KIRK**—Will they be invited to make written submissions?

**Mr Ford**—I am not sure at this stage exactly what form the consultations will take, but there certainly will be consultations.

**Senator LUDWIG**—You will recall that last time we talked about the number of small business telephone inquiries that you were receiving. Has that started to increase or decrease? I know that you cannot identify the range of issues, but have you had to put in a new telephone exchange? How is it going?

**Mr Crompton**—If we had the resources! The level of telephone inquiries increased more than a year ago and it has stuck fairly steadily at the same level. Inquiries did not take off again as a result of the commencement of the small business provisions. They are coming through at that steady rate. It seems to be levelling out at a rate of about 21,000 to 23,000 inquiries a year.

**Senator LUDWIG**—How many staff do you have to answer them?

**Mr Crompton**—Directly or supervisory as well?

**Senator LUDWIG**—The people who pick up the phone.

**Mr Pilgrim**—We have a small call unit, or inquiries unit, which is currently four people. That includes a supervisor and three staff who are directly answering calls, although the supervisor tends to help out on calls, depending on the day as it goes by. Those staff do not just answer calls; they sometimes deal with less complex inquiries that come into the organisation by email.

**Senator LUDWIG**—Have you looked at the morale in that unit or in other parts of your commission because of the nature of the increasing amount of work that you are undertaking, which you have explained to this committee?

**Mr Crompton**—I would like to think that, as an organisation with fewer than 40 people, we are acutely aware of those kinds of things on a daily basis, but we have not done a formal survey of any sort. I think they find the work hard, but I would like to think that they were doing it with good morale.

**Senator LUDWIG**—Have you commenced tracking things like sick leave or those sorts of issues? I can appreciate that it is always difficult, but have you tried to identify whether the nature of the work and the increased workload are impacting upon increased sick leave or other leave?

**Mr Crompton**—I am not aware of anything like that happening. We can look for some trend or pattern, but I do not think that there will be one. The deputy commissioner keeps a very close eye on those things and he may be able to do better than I right now.

**Mr Pilgrim**—One of the benefits of being such a small organisation is that you can work fairly closely with the staff at all levels in all of the different sections of the organisation. From my observation we are not seeing any increase or unusual rises in the level of staff taking sick leave and those sorts of issues. The advice I am getting, either directly from those staff or from their supervisors, is that morale is generally good in respect of the actual calls and the workload. We have roster systems in place for those staff to ensure that no one particular staff member is working for too long on the phones at any one particular time. They can vary their work by stopping for breaks and undertaking something such as written work so they get to think about the issues in a different way. We do have backup in the form of other staff who can come in and take their place. So my general answer would be that there have been no obvious signs of excessive leave being taken as a result of the amount of work in the organisation.

**Mr Crompton**—It has been a very hard couple of years for pretty well everybody in the office. They have worked extremely well. It has been a delight to work with everybody there. They have really put their elbows to the wheel, and that is continuing to occur. It is a wonderful organisation in which to work in that regard, and at the moment we are coping.

**CHAIR**—Thank you very much for assisting the committee, Mr Crompton and Mr Pilgrim. We will now deal with the Federal Court of Australia.

[12.27 p.m.]

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

**Senator LUDWIG**—I note that Justice Lindgren, in a judgment given last Wednesday which I suspect you are familiar with, decided that he would take into account the failure of the Attorney-General to appoint a replacement for Justice Katz in any application by the Commonwealth government or its ministers for an early hearing date. Minister, this must be a matter of profound embarrassment for the government given that the minister for immigration complains of delays in migration matters in the Federal Court. When can we expect the Attorney-General to finally appoint someone to replace Justice Katz?

**Senator Ellison**—I understand this is being considered at the moment. I do not know what stage that has reached. I understand that Justice Katz retired on health grounds in March 2002. I will take your question on notice, take it up with the Attorney and see whether there is anything further he can add.

**Senator LUDWIG**—It has been 11 months by my calculations. I do not know, Minister, whether you have had the opportunity to read the matter of *NAKY v. the Minister for Immigration and Multicultural and Indigenous Affairs* [2002], but I invite you to read Justice Lindgren's short statement. It is of great concern to me that it has been 11 months and that the court is now making statements about it. It appears that the government is not taking the matter seriously.

**Senator Ellison**—I am sure the Attorney-General is. I will certainly undertake to convey your concern to the Attorney-General and the fact that it was raised here, ask him if there is anything further I can add and get back to you as soon as we can.

**Senator LUDWIG**—Thank you, Minister. Mr Soden, how many applications have there been under the Judiciary Act in this financial year for the review of decisions under the Migration Act?

**Mr Soden**—I do not think I can give you the precise number. In anticipation of those sorts of questions, we have put together quite a comprehensive collection of statistics concerning migration cases. I anticipated the possibility of being able to table that collection of statistics, which I think will answer many of the questions that you might have.

**Senator LUDWIG**—I have 10 or 11 in that area on statistics so, if that could be made available to the committee, I might be able to rule those through.

**Mr Soden**—There are two documents I might table.

**CHAIR**—Could we have those two documents collected for tabling.

**Senator LUDWIG**—While those documents are being photocopied, I would like to ask about case management. I think you might have been here when I spoke to the Federal Magistrates Service.

**Mr Soden**—I was.

**Senator LUDWIG**—I think we were tracking whether you have made a decision about your system. You have got FEDCAMS, haven't you?

**Mr Soden**—Yes. Our existing system is called FEDCAMS, and we have made a decision to apply the Casetrack system. Unfortunately, you may not have seen it, Senator, but we did send a letter to the committee asking that that decision be brought to your attention late last year. We have made that decision and we are in the process of reconfiguring the system to meet our needs. I can confirm what Peter May said, and that is that we hope to go live with that new system in June this year.

**Senator LUDWIG**—I am sorry, I would have looked out for that letter. I may have missed it. Sometimes, if they come to my parliamentary office, they get bundled up and sent to my staff.

**Mr Soden**—I did promise to let you know.

**Senator LUDWIG**—They may not have been brought it to my attention, but it would be my fault, not theirs. You are now moving to Casetrack. When will it come live?

**Mr Soden**—We are in the process of reconfiguring it now to meet our needs. We plan to go live at the end of June or on 1 July.

**Senator LUDWIG**—When you say, 'going live', what does that exactly mean?

**Mr Soden**—It means we will transfer the computer support operations from FEDCAMS, our existing system, to Casetrack.

**Senator LUDWIG**—Will there be an external difference when people want to access the information?

**Mr Soden**—No.

**Senator LUDWIG**—For people making or filing applications?

**Mr Soden**—It is only internal at this stage.



**Senator LUDWIG**—So it is only used in terms of the judges are tracking the internal cases?

**Mr Soden**—It is primarily an administrative case management support system. However, it is our plan to build onto it to integrate our e-filing and our e-court system, which are not integrated with FEDCAMS at the moment but which we do plan—

**Senator LUDWIG**—That is what I was trying to understand, because FEDCAMS is a bit broader than case management, isn't it, in the sense that it interacts externally as well, and you file documents?

**Mr Soden**—No, it does not. That is the problem with FEDCAMS. Our e-filing and our e-court systems work separately from FEDCAMS. FEDCAMS is an old system; it is not a system you would want to invest in to upgrade it to be integrated with the new e-filing and e-court facilities. Casetrack is more modern and we can integrate—

**Senator LUDWIG**—I had confused that, I am sorry.

**Mr Soden**—Our plan for the future is to enable external users, through the electronic filing and the e-court, to come into an integrated system, and Casetrack will enable us to do that. We are presently talking with the Family Court and the Federal Magistrates Court about those integration issues for them in the future as well, because we have done a lot of work in the development sense with our e-court and e-filing. Neither the Family Court nor the Federal Magistrates Court have yet gone down that track. We think we will be able to combine our experience and our resources to produce a system that will be much better than each of the existing systems.

**Senator LUDWIG**—Has the initial cost of that development all been met in-house?

**Mr Soden**—Yes, it has all been met in-house.

**Senator LUDWIG**—What has been the total cost to date? If we differentiate it from your electronic matters, what has been the change from FEDCAMS to Casetrack?

**Mr Soden**—It is all costs that are going to be incurred in the future. When we implement the Casetrack system and have to pay the Oracle license fees—

**Mr G. Foster**—Perhaps I can help. The first costs we will have in terms of the Casetrack system relate to perhaps some infrastructure costs with the Family Court in terms of servers, IT equipment and network costs. Then certainly there will be some costs in terms of some programmers to make the modifications we require. So our costs to date are very negligible. We will not, in fact, know quite the order of the cost for the programmers until we complete our discussions with the Family Court.

**Mr Soden**—From my perspective, the costs all up are negligible compared with what might otherwise be the development cost of going to a different system with an external developer. By keeping it in-house within the existing courts and taking advantage of the Family Court, as is presently done, it produces a great saving for us.

**Senator LUDWIG**—I want to turn back to earlier matters and the figures that you provided this morning. I appreciated that summary. They do not show—or perhaps you can point them out to save time—whether or not the plaintiff S157 against the Commonwealth has been reflected. I think I heard from the High Court this morning that a significant number of cases have been referred to another court.

**Mr Soden**—The information that I have given is really up to that point in time. I should explain the meaning to us of that curve. If you look above the September 2001 quarterly point, that was the point the number of migration applications reached immediately prior to

the prohibitive clause legislation that came in, effective 1 October. Then there has been a decline, in anticipation of the effect of that clause, which meant that there would not be many more migration matters in our court. Of course, that has all been turned around as a result of the High Court's decision last week.

I think our starting point for the future is likely to be back at that September 2001 mark and, instead of the curve going down, it is likely to go up. The first indication of that is, of course, the 700-odd matters being remitted to our court by the High Court. As to the status of all of those matters, I can confirm from what the High Court said this morning that it is still a little unclear. As they are calling them over, we are getting information about the results of those call-overs and, yes, some have been withdrawn and some are being settled by consent, but clearly the large majority of the 700 is going to come back to three locations primarily: Sydney, Melbourne and Adelaide.

In terms of the effect of the decision for the future, it seems to be, on all indications, that the jurisdiction is back. As a starting point, depending on what goes through the Migration Review Tribunal and the Refugee Review Tribunal—and in that sense it is a little unclear what their workload will be—it is expected that our migration workload will increase quite substantially.

In terms of transfers capability to the Magistrates Court, although the issue has not been judicially tested, it appears that the Federal Court will not be able to transfer those matters remitted from the High Court on the basis that the transfer provisions seem to indicate that we can only transfer matters to the Magistrates Court that were commenced after 1 October 2001. I think most of these actions are prior to that date. That is not absolutely clear but that is the early indication. So, although a large number of migration cases have been transferred to the Magistrates Court in the past—and with Mr May's consent I can table some precise figures along those lines; after he gave evidence I checked with him and he is happy to give you that—whether we could do that in the future is unclear. Of course, the capacity of the Magistrates Court to receive transfers is another issue.

**Senator LUDWIG**—Do you liaise with them about their capacity to receive them, or is that a matter that you will get separate advice on?

**Mr Soden**—There are two answers to that. We have been liaising with them continuously through the Chief Magistrate's office and on a local basis in relation to the capacity for transfer. For example, judges in the respective states will consult with the local magistrate in relation to when hearing dates can be given for transferred migration matters. Judges will then make a decision about whether the magistrates can hear those matters sooner than our court can. Often our judges decide that they can squeeze a migration case into their dockets sooner than a magistrate can hear it and, therefore, will not transfer it. However, in the broader strategic sense—keeping in mind that the system will work better in the future if only one magistrate and one judge deal with migration matters rather than four judges at the Federal Court—we have raised with the Magistrates Court, informally at this stage, how we might deal with this work in the future, because from our perspective it is better for the resources of the Magistrates Court to increase rather than the resources of the Federal Court to increase. That is in strategic structural terms, if I can put it that way.

**Senator LUDWIG**—Have you spoken to them about that view?

**Mr Soden**—Yes, we have. The impetus to do something sooner rather than later, in relation to the broader transfer issue, was highlighted as a result of the High Court's decision last week. Prior to that there was uncertainty about whether there would be a jurisdiction. Now it seems clear that there is. The need to consult with the Magistrates Court on a formal basis has

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been considered, certainly in our court, and I have discussed it informally with Peter May. The Chief Magistrate is away on leave at the moment. I suspect that as soon as she returns there will be some meetings to work out in a structural way how we might deal with the workload.

**Senator LUDWIG**—So you now expect, as a consequence of the High Court's decision, that migration matters will come from the Refugee Review Tribunal or the migration tribunal to the Federal Court, or matters will be filed in the Federal Court in the first instance?

**Mr Soden**—Yes, subject of course to the output of those tribunals. If we assume that applications will be made to those tribunals and there is an output, whatever it is in the future.

**Senator LUDWIG**—Going on past output.

**Mr Soden**—Yes.

**Senator LUDWIG**—Does that have resource implications for your court? Have you looked at what resource implications it might have? If you look at the current output of those tribunals—in other words, where your work is likely to come from—now that the High Court has given a decision in the plaintiff against the Commonwealth, you are likely to have some, if not all, of those matters turn up in your court.

**Mr Soden**—I think I have indicated in this place in the past that we would not have the capacity with our existing resources to deal with so many migration cases, particularly in the registries. I will come back to that in a moment. As I have said, we do not see the solution in a strategic sense necessarily being extra judges for the Federal Court. That is why I mentioned that we need to consult with the Magistrates Court on the question of what resources they might need for extra matters being transferred from us to them. I suppose the point I should make in terms of resources is that our registry performs the registry work of the Federal Court and the Federal Magistrates Court. If all of this work comes back to the extent that it looks like it will, we are going to have to look at the question of resources for our registry.

**Senator LUDWIG**—Have you set down a plan for that? I guess it is on your doorstep, isn't it?

**Mr Soden**—It is on the doorstep this week, and we have to consult closely with the Federal Magistrates Court about that because we perform their registry services for them as well. So, jointly, we will be looking at that quite urgently.

**Senator LUDWIG**—What do you intend to do?

**Mr Soden**—In terms of the resources we might need, there are the usual processes for obtaining resources, of course. But, in the meantime, we will just have to manage as best we can with the work that comes in, as it comes in.

**Senator LUDWIG**—Do you expect delays to occur as a consequence?

**Mr Soden**—That is always a risk, yes, of course. We have time goals that we seek to achieve in the processing of migration cases, but, if the court clearly is swamped beyond the capacity to meet those goals, delays will occur.

**CHAIR**—As I understand it, we have nothing further for the Federal Court, Mr Soden and Mr Foster. Thank you very much for assisting the committee.

[12.47 p.m.]

### **Australian Crime Commission**

**CHAIR**—Good afternoon, Mr Bradley. I welcome you as the Acting Chief Executive of the Australian Crime Commission on this occasion. I think on the last occasion it was the NCA. Senator Ludwig, would you like to begin?

**Senator LUDWIG**—Going to the area of corporate services, which I think we were following up last time, you might recall, Mr Bradley, at the last round of estimates you told the committee that \$4.3 million or \$3.4 million—I forget the exact figure—was spent on the co-location of the former NCA with the AFP in the Melbourne office. It has been paid ‘out of the cash reserves of the NCA with a view to borrowing from the department of finance’, I think the quote was. You said that it had not yet been determined whether or not the loan funds would be made available. Has the determination been made yet?

**Mr Bradley**—The figure today is \$3.6 million and, no, a determination has not been made as to whether that will be the subject of a loan.

**Senator LUDWIG**—Why not?

**Mr Bradley**—That is not a matter for me. I understand that it was informally arranged that it would be the subject of a loan and that the discussions about that have been caught up in the more general discussions about the funding of the ACC.

**Senator LUDWIG**—What do you mean by ‘caught up in the more general discussions about the funding of the ACC’? Do you not have the NCA’s former budget? You transferred on a particular date, didn’t you?

**Mr Bradley**—The funding for this year, yes. One of the issues was the depletion of the cash reserves. They have been largely restored during the course of the financial year and so it is not the problem that it was. But, as I understand it, the discussions are ongoing. It has not been resolved. I personally do not think it is a big issue, firstly because a loan is just that: it is a debt on one side of the balance sheet, represented by items on the other side. The impacts on the cash reserves have been overcome.

**Senator LUDWIG**—How have they been overcome?

**Mr Bradley**—By generation of funds in the bank account.

**Senator LUDWIG**—How does that happen?

**Mr Bradley**—It is through allocated funds being banked rather than spent, in simple terms.

**Senator LUDWIG**—Unfortunately I am not an accountant. This is the way I see it, and perhaps you will agree or disagree with me, or assist me. You started with \$3.6 million loan. In other words, it had been taken out of cash reserves so that it was not available to you to use for normal administrative functions, whatever you would normally use cash reserves for. You now say that you have been able to find cash reserves through negotiation. Where does the cash come from?

**Mr Bradley**—The cash comes from the allocation. As I understand it—and Mr Hickman could be more specific about this—the funds arrive over the period based on a projected expenditure pattern and the expenditure pattern has been such that savings have been accumulated. They appear in the accounts as cash reserves.

**Mr Hickman**—That is substantially correct. The funds that were held in our balance sheet largely represented funds accumulated in respect of employee entitlements and accumulated depreciation, so the diminution of those funds did not directly impact on operations. Nevertheless, over the last seven or eight months there has been a reduced level of expenditure within the NCA and the then ACC as we have gone through the transition process. That has led to an accumulation of funds such that the prospective problem of a cash shortage has not arisen.

**Senator LUDWIG**—So the increase in cash reserves is a direct result of not spending the funds on employee entitlements?

**Mr Hickman**—That is one of the reasons for it. I suspect that there have been other areas of outlays that have been less than might have been expected because of the challenge of managing through this transition period.

**Senator LUDWIG**—I wonder if you could give me a breakdown of where that cash has predominantly—not down to the last dollar—come from. I am happy for you to take that on notice.

**Mr Hickman**—I will take that on notice, thank you.

**Senator LUDWIG**—How has that impacted on your ability to operate? Correct me if I am wrong, but if you are saving on wages and employee entitlements—in other words, your cash is increasing, so presumably you are not spending on employees or their entitlements—then you have fewer people available to do the required work of the new ACC. Is that right? That is how I would see it.

**Mr Bradley**—As a logical proposition I think it is.

**Senator LUDWIG**—So how is that impacting upon your ability to do the work? As I understand it, you are telling me that you have fewer people as you have saved some money. With fewer people, are you meeting all the program needs that you are required to meet?

**Mr Bradley**—I believe so.

**Senator LUDWIG**—You say ‘believe’. I wonder if you could be a bit more confident than that. Are there targets?

**Mr Bradley**—Yes.

**Senator LUDWIG**—Are you meeting all your targets?

**Mr Bradley**—Yes.

**Senator LUDWIG**—So the work is being done?

**Mr Bradley**—Yes.

**Senator LUDWIG**—And you have fewer bodies to do it?

**Mr Bradley**—Yes.

**Senator LUDWIG**—What is their stress level like?

**Mr Bradley**—This would be a subjective assessment based on a very little survey of staff, but there have been issues about the future: certainty of employment and the directions that the organisation will take. As far as I am able to glean from direct contact with staff, through staff meetings in every office and through individual contact and bits of anecdotal information that come forward, I think that the staff have a tolerable level of stress, given the nature of the work we do and the volume of work which we face in the long term. I do not think there is

evidence of abnormal levels of stress as a consequence of an overall reduction in staff numbers against a fairly constant level of work.

**Senator LUDWIG**—How many people have not transferred to the ACC or have left the organisation—in other words, what numbers have dropped and from what areas? I am happy for you to take that on notice. More specifically, if you have a general number that would be fine, but I was also looking for what programs may have fewer numbers in them so I am seeking figures by program.

**Mr Bradley**—In general terms, the numbers have dropped only marginally. There has been a reduction from, I think, 31 December, when the changeover occurred, of only about four in the NCA, maybe one or two in OSCA and perhaps three or four from the ABCI numbers.

**Senator LUDWIG**—Are the ACC employees on contracts—12-month contracts or ongoing contracts—or are they directly employed?

**Mr Bradley**—A large number of them were employed under a certified agreement which expired at the end of the NCA. There are a number employed under Australian workplace agreements. There are a number within the ABCI with a similar sort of mix. All of the employees in the three former agencies transferred to the ACC on similar, if not identical, terms to those which applied to them prior to 1 January. Of those employees in those categories, there are a proportion on non-ongoing contracts.

**Senator LUDWIG**—What is a non-ongoing contract?

**Mr Bradley**—It is employment for a limited term. Most public servants are employed for indefinite terms. These people are employed for terms that expire on a particular date. Usually that is for a reason. One example I can think of which would account for a substantial number of those who have left the organisation would be those involved in things like sorting out the records, exhibits, registry processes and things like that—they were employed for a relatively short period.

**Senator LUDWIG**—Of the non-ongoing employees that are currently with you, how many would be in that category and what areas would they be from?

**Mr Bradley**—I think they are pretty much across the board, and there is a large proportion—in the order of 40 per cent—which, relative to the Public Service generally, is high. But I think that figure is brought about by the fact that most of them were employed in the NCA environment and against the possibility that the NCA would change in the foreseeable future at the time they were employed.

**Senator LUDWIG**—To put it in my words: they were employed during the former NCA's life when they knew that it was going to become the ACC and so they put them on non-ongoing contracts or short contracts so that they could then manage the closure of that chapter.

**Mr Bradley**—That certainly accounts for a proportion of them.

**Senator LUDWIG**—Now the ACC is off and running, what are you going to do about them?

**Mr Bradley**—A number of others were employed against programs for which funding was tied—something we discussed on the last occasion—and there is an issue as to whether the tied funding for particular programs will be rolled over into the next financial year. Until that is resolved it would not be prudent employment practice to enter into employment contracts with persons which extended beyond the period of the current funding arrangements.

**Senator LUDWIG**—Which programs are they?

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**CHAIR**—Senator Ludwig, it being one o'clock, the committee will break for lunch. I will consult with you to determine what you want to do in relation to the post 2 p.m. period.

**Mr Cornall**—Madam Chair, before we finish I would like to put it on the record that my understanding is that on 30 June 2001 the NCA staff, including seconded staff, totalled 395. On 30 June 2002, it was 406; on 31 December 2002, it was 423. We should have those figures in our mind. On those figures, certainly as at 31 December, there has been no significant reduction—in fact there has been an increase—in staff of the NCA.

**CHAIR**—Senator Ludwig, as I indicated this morning, we had an agreement to go to Indigenous affairs for approximately one hour at 2 p.m. We will be doing so. We will resume immediately after that with the Australian Crime Commission.

**Proceedings suspended from 1.01 p.m. to 2.02 p.m.**

**IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS  
PORTFOLIO**

Consideration resumed from 20 November 2002.

**In Attendance**

Senator Ellison, Minister for Justice and Customs

**Department of Immigration and Multicultural and Indigenous Affairs**

**Executive**

Mr Bill Farmer, Secretary

Mr Ed Killesteyn, Deputy Secretary

Ms Philippa Godwin, Deputy Secretary

**Outcome 1—Contributing to Australia's society and its economic advancement through the lawful and orderly entry and stay of people**

Mr Abul Rizvi, First Assistant Secretary, Migration and Temporary Entry Division

Ms Arja Keski-Nummi, Assistant Secretary, Temporary Entry Branch

Mr Bernie Waters, Assistant Secretary, Business Branch

Mr Chris Smith, Assistant Secretary, Migration Branch

Mr Peter Hughes, First Assistant Secretary, Refugee and Humanitarian Division

Mr Robert Illingworth, Assistant Secretary, Onshore Protection Branch

Mr John Okely, Assistant Secretary, International Cooperation Branch

Ms Jo Baker, Acting Assistant Secretary, Humanitarian Branch

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

Ms Rosemary Greaves, Assistant Secretary, Detention Policy Branch

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

Mr Vince McMahan PSM, Executive Coordinator, Offshore Centre Management and Infrastructure Division

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

Ms Yole Daniels, Assistant Secretary, Offshore Asylum Seeker Management Branch

Ms Lesley Daw, Acting Assistant Secretary, Detention Strategy Branch

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

Ms Nelly Siegmund, Assistant Secretary, Border Protection Branch

Ms Janette Haughton, Acting Assistant Secretary, Onshore Compliance and Integrity Support Branch

Mr Steven Larkin, Director, Intelligence Analysis Section

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

Mr John Eyers, Assistant Secretary, Legal Services and Litigation Branch

**Outcome 2—A society which values Australian citizenship, appreciates cultural diversity and enables migrants to participate equitably**

Mr Peter Vardos PSM, First Assistant Secretary, Citizenship and Multicultural Affairs Division

Ms Jennifer Bryant, Senior Assistant Secretary, Settlement Branch

Mr David Doherty, Assistant Secretary, Citizenship and Language Services Branch

Dr Thu Nguyen-Hoan PSM, Assistant Secretary, Multicultural Affairs Branch

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**Outcome 3—Sound and well-coordinated policies, programs and decision-making processes in relation to Indigenous affairs and reconciliation**

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

Ms Dianne Hawgood, Executive Director, Indigenous Community Coordination Taskforce

Ms Michelle Patterson, Assistant Secretary, Indigenous Community Coordination Taskforce

**Internal Products**

Mr Jim O'Callaghan, Acting First Assistant Secretary, Corporate Governance Division

Ms Louise Gray, Chief Financial Officer, Resource Management Branch

Mr Douglas Walker, Assistant Secretary, Visa Framework Branch

Mr Andrew Endrey, Acting Assistant Secretary, Ministerial and Communications Branch

Ms Cheryl Hannah, Chief Information Officer, Business Solutions Group

**Aboriginal and Torres Strait Islander Commission**

Mr Wayne Gibbons, Chief Executive Officer

Mr Bernie Yates, Executive Coordinator

Mr Mick Gooda, Executive Coordinator

Mr Brian Stacey, Manager, Land and Development Group

Mr Les Turner, Manager, Culture, Rights and Justice Group

Mr Peter Schnierer, Manager, Coordination and Review Policy Group

Mr Rod Alfredson, Director, Office of Evaluation and Audit

Mr Peter Taylor, National Policy Manager

Mr Paul Barrett, Chief Finance Officer

Mr John Kelly, Manager Network

**Migration Agents Registration Authority**

Andrew Cope, Director, Migration Agents Registration Authority; National Vice-President, MIA

Len Holt OAM, Director, Migration Agents Registration Authority; National Vice-President, MIA

John Young, Director, Migration Agents Registration Authority; Victorian State President, MIA

Ray Brown, Director, Migration Agents Registration Authority; Past President, MIA

Venie Ann Moser, Deputy Executive Officer, Migration Agents Registration Authority

Allisar Katrib, Professional Standards Officer, Migration Agents Registration Authority

**CHAIR**—I call the committee to order. The committee will now resume this public hearing of the Senate Legal and Constitutional Legislation Committee with the examination of the proposed expenditure for the Immigration and Multicultural and Indigenous Affairs portfolio specifically relating to the Indigenous affairs area. I again welcome Senator the Hon. Chris Ellison, Minister for Justice and Customs and Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs, the department, Mr Farmer and associated agencies.

Before we begin I advise officers that the committee has agreed to the date of Wednesday, 19 March for receipt of answers to questions taken on notice and any additional information. 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 the discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly

provided otherwise. I also remind officers that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister.

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

**Mr Farmer**—No.

**CHAIR**—Minister?

**Senator Ellison**—No, Madam Chair.

[2.04 p.m.]

**CHAIR**—We will begin with questions under outcome 3—Sound and well-coordinated policies, programs and decision-making processes in relation to Indigenous affairs and reconciliation.

**Senator LUDWIG**—What has been the government's response to the Gordon inquiry in WA?

**Mr Vaughan**—It was a WA government inquiry, as you are aware, Senator, and the WA government has issued a response to it. The Premier wrote to the Prime Minister and the Prime Minister offered the Premier whatever cooperation and assistance of a specific kind he might need from the Commonwealth. Commonwealth agencies at the local level, at the state level, have obviously been involved in dialogue with the Western Australian government but, other than operational needs at the local level, there have been no explicit requests from the WA government for a more substantive Commonwealth response at this stage.

**Senator LUDWIG**—Is there any intention to make a response?

**Mr Vaughan**—Not a response to the inquiry report by the Commonwealth because it was not a Commonwealth inquiry. But an assurance has been given that whatever is required of the Commonwealth, the Commonwealth will look at very positively. As I said, a lot of the involvement of the Commonwealth so far has been at the operational level in Western Australia.

**Senator LUDWIG**—You said that the WA Premier corresponded with the Prime Minister. Was there a request for assistance, and what has the response been?

**Mr Vaughan**—It was in generalised terms. The Minister for Family and Community Services in her portfolio has the primary carriage of it at the Commonwealth level.

**Senator LUDWIG**—Do you know whether your office will be examining the report to make any detailed recommendations to this government about it?

**Mr Vaughan**—We have examined the report. Most of the recommendations deal with state government policies and administrative arrangements. They are not directly or specifically addressed to Commonwealth agencies. It is in the nature of the child protection issue which the report was examining.

**Senator LUDWIG**—I notice that WA's commitment has been something in the order of \$75 million.

**Mr Vaughan**—Yes.

**Senator LUDWIG**—Do you know whether this government is going to commit funds to the project?

**Mr Vaughan**—We have not received a request for financial assistance of that kind from the Western Australian government.

**Senator LUDWIG**—Have you examined any proposals to consider whether financial assistance would be needed?

**Mr Vaughan**—The Department of Family and Community Services, which has the main carriage of the issue, may be more aware of that than I am.

**Senator LUDWIG**—Do you know whether there are any plans afoot to have this type of inquiry made in other states?

**Mr Vaughan**—Not that I am aware of.

**Senator LUDWIG**—The other area about which I have been requesting information from you concerned those advisory committees and task forces or reference groups, more generally speaking. It would be helpful if you had a list of the advisory groups or task forces or any other reference groups established—we will say from March 1996 or 1997—at least those that are ongoing or are still having some input, including perhaps their terms of reference and their membership. I am happy for you to take that on notice. I know it might be a reasonable task but it would be helpful at least to me, if not the committee, to understand the range of task forces and their work or the nature of the work that they are undertaking.

**Mr Vaughan**—For the purposes of clarification, do you mean in relation to this question of child protection—

**Senator LUDWIG**—No, more broadly.

**Mr Vaughan**—More broadly in relation to Indigenous affairs. In relation to this portfolio—

**Senator LUDWIG**—Yes.

**Mr Vaughan**—The Aboriginal affairs portfolio at the federal level.

**Senator LUDWIG**—Yes, Indigenous affairs. Some of the questions I have asked at previous estimates hearings revolved around whether they are advisory committees or ongoing or standing committees. It might be my error—I sometimes get a little bit confused with ongoing committees or whether they are task forces with a finite life and who is on them and the nature of their work. I thought that you might be able to—

**Mr Vaughan**—I think we can fairly readily assemble such a list in respect of those committees and task forces that exist at the moment. Going back perhaps four, five or six years to those that no longer exist might be a bit problematic. I presume the contemporary ones are the main ones of interest?

**Senator LUDWIG**—Yes. We will look at the contemporary ones, then we will see about the others. Depending on the nature of those that may have lapsed, if they are easy to identify, then we will look at them. If they prove to be more difficult, perhaps we can ask the committee what we should do then. We will be seeing you again in May, so we can always follow up then if we need to. The type of material that might be helpful to the committee would be an example of the time line of the operations of each of the task forces or advisory committees: how long they were supposed to last and whether there was any extension of time. I am interested to know if they were regularly attended or, if there were meeting requirements—such as to meet once a quarter—whether they were undertaken and continue to

be undertaken or whether there have been changes to the way the committees or task forces operate. I am also interested in their budget: the nature of the budget, how much is required, whether they have been spending their budget and the extraneous costs that might be required, such as the cost of making documents available. Where they require or undertake community consultation such as roundtables or forums, could you tell us where they have been held, who has participated from the advisory committee or the task force and whether or not groups attended. I am interested not so much in individuals but in who, if they held a forum and asked organisations to come along, the organisations were.

That would very much depend on the nature of the information you had on hand. I am trying to give you a flavour of the level of detail I would like. I am after not just the top level but a bit more depth, to establish what these committees do. If they have produced any reports, could this committee have a copy of those reports and an indication of how long the report took from the date the committee decided it would write a report to the eventual report outcome. I would also like to know whether they required any government response. If that information is forthcoming, perhaps tie that to it so that I can see whether or not the government has responded. If there are any outstanding responses, they can be asterisked so that we can identify them. I have a couple of other matters to raise, but I will put them on notice. I will draw them up, to make them easier to follow, and I will provide them before the dinner break or earlier.

**CHAIR**—Certainly, Senator Ludwig. That is fine. That is very helpful.

**Senator LUDWIG**—That is all I wanted to ask Mr Vaughan.

**CHAIR**—Thank you very much for your assistance, Mr Vaughan.

[2.15 p.m.]

#### **Aboriginal and Torres Strait Islander Commission**

**CHAIR**—Good afternoon, Mr Gibbons, gentlemen. Thank you very much for attending this afternoon.

**Senator LUDWIG**—There was, I think, a report in the *Australian* of 13 December last year in relation to a person from your organisation that had been suspended because of a letter. I think a second article on the same subject appeared in the *Canberra Times*. The report, as I am informed, said that the media director, Brian Johnstone, had been suspended over an alleged breach of the APS Code of Conduct. Can you tell me something about that?

**Mr Gibbons**—I cannot tell you, at this stage, much at all, Senator. The officer in question was charged with misconduct under the code of conduct of the Public Service.

**Senator LUDWIG**—If it is sub judice, then by all means please claim that.

**Mr Gibbons**—There is an investigation by an independent person in train. That investigation has not yet reported. The media report involves a lot of speculation and inaccuracy.

**Senator LUDWIG**—Do you want to put anything on the record that might clarify that? If you say that the *Australian* and the *Canberra Times* have inaccuracies, then unfortunately I have adopted them, in the sense of reading them and now seeking some clarification of them. If there is any information that you can provide, it would be helpful. If there were certain inaccuracies or inconsistencies or something like that which you wanted to make plain, now is your opportunity.

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**Mr Gibbons**—I think the only point I would make is that the reason for the investigation is alleged to have been a letter. There is more to it than that. But beyond that I will leave it for the investigation to determine.

**Senator LUDWIG**—When is that likely to be completed? I am told that the officer was highly regarded by many former and current commissioners, so I hope that the matters are quickly dealt with, a finding is made and the matter is closed. How long will that take?

**Mr Gibbons**—I expect that there are a few more weeks to go yet, Senator.

**Senator LUDWIG**—Perhaps you could take it on notice to tell me, when that investigation is completed, its cost. And perhaps you would advise of what the outcome is, if it is made public. If it is not, we might wait till May and see what we can find out from you about it.

**Mr Gibbons**—I will take that on notice and provide a response to the extent that the Public Service Act permits.

**Senator LUDWIG**—Yes. I certainly do not want you to go outside of that.

**Mr Gibbons**—I should make it clear that the officer was a contractor, not a permanent officer of the Public Service.

**Senator LUDWIG**—That is what I was encouraging you to at least advise the committee. If there were any matters that can be put into the public domain which are helpful and do clarify the issue, it would be helpful, but if you cannot say anything, I understand that as well. In respect of the tent embassy report, does your organisation agree with the recommendation?

**Mr Gibbons**—I do not have a view on a policy question like that.

**Senator LUDWIG**—Mr Farmer?

**Mr Farmer**—I will get my trusty Mr Vaughan to come up to the table.

**Mr Vaughan**—As to the question of policy, that is really a matter for the minister concerned. Mr Tuckey has got ministerial responsibility for territories, and I am not sure who represents him or which committee that would be under in the Senate. I can take questions on notice and convey them to the appropriate minister if there are any questions of policy.

**Senator LUDWIG**—The main issue in the consultant's report, as you may be aware at least from Mr Tuckey's comments, is that they are looking at a permanent facility of some description—at least that is what I can glean from the report—and I was wondering whether that was true and, if it were true, whether ATSIC had been consulted about that or whether they agreed with it. It seems to be a relevant matter that I thought Mr Gibbons could comment on.

**Senator Ellison**—As to whether ATSIC has been consulted, certainly people can answer that here, I guess.

**Mr Vaughan**—Senator, could I ask, by way of clarification: is the report you are referring to the one that I think came up in discussion at our last hearings? The ATSIC regional council in Queanbeyan had commissioned a consultant to mediate between some of the principal stakeholders about the future of the tent embassy.

**Senator LUDWIG**—Yes, unless there is another one floating around.

**Mr Vaughan**—That is the only one I know of; I was checking we were talking about the same one. I am not sure that report has been finalised yet. Perhaps one of our colleagues from ATSIC may know, but when I last heard I did not think it had been.

**Mr Gibbons**—If that is the report to which you refer then that is still in the consultative phase; there is no report on it.

**Senator LUDWIG**—Was I on to something else then? Is there something else floating around that I am unaware of? Don't answer that!

**CHAIR**—I am sure that is not possible, Senator Ludwig!

**Mr Gibbons**—You referred to a report, Senator, and I do not have a report.

**Senator LUDWIG**—I did not think there were too many reports about the tent embassy. Maybe you did not hear the 'tent embassy' phrase in front. So where are we, then? Are we still waiting for the report?

**Mr Gibbons**—They are still consulting with stakeholders.

**Senator LUDWIG**—I guess Mr Tuckey knows about it ahead of time, because he seems to have made some statements—or are they separate from the consultant's report? I will ask.

**Senator Ellison**—I will take it on notice.

**Senator LUDWIG**—I just would not mind it clarified.

**Mr Gibbons**—I am expecting that the report will be made available to the regional council of ATSIC in Queanbeyan around April.

**Senator Ellison**—There have been comments about structures which are a quite separate aspect to the embassy, which have been erected there, and there have been comments about taking them down. That is another issue dealing with safety and all sorts of things, so I think there have been comments on that. But I will take it on notice.

**Senator LUDWIG**—I think it is one of those areas that need to be dealt with sensitively to ensure that there are not any rumours. In relation to the Indigenous language and interpreter service, can you tell me how much money has been allocated to Indigenous language services in the last financial year or the year before that?

**Mr Gibbons**—Yes, we have those figures. I can provide those on notice for you.

**Senator LUDWIG**—What types of projects do these funds include?

**Mr Gibbons**—I can give you a brief summary, but in a written response I can give you some more input.

**Senator LUDWIG**—Yes, perhaps you can take it on notice in terms of each service and the amount that has been expended on it. If there is a more general—

**Mr Gibbons**—It is directed towards the preservation of Indigenous languages.

**Senator LUDWIG**—And that service is ongoing. Is there a review going on in relation to it?

**Mr Gibbons**—No, there is not a review of that currently—not that I am aware of, anyway.

**Senator LUDWIG**—Is there any information that you have or that you have been exploring as to whether or not it is helpful in reducing juvenile detention?

**Mr Gibbons**—Personally, I am not aware but, in the response that I provide, I will look at that aspect for you.

**Senator LUDWIG**—Are the services mostly funded out of your organisation or are other funds accessed from other areas as well?

**Mr Gibbons**—The funds we provide are directed towards the preservation of existing Indigenous languages. This involved interviewing existing living speakers of those languages, documenting the structure of those languages and recording that for posterity. We fund a number of organisations who conduct that work across the country.

**Senator LUDWIG**—Has that been the same amount that you have been funding in the last couple of years or has there been an increase or decrease in the amount that you have set aside?

**Mr Gibbons**—There has been an increase over recent years but I am not aware of exactly what it is. I will report that in the response that I give you.

**Senator LUDWIG**—Do you have a rough figure as to how much that is funded to?

**Mr Barrett**—At present the preservation of Indigenous languages has a budget of about \$5.8 million.

**Senator LUDWIG**—I asked the office about the WA Gordon inquiry. Do you have a separate view about whether or not you will be responding to it?

**Mr Gibbons**—The issues identified in the inquiry are issues that are critical to many of the interventions that we make across Australia. ATSIC is responsible in many of the remote areas for the provision of infrastructure, services, assistance with supporting language, and support for people who are victims of family abuse and substance abuse. In recent months we have been looking at how these might be better structured and targeted in ways that are consistent with the report findings. We are working very closely with the government of Western Australia through a framework agreement that we have in place that involves all the ATSIC regional councils in Western Australia working with the relevant state government agencies in the provision of joined-up services targeting the outcomes that are desired in the report.

**Senator LUDWIG**—Is the framework agreement that you have just mentioned an ongoing agreement or has it been newly struck?

**Mr Gibbons**—It has its origins in the last 18 months. It is one of the more successful agreements that we have with the states.

**Senator LUDWIG**—Could you explain the nature of that agreement?

**Mr Gibbons**—It is effectively a partnership arrangement whereby the states recognise ATSIC, recognise the regional council planning framework and participate within that planning process to ensure that the various services that state government agencies provide—housing, education, infrastructure—are tailored to work with other services that ATSIC provides, and that other Commonwealth agencies provide, within a framework of a regional council plan. Under that agreement the regional council is involved in guiding the decisions on state government programs as well as our own.

**Senator LUDWIG**—That has been struck in the last 18 months?

**Mr Gibbons**—It was certainly negotiated and signed before I arrived at ATSIC. I think it is about 18 months old.

**Senator LUDWIG**—Is that reflected in other states?

**Mr Gibbons**—We have since signed agreements with other states. They are not as advanced in implementation as the one with Western Australia but the same model has been used. The most recent was with New South Wales.

**Senator LUDWIG**—Which states have not signed such agreements?

**Mr Gibbons**—I will take that on notice. I cannot recall all of them.

**Senator LUDWIG**—Is there a framework document that goes with that or is there something that the committee could examine, provided it is not too voluminous?

**Mr Gibbons**—Yes.

**Senator LUDWIG**—Is there one with the Commonwealth? Would you get the same benefit from one with the Commonwealth?

**Mr Gibbons**—We participate in a whole-of-government task force at the Commonwealth level. The framework agreements with the states enable us to bring the joined-up processes of the Commonwealth together with interventions funded by the states.

**Senator LUDWIG**—I think that answers my question in that area. At the last estimates we also discussed the community participation agreements. We received an answer to question on notice No. 23, which provided a summary of expenditure by region—Alice Springs, Queensland, the Queensland Peninsula and South Australia—for 2001-02. However, I could not see any information about 2002-03. I assume it is from financial year to financial year and that is why that was not done. You have to wait until June 2003. Is that how it works?

**Mr Gibbons**—I believe so. Mr Taylor might like to comment.

**Mr Taylor**—Yes, that is correct. The report covered the financial year 2001-02.

**Senator LUDWIG**—Were all the CPAs in there or are some not included?

**Mr Taylor**—In 2001-02?

**Senator LUDWIG**—The answer to the question provided a summary of expenditure by region. Are all the CPAs reflected in that?

**Mr Taylor**—Yes.

**Senator LUDWIG**—For 2002-03, are all the CPAs included or are some not present?

**Mr Taylor**—Because it is part way through the financial year, we have not provided you with an overview of that year. This year's expenditure would be reflective of further activity.

**Senator LUDWIG**—I may be missing part of it, but is the funding ad hoc to the extent that it does not come regularly and therefore some community projects have not been funded to date but will be by the end of June? Are there any CPAs which were funded in 2001 and which have not been funded in the financial year 2002-03, or are all of them still receiving funding? I guess the nub of the question is: have some missed out?

**Mr Taylor**—There are two parts to the answer. One is that a number of communities have expressed interest in CPAs but they are not within the general target area of the program. For example, these may be communities in non-remote areas. It is unlikely that they will be funded under the program given its general targeting. Some communities that were interested in 2001-02 may not have funding commenced this financial year for a range of reasons, depending on preparedness, governance arrangements and issues of that order. In general terms, if I understand where your question is heading, the timing and flow of funds for this initiative are not creating that kind of bottleneck. It is not a problem in terms of a mismatch of funds availability and program implementation.

**Senator LUDWIG**—How many communities which might have asked for community participation agreements do not meet the targeted area?



**Mr Taylor**—From memory, there are around three or four which are currently actively expressing interest but which are not within the geographic targeting of the program.

**Senator LUDWIG**—So those funds are tied to that geographic area?

**Mr Taylor**—Yes, Senator.

**Senator LUDWIG**—So obviously the response is, ‘You are not in the geographic area and you don’t receive the funding.’

**Mr Taylor**—Yes.

**Senator LUDWIG**—Is there some other way you can assist those communities?

**Mr Taylor**—Yes, there is. Generally our response will be to see if we can broker access to other programs or support arrangements which might deal with some of the social issues that communities are looking to deal with through a CPA-type model.

**Senator LUDWIG**—Is there any view about expanding the CPA to other geographic areas?

**Mr Taylor**—I think that is a policy question for government.

**Senator LUDWIG**—I thought I would try Mr Gibbons.

**Mr Gibbons**—Until the current round of funding has been exhausted and the government has applied some learning from the experience, that question is probably premature.

**Senator LUDWIG**—I can certainly wait for the answer. Thank you. In respect of capacity building and quality assurance, under the restructure how many staff will be moved back to Canberra?

**Mr Gibbons**—From memory, about 63 positions are affected by restructuring.

**Senator LUDWIG**—Will they move back to Canberra?

**Mr Gibbons**—The positions will; whether or not the staff come back is yet to be determined. Some may be relocated to other offices if they choose not to return to Canberra.

**Senator LUDWIG**—That is the staff?

**Mr Gibbons**—Yes.

**Senator LUDWIG**—So the positions will then be brought back to Canberra.

**Mr Gibbons**—Yes.

**Senator LUDWIG**—And you are in the process of negotiating with the staff whether or not they return with the positions.

**Mr Gibbons**—Generally, yes.

**Senator LUDWIG**—Do you have an indication of how many are likely to return to Canberra?

**Mr Gibbons**—I have not yet consulted with the individuals, so I do not have that answer.

**Senator LUDWIG**—You need to talk to them first, I suspect. My recollection is that the positions were sent to the regions and now they are being drawn back in again. What was the time frame that that occurred in?

**Mr Gibbons**—It was 2000.

**Senator LUDWIG**—I thought I was here when it started. So it has been a very short space of time when you have taken a decentralised view and now you have recentralised, if I can use that expression. Is there a reason for that?

**Mr Gibbons**—It is because it is not working.

**Senator LUDWIG**—Why is it not working?

**Mr Gibbons**—Basically, the units that I am looking at bringing back are policy program units that need to operate together as a team in the national office. They provide leadership to the organisation—to the other 1,200 people in the organisation who are actually delivering the programs on the ground. They need to engage with the other whole of government processes that are now emerging in the national centre.

**Senator LUDWIG**—What was the cost of their move from Canberra to the regions and what is the expected cost of their return? Have you set aside a budget outlay for this exercise?

**Mr Gibbons**—I will have to take that on notice. There was a cost to ATSIC of the 2000 reorganisation, which I can provide, but there was more to it than just removing these people to the centre. There were some major changes to the structure of the network which remain in place.

**Senator LUDWIG**—What were they?

**Mr Gibbons**—Providing support for regional councils who operated across the country was a major part of that reorganisation.

**Senator LUDWIG**—When you say it was not working, was any evaluation done to determine that the approach was not working? In other words, is there a document or something that you can point to that says that this was investigated by—I hate to say it—a consultant?

**Mr Gibbons**—No. There was a process of decision making within the office, and it is being done in accordance with the wishes of the board. It is not a board decision; the board were concerned that it was not working. On my arrival I quickly came to the conclusion that it was not working.

**Senator LUDWIG**—So this is your decision?

**Mr Gibbons**—It is my decision, yes.

**Senator LUDWIG**—What did you base it on?

**Mr Gibbons**—The fact that the office at the centre was not discharging many of the responsibilities that it has. It was not engaging seriously with other agencies of government on the development of policy. It was not fulfilling its charter under the act to monitor and to hold accountable mainstream agencies for the delivery of services that impact on the lives of Indigenous Australians. It was not providing the support that it needs to provide to a big, diverse network that is operating in a very complex environment with hugely disadvantaged people.

**Senator LUDWIG**—Will new positions be created?

**Mr Gibbons**—There are some new positions at the highest level in the organisation to provide some leadership capability.

**Senator LUDWIG**—Do you know what they will be? Are they designated as SES?

**Mr Gibbons**—There are about seven or eight positions at the SES level.

**Senator LUDWIG**—Have duty statements been prepared for those positions or roles?

**Mr Gibbons**—I can provide you with the statement that I made available to the board and the staff about that.

**Senator LUDWIG**—Thank you. Who will then form the selection panel for those? Or have they already been chosen?

**Mr Gibbons**—Some of them have been chosen, but the composition of selection panels is prescribed under the APS guidelines. They require that a woman, an Indigenous officer and a representative of the Public Service Commissioner be involved.

**Senator LUDWIG**—Will any commissioners be on those panels?

**Mr Gibbons**—No.

**Senator LUDWIG**—Have they been on panels before for the selection of staff?

**Mr Gibbons**—Yes, they have.

**Senator LUDWIG**—Is there any reason why they are now not on the new panel?

**Mr Gibbons**—Yes, because it is inconsistent with the Public Service guidelines.

**Senator LUDWIG**—When it was done before, was it then still inconsistent with the Public Service guidelines?

**Mr Gibbons**—Yes.

**Senator LUDWIG**—Which Public Service guidelines are those? I am not familiar with the guidelines.

**Mr Gibbons**—The current ones. If you wish me to, I will provide you with the advice I have from the Public Service Commissioner on that.

**Senator LUDWIG**—If you could, then please do so.

**Mr Gibbons**—I should stress that it is possible to have outsiders on selection panels. You have to avoid a conflict of interest in the composition of the panels, and there was a conflict of interest in involving members of the elected arm on panels.

**Senator LUDWIG**—I am not suggesting one way or another; I am just trying to elicit reasons for the particular course of action that has been taken and, if there is any justification that can support those decisions you have made, I am only too happy to receive them for the committee. In respect of staff morale, more generally, how do you gauge how the organisation is going? Do you monitor sick leave or whether people are taking other forms of leave above the norm for the Public Service more generally?

**Mr Gibbons**—Certainly you look at all of those factors, together with a process of engagement with staff across the organisation.

**Senator LUDWIG**—How is it going? Is it above the norm or below?

**Mr Gibbons**—I think the bulk of our staff are in the network. Our situation is comparable to the rest of the service. My impression from visiting and meeting officers in 20 of our offices outside Canberra is that morale is good. I think the situation has been different in the national office because I do not think it has been as effective as it could be, but we are working to restructure that and get that contributing as it needs to.

**Senator LUDWIG**—I do not know whether there is a clinical term for it, but are there any staff on stress leave or leave of that nature that you are aware of?

**Mr Gibbons**—There are. I cannot recall the number but I know that when I arrived there was a significant number of staff, particularly from the national office, who were on stress leave.

**Senator LUDWIG**—What would you call a significant number?

**Mr Gibbons**—In the tens, I think.

**Senator LUDWIG**—Out of how many?

**Mr Gibbons**—About 250 people on the national office staff.

**Senator LUDWIG**—Have you done any examination as to how long they have been on that leave and what level they are? In other words, what do you tend to do about it?

**Mr Gibbons**—Deal with the issue, Senator. We deal with each person on an individual basis.

**Senator LUDWIG**—If it is available, perhaps you could let the committee know how long these people have been on stress leave and what executive level they are at—how many weeks they have been on leave and what action you intend to take. Not so much—I had better be careful about that. I withdraw that—just the last part.

**CHAIR**—I am not sure you can do that once it is on the record.

**Senator LUDWIG**—I can try.

**Senator SCULLION**—Mr Gibbons, I notice with interest some of your jargon with regard to running a bureaucracy and a large organisation. Coming from your background, clearly you know what you are talking about. I was struck by a particular phrase of yours: targeting outcomes. I was very interested to read an Australian National Audit Office performance audit that was conducted on the Northern Territory land councils and the Aboriginal Benefit Account. In the conclusions it says:

In the case of the Land Councils, there is a particular need to place greater emphasis on outcomes, outputs and cost effectiveness, rather than simply reporting the level of inputs.

That seems very consistent with the values you espouse. It was interesting to note the responses. I congratulate both the Anindilyakwa Land Council and the Tiwi Land Council for unreservedly accepting that these were very laudable outcomes and for accepting them, and I also congratulate ATSIC, who have accepted that some amendments need to be made. But the Central Land Council said:

The CLC considers the detailed level of information provided should have allowed more insightful judgements to be made. The draft report is somewhat limited in scope, and therefore usefulness.

And the Northern Land Council said:

... it does not follow that a reasonable assessment cannot be made of organisations which have not yet adopted the new requirements.

My point is that it would appear that both the Central Land Council and the Northern Land Council are not exactly rushing forward to embrace what would be considered, because it came from such an excellent audit body, to be a step forward. Is it within your capacity to be able to give some direction? Clearly, from their responses they are not going to be racing out as a priority to develop these performance outputs. What are you going to do about that?

**Mr Gibbons**—The land councils are statutory bodies over which ATSIC has no control. ATSIC is a separate statutory body. The land councils are funded through appropriation from the parliament and from resources obtained through royalty arrangements, I understand. I

cannot answer or comment on the question beyond that. Mr Stacey might want to say a few words about our position in relation to the report.

**Mr Stacey**—As our CEO has pointed out, the land councils are independent statutory authorities and they are accountable to the minister, not to ATSIC. If you are asking about what capacity there might be to persuade one or more land councils to implement recommendations, there is the role of parliament in scrutinising the implementation of reports made by the Auditor-General. Beyond that, in the longer term, there is also the power of parliament to make amendments to the Aboriginal land rights act, which governs the operations of land councils, if they think that is appropriate. I might say finally that the minister has asked publicly that the land councils not just support the recommendations but embrace the underlying rationale for making those recommendations.

**Senator SCULLION**—Thank you, Mr Stacey.

**Senator GREIG**—I have a follow-up to a question that Senator Ludwig asked about funding for Indigenous language services. I think Mr Barrett said it was \$5.8 million.

**Mr Barrett**—Yes.

**Senator GREIG**—Is that annually or is that triennial funding or is it for a four-year period?

**Mr Barrett**—No, that is just for the 2002-03 financial year.

**Senator GREIG**—Is that pool of funding also used for the interpreter services under the Howard government's response to the Northern Territory mandatory sentencing regime, when Indigenous interpreter services were introduced in the court system for the first time about 18 months to two years ago? This committee dealt with the issue and scrutinised the legislation at the time. Is that \$5.8 million also linked with that court system?

**Mr Gibbons**—I believe that is the case but I will have to ask Mr Barrett. No, it is not.

**Senator GREIG**—I have one other question—and I am not sure whether you are the right body to ask. Does ATSIC facilitate and resource Indigenous health programs or nutrition programs for Aboriginal people?

**Mr Gibbons**—Indigenous health programs are funded through the department of health. We provide support for environmental infrastructure and housing, which have a bearing on health, but the actual funding of health services comes from the health portfolio.

**Senator GREIG**—Is there any sort of advocacy from ATSIC to health bodies in terms of policy direction or priorities?

**Mr Gibbons**—There is a national council on which ATSIC is represented, which is a vehicle for ATSIC to advocate its view. Recently we concluded a memorandum of understanding with the health portfolio. One of the reasons that I am pulling policy staff back to Canberra is to start the business of more effectively advocating ATSIC's interests in relation to these matters, which is something we have not done very well for some time.

**Senator GREIG**—I ask specifically because I am aware of a program in my home state of Western Australia which educated Aboriginal women, particularly younger women, in the nutrition of fruits and vegetables, and how to cook and prepare them and what not—a program I understood to be successful and well supported but that was defunded or ended. I am concerned about that and I want to know whether ATSIC has a position on that in terms of either direct funding or stronger advocacy to government in addressing those areas.

**Mr Gibbons**—I do not believe ATSIC was involved in funding it, but I will check that and, if I am wrong, I will come back to you. We do support initiatives of that kind. One of the reasons we want to be a more effective advocate of Indigenous interests is to ensure that experiments or trials of that kind are adopted more widely, evaluated and, if they work, applied systematically across communities that need them.

**Senator GREIG**—Finally, I wonder about the involvement of Indigenous people in terms of the elections for ATSIC commissioners. Do we have any clear figures on the participation rate in those elections?

**Mr Gibbons**—Yes, there was an increased participation rate on the part of people eligible to vote this time. There was an increase in the number of women who voted and the number of women who were elected as councillors. I will give you a full account of the participation and election results on notice if you like.

**Senator GREIG**—Could that show the overall percentage of Indigenous people who are participating in the elections themselves rather than the raw data?

**Mr Gibbons**—Yes.

**Senator GREIG**—From memory, I think I have seen TV commercials encouraging Indigenous people to enrol. Has there been any follow-up feedback of the success or otherwise of those kinds of engagement campaigns?

**Mr Gibbons**—A review of that process is going to get under way. ATSIC funded a campaign to encourage Indigenous people to participate. It was an extensive campaign across the communities. On the face of it, it appears to have been very successful because the participation rate increased this time compared with last time. It also targeted women and had the effect of drawing out more women as voters and as candidates.

**Senator GREIG**—Is there any evidence to suggest that there is a stronger participation rate from some states as opposed to other states or territories?

**Mr Gibbons**—There might be. I have not been here long enough to have got across that, but I will have a look at that and provide you with some advice.

**CHAIR**—Mr Gibbons, I thank you and your officers very much for assisting the committee this afternoon. Mr Farmer, we will see you tomorrow. Thank you.

[2.55 p.m.]

### **ATTORNEY-GENERAL'S PORTFOLIO**

Consideration resumed.

#### **In Attendance**

Senator Ellison, Minister for Justice and Customs

#### **Attorney-General's Department**

Mr Robert Cornall, Secretary

Mr Ian Govey, General Manager, Civil Justice and Legal Services

Mr Ian Carnell, General Manager, Criminal Justice and Security

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

Ms Kathy Leigh, First Assistant Secretary, Civil Justice Division

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

Mr Geoff McDonald, Assistant Secretary, Criminal Law Branch

Ms Robyn Warner, Assistant Secretary, Criminal Law Branch

Ms Dianne Heriot, Assistant Secretary, Crime Prevention Branch

Mr Craig Harris, Acting Assistant Secretary, National Law Enforcement Branch

Mr Chris Meaney, Assistant Secretary, Strategic Law Enforcement Branch

Mr Richard Humphrey, Office of Legislative Drafting

Mr Noel Bugeia, Director, Legislative Services and Publication, Office of Legislative Drafting

Ms Philippa Horner, First Assistant Secretary, Native Title Division

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

Mr Keith Holland, Assistant Secretary, Security Law and Justice Branch

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 Iain Anderson, First Assistant Secretary, Office of Legal Services Coordination

Mr James Faulkner, Assistant Secretary, Office of Legal Services

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

Mr Ed Tyrie, Director, Protective Security Coordination Centre

Mr Trevor Clement, Assistant Secretary, Policy and Services Branch

Mr David Templeman, Director-General, Emergency Management Australia

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

#### **Royal Commission into the Building and Construction Industry**

Mr Colin Thatcher, Secretary

Ms Sheila Butler, Director, Corporate Services

#### **Royal Commission into the failure of HHH Insurance Group**

Mr Richard St John, Secretary

Mr Graham Millar, Deputy Secretary

**Australian Federal Police**

Mr Mick Keelty, Commissioner

Mr John Davies, Deputy Commissioner

Ms Audrey Fagan, Executive Director Protection

Mr Trevor Van Dam, Chief Operating Officer

**Australian Crime Commission**

Mr Phillip Bradley, Acting Chief Executive Officer

Mr Jon Hickman, National Director, Corporate Services

**Australian Customs Service**

Mr Lionel Woodward, Chief Executive Officer

Mr John Drury, Deputy Chief Executive Officer

Mr John Jeffery, Deputy Chief Executive Officer

Rear Admiral Max Hancock, Director-General, Coastwatch

Mr Tom Marshall, Deputy Director, 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

**Australian Government Solicitor**

Ms Rayne de Gruchy, Chief Executive Officer

Mr David Riggs, 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

**Australian Security Intelligence Organisation**

Denis Richardson, Director-General

Robert Campbell, Acting First Assistant Director-General

Susanna Kiemann, Chief Financial Officer

**CrimTrac**

Mr Jonathan Mobbs, Chief Executive Officer

Mr Stewart Cross, Manager, Business Operations and Deputy CEO

Ms Nicole McLay, Director, Finance and Business Services

**Family Court of Australia**

Mr Richard Foster, Chief Executive Officer

Ms Jennifer Cooke, General Manager, Client Services

Ms Dianne Carlos, Chief Finance Officer

**Federal Court of Australia**

Mr Warwick Soden, Registrar and Chief Executive Officer

Mr Gordon Foster, Executive Director, Corporate Services Branch



**Federal Magistrates Service**

Mr Peter May, Chief Executive Officer

**High Court of Australia**

Mr Christopher Doogan, Chief Executive and Principal Registrar

Mr Lex Howard, Marshal

**Human Rights and Equal Opportunity Commission**

Ms Pru Goward, Sex Discrimination Commissioner

Dr William Jonas, Aboriginal and Torres Straight Islander Committee

Dr Sev Ozdowski, Human Rights Commissioner

Ms Dianna Temby, Executive Director

Ms Rocky Clifford, Director, Complaint Handling

Ms Susan Roberts, Director, Legal Services

Mr Stephen Duffield, Director, Human Rights Unit

Ms Robyn Ephgrave, Manager, Finance and Services

**Insolvency and Trustee Service Australia**

Mr Terry Gallagher, Chief Executive

Mr Peter Lowe, Executive Director

**Office of Film and Literature Classification**

Mr Des Clark, Director

Mr Paul Hunt, Acting Deputy Director

Mr Paul Tenison, Business Manager

**Office of Parliamentary Counsel**

Ms Hilary Penfold PSM, QC, First Parliamentary Counsel

Mr Peter Quiggin, Second Parliamentary Counsel

Ms Glenyce Collins, General Manager

Mr Tony Perkins, Executive Officer

**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 the Privacy Commissioner**

Mr Malcolm Crompton, Federal Privacy Commissioner

Mr Timothy Pilgrim, Deputy Federal Privacy Commissioner

Ms Robyn Ephgrave, Manager, Finance and Services

**Australian Crime Commission**

**CHAIR**—Mr Bradley and Mr Hickman, thank you very much for your patience and for rejoining the committee this afternoon. Senator Ludwig will continue with questions to the Australian Crime Commission.

**Senator LUDWIG**—Before lunch we were dealing with some of the broader issues of funding. I was trying to get an understanding of the various areas. We might start again rather than start from where we left off. You said a certified agreement expired with the NCA which does not carry forward to the ACC. Is that your understanding of the certified agreement, that there is no succession?

**Mr Bradley**—The terms and the conditions of employment are the same as applied under the certified agreement. A determination, which was signed by me, was made on 1 January.

The process, as I understand it, is that a new certified agreement will be entered into. Indeed, we have received notice from the main employee group, the CPSU, initiating proceedings towards negotiating a new certified agreement.

**Senator LUDWIG**—The conditions, though, that the employees are now under are the same in any event?

**Mr Bradley**—Yes.

**Senator LUDWIG**—The non-ongoing employees, those on contracts, are not on the same terms under the certified agreement as ongoing employees or are they?

**Mr Bradley**—They are on the same terms that they were on prior to the commencement of the ACC.

**Senator LUDWIG**—But that is not the certified agreement?

**Mr Bradley**—It can be.

**Mr Hickman**—Staff who are employed under the certified agreement are employed under the same terms and conditions that they were formerly employed under. Staff who are employed under AWAs carry over their AWAs to the new organisation. In respect of non-ongoing staff, they may be employed under AWAs or they may be employed on contracts.

**Senator LUDWIG**—I see.

**Mr Hickman**—If they are employed on contracts as distinct from AWAs, they are employed under the same terms and conditions as ongoing public servants—that is, under the certified agreement up to 31 December and subsequently under the determinations of the chief executive officer.

**Senator LUDWIG**—What would make you decide to have an AWA as distinct from a contract?

**Mr Bradley**—As I understand it, AWAs are mainly applied to senior staff and they offer a greater degree of flexibility in employment. Contracts—they are all employment contracts with the Commonwealth in one way or another—are typically for finite, indeed shorter, periods of employment.

**Senator LUDWIG**—I think that helps. You mentioned tied funding that was going to expire. In which two areas was that?

**Mr Bradley**—The main area of tied funding is in an area called Swordfish, which is basically a reference to the former NCA in relation to money laundering—most specifically Commonwealth revenue money laundering.

**Senator LUDWIG**—What is the second area?

**Mr Bradley**—The second area relates to undercover investigations.

**Senator LUDWIG**—Does that have a name?

**Mr Bradley**—Yes, it does. It is called Sagan.

**Senator LUDWIG**—What has happened to those two projects?

**Mr Bradley**—They are continuing in the present environment and they are funded until the end of this financial year.

**Senator LUDWIG**—What will happen after that?

**Mr Bradley**—There will either be renewed funding, in which case they will continue under that funding or, in the event that the tied funding does not roll over into the next

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financial year, a decision will be made as to whether those projects continue to be funded by the general funding for the organisation.

**Senator LUDWIG**—When will decisions about that be known?

**Mr Bradley**—I understand that the budget process is that the organisation becomes aware—

**Mr Cornall**—It is part of the budget process and the outcomes will be announced when the budget is announced.

**Senator LUDWIG**—Do you put a particular bid in for that funding or is that just something that you request? How does that work?

**Mr Bradley**—There are presently a number of bids in relation to funding. The one that relates to the area presently covered by Swordfish has been enhanced. There is one in relation to the continuation of Sagan. There are some other minor bids under what are known as NIDS bids.

**Senator LUDWIG**—I am trying to recall the issues we were dealing with. Just prior to the break we dealt with the two projects that were part of the tied funding: the certified agreement and the—

**Mr Bradley**—I think the one you were interested in mostly was the overall reduction in personnel and then the capacity to meet the operational demands.

**Senator LUDWIG**—AG's met that. Were you going to provide a breakdown by area? What I am looking for is a breakdown of those people who are on AWAs, those who are on ongoing contracts, those who are on contracts but who either do not have AWAs or are not under the certified agreement—in other words, those on sole contracts—and those who are public servants who, I think, are under the certified agreement. I am not sure whether all of the public servants are under the certified agreement or whether they fall within some of the other categories I have mentioned. I would like a breakdown by area. I am also trying to identify what your turnover rate is. How many people have left your organisation since it started and what is the reason—whether it has been an end of contract or whether they have been terminated or something like that? No more detail than that.

**Mr Bradley**—The statistics in relation to the categories of employees can certainly be provided. As to the reasons for separation, sometimes that is not within the knowledge of the employer. I do not know that we could do that on every occasion.

**Senator LUDWIG**—Just do it as far as you can determine. I am not actually after a particular reason but more whether a contract expired and was not renewed or whether they were terminated. I do not really need the reason for that. It is more the type of separation than the reason. At the last round of estimates you indicated that the review of the Swordfish program was under way. Have you finished that review?

**Mr Bradley**—Yes.

**Senator LUDWIG**—What did you come up with? Is that available?

**Mr Bradley**—We have looked at the Swordfish investigation for the purpose of refining the program and we put that forward in the context of the current bids for funding.

**Senator LUDWIG**—What do you want? I ask that in the sense that you have asked for it to be refined. In what way?

**Mr Bradley**—The refinement relates largely to the types of resources that are applied to it and how they are applied. There is also a quantum attached to it as well as to what it is likely to cost.

**Senator LUDWIG**—So have you asked for more money? I could be coming to the budget now. I will stop before I need to ask. Am I heading there again?

**CHAIR**—You are indeed, Senator Ludwig.

**Senator LUDWIG**—I cannot help myself.

**CHAIR**—You could try.

**Senator LUDWIG**—I am. So, money aside, you are seeking to expand the program in terms of what you want it to do or you are seeking to refine the program in terms of it not doing all the tasks that it did before? That is what I am trying to ascertain.

**Mr Bradley**—I think it is fair to say that it is redesigned so that the operational activity would take a different form.

**Senator LUDWIG**—You have lost me again. Is there some way you can give me, without stepping on too many toes, a concrete example of what you mean?

**Mr Bradley**—I do not want to deal with operational matters, but essentially with an investigation there are different types of resources applied to it. For example, you could have accountants, police type investigators, intelligence analysts and technical applications applied to it. The apportionment of those is a big part of the refinement towards a particular goal.

**Senator Ellison**—Often references have gone this way: you start with a reference and as an investigation progresses you find out that it really takes you in a different direction and that you require different expertise and skills, and you change the complexion of your task force. I think that is a description; that is what I am getting at.

**Senator LUDWIG**—I am trying to get a frame of reference so that I can understand it, but I might have to wait for the annual report by the look of this. It does impact upon the budget and I know my limitation there. There are also operational requirements, so it all becomes limited.

**Senator ELLISON**—With the estimates in May we will be in a different position. By then the budget will be available.

**Senator LUDWIG**—Yes, I thought that perhaps I could save some of that until then. What about Sagan? Has Sagan been similarly reviewed?

**Mr Bradley**—Yes.

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

**Mr Bradley**—It has been reviewed in a couple of ways to deal mainly with how it would be conducted in different funding environments. For example, if the funds are not rolled over, what resources would be required to maintain that level of operational activity from within the reduced available resources.

**Senator LUDWIG**—Without going too much into your finances—or not at all as the case may be—has the review determined whether or not the program will end or are you making contingency plans should the program not be funded?

**Mr Bradley**—No, the review has not done that. The fundamental position that the organisation takes is that this sort of work is an important component of the toolbox which is available to an investigating agency and therefore it should exist in some form or other. It is

possible that it could be provided externally. It is possible that it could be done in a very reduced format. It is obviously possible that it could continue with its present level of funding.

**Senator LUDWIG**—How could it be done externally? I am not familiar with how that could occur.

**Mr Bradley**—These are covert operations. One component of that is undercover policing. There are levels of expertise around the country. One of the fundamental principles upon which the ACC operates is that it aligns itself with mainstream policing agencies in order to carry out the work, so some things can be done by partners and some things can be done internally.

**Senator LUDWIG**—So that has all been taking place. Has that been finalised?

**Mr Bradley**—No.

**Senator LUDWIG**—When will it be finalised?

**Mr Bradley**—When the budget outcome is known.

**Senator LUDWIG**—So you have to wait to see whether it is going to be funded.

**Mr Bradley**—Yes.

**Senator LUDWIG**—I guess May seems a better date to be asking these questions.

**CHAIR**—Very perceptive of you, Senator Ludwig.

**Senator LUDWIG**—It has taken me a while! Going back to the ongoing contracts then, I do not know whether one of the questions was to ascertain whether we had a number of those personnel in that category. I think you were going to take it on notice but I just wanted to make sure that was the case.

**Mr Bradley**—We have a percentage. I think we provided the percentage of figures.

**Senator LUDWIG**—We had a look at a percentage—

**Mr Bradley**—Of the APS staff 193 are ongoing and 144 non-ongoing. That is a total of 337. That is APS.

**Senator LUDWIG**—So half of your establishment are—

**Mr Bradley**—Less than half—144 as opposed to 193.

**Senator LUDWIG**—A significant number.

**Mr Bradley**—Yes, a very significant number.

**Senator LUDWIG**—How does that affect the operations?

**Mr Bradley**—From the point of view of the employer it gives a lot of flexibility, bearing in mind that a number of these people are in roles such as electronic monitoring and registry tasks—a range of things that are relatively short term. It is also an environment where the ultimate funding will not be known for a few months. So for those reasons the flexibility is desirable. I do not think it significantly impacts on operations in the sense that, to the extent that you wish to extend these non-ongoing staff and that there was funding available to do that, I would imagine the people in those roles would be more than happy to stay with the organisation.

**Senator LUDWIG**—What about the new CEO?

**Mr Carnell**—This a matter for the government. The government is in the process at this stage of consultation about a new CEO in accordance with the requirements of the relevant legislation. It is hoped that process will conclude shortly and the government will then be in a position to consider what it wants to do.

**Senator LUDWIG**—So you have had more than 12 months notice that the ACC was going to start in January—that is right, isn't it?

**Senator Ellison**—Not quite right. We had the leaders' summit—

**Senator LUDWIG**—I am happy to settle for six months.

**Senator Ellison**—But we also had to get agreement from the states and territories and, as you recall, there was some discussion between me and counterparts in the states and territories. In fact we had the APMC in Darwin in July and then another ministerial council, so it was thought best not to start looking for a CEO until we had finalised the agreement in relation to the form of the new body and that it would start on 1 January. We always said that it would start on 1 January, but of course the agreement in relation to the CEO, and also the process for appointing that person, still had to be reached with all the states. Whilst the ACC had been mooted for some time, it would have been premature to be seeking a CEO when you had not tightened the wing-nuts on the agreement.

**Senator LUDWIG**—We are now six weeks into the operation of the ACC.

**Senator Ellison**—I think Mr Bradley has been doing an excellent job in the position of Acting Chair of the NCA and in handling the transition. Mr Bradley's position expires at the end of February. I would hope to have a CEO in place very soon. In hindsight, having Mr Bradley there for the transitional period before and after has worked very well. I do not see any disadvantages in having a CEO in place a couple of months later than the start of the ACC. In fact, as I have just said, having Mr Bradley in an acting capacity during that transitional period, and continuing beyond the date of 1 January, while not something we had originally envisaged, has turned out very well.

**Senator LUDWIG**—What about the position itself? Have you worked out the level of remuneration that will be paid?

**Senator Ellison**—Yes, that has been determined. The Remuneration Tribunal determined that.

**Senator LUDWIG**—Is that available?

**Senator Ellison**—Yes, that is available. We can give you that.

**Senator LUDWIG**—Can you remind me what the level of the scale is, or is that in the remuneration determination?

**Mr Carnell**—The original total package was of the order of \$247,000. My recollection is that the revised package is of the order of \$285,000. I might stand to be corrected but we can provide you with the determination. That is counting all the benefits. So it has gone up a bit since the earlier figure.

**Senator LUDWIG**—Not a lot.

**Mr Carnell**—Yes, it has gone up by several thousand. It is a significant amount.

**Senator LUDWIG**—That is a total package, including a car?

**Mr Carnell**—Yes.

**Senator LUDWIG**—In relation to the special reference on firearms, what progress has been made on that special reference?

**Mr Bradley**—There have been two main components of the work. In furtherance of the need to coordinate the national response, we held a national conference on 28 and 29 January in Sydney which was attended by all the participating agencies around the country. An outcomes document is about to be produced in relation to that. The main goals were to carve out a role for the ACC in coordinating and establishing an intelligence basis and to generally raise the awareness around the country of the nature of the problem and the nature of the responses. A lot of work has already been done on a national firearms agreement. There is a national plan in place. A lot of work is being done in various jurisdictions, including the Commonwealth, on legislation. On the operations side, there is significant work going on, the details of which I would prefer to leave.

**Senator LUDWIG**—So the board has met in relation to this issue and a report has been prepared?

**Mr Bradley**—In relation to the board, the national firearms reference is a reference subscribed to by every jurisdiction—the Commonwealth and the states. By operation of the act it continues into the ACC environment and is deemed to be a determination of the board which carries coercive powers. The board has met and acknowledged that that is happening in relation to firearms.

**Senator LUDWIG**—So the board has met since 1 January?

**Mr Bradley**—Yes.

**Senator LUDWIG**—How many times has it met?

**Mr Bradley**—Once.

**Senator LUDWIG**—With respect to the special reference, the stage of planning is that the board has met, it has got a special reference—I think that is the way it goes—and it has its planning under way. Where is it up to now?

**Mr Bradley**—The board?

**Senator LUDWIG**—No, the special reference. Has the planning of the work started? I do not expect you to go into operational details; I am just trying to find out whether it is now in your hands to be dealt with.

**Mr Bradley**—Part of it is. We are very keen to portray ourselves as operating in a partnership environment with mainstream law enforcement agencies, and we are identifying the components of the national effort which we can attend to and drawing to the attention of our partners those things which they can attend to. I am not suggesting that they needed us to do that, because there is some very effective work going on in a number of jurisdictions. But there is one thing that we can do very well, and that is the part of the investigation that involves the use of coercive powers. There are also one or two other bits and pieces that we bring to the process, including national intelligence capacity, financial investigation capacity and things like that.

**Senator LUDWIG**—All right. Is there a time frame for the ACC to deliver the Prime Minister's commitment to fight firearms?

**Mr Bradley**—I do not think there is a time frame in the sense that firearms will be dealt with within a finite period, no. As I understand it, there are a number of things going on of

which we are a part, and, as I said, there are the coordination process, the intelligence process, the unfolding of national plans towards a coordinated effort, there is some enthusiasm for specific techniques to deal with firearms—specific technology—and uniformity of legislative and administrative responses.

**Senator LUDWIG**—I think I asked you at the last estimates about your annual report, or rather the report of the NCA. I do not know how much responsibility you now want to take for that, but where is it?

**Mr Bradley**—As to responsibility, the report was written by my predecessor and signed off before he left. The tabling of the annual report is dependent upon receipt of the responses of the various jurisdictions—the states and territories in particular—before it can be tabled. I think that the NCA signed off on the report in early September, it was in a publishable form in November and we are still awaiting responses. All of the jurisdictions have not yet responded—some have, some have not.

**Senator LUDWIG**—That is the state jurisdictions?

**Mr Bradley**—Yes.

**Senator LUDWIG**—What about the financial report? If I recollect correctly, I asked whether, if the annual report was not available, your financial affairs were available and whether the committee could have those.

**Mr Bradley**—Yes, we undertook to provide audited accounts as at 31 December. I understand that has been done.

**Senator LUDWIG**—Terrific. So we have got those?

**Mr Bradley**—Yes.

**Senator GREIG**—Minister, perhaps I could ask this question of you. I do not quite recall what we finished up with, when we were dealing with the legislation and the introduction of the ACC, in terms of a integrity regime for staff. You may recall there was some concern about whether the staff moving across or coming on board ought to adhere to the integrity regime that applied to the Australian Federal Police. My recollection is that I moved an amendment to that effect. I do not recall whether it was adopted by parliament. I am wondering where we are at, in terms of the existing legislation.

**Senator Ellison**—There is nothing in the legislation which requires that. I will correct that if it is wrong, but I am pretty sure it is the position. Mr Meaney might be able to assist us.

**Mr Meaney**—That was a specific recommendation, Senator, as you would recall, of the parliamentary joint committee report. The particular recommendation was that the staff be employed under the AFP Act; that was the measure that was being pressed for. The government rejected that but certainly took on board that the CEO should examine, as a matter of priority, the integrity regime that ought to apply, to see whether the regime that relates to Public Service Act employees was adequate or whether it needed to be supplemented in some way. My understanding is that that has not progressed to date, but will be a matter that will be drawn to the attention of the permanent CEO as part of their first instructions.



**Senator GREIG**—So, to summarise, it is under consideration or review; it is not necessarily implemented. Is it something that the commission itself implements or is it something that comes back to parliament?

**Mr Meaney**—My understanding is that it will be implemented administratively but that the CEO will consult with the board in relation to the implementation of that, and will no doubt bring recommendations to the board for adoption. So the board would give direction as to its implementation.

**Senator GREIG**—Does that liaison involve discussion with the staff and those concerned? Is there an opportunity for them to express a view or have they already done so?

**Mr Meaney**—I would imagine there would be, but I am not aware of any particular processes that have been put in place on this issue.

**CHAIR**—Thank you all very much for assisting the committee today. We will consider the Australian Crime Commission further at budget estimates, I am sure, although Mr Bradley may be spared that experience.

**Senator ELLISON**—Mr Bradley will not be here in May.

**CHAIR**—I did indicate that Mr Bradley may be spared that experience. But thank you for your assistance to the committee on previous occasions.

[3.27 p.m.]

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

**CHAIR**—Good afternoon, Dr Ozdowski, Ms Goward, Ms Temby and your officers who are with you. I understand that the committee has received advice that Professor Tay is most unwell and is unable to join us. Please pass on the committee's best wishes to Professor Tay in these times. I also welcome Mr Duffield to the table. Senator Kirk will begin with questions, then we will proceed to Senator Ludwig.

**Senator KIRK**—Thank you for coming along today. My first question relates to children in immigration detention. Could you provide the committee with an update on the commission's National Inquiry into Children in Immigration Detention?

**Dr Ozdowski**—With pleasure. I would like to mention that we have already completed all public hearings. The last public hearings were held for the Department of Immigration and Multicultural and Indigenous Affairs and ACM, between 2 December and 5 December in Sydney. Transcripts of the public hearings are available on the commission's web site. This concluded our collection of evidence. At the moment we are in the process of writing the report. I hope that the report will be ready for transmittal to the department of immigration by the end of March. We are obliged under section 11(1)(f) of our act to secure comments from the department, which I will have to consider. The report, when finalised, will go to the Attorney-General for tabling in parliament. I understand that he will have 15 sitting days to table it.

**Senator KIRK**—So we are looking at the end of March to early April?

**Dr Ozdowski**—No, its transmittal to the department of immigration for comment will be at the end of March. It depends on how long it will take for them to respond to the report. I need to consider their comments before I finalise the report. I hope that the report will be finalised some time in June, then I will have to print it and transfer it to the Attorney-General for tabling in parliament.

**Senator KIRK**—And that takes 15 days. My next question is on pregnancy related discrimination. In the annual report, you drew attention to the fact that the number of complaints of pregnancy related discrimination has doubled in the last financial year, and you suggested that this was probably related to the commission's public work on the issue. How many pregnancy related complaints have been received to date in this financial year? How does this compare with last financial year?

**Ms Clifford**—Unfortunately, I do not have those numbers with me but we could take that on notice. If I could give you some anecdotal level of information it might be of some assistance.

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

**Ms Clifford**—From experience, I think the numbers have remained about the same as they were the previous year. If you were after something more exact, we can take that on notice.

**Senator KIRK**—You are saying they are around the same as they were last year, given that they had doubled last year?

**Ms Clifford**—Yes, there was quite an increase. I assess all the complaints as they come in and, from my experience, it feels as if it is at about the same level.

**Senator KIRK**—Do you have any sort of breakdown of how the complaints, both last year and this year, were resolved?

**Ms Clifford**—Do you mean pregnancy related matters in particular?

**Senator KIRK**—Yes, focus on pregnancy.

**Ms Clifford**—Under the Sex Discrimination Act, on average around 40 to 45 per cent of matters are resolved by conciliation and, again, that is about the same level to date for this financial year.

**Senator KIRK**—And the rest are resolved by going to a hearing?

**Ms Clifford**—Some of the matters are either terminated for a number of statutory reasons under the Human Rights and Equal Opportunity Commission Act, and I would expect, although I cannot give you that information, that they settled prior to lodging or just after lodging applications with the courts.

**Senator KIRK**—But you do have a breakdown of how they are dealt with that you could provide us with?

**Ms Clifford**—If they are unable to be resolved, then the matters are terminated by the president, and some of those people will then proceed to continue with their matter in court. But I understand—again, this is not information I have—that a large number of matters still settle prior to them being heard.

**Senator KIRK**—But you do have a breakdown, don't you, as to the ones that were settled, terminated and resolved?

**Ms Clifford**—Yes. Do you want that in terms of pregnancy matters in particular? I am sorry that I do not have the exact figures for pregnancy related matters.

**Senator KIRK**—That is all right. You can take that on notice.

**Ms Clifford**—If you would just bear with me, I will find that information under the Sex Discrimination Act in the annual report. Figures for complaints for the year under the Sex Discrimination Act were as follows: 43 per cent of them were conciliated; 23 per cent were terminated because there was no reasonable prospect of them settling at the commission

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through conciliation; 14 per cent were withdrawn; and 20 per cent were terminated for the other reasons under the act, such as they were lacking in substance, they were out of time or they had been adequately dealt with elsewhere.

**Senator KIRK**—And that is generally under the Sex Discrimination Act?

**Ms Clifford**—That is under the Sex Discrimination Act.

**Senator KIRK**—Do you have a breakdown into the different categories of discrimination?

**Ms Clifford**—I do not in terms of the grounds but, if you are looking in terms of pregnancy, pregnancy related matters would generally reflect that. They are a high percentage of the complaints, so I expect that they would replicate the general numbers.

**Senator KIRK**—What sort of percentage of the complaints would they be? You said they were a high percentage—what sort of percentage are you talking about?

**Ms Clifford**—Last year they were 30 per cent of complaints under the Sex Discrimination Act.

**Senator KIRK**—Do you have any figures on how many of the complainants were represented in their complaints—whether they were represented by legal representatives or by others?

**Ms Clifford**—I do not have the exact number, but from experience I can give you a general idea. Under the Sex Discrimination Act, probably around 40 per cent of people are represented by solicitors, unions or those types of advocates and 60 per cent are unrepresented.

**Senator KIRK**—Do you keep statistics on that or do you just have anecdotal evidence?

**Ms Clifford**—We do have some, but it is based on a voluntary demographics survey and they will be patchy. But from my recollection they are about those numbers. Again, we could take that on notice if you would like something more specific.

**Senator KIRK**—Yes, thank you. The next lot of questions are in relation to paid maternity leave. I congratulate the commission on its excellent inquiry into this subject matter. How many copies of the final report *A time to value* has the commission distributed?

**Ms Goward**—I am sorry, I cannot give you that number.

**Senator KIRK**—Approximately? Perhaps you could take it on notice?

**Ms Goward**—I will take it on notice.

**Senator KIRK**—How many were printed?

**Senator LUDWIG**—I got one, so it must have been more than one.

**Ms Goward**—Because we put it on the Web and it can be downloaded from the Web the number that we actually print is quite limited.

**Senator KIRK**—Are you aware of how many have been downloaded from the web site?

**Ms Goward**—I do not know.

**Senator KIRK**—You do not keep figures on that? Will the commission be undertaking any further work to publicise its recommendations in that report or has it done all that it is intending to do on that?

**Ms Goward**—I think it is a matter of by invitation. When people want to know more about it we are very happy to accept the invitation to speak about it.

**Senator KIRK**—On the web site do you have information in a summarised form as to your findings?

**Ms Goward**—And we have an education kit on paid maternity leave that is also available from the Web.

**Senator KIRK**—So people can request that via the Web?

**Ms Goward**—Yes.

**Senator KIRK**—That is good. Has the commission had any indication from the government as to when it proposes to provide a response to your report?

**Ms Goward**—No.

**Senator KIRK**—Minister, when is the government looking to provide a response to the report?

**Ms Leigh**—The Prime Minister has established an interdepartmental task force on work and family which is chaired by the Department of the Prime Minister and Cabinet. That task force is reviewing options that might better facilitate choice for parents in balancing work and family life. The Sex Discrimination Commissioner's paper is one of the things being looked at by that task force. I cannot give you a precise time for the outcome of that work, but I think you might be interested to know that that work is taking place.

**Senator KIRK**—So there is no indication at all as to when that matter will be finalised or when there will be an outcome? You do not have any knowledge of that? Will it be in 12 months or six months?

**Ms Leigh**—I really do not think I am in a position to give you a precise figure. As I indicated, that task force is being chaired by another department.

**Senator KIRK**—Which department?

**Ms Leigh**—The Department of the Prime Minister and Cabinet.

**Senator LUDWIG**—So we should be asking them that question.

**Ms Leigh**—I assume that they would be able to assist you, although I do not know whether there is a definite time frame.

**Senator LUDWIG**—Are you on the task force?

**Ms Leigh**—Yes, our department is on the task force.

**Senator LUDWIG**—Who is your representative on the task force?

**Ms Leigh**—A few different people have attended the various meetings that have been held. The task force has subordinate working groups as well as the main task force, but the branch head of the human rights branch has been the key player from our department.

**Senator LUDWIG**—What output number is that?

**Ms Leigh**—It is 1.1.

**Senator LUDWIG**—We will come back to that. I think the last time you were here I asked you about the economic modelling in relation to paid maternity leave. Did you provide the consultant's economic modelling or simply the report?

**Ms Goward**—With every copy of the discussion paper we provided a copy of NATSEM's—the economic modellers—report. We provided that to you and to all members of parliament. That modelling paper is part of that report.

**Senator LUDWIG**—Is that what they did? I read that report, but I am trying to ascertain whether that was the extent of their work. I am looking more for the actual modelling.

**Ms Goward**—The STINMOD data?

**Senator LUDWIG**—Yes. What figures did they use?

**Ms Goward**—I think they said that they used the STINMOD model, which they use for all that sort of work. They would have just done the normal computations using that model. It would not have been enlightening at all.

**Senator LUDWIG**—I think that is all I needed. That is much appreciated, too. Thank you very much. Are you aware that the government has signed the UN protocol to prevent, suppress and punish trafficking in persons? Does HREOC have any interest in or plans to act now that this protocol has been signed?

**Ms Goward**—That was the protocol of last year?

**Senator LUDWIG**—Yes.

**Ms Goward**—We do monitor the issue of trafficking women and girls in Australia. Of course, we are going to follow the developments now that the government has signed the optional protocol. We are very happy to provide any assistance, because we have monitored the human rights aspects of it.

**Senator LUDWIG**—How would you normally do that? I am not familiar with the internal workings of HREOC. Will you set up a committee or will you ask the government to do something now that they have signed it? Will you examine it and produce a report?

**Ms Goward**—The government obviously now has to decide how it wants to incorporate the optional protocol into its processes. As part of making that decision, I imagine they will establish a working party in the normal way and that the commission will be invited to make some observations.

**Senator LUDWIG**—Would you be keen to be on that working party? From the government's perspective, has that been to the treaties committee? Am I asking things out of order again? I have relinquished my membership of the treaties committee since the last election, so I do not know whether or not a national interest analysis was prepared.

**Mr Cornall**—We will come back to that question.

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

**Ms Leigh**—I believe it relates to a treaty that is the responsibility of the Criminal Law Division rather than my division.

**Mr Cornall**—We can take it on notice if that is the easiest answer.

**Senator LUDWIG**—If I tell you, you can take it on notice—

**CHAIR**—That would speed up the process.

**Senator LUDWIG**—or I can tell Mr Govey and someone can have a look at it eventually. The side issue I was looking at is: because it has been signed, has it come into effect? My understanding is that, usually, they are signed and they wait for a certain number—

**Ms Leigh**—Usually you require ratification to give binding force.

**Senator LUDWIG**—Yes, there is a ratification process or a certain number have to be signed before it comes into force. There are a few of those preconditions so I am trying to understand exactly what they are. Will the protocol work from now on? Do you intend to, or

do you have to, do anything to meet the requirements of the protocol? Sometimes you have legislation or various statutes already in existence and you do not have to provide any additional statutory support to the protocol because you can already meet the requirements or, alternatively, you meet them by non-statutory means. If it is a treaty that requires examination—in other words, an executive government decision to sign or ratify as the case may be—has it been to the treaties committee and has a national interest analysis been prepared? If so, is that available? I can then check whether the treaties committee has made a report on it or whether it is in that process and going there.

**Ms Leigh**—Just to be absolutely clear, which instrument are we referring to?

**Senator LUDWIG**—The UN protocol to prevent, suppress and punish trafficking in persons.

**Mr Cornall**—You have asked a series of questions. Can we take all of those on notice?

**Senator LUDWIG**—Yes, by all means. That was the point—because I think you have another branch that deals with all of that.

**Senator GREIG**—Ms Clifford, I am aware that we have no national laws that deal with sexuality discrimination, but I understand that people are encouraged or invited to submit their claims of discrimination, when they feel they have experienced them, to HREOC for monitoring and also potentially for advising government and ministers as to what may be happening and perhaps for advocacy in terms of reform. Are you able to give an indication of the volume of complaints you may be getting in the area of sexuality discrimination? Can you give me an indication of the sorts of discrimination we are talking about—is it individual vilification and harassment or is it more with regard to a lack of partnership recognition for same sex couples?

**Ms Clifford**—The commission does have a complaints process for people who want to lodge complaints alleging sexual preference discrimination in employment only. That complaints process, however, is not in relation to unlawful discrimination like sex, race and disability discrimination that can be subject ultimately to report, should the commission find discrimination, in parliament. Given the non-enforceability of that complaints process, we have a very small number of complaints that come to the commission. Most of those relate to people who are employed by the Commonwealth, because obviously they have restraints in going to state equal opportunity agencies. On the numbers of calls that we would get in relation to that, given that the state agencies have sexual preference as an unlawful discriminatory ground, we would suggest that, where they can, people pursue their matters there.

Having said that, last year the commission received only 18 complaints under the Human Rights and Equal Opportunity Commission Act in relation to sexual preference discrimination in employment. Of those—again, I do not have the exact numbers here—some would be about same-sex benefits of Commonwealth officers, some would be just general employment ones where maybe they are restricted from going to the state agencies. There would not be so much on vilification, because it is in employment rather than being a general vilification provision under the law. So there is a mixture of those. Some of them relate to people's HIV status, a dual discriminatory sort of matter—sometimes they may be brought under the Disability Discrimination Act as well, but they may have two grounds of complaint.

**Senator GREIG**—Do you feel that the non-enforceability situation we have in this area is a deterrent for people to lodge complaints, even if it was just to try to alert HREOC to other issues?

**Ms Clifford**—When you look at the number of complaints that state agencies receive, clearly people are choosing to go where they have enforceable rights rather than coming to the human rights commission—except for those who may have limitations in going there, such as Commonwealth officers, or who have a particular size of employer. Some state agencies do not deal with matters if the employer has under five employees, so we get those left over where the states do not cover the jurisdiction.

**Senator GREIG**—Is there any evidence to suggest that, given that most states and territories have to varying degrees now addressed and redressed this area of discrimination, it is diminishing at a Commonwealth level?

**Ms Clifford**—At this stage there are probably about the same numbers. The other area that did not have sexual preference discrimination was Western Australia: people who wanted to make complaints needed to come to the human rights commission, but there was always a very small number from there anyhow. At this stage I could not make any comments about whether or not the numbers are decreasing.

**Senator GREIG**—In relation to complaints, has HREOC received any from people alleging discrimination on transgender or intersex status?

**Ms Clifford**—We do from time to time, although that is also a complex area because sexual preference is not about transexuality or transgenderism. The Sex Discrimination Act is about sex discrimination, not gender discrimination, so there is some gap in the federal law in terms of transexuality. Again, most of the states have jurisdiction that would cover that area in terms of discrimination or vilification.

**Senator GREIG**—Does HREOC have the right or opportunity to advocate reform in this area to government and, if so, has it done so?

**Ms Clifford**—The commission has its general role to make inquiries into matters that relate to the ground of sexual preference. In the past the previous human rights commissioner did some work on same-sex couples. I think there have been a couple of HREOCA reports that have been tabled in parliament as well.

**Senator GREIG**—One on superannuation, I recall.

**Ms Clifford**—Yes, one on superannuation. As I said, the previous human rights commissioner also issued an issues paper in relation to issues facing people of particular sexual preference or transsexual/transgender issues.

**Senator GREIG**—Has HREOC had an opportunity to explore antidiscrimination regimes in comparable jurisdictions that deal with this area in terms of looking at models or current trends?

**Ms Clifford**—It is fair to say that the commission has not turned its mind to that in recent years—again, in terms of the states having enforceable rights in that area. But I would leave it to the commissioners, of course, to decide what their priorities are for inquiries. Certainly the commission is able to and has the authority and power to inquire into particular issues that give rise to sexual preference discrimination, or recommendations to parliament if they had a general inquiry.

**Senator GREIG**—Minister, I will ask you one last question: for at least the last 18 months to two years the government has indicated a desire to reform HREOC with amending legislation in terms of perhaps a name change and/or relinquishing specialist commissioners. Is that still government policy? If so, when might we see the legislation?

**Senator Ellison**—I think Ms Leigh can answer that.

**Ms Leigh**—The government does remain committed to those reforms to the structure of the commission. I cannot give you a precise time in terms of progressing that, but the government certainly remains committed to that.

**Senator GREIG**—Does that include the points I raised in terms of a name change and the removal of specialist commissioners?

**Ms Leigh**—I think it would be a bit premature for me to go into the detail of that, given that the government has not made any further detailed announcements about it since its pre-election statement.

**Senator GREIG**—But it is a government objective for the next financial year, as it were—for this parliamentary term?

**Ms Leigh**—It is an immediate government objective, yes.

**CHAIR**—If there is nothing further, I thank all the witnesses from HREOC. Dr Jonas, I neglected to acknowledge you when you sat at the table. I thank all of the commissioners for their assistance this afternoon.

**Mr Cornall**—Madam Chair, while we are changing to the next agency, I now have the Remuneration Tribunal Determination 2002/23—Remuneration and Allowances for Holders of Full-Time Public Office. The table in paragraph 2.1 shows that, as I indicated, the total remuneration for the Chief Executive Officer of the Australian Crime Commission is \$285,000. As an aside, if you look at paragraph 2.8 it indicates that the superannuation of all of those officers is calculated on the base salary that is specified in this same table. It might show you the way in which the superannuation is calculated.

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

**Mr Cornall**—I can table this if that is of assistance.

**CHAIR**—Thank you, Mr Cornall. I am sure Senator Ludwig will be grateful for that. We will take that as a tabled document. We will now move on to the very patient Family Court of Australia.

[3.54 p.m.]

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

**Senator Ellison**—Before we begin with the Family Court of Australia, can we confirm that CrimTrac is not required?

**CHAIR**—Yes, and they have been advised of that and they have departed. We will now have questions for the Family Court of Australia.

**Senator KIRK**—I understand that, according to media reports, the chief justice has changed his plans for this year. I understand that previously he had intended to cease hearing cases in February and then to use his accumulated annual leave to continue his administrative work until March 2004. Is that a correct report?

**Mr R. Foster**—His plans have only changed marginally. He was intending through this calendar year to take some accrued leave but he reconsidered that position in terms of the court's workload and has decided to maintain an almost full commitment to court sitting duties. However, his retirement date is still the end of March 2004. The only things that have changed is that he has decided to sit more often in court than he had originally intended and to forgo that accrued leave.

**Senator KIRK**—Is he intending to sit or just to continue administrative work?



**Mr R. Foster**—No, he intends to sit in both first instance and appellate work, and on circuit as well.

**Senator KIRK**—So really just continuing on in the normal way?

**Mr R. Foster**—Basically, but he is taking some extended leave in the middle of the year for a couple of months, but largely it is business as usual until March next year.

**Senator KIRK**—I just wondered about the reason for his decision. Is it that he is concerned that there will not be enough judges to otherwise deal with the Family Court's workload? Is that the reason for his decision?

**Mr R. Foster**—I guess his decision is really a matter for him. However, we do have two vacancies on the court: one vice Justice Robinson who retired from the court on 19 June last year and who has not been replaced, and the other in relation to Justice Lindenmayer who retired on 31 December last year and who has not been replaced. In effect, the court still has two vacancies.

**Senator KIRK**—Is there any advice as to when replacements are going to be made for the two judges you mentioned?

**Mr R. Foster**—At the end of the day, that is a matter for the government. However, I understand that it is under active consideration.

**Senator KIRK**—Can I ask the government about that?

**Ms Leigh**—As Mr Foster said, it is under active consideration.

**Senator KIRK**—So what does that mean?

**Ms Leigh**—It means that the Attorney is actively considering what to do in relation to those two positions. Justice Robinson passed away and Justice Lindenmayer retired. The Attorney is actively looking at the issue of those positions.

**Senator KIRK**—When is a decision likely to be made?

**Ms Leigh**—That is not something that I am able to say.

**Senator Ellison**—As I said before in response to Senator Ludwig, I will take that on notice and raise it with the Attorney. If there is anything that I can add or that can be added I will provide that to the committee. In doing so, I will pass on to the Attorney the committee's concern in relation to this matter.

**Senator KIRK**—I notice that at the end of last year Justice O'Reilly was appointed to the court. Was that appointment in order to fill one of the vacancies created by the death of Justice Robinson?

**Mr R. Foster**—No, that appointment was to replace Justice Jerrard who went to the Court of Appeal in Queensland on 29 May last year. As I mentioned, we currently have two vacancies.

**Senator KIRK**—Is it correct that, at the end of last year, Justice Warnick was assigned to the appeal division of the court?

**Mr R. Foster**—That is correct. Justice Warnick was appointed to the appeal division of the full court on 12 December last year.

**Senator KIRK**—And just last week Justice May was assigned to the appeal division also?

**Mr R. Foster**—That is correct.

**Senator KIRK**—Now those two justices have been assigned to the appeal division, does that mean that they will only be doing appellate work and no longer hearing first-instance matters?

**Mr R. Foster**—As I understand it, one-third of their time will be available for work in first instance. So obviously there is going to be an impact on the Brisbane registry.

**Senator KIRK**—So in effect you have two vacancies and then you have two judges who now are going to be devoting only one-third of their time to trial work?

**Mr R. Foster**—To first-instance work, yes.

**Senator KIRK**—Is that putting pressure on the workload of the other judges?

**Mr R. Foster**—All the judges at the court are pretty busy.

**Senator KIRK**—Naturally, and increasingly so.

**Mr R. Foster**—In the longer term it is inevitable that it will, because the number of trial judge days will be diminished in Brisbane.

**Senator KIRK**—So would you agree that there is a pressing need for the vacancies to be filled?

**Mr R. Foster**—Yes, I would.

**Senator KIRK**—Have you made any submissions in that regard to the government?

**Mr R. Foster**—There is a normal process whereby the Attorney-General's Department ask us to prepare documentation supporting the appointment of a replacement judge.

**Senator KIRK**—Have you done so? Have you been asked to?

**Mr R. Foster**—We have done that, yes.

**Senator KIRK**—In relation to both vacancies?

**Mr R. Foster**—In relation to both vacancies.

**Senator KIRK**—And what about in relation to the judges who have been appointed to the appellate division—the appeal division?

**Mr R. Foster**—No, because they have only just recently been appointed.

**Senator KIRK**—Would it be normal practice to be consulted on that as well?

**Mr R. Foster**—In terms of replacements?

**Senator KIRK**—Yes, for those who have gone to the appeal division.

**Mr R. Foster**—That is something I am not really certain I can answer, because it is the first time since I have been at the court that judges have been appointed to the full court. Perhaps someone from the department will be able to answer that on my behalf.

**Ms Leigh**—I am not sure it is necessarily correct to categorise those appointments as requiring replacements. It is the case that a number of members of the Family Court are normally assigned to the appeal division. That is the usual course. The fact that the Attorney has recently assigned these two judges to the appeal division is just part of that normal process.

**Senator KIRK**—But from what we have heard today, only one-third of their time will be devoted to first-instance matters, so obviously that will put pressure on the judges who hear matters at first instance. I wondered if there was—

**Ms Leigh**—One of the judges who has just been assigned to the appeal division replaced Justice Lindenmayer when he retired. In that sense, it is just a continuation of the previous situation, so that does not change the balance in terms of availability for appeal work or first-instance work. The other appointment responds to a request from the Chief Justice to the Attorney to make an additional appointment to the appeal division.

**Mr R. Foster**—Just adding to that, the court moves judges around from one registry to another on a fairly regular basis, so if there were a need in Brisbane and there were capacity in Sydney, for example, through negotiation in the court a judge would be made available for a period of time in Brisbane. The workload of the court is looked at nationally as well as on a registry-by-registry basis.

**Senator KIRK**—So people may be seconded to a registry to deal with the work there?

**Mr R. Foster**—‘Secondment’ is not the term I would use, but they might provide some relief, for example, for a period of time.

**Senator KIRK**—Are there any appointments or changes to the court to assist it to cope with its workload? This question is probably to the department.

**Ms Leigh**—I do not believe there is any other information in relation to appointments. I am not quite sure whether you have something in particular in mind—

**Senator KIRK**—Any other changes to assist the court with its workload—perhaps more administrative staff or more resources generally to assist the court.

**Ms Leigh**—I do not think there is anything in that line that I could provide you with information on. The court is self-administering, so I am sure it is constantly looking at ways of being more efficient, but that is really a matter for the court.

**Senator GREIG**—For about two years—it may be less than that—we have had binding prenuptial agreements in place. Has that had any effect on the Family Court’s decisions? Has it made things easier or more complicated, or has there been no difference?

**Mr R. Foster**—I do not think I am in a position to answer that question. Normally we would have here the principal registrar, who would be in a position to address that issue, but she is on extended leave. It is not a question that we anticipated, so could we take it on notice, please?

**Senator GREIG**—Surely. I have a question that relates to the creation and evolution of the federal magistracy and the fanfare at the time about how it would relieve much of the pressure and perhaps the economic difficulties of the Family Court, albeit a different economic system in terms of Commonwealth funding. Has that been the case? Has it been borne out that the existence of the federal magistracy has taken pressure off the Family Court system?

**Mr R. Foster**—Certainly in terms of divorce filings, the majority of those matters are now ending up with the Federal Magistrates Service, but in reality many of them come back to be determined by our deputy registrars.

**Senator GREIG**—Why is that?

**Mr R. Foster**—Because under the memorandum of understanding we are resourced to deal with those matters. People will file on the FMS because the filing fees are cheaper and then the process is that they are transferred to us for determination. In terms of interim and final orders, the workloads have remained pretty much the same. There has been some shifting at the margins but it has not been significant. So the workload of the court, whilst there has been in some areas a reduction in workload, largely with an increase in family law work generally—to the order of 10 per cent on the eastern seaboard—the impact of the FMS—

**Senator GREIG**—Is that an annual increment?

**Mr R. Foster**—It seems to be an annual increment. I think the FMS in itself, with the establishment of a new court, actually attracted new work. Perhaps that is something that should be best addressed to the FMS and it is probably covered in the review of the FMS. But there is generally an increase in family law work around, so the impact of the FMS on the Family Court of Australia has not been as great as perhaps (1) we would have liked to have happened and (2) we thought might happen.

**Senator GREIG**—Is funding and resourcing increasing at 10 per cent to meet that demand?

**Mr R. Foster**—Our funding has remained pretty much the same. Any chief executive who said they had enough resources would probably be fooling themselves. We are constantly looking at ways by which we can better process our matters, change our practices and procedures, and reduce our corporate overheads specifically to ensure that our focus is on judicial workload and client services. That is the whole focus of many of the improvements that are going on in the court at the moment.

**Senator GREIG**—Ten per cent annually is significant. I wonder for how long that is sustainable before you are really going to need further resources.

**Mr R. Foster**—It is a significant increase in workload.

**Senator GREIG**—Are clients—those people accessing the courts—advised one way or the other as to whether they should go to the Family Court or the federal magistracy? Is there an education program to do this? Is there a level of understanding of that amongst clients?

**Mr R. Foster**—People are given advice if they are self-represented at the time of filing, which is probably the best way to go. They can ask questions about it and they are advised by our registry staff, because we provide services for both the FMS and the Family Court of Australia. We do have on our web site a step by step process which explains the processes of the Family Court. That has been on the web site since October last year. Interestingly, it has had about 8½ thousand hits, so it is quite a significant source of information. The court is about to release a new Family Court handbook which details all the processes and services that are available in the Family Court. At the end of the day people have to make a decision about which court they want to be in. I know that people will look at what the delays are in both courts and they will probably file in a court where they think they can get the least amount of delay.

**Senator GREIG**—My recollection of the legislation establishing the federal magistracy is that one of the benefits would be that it would in some cases be a mobile court, being able to visit rural and regional areas. Has that been the case in the sense of dealing with Family Court issues? Has there been an improvement in that area for rural and regional Australians?

**Mr R. Foster**—The Family Court has made a commitment not to withdraw from rural and regional Australia, so we continue to circuit in the places that we circuited in prior to the introduction of the FMS. The advantage to the consumer is that the FMS are going in many instances to places where the Family Court did not circuit. We work together to try to work out the most sensible way to provide as wide a coverage as possible. I think that at the end of the day the FMS and us working together has actually broadened the network a bit for rural and regional Australia, not always in judicial sittings but certainly in terms of counselling services. We are always trying to extend, wherever we can, the network of counselling and DR services.

**Mr Cornall**—Madam Chair, could I just add that the discussion was largely about resolution of these matters in the court context, but the government has put quite a few resources into alternative means of resolving disputes. You would recall that there was the Pathways initiative and so on, which is still under consideration, and there have been primary dispute resolution and other investments by the government—all designed to produce outcomes for people with family law problems. We can go into that in more detail when the Family Law Division is here, Senator, if you would like, but I just wanted to put it in that broader context of the government's commitment to resolution of family law disputes.

**Senator GREIG**—That is understood. I understand that many cases are conciliated or mediated before getting to the point of involving the courts themselves. That can and does involve counselling too, doesn't it, in many cases?

**Mr R. Foster**—It certainly does. In fact, the judges really only deal with the matters that go to final orders, and about five or six per cent of all matters that are filed, in terms of final orders. The rest are resolved in some other way. So a very small number actually get to a judge.

**Senator GREIG**—I think that is overlooked. I am sure my colleagues have experienced a similar thing, that we often get very angry emails and angry letters, because it is a very emotive area of law.

**Mr R. Foster**—Absolutely.

**Senator GREIG**—I think it can give a skewed perception of what is really happening out there.

**Mr R. Foster**—I agree.

**Senator KIRK**—I have a question in relation to your web site, which you mentioned before. I notice that on the web site you have a step by step guide to proceedings in the Family Court, which incorporates a guided tour of a virtual courtroom. I wonder if you can tell me how many page impressions—how many hits—on the web site there have been to date, by month.

**Mr R. Foster**—On the whole web site, between 1 February and 31 December last year, there were just over a million hits—1,059,709, to be precise. They averaged 96,000-plus a month. I can give you a table of the various parts of the web site where the hits are occurring, if you would find that useful. We could leave that with you.

**Senator KIRK**—Good. That would indeed be appreciated.

**Mr R. Foster**—There is obviously a significant number of people now using the web site. As I said, there have already been 10,000-plus hits on the step by step guide, which was only implemented in October.

**Senator KIRK**—You say that also details a breakdown as to what segments of the web site are being viewed?

**Mr R. Foster**—Yes, that is right.

**Senator KIRK**—Can litigants access the web site from terminals in the court registries, or only from outside the court?

**Mr R. Foster**—No, only outside the court at the moment.

**Senator KIRK**—Is there any move to set that up?

**Mr R. Foster**—Yes. We are looking into all our client service areas, and that is one thing that is obviously under consideration: whether people can actually access the web site when they are in the building. At the moment, the answer is no, they cannot. Sorry, I have been corrected.

**Ms Cooke**—We have set up across a number of registries—and all registries are moving towards—the capacity to have a PC that is available within the registry, usually at the filing counters or at a small area close to the filing counters, where people can have access to the web site and can download documents. In some registries, for example in Newcastle, they can do their application on line from a PC as well.

**Senator KIRK**—How many registries have adopted that thus far?

**Ms Cooke**—I cannot tell you totally, but I know that it is certainly operating in Brisbane, in Canberra and in Parramatta.

**Senator KIRK**—Would you take that on notice, and provide us with the details.

**Ms Cooke**—I will.

**Senator KIRK**—Thank you. I wonder whether or not you have noticed that this ability to access the web has had any observable effect on those who come before the court and are self-represented.

**Mr R. Foster**—I do not think I am qualified to respond to that.

**Senator KIRK**—The judges, would you say, would really be the ones with that knowledge?

**Mr R. Foster**—Yes, but I can certainly make some inquiries around the court in that regard, if that would help.

**Senator KIRK**—This is as to whether or not they have any better understanding of the way that the court works in that process and the like.

**Mr R. Foster**—Sure.

**Senator KIRK**—At the supplementary estimates last November we were discussing the looming problems that the court will face in dealing with interim parenting applications when it loses its band 2 registrars on 1 July this year. How many band 2 registrars do you have presently, and where are they located?

**Mr R. Foster**—We have seven currently, and they are located as follows: one in Adelaide, two in Brisbane, three in Melbourne and one in Sydney. It is intended that from 30 June we will have only two.

**Senator KIRK**—So how are those interim parenting applications going to be dealt with when there are only two down from seven?

**Mr R. Foster**—We are looking at ways to try to reduce the number of interim allocations that we are getting—that is one point. At the end of the day, if there are matters to be heard, then the judges or their judicial registrars would have to attend to those urgent interim matters.

**Senator KIRK**—I also recall that the court had established Project Mercury to look into and review the way the court deals with these interim matters. I wonder about the progress of that and whether any strategies at all are thought about in order to cope with the loss of these band 2 registrars.

**Mr R. Foster**—There has been some progress, Senator. A report is being prepared as we speak. It is yet to go to the Chief Justice's Consultative Committee, which is the week after next. If we could leave that until after that meeting—I am not really in a position to disclose the outcome of that report until it has been discussed with the Chief Justice. The majority of the work has been done. There will be a report available after the Chief Justice's Consultative Committee meeting, which is next week in Hobart.

**Senator KIRK**—So in a month's time or so. Can the committee be given a copy of that report when it is ready?

**Mr R. Foster**—Subject to the consent of the Chief Justice, certainly.

**Senator KIRK**—Thank you. Has there been any change in the profile of staff providing counselling services in the registries of the court since we last discussed this in the supplementary estimates?

**Mr R. Foster**—As at the middle of January there were 77.7 FTE counselling positions across the court. That compares with the figure that we reported at December estimates of 82.3 FTEs. There is a reduction of 4.6 FTEs, but that is the result of current vacancies which we are currently filling, so there is no question of not filling those vacancies. At the moment we are 4.6 FTEs down because some people have left the court, basically, and we are in the process of refilling those vacancies.

**Senator KIRK**—So you are in the process of replacing those. You have advertised and are in the process of interviewing them.

**Mr R. Foster**—I am not quite sure where we are up to with the process, but certainly there is no intention within the court not to refill those counsellor positions.

**Senator KIRK**—Finally, you indicated at the last round of estimates that there may be a waiver of the legal aid cap being pursued in order to extend Project Magellan around Australia. What progress has been made in obtaining the waiver to the legal aid cap?

**Mr R. Foster**—We received advice last month from the Attorney-General that the fee cap has been lifted. Now we intend to implement Magellan across all registries and work on that is currently progressing.

**Senator KIRK**—Which registries is the project operating in at the moment?

**Mr R. Foster**—It was operating in Melbourne and Dandenong, but it is not operating currently because it was subject to a review which was done. The outcomes of that review have been analysed and examined and we have been waiting for the decision from the Attorney-General about the salary cap, which has only just happened.

**Senator KIRK**—So it will be extended across 12 registries in a period of time.

**Mr R. Foster**—It is, and part of that process is that we are required to negotiate protocols with the various state community service departments. Protocols exist with all the states but they do need some updating, especially in relation to Magellan, but work is well advanced in that regard as well. We are getting very close to be able to implement Magellan at the major registries around the country.

**Senator KIRK**—When, approximately, do you think that implementation is likely to be completed?

**Mr R. Foster**—I would not like to commit myself to a date. It is a project that has the full support of the chief justice, who is very keen to have it done. Bearing in mind his departure date from the court, all I can say is that it has a top priority within the court. But there is quite a lot of negotiating to do with state agencies so it is a bit hard to say when this program will be run out across the country.

**Senator KIRK**—Twelve months or thereabouts?

**Mr R. Foster**—I would like to think it would be much sooner than that but I would not like to commit myself to a finite date.

**Senator LUDWIG**—Today we have heard from the Federal Court, the Federal Magistrates Service and now the Family Court about the lack of judicial appointments. We have heard the reasons and that you are going to make representations to the Attorney-General about it. We have also heard that, as a consequence of that, there have been increasing delays—in other words, people are waiting longer for justice to be handed down or for the ability to have their matters resolved. It is of great concern when you look at the interrelationship between some of those courts. When you look at three of the courts which deal with most of the day-to-day work that people would come across, the Federal Court, the Family Court and the Federal Magistrates Service are all awaiting some form of attention from this government to ensure that judges are appointed and are doing their work. I ask again, in summary form, so that it is clear, that you convey my concern to the Attorney-General because it does not just involve one court; it appears to involve three courts. Other courts are not appearing before us today, other than the High Court, which we will leave aside for the moment. It may be reflected elsewhere but I will not say that because I do not know that for sure. It is certainly a matter that I will follow up in May.

**Senator Ellison**—I will take that on board.

**CHAIR**—As there are no further questions, I thank you and your officers, Mr Foster. We will now deal with the Office of the Director of Public Prosecutions.

[4.23 p.m.]

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

**Senator LUDWIG**—I turn to the building industry task force. The DPP has been given, as I understand it, \$800,000 for the purpose of providing advice on offences and prosecuting matters referred to it by the interim task force for the building and construction industry. Is that correct?

**Mr Bugg**—Yes, that is correct.

**Senator LUDWIG**—How many files have you opened on matters referred by the task force?

**Mr Bugg**—I am happy for Mr Delaney to provide you with some information on that, Senator.

**Mr Delaney**—Senator, I cannot give you the exact number of files on which there may have been advice but I can say that there are two active matters in Victoria and two active matters in Sydney. One of those matters in Victoria, as you would be aware, is in the court process now and a date has been fixed for a hearing in relation to that. More generally, advice has been given across the board to the task force as to prosecution requirements and a process set up to handle investigations and to advise on investigations.



**Senator LUDWIG**—Are they prosecutions under way, or investigations? Or can't you say?

**Mr Delaney**—Other than the Kingham matter—

**Senator LUDWIG**—Except that one, yes.

**Mr Delaney**—Yes. They are at an advanced stage, if I could put it that way, and we would expect prosecutions in the short term.

**Senator LUDWIG**—Perhaps we could put it in the reverse: what can you tell me about—I was going to say 'those that I can't ask about' but you would not tell me. What can you say about those matters? That is more general, at least as far as the record is concerned.

**Mr Delaney**—About the matters that are pending?

**Senator LUDWIG**—Or have you gone as far as you can?

**Mr Delaney**—I think I have gone as far as I can.

**Senator LUDWIG**—So there is no point in my asking any more questions about them without running into a problem?

**Mr Delaney**—That is right, yes.

**Senator LUDWIG**—The status of those is 'advanced investigation', other than the one matter.

**Mr Delaney**—Yes.

**Senator LUDWIG**—Is the \$800,000 in a separate fund? How is it going to be spent? Or has it been spent? Or has it been earmarked to be spent?

**Mr Delaney**—It has been earmarked, and it is a one-off allocation. It will be utilised over time as the need arises.

**Senator LUDWIG**—Did you say you would require that amount or did someone else determine that that would be an equitable amount to pass to you for the work that you might do? Is that to cover everything or is there an ability for you to say that if it exceeds that amount you can come back and ask for more?

**Mr Delaney**—That is to cover everything.

**Senator LUDWIG**—There is no Oliver Twist in this?

**Mr Delaney**—No.

**Senator LUDWIG**—Is that for one financial year or is it ongoing?

**Mr Delaney**—That is an all-up figure, as I understand it.

**Senator LUDWIG**—Who assessed that amount—whether it would be adequate or not? Did you assess that?

**Mr Delaney**—There were discussions between the Department of Finance and Administration, the DPP and the building royal commission as to projected requirements. In the light of those discussions that figure was arrived at.

**Senator LUDWIG**—What can you tell me about that? Was that a case of how many matters you might deal with divided by your usual cost?

**Mr Bugg**—It was a fairly complicated task. You are dealing with a new area where you have to take into account the need to train staff and the need to probably retain outside

counsel to undertake some of the work and so on. A number of factors were involved in it. That is what we finished up with as a figure that came to us.

**Senator LUDWIG**—Did you break that figure down into constituent parts or did you simply earmark it for all future costs that are going to arise?

**Mr Bugg**—Yes, that is right.

**Senator LUDWIG**—So it is the latter?

**Mr Bugg**—It is the latter, yes.

**Senator LUDWIG**—Of those matters that are under investigation, can you say whether they are in relation to concerns about alleged contraventions of the Workplace Relations Act, the Trade Practices Act, the Corporations Act, the Migration Act or the Tax Act or other pieces of legislation—or can't you say? In other words, does that degree of specificity then lead to the identification of the matter?

**Mr Delaney**—I think it would inevitably lead to a path that would be inappropriate at this point. As I mentioned, we would anticipate that action on those matters will be taken in the short term.

**Senator LUDWIG**—We might leave some of that until May and see how we go. In respect of Mr Adler, he was granted bail on 3 December last year, as I understand it. Is that correct?

**Mr Bugg**—I am not sure of the date but he was certainly granted bail.

**Senator LUDWIG**—As I understand it, a prosecution was brought on behalf of the Australian Securities and Investments Commission.

**Mr Bugg**—Yes.

**Senator LUDWIG**—Is that something that you then do on their behalf or do they do that?

**Mr Bugg**—No, that is a prosecution that my office is running. It is a file which was investigated by ASIC and referred to my office. In the ordinary course of events we take up the prosecution, which is happening. My office was running the prosecution when the matter was before court and when bail was granted.

**Senator LUDWIG**—Obviously stop me if I get into an area that I cannot ask about, because as you know I will probably ask the question in any event. What bail conditions, if any, were then sought by you in relation to that?

**Mr Bugg**—I cannot tell you precisely. If you are asking questions about the outcome of that bail application, bail was granted, which permitted him to then travel overseas. That was not a position which my office opposed. We understood that there were sufficient assurances to give us the confidence that he would return for the continuum of the proceedings, and that is precisely what has happened. I really do not want to go into any debate or discussion about the prudence or not of that, but I think history has proven it to be prudent.

**Senator LUDWIG**—I suppose you could say what conditions were imposed by the court.

**Mr Bugg**—I could if I had them before me. I cannot tell you now but I can provide you with them.

**Senator LUDWIG**—If you could, that would be helpful. That might be a way of dealing with that particular issue.

**Mr Bugg**—That is a matter that is still proceeding, so it is very difficult to make any further comment about it.

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**Senator LUDWIG**—Does the DPP make its decision based on instructions from the client, such as ASIC? In this case, did it? Or does the DPP form its own view about a particular matter and pursue bail or no bail?

**Mr Bugg**—Ultimately it is our call, but we will obviously take on board comments and input from ASIC and, for that matter, any other agency that might have been involved in the investigation. But it is my call or my office's call at the end of the day.

**Senator LUDWIG**—Your prosecution policy covers bail applications, doesn't it? I think you have provided that to the committee in the past.

**Mr Bugg**—Yes.

**Senator LUDWIG**—I cannot recall. It is a voluminous document from memory.

**Mr Bugg**—Yes, it is.

**Senator LUDWIG**—Does it have a section on bail applications and what the requirements are?

**Mr Bugg**—It has.

**Mr Delaney**—There are a number of authorities which give a reasonable indication of what the court's attitude and, therefore, what the attitude of the prosecution should be in relation to questions of bail. Certainly, as far as the office is concerned we have a general policy about it, and that requires a reasonable assurance that the person before the court will return on the next mentioned date and that there is no risk of that person reoffending—it depends on the nature of the charges. Other issues arise and they all have to be taken into account. The courts have set that out. We follow the direction that we have been given by the court and that governs the approach we have to it. Whether it is spelt out in that detail in the prosecution policy—

**Senator LUDWIG**—Would you mind having a look for me? If it is, you could reappraise the committee of that. If it is not, you could advise us in due course that it is not. But I do know there is precedent in court decisions.

**Mr Bugg**—We appear in state courts, so you get a variation with bail acts from state to state about what occurs, so you cannot have a uniform policy across the country in relation to that. Obviously you follow the general principles that have been laid down by the courts. I can come back to you on that, Senator.

**Senator LUDWIG**—Does the court provide to you the bail conditions or are they part of the decision the court makes—if there are conditions that have to be met?

**Mr Bugg**—They are part of the court order. 'The court grants bail subject to the following conditions' is a formal order of the court.

**Senator LUDWIG**—Then it specifies what they might be.

**Mr Bugg**—Yes.

**Senator LUDWIG**—Where do itineraries or travel plans go? They would not be in the court order but they might be required to be handed up.

**Mr Bugg**—It will vary from matter to matter, I suppose. If we are talking about this particular matter, I can let you have details of the terms of the court order in relation to that particular application.

**Senator LUDWIG**—All right. That might be a way around it. If you were able to provide the detail of what those matters were, it would be helpful.

**CHAIR**—Mr Bugg, that concludes questions to the Office of the Director of Public Prosecutions. Thank you very much, gentlemen.

[4.37 p.m.]

**Australian Government Solicitor**

**Senator LUDWIG**—You almost know it is coming, don't you? Could you provide the costs of your services to date to the HIH and building royal commissions? I know you have already provided a fair amount of information, and the committee appreciates your cooperation so far, but could you update that information? I am happy for you to take that on notice.

**Mr Riggs**—We understand that the HIH royal commission people will be before you tomorrow. We have seen the numbers that they are proposing to lay before you on that occasion, and we agree with those numbers. I have only one copy of them here. My understanding is that, in relation to AGS, they are about to tell you that they have paid to us \$3,562,377 up to 30 January 2003. We agree with those numbers.

**Senator LUDWIG**—Is that the total figure?

**Mr Riggs**—Yes.

**Senator LUDWIG**—When do you expect that work to finish? Have they given you a date when they expect the contracts to end?

**Ms de Gruchy**—As you are aware, the reporting time has been extended. That will mean that the commission will make a decision as to what resources it needs up to the point of the commissioner being able to submit his report to the government. We expect that there may be a need for our people to be there for longer than would otherwise have been the case, but it will be a situation of the commission perhaps reducing the legal resources as the reporting date gets closer.

**Senator LUDWIG**—You have had staff working in those royal commissions, as I understand it. Are they still on secondment in both the royal commissions or are they rotating back into your organisation at this point in time? Is there an expected return date?

**Ms de Gruchy**—The staff have not been on secondment, unless you are the word—

**Senator LUDWIG**—Very loosely.

**Ms de Gruchy**—Yes. They have been dedicated to the commission and have been working on the commission premises. We expect them to return as the commission informs us that their assignment is complete or their needs have been met.

**Senator LUDWIG**—Have they started communicating to you yet about whether there will be a gradual return of staff or whether they wish the current staff to continue with them until notified?

**Ms de Gruchy**—We have already had some of our employees return from the commissions. Again, it is really an issue for the commissions to determine how many people they need. In relation to both royal commissions, we have had the return of some staff. Senator, would it assist if we provided you similar information to the information given at the last hearings about the number of people that we currently have with the commissions?

**Senator LUDWIG**—Yes, that would be helpful. I was thinking of a way of asking it again without asking it again.

**CHAIR**—I think Mr Riggs has a document to table.

**Senator LUDWIG**—In relation to question No. 69 from the supplementary estimates, you indicated that the AGS was part of a panel of firms providing legal services to the interim task force into the building and construction industry. What have been the costs of those services to the task force, to date?

**Ms de Gruchy**—We estimate that the total costs incurred to AGS to 5 February 2003 for services in relation to the establishment and the work of the interim building task force are \$75,529.50, exclusive of GST, plus \$8,056.58 in disbursements, inclusive of GST.

**Senator LUDWIG**—Is that an ongoing contract or is it a fee-for-service arrangement: they ask you for work and you provide it, or is there a contract for a certain date to provide ongoing legal advice?

**Ms de Gruchy**—The ongoing legal advice that we provide it is basically in response to requests, in a similar way that other clients would seek our services for advice in relation to particular matters.

**Senator LUDWIG**—That is what I was trying to identify. It is different for the royal commission, isn't it? In the royal commission you provide a whole service: you provide team members to work on the royal commission. That is not what you are doing in relation to the task force; is that right?

**Ms de Gruchy**—That is right; that is not what we are doing in relation to this. This is more like responding to a client's request.

**Senator LUDWIG**—Like a corporate legal firm, and you are providing a fee-for-service depending on the inquiry that is made.

**Ms de Gruchy**—Yes, that is right.

**Senator LUDWIG**—Is there a retainer?

**Ms de Gruchy**—We are on the panel of firms that are used by the Department of Employment and Workplace Relations.

**Senator LUDWIG**—Does that mean you get a retainer for being on the panel?

**Ms de Gruchy**—It means that, at the discretion of the department, they can use any firm on their panel to provide legal services. There is no formal retainer but we do enter into a legal service agreement which has contractual terms attached to it. In relation to the task force, they will also negotiate with us about what services we will provide in relation to any particular matter.

**Senator LUDWIG**—And there is no consideration for that contractual arrangement you have entered into to be on the panel?

**Mr Riggs**—That is correct. It is a standing offer, in effect.

**Senator LUDWIG**—I do not know how easy it is for you to obtain this information and I am happy for you to take the question on notice. You provide advice or representation to the two commissions and now, under a fee-for-service arrangement, to the task force. Are there other courts or tribunals for which you are on a panel or do you provide a fee-for-service arrangement or there is a contractual arrangement in place similar to that with either the task force or the commissions? For argument's sake, are these with the Refugee Review Tribunal, the Administrative Appeals Tribunal or the Australian Industrial Relations Commission?

**Ms de Gruchy**—The arrangements we have are many and varied. Not all departments, for example, have a panel but there are a significant number of panels. Those arrangements are generally set up through a request for tender, a response and an evaluation, and then firms are

appointed. In addition to that, there may be different entities within a portfolio that will be subject to the panel arrangements. It may be that some clients have their own arrangements and will negotiate with us directly. There are some clients for which there is no particular arrangement and we deal with those clients on a one-off basis. There are many similar situations where we would negotiate with a client where the client is part of a department that has a panel arrangement. This is not in any way a one-off situation.

**Senator LUDWIG**—I will see if we can limit the amount of work that I might otherwise ask you to do. Can we have a look to see whether those sorts of arrangements are in place with the AAT, the AIRC, the MRT, the RRT, the Family Court, the Federal Court and the High Court? What is the nature of the arrangements in the last 12 months in respect of the cost of fee for service if a service has been provided?

**Ms de Gruchy**—I am happy to take that on notice.

**Senator KIRK**—In answer to question on notice No. 72 from the supplementary estimates, you indicated that AGS acted for both Messrs John Lyten and Lee Carson and also for the Employment Advocate, Mr Jonathon Hamberger, in the Federal Court proceedings, *Hamberger v. CFMEU and Williamson*. Is that correct?

**Ms de Gruchy**—Yes.

**Senator KIRK**—You indicated that you acted for Messrs Lyten and Carson after a determination was made by you, the CEO, pursuant to section 55N(4) of the Judiciary Act. Is that correct?

**Ms de Gruchy**—Yes.

**Senator KIRK**—I understand that the CEO, in making the determination, has to be satisfied, in providing the services to these two individuals, that it was in fact within the functions of the AGS as set out under section 55K of the Judiciary Act. Could you explain how acting for these two individuals is within the functions of the AGS as set out under the act?

**Ms de Gruchy**—In making a decision as to whether something is within the functions of AGS, I rely on the advice of a number of advisers within AGS who are counsellors to me in relation to this particular provision. They have experience in interpreting the statutory provisions as to what is or is not within the functions of AGS. Under section 55K(b) and (f), paragraph (b) is for the function of AGS to provide legal services and related services to persons and bodies for any purpose for which the Commonwealth has power to make laws, and (f) is the incidental power, to do anything incidental to any of its functions. In relation to this particular matter, it was my opinion that the legal services to be provided related to the enforcement of a Commonwealth law, the Workplace Relations Act, and, both on that basis of paragraph (b) and also on the incidental power, in order to appropriately serve our client the Employment Advocate, that it was part of the functions of AGS to represent those individuals.

**Senator KIRK**—You said that advice was provided to you and then you made a determination. I wonder whether or not that advice might be provided to the committee so that it can be fleshed out. Unfortunately, I do not have a copy of (b) or (f) in front of me, so I cannot make that assessment myself. Do you have a copy of the advice that you could provide to the committee?

**Ms de Gruchy**—Senator, it is not in the usual course for legal advice to be provided to the committee on a matter such as this. I would be very happy to provide the statutory provisions.

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**Senator KIRK**—I would like to see them.

**Senator LUDWIG**—We seem to get to this point all the time, don't we? I was avoiding it on purpose.

**Senator KIRK**—Could you explain, perhaps to flesh out a bit more for me, exactly how it is that you see that it is within the functions, whether it is incidental or to the enforcement of Commonwealth law, for the AGS to be acting both for witnesses and also for the Employment Advocate in this type of matter?

**Ms de Gruchy**—In relation to the particular decision that I have to make in relation to the section, I have first of all to determine whether to act would be within the functions of AGS, and also to look at the issue of whether there might be any conflict between the interests of the individuals concerned and those of the Commonwealth—the interests of the Commonwealth, of course, being paramount. In this particular case, it did form part of my decision that the arrangements had been in place that the witnesses were indemnified by the Commonwealth, in circumstances where the representation of the individuals would be concurrent and consistent with the position of the Employment Advocate and the Commonwealth.

**Senator LUDWIG**—Who makes the request to you? Does the OEA make the request that you undertake that work?

**Ms de Gruchy**—That is correct. We would not act without our client requesting that we act, and with the request of the individuals concerned.

**Senator KIRK**—Requests from Lyten and Carson that you provide legal services to them—is that what you are saying—or requests from the OEA that you provide legal services to Lyten and Carson?

**Ms de Gruchy**—Well, through the Office of the Employment Advocate.

**Senator LUDWIG**—But you asked the two people themselves whether they want legal representation?

**Ms de Gruchy**—That was indicated to us through the Office of the Employment Advocate, that they requested AGS to act on their behalf.

**Senator LUDWIG**—You don't confirm that independently?

**Ms de Gruchy**—I would have to take it on notice, as to whether in fact I had any particular evidence of their request, for example, if it was a request in writing.

**Senator KIRK**—So when you are making your determination under section 55N, you simply take advice from the OEA and also from your advisers in making that determination?

**Ms de Gruchy**—I take advice from AGS people, responding to a request from a client.

**Senator KIRK**—In answer to question on notice No. 72, from the supplementary estimates, you indicated that the AGS had provided legal services to 19 private individuals in connection with litigation.

**Ms de Gruchy**—In connection generally with litigation.

**Senator KIRK**—With litigation generally—it must be. Is that correct?

**Ms de Gruchy**—Yes.

**Senator KIRK**—Could you provide us with a list of those individuals and a description of the litigation—that is, the name and number of proceedings in the court or tribunal involved?

**Ms de Gruchy**—I would request that you consider whether in fact that information should be provided. These are individual citizens, and I would be concerned that there are privacy issues in relation to individuals.

**Senator Ellison**—It is not the norm, Madam Chair, to provide that information.

**CHAIR**—I have certainly never heard an individual's matter discussed in that manner previously.

**Senator Ellison**—No, we have not done that, for obvious reasons.

**CHAIR**—I was agreeing with you, Minister.

**Senator Ellison**—I think Ms de Gruchy makes a very good point. Perhaps there had better be some other questions which we can accommodate, but I think we have reached a point now where we are getting into the personal affairs of people.

**Senator LUDWIG**—I appreciate that point. These are people that the OEA have requested due to—

**Ms de Gruchy**—No, these are 19 private individuals—in fact there have been another two since the question was asked and answered—in relation to claims or litigation but that are otherwise unrelated to the OEA.

**Senator LUDWIG**—So what can you tell me about them without their names at this point? What is the nature of the matter?

**Ms de Gruchy**—The nature of the work can vary enormously, depending on what the type of claim is. In relation to the decision making process, it is very similar to the one I described to Senator Kirk, and that is to establish whether it is within the functions of AGS and whether it is in the interests of the Commonwealth for AGS to act. Perhaps I could give an example that may assist the committee. If you took a situation where the Commonwealth was a major creditor in a bankruptcy, that would be a situation where it would certainly be in the interests of the Commonwealth for AGS to act, for example, on behalf of a liquidator.

**Senator LUDWIG**—Yes. Are these matters wide ranging?

**Ms de Gruchy**—Wide ranging.

**Senator KIRK**—And there have been 19 plus two in what period of time? Is that just in the last six months or 12 months?

**Ms de Gruchy**—That is since AGS became a statutory authority with that power in section 55N.

**Senator KIRK**—What year was that?

**Ms de Gruchy**—1 September 1999.

**Senator LUDWIG**—Who is caught in 55N(4)? Can you give me a description of who would be caught within that? What does that allow?

**Ms de Gruchy**—What sorts of individuals?

**Senator LUDWIG**—How broad is the discretion?

**Ms de Gruchy**—The discretion is for any person or body, so it covers a wide range of both individuals and corporate entities.



**Senator LUDWIG**—It refers you back to 55K and then provides for a wide discretion or a broad discretion. So the AGS then acts as any other law firm?

**Ms de Gruchy**—But only in a situation where the interests of the Commonwealth—

**Senator LUDWIG**—Yes, and I always have trouble with this, I must tell you. As I understand it, you can access the AGS, you can be an individual and you can seek assistance, but it always comes with this rider. I do not know whether law firms have this rider, that it is only if it is not in their best interests.

**Ms de Gruchy**—AGS would not want to act in a situation where it perceived that there could potentially be a conflict with the Commonwealth or a conflict perhaps with AGS or an AGS employee, so it is important in considering any request for AGS to act that we consider those issues.

**Senator LUDWIG**—So would these requests have come from within other departments or just from the person on the Clapham omnibus?

**Ms de Gruchy**—It would be a client who would have approached us and it would generally be in connection with another matter or a matter that we were handling on behalf of the client.

**Senator LUDWIG**—I am not sure I understand when you say a matter that you are already handling on behalf of a client.

**Ms de Gruchy**—Generally it would not be just any individual who came to AGS and said, ‘Could you please act for us in this matter?’ These issues come to us because there is generally an interest of a client. For example, in enforcing a Commonwealth law, it might be that we would act in relation to the matter, representing an individual.

**Senator KIRK**—You say ‘generally’. Is that exclusively? Is it only when there is a client or a department involved? ‘Generally’ indicates to me that sometimes private litigants may approach you.

**Ms de Gruchy**—I mean generally in the sense that I believe that to be the case. Without going back and reviewing every single matter, I would not want to say categorically to the committee that it has only ever have happened in a situation where a client has approached us, but I would expect that to be the case.

**Senator LUDWIG**—So there might be related or collateral proceedings that someone wants to institute and, provided they are not against the best interests of the Commonwealth, under that broad discretion you could take it on board?

**Ms de Gruchy**—I would say ‘consistent with the interests of the Commonwealth’ rather than ‘not against the interests of the Commonwealth’.

**Senator KIRK**—I want to go back to Lyten and Carson. Can you estimate the value of the legal services that were provided to those two individuals?

**Ms de Gruchy**—I understand that the cost in relation to the representation has been provided to the committee by the Office of the Employment Advocate.

**Senator KIRK**—You do not have that information?

**Ms de Gruchy**—There has been an estimate made of what perhaps is solely attributable to the representation of the individuals, although in a sense that is an estimate because obviously the fees were paid in relation to the whole of the representation. That figure was \$1,256.

**Senator KIRK**—Would that be an average figure for the sorts of matters that you take on for private individuals or do they vary vastly?

**Ms de Gruchy**—It would vary extensively.

**Senator KIRK**—Depending on the matter, of course.

**Senator LUDWIG**—Are you able to tell us the expenditure for the 19 or the 21? I do not want to go too far and I think you have assisted the committee as much as you are able. But are we talking about a lot or a little bit of money? Is there a relativity we can tag to this in terms of your work? How significant are they? Are you not that interested in them? Which end of the spectrum are we at?

**Ms de Gruchy**—I have to be honest and say that the spectrum of matters would be quite broad. For example, acting in a substantive proceeding, the costs could be in the thousands, whereas in this particular case the representation was in relation to a notice of motion in relation to costs, which is a much smaller matter than the hearing of a whole case.

**Mr Riggs**—Another way of thinking about it is that in a typical year AGS has somewhere between 18,000 and 20,000 new matters referred to it. Over the period since 1999, there have been a mere 19 such matters. So in scale, as far as AGS as a business is concerned, this is very much peripheral.

**Senator LUDWIG**—That is very helpful, Mr Riggs. Thank you very much.

**Mr Cornall**—Listening to this discussion, it seems to me that in a number of these matters it would be likely that the individual is not so much a private client but a Commonwealth officer who has got mixed up in litigation arising out of that officer's duty but is individually concerned in the litigation because they are named in the litigation or have somehow become involved in it, but in discharge of their duties as a Commonwealth officer. They are not, as I understand it, private clients in the sense that you might normally understand that term.

**Senator LUDWIG**—Thank you. We have juxtaposed that—and that may be our error—with the OEA and their two who are, for all intents and purposes, private individuals. You can understand perhaps that we were seeking more information about the 19 or 21. It dawned on me that that in fact is more likely to be the case—collateral matters to existing matters on foot—and that when you look at 19 or 21 out of the whole scale of things it provides a better picture. If we need anything more we have May budget estimates, or we can put questions on notice.

**Mr Cornall**—There was one issue that I was concerned about. I did not quite understand the thrust of the question about the Family Court and the Federal Court. I am not sure that Ms de Gruchy did either. I was not sure whether you were suggesting that the AGS might have been providing panel services to the courts themselves.

**Senator LUDWIG**—I do not know. The answer was so broad that I thought I would ask anyway.

**Mr Cornall**—If that is the case, the answer to that question is no. They are not providers.

**Senator LUDWIG**—They may be to the registry. When I say 'the court' it could be to the registry itself. I use 'the court' as a generic term but the registry might seek legal services to be provided by the Australian Government Solicitor. I am not sure; I was merely trying to get a slice of a number that I could readily call to mind to get a feel for it rather than ask for all. I did not want at this stage to put a significant workload on the AGS, other than what they always have. They do not appear as a Commonwealth agency as such. I never quite understand it but they are separate and they do have their own costs to meet if they appear.

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**Mr Cornall**—They do.

**CHAIR**—Does that clarify that particular question, Ms de Gruchy and Mr Cornall?

**Ms de Gruchy**—I understand that the senator was making a selection of a few potential clients of AGS and requesting that we advise the nature of the legal service relationship as an indication of the variety of potential ways of AGS being asked to provide services.

**Senator LUDWIG**—Yes, thank you. No more than that.

**CHAIR**—We are all on the same wavelength—excellent. If there are no further questions, thank you Ms de Gruchy and Mr Riggs for your attendance this afternoon.

[5.09 p.m.]

#### **Australian Customs Service**

**CHAIR**—We will begin with questions from Senator Ludwig on these additional estimates.

**Senator LUDWIG**—In relation to the passenger movement charge, at the estimates hearing on 20 November there was a question about the PMC on international passengers departing Australia which was introduced in the 1995 budget. Can you update that figure in terms of how much revenue has been gathered by the PMC?

**Mr Woodward**—For which period?

**Senator LUDWIG**—It was \$30 in 1999 and then \$38 in 2001. If we just go for the last financial year and then year to date.

**Mr Woodward**—The last figure I have is for 2001-02. I am not sure whether we have a progress figure. The figure I have is \$283.6 million for 2001-02. However, I do not have the six months—

**Senator LUDWIG**—Do you do monthly figures or is it computed at the end of the period?

**Mr Woodward**—I think we probably do it monthly, but perhaps we can take that on notice and cover a period beyond June last year.

**Senator LUDWIG**—In relation to that charge, do we have a complete figure on how much has been collected? I think we may already have followed that at some point.

**Mr Woodward**—When you say ‘collected’ do you mean—

**Senator LUDWIG**—Since 1995.

**Mr Woodward**—Last time the questioning was based on how much it costs the border agencies to provide these services and how much we collect. You asked a number of questions relating to that. The last figure we have which we are in the process of updating—obviously some of these figures are unrelated to us and involve Quarantine and Immigration—shows that in the financial year ended June 2000, it was about \$124.5 million for Customs, about \$8 million for Immigration and about \$19 million for Quarantine. However, as I said, we are in the process of updating not only our own figures but also the figures for the other departments and agencies. The passenger movement charge collected for 2000-01 was \$242.8 million and, as I said, the figure for 2001-02 was \$283.6 million.

**Senator LUDWIG**—Is there a breakdown by individual international airport?

**Mr Woodward**—I am not sure that we would go into that detail. We are interested in the aggregate amount. I am not sure what we would glean from that.

**Senator LUDWIG**—I am not sure what we would glean either. If you have that information it would be helpful, but if you do not have it, do not go to any trouble.

**Mr Woodward**—If we have, but I doubt whether we would have it.

**Senator LUDWIG**—If we look at the other side of the equation, what would be the costs associated with the provision of passenger processing services that you do? Do you identify that as an output?

**Mr Woodward**—Yes: ‘Output 2: Facilitation of legitimate movement of people across the border, while identifying illegal movements’.

**Senator LUDWIG**—That is the point I was trying—

**Mr Woodward**—That is \$92.3 million in 1999—

**Senator LUDWIG**—But that also includes the two aspects of that operation, doesn’t it? It is not only the processing.

**Mr Woodward**—There are some goods related things like duty free which I assume would be picked up in that as well.

**Mr Jeffery**—The figure for 2000 that Mr Woodward read out a moment ago, the \$124.5 million, was the cost to Customs in 2000. As he said, we are updating that, and he then moved across to the other agencies. We are updating that at present so that is now two years out of date. In relation to the question about airports, the collections are not based on airports or international airports, they are based on passengers carried by airlines. We collect off the airlines, based on the number of passengers they carry, that are obligated to pay the passenger movement charge. It is included in the ticket price.

**Senator LUDWIG**—Can you do that as a breakdown per airline, or is that going too far?

**Mr Jeffery**—I believe we can do it by breakdown by airline. We will have to have a look at that, but we will take it on notice.

**Senator LUDWIG**—I do not want you to go to any significant amount of work. If it is easily available, that is fine; if not, come back and explain to the committee.

**Mr Jeffery**—We will take it on notice and look at it.

**Senator LUDWIG**—Do you have agreements to do quarantine work on behalf of the quarantine service? I am trying to establish whether you do any quarantine work.

**Mr Woodward**—We perform work on behalf of a significant number of agencies.

**Ms Batman**—We do work on behalf of a number of agencies, including Quarantine, but we do that work through a memorandum of understanding that talks about the roles and responsibilities and the way that we work together rather than a direct service level agreement. It is more a cooperative arrangement than a defined set of roles.

**Senator LUDWIG**—I have asked that question before. It is a memorandum of understanding, but does it come with an amount of money attached to it?

**Ms Batman**—No.

**Senator LUDWIG**—I am more familiar, I must say, with service level agreements where the Australian Government Solicitor says, ‘This much money and you get this much service.’ In the Department of Immigration and Multicultural and Indigenous Affairs the same thing occurs.

**Mr Woodward**—There are some areas where we do that. In Customs it is a mixture. In relation to Customs responsibilities for GST, luxury car tax and wine equalisation tax we get a certain amount of money from the Taxation Office and we are required to perform work. Another area where significant sums are involved involves an additional amount but not the total amount that was provided several years ago following one of the Prime Minister's task forces. Immigration has actually appropriated the money and we provide an array of coastal surveillance services that correspond with the amount we get. I stress that it is not the totality of the amount that Coastwatch performs. There are at least three scenarios that we have.

**Senator LUDWIG**—If there were initiatives for increased money available for Quarantine, it would not necessarily flow back to you through a service level agreement.

**Mr Woodward**—There were two separate amounts provided as a result of what started out as foot-and-mouth and became a quarantine initiative. AQIS was given a significant sum of money over a five-year period and Customs separately was given a significant amount of money over four years. The aggregate is the totality of the response to the quarantine initiative.

**Senator LUDWIG**—Do you recall how much was funded to you?

**Mr Woodward**—I think it was \$238 million, from memory.

**Senator LUDWIG**—How has that been broken down? That is your work for Quarantine. Is that a broad way of saying it?

**Mr Woodward**—These were amounts that were provided for the Customs component of the increased quarantine initiatives. The principal component was a significant number of airport and seaport staff—approaching 500. The second component was additional technology, particularly X-rays. Inevitably, because we were working very closely with Quarantine, we got together. They were buying X-rays as well, so we worked out a position that would enable the best result: we were both buying X-rays, for example, for airports.

**Senator LUDWIG**—The money that was then expended on—I guess we will use the hardware item—an X-ray—

**Mr Woodward**—We have to account for it.

**Senator LUDWIG**—Do you account for it as a quarantine measure?

**Mr Woodward**—We have a listing—

**Senator LUDWIG**—It is a quarantine initiative. It has been given to you for quarantine under that initiative, but in fact it has broader use if it is an X-ray machine.

**Mr Woodward**—Two separate funding processes were followed. From memory—and we can check this out—Quarantine got something like \$380 million or \$390 million and that was appropriated to them. They are accountable for it and they report on their expenditure, the results and the performance. We were given something like \$238 million over four years appropriated to us. We account for it. Obviously there is a degree of overlap because it is one quarantine initiative, but we report separately on it in annual reports and in these statements.

**Senator LUDWIG**—How many staff were employed as a consequence of that initiative?

**Mr Woodward**—I think we have put on about 460 people in Customs.

**Senator LUDWIG**—Is there a break-up of where they are now located and of the tasks that they were assigned to?

**Mr Woodward**—That should not be a difficulty. Can we take that on notice? I do not have it with me.

**Senator LUDWIG**—Yes please. In that break-up, you might also include what turnover there has been amongst those new employees since the program started.

**Mr Woodward**—We will do the best we can, but can I emphasise that when you are dealing with a single border, you have a whole set of responsibilities and initiatives taking place. There has been funding provided through the quarantine initiative. Funding has also been provided in relation to counter-terrorism and funds have been provided in relation to drugs. While in some cases it is easy to say whether one individual was engaged solely or primarily for quarantine initiatives when they might also have been working in relation to counter-terrorism or drugs, in other cases it is hard to do that. We will do the best we can.

**Senator LUDWIG**—I appreciate that it might, in fact, be the position rather than the person themselves and, on top of that, the position might have dual roles.

**Mr Woodward**—It might be the position and the person. It would be hard for us to identify many people and to ask them whether they believe they are engaged solely or primarily for quarantine work. In fact, there would be very few people who would know. Nevertheless, the funding capability came out of that specific government initiative.

**Senator LUDWIG**—I appreciate that their roles might change from week to week or month to month, depending on the emphasis on the issue. That is why I was trying to ascertain the type of memorandum of agreement.

**Mr Woodward**—We have the thrust of your question and we will do the best we can, but it will not be as black and white as I think you are looking for.

**Senator LUDWIG**—I appreciate that. Thank you very much. What additional equipment can you identify that was purchased as a consequence of the quarantine intervention? As I understand it, the X-rays are a part of that, but is there certain hardware that you can identify?

**Mr Woodward**—Yes, we certainly can. I think it was about 20 pieces of X-ray equipment but, again, can we give you that on notice?

**Senator LUDWIG**—Yes, please. Perhaps we could also know where the equipment was installed or, if it was not installed, what the nature of the equipment is and where it is kept.

**Mr Woodward**—Again, it is not as easy as it sounds because there is some equipment that we were going to get rid of but we have kept it going. In some cases it has been used in other initiatives that are somewhat related to it—for example, in relation to air cargo and firearms. Again, I know what you are looking for and we will do the best we can.

**Senator LUDWIG**—Thank you. In relation to hand-held radiation detectors and the detection of chemical agents, has Customs taken delivery of hand-held detectors of nuclear radiation?

**Mr Woodward**—Are these the radiation pagers? Assuming they are, the first of those items of equipment will be arriving in the next day or two. It has actually left the United States and will be calibrated and tested in Australia. We are working on the assumption that if the calibration and testing are successful—and we have no reason to believe they will not be—the remaining 14 can be dispatched within a few weeks.

**Senator LUDWIG**—Are you able to say where they will be located should the testing prove satisfactory?

**Mr Woodward**—I think it would be unwise for me to comment.

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**Senator LUDWIG**—That is all right. That is why I prefaced my remarks with ‘are you able’. What capability will they have?

**Mr Woodward**—The equipment we are getting will identify whether or not there is a radiation signal that goes beyond a certain level. It will not be able to go to the point of identifying the precise nature of the device or item of equipment. That would then have to go for more specialised examination. We are also exploring the possibility of getting a number of more expensive items of equipment that will go beyond the identification that there is a potential radiation hazard to potentially identifying the nature of that hazard. There are items that can do that—they are more expensive—and we are exploring that at the moment.

**Senator LUDWIG**—Are they on the wish list or are they being ordered as we speak?

**Mr Woodward**—They have not been ordered, but I think there is enough in what we have seen so far to say that we may go to that point. But there is the expenditure, as well as the assessment of whether or not they are useful, involved in that.

**Senator LUDWIG**—Has any analysis been undertaken to determine whether there is a cost benefit for them?

**Mr Woodward**—I think it is pretty hard to do a cost benefit analysis when at the end of the day you are talking about human lives being potentially at risk. We are saying that, based on work that has been done overseas, there is a very real possibility that the assistance that we will get in discharging our radiation responsibilities at the border will be enhanced if we were to get the next level of equipment.

**Senator LUDWIG**—Who makes that decision? Do you make a submission to someone or do you make the decision?

**Mr Woodward**—As I said, there are financial considerations involved. I have responsibility for looking at the money that I currently have. Provided that the further work that is going on at the moment comes to fruition, in terms of analysis of the usefulness of it, I think we will find a way to proceed.

**Senator LUDWIG**—In relation to question on notice No. 114 that I asked, has Customs as yet taken delivery of instruments for the chemical analysis of volatile organic compounds?

**Mr Woodward**—We are undertaking some tests in relation to various items of equipment. We are looking at spectrometers, which are in use overseas, which have a real potential for use in Australia. I understand they will be useful not only in relation to the potential for chemical warfare but also for the purposes of identifying precursors to drugs and weapons that could be constructed. They have the potential to pick up a range of chemical warfare items. We are also looking at gas chromatographic equipment, which are basically vapour analysers, which we would use in the extraction of gases in containers and similar items. They would be capable of quick analysis but use a different scientific approach. We are also exploring the possibility of a third range of equipment which would be used particularly for drugs and explosives but which might have some applicability in the area of biosensor technology. So we are looking at three items, but the two that we intend to pursue fairly vigorously in the short term are spectrometers and gas chromatographs.

**Senator LUDWIG**—That will give you the capability to detect what chemical and gas agents—

**Mr Woodward**—My non-technical, non-scientific understanding is that between those two items we would have the ability to detect the expected array from chlorine or mustard gas, sarin, VX, and those sorts of potential chemical weapons—or precursors to them.

**Senator LUDWIG**—When will the decision be made? Do you have a time line?

**Mr Woodward**—The work in relation to the assessment is still underway. My assessment would be that it would still be some months before we were able to actually order and take delivery. As I think I told you last time, there are a number of items of equipment from X-rays through to the radiation pagers where there is a worldwide shortage. You can put in an order but you will not necessarily get it the next day.

**Senator LUDWIG**—In relation to agreements or understandings that exist in this area, do you have any agreements with any other agencies within the Commonwealth to deal with nuclear, chemical or biological threats? If a matter were to come up in a container, how would you deal with it? For argument's sake, if you have a suspicion—and a Customs officer might form a suspicion but not have the requisite material to detect—do you have agreements with other agencies for assistance in that regard?

**Mr Woodward**—We certainly have arrangements with other scientific agencies to deal with anything that is beyond our capability. We have a regime whereby the first warnings of any of this would obviously come through the intelligence agencies, in particular ASIO, to give us a generalised warning. It could be any one of the items that we have discussed. The second aspect is that we would be working closely with the law enforcement community, the Federal Police, the state police forces, and those that were to be involved in follow-up action including Emergency Management Australia.

We have a fairly detailed set of procedures, which we have put together and have just revised again, dealing with the array of circumstances which might arise in relation to nuclear, biological or chemical issues. These items of equipment would be involved in the detection. We would be then sending whatever it is off to the specialist scientific agencies if testing is required. But immediate action would be particularly with the Federal Police, the PSCC and all of those involved in emergency assessment, and then there would be management in the event that there is something actually involved in the cargo or on individuals who arrive in Australia. That is the broad approach that we would be adopting.

**Senator LUDWIG**—I guess what I am trying to identify is perhaps a difference in my understanding of how you work and your understanding of how you work. Is there a concrete arrangement in place if there were a threat and a response was required? In other words, is there an arrangement not only at an interagency level but also at the lower level where someone picks up a phone, makes a phone call and someone turns up? You can have all the interagency arrangements in place but unless you have a phone number—

**Mr Woodward**—We have that. The documents we have prepared include a section dealing with chemical, biological and radiological incidents. It describes the characteristics of each of them, what to do to protect oneself, what to do in the event that there is something that either is, or is likely to be, one of these items. To the best of my knowledge I do not think it has been tested over the last 12 months, but there have been examples earlier on. A major one occurred during the Olympics where we were able to activate the procedures. The officers know.

**Senator LUDWIG**—Do Customs have protective suits or do you access someone with the specialist skills to do that—for example, for radiological or biological threats?

**Mr Woodward**—One of the advantages we have is that we know the equipment we have and we know our abilities. Very quickly, we get those who are able to deal with particular hazards as soon as we can. There are some items that obviously we have but, frankly, as soon as we identify that there is a chemical, nuclear or biological hazard we quickly move to



contain the areas and get the experts in. We do not pretend to be experts in relation to dealing with those incidents.

**Senator LUDWIG**—On another matter, ANAO Report No. 54 stated that an intelligence summary report containing pertinent information be distributed to national office, all regional managers and targeting analysis groups within one week of the seizure. In response to question 101 at additional estimates, Customs said:

Post-detection reporting now includes distribution of a preliminary detection report on the day of detection. This now is followed by a more detailed post-detection report within one week of detection.

Can you confirm that these two reports are distributed to the officers as recommended by the ANAO report?

**Mr Woodward**—Certainly the first procedure is in place. On the second one, I am not sure I could guarantee in every case it has been dealt with within a week. I will ask Ms Batman to address that.

**Ms Batman**—I just need to look at the terms of the ANAO recommendation. I understand what happens but I want to confirm that it is lined up.

**Senator LUDWIG**—It is recommendation No. 1. While you are doing that I will include recommendation 2(a), which I will read while you look at recommendation 1. Recommendation 2(a) states that the ACS:

(a) review the recruitment, training and career development of intelligence analysts following a trial being conducted in the New South Wales region ...

In response to question 101 at additional estimates the ACS stated that the review had commenced and it incorporates a survey to collect objective data directly from current and ex-Customs analysts. I will ask a couple of questions about that, but I may have now given you enough time to look at recommendation 1.

**Ms Batman**—Yes, thank you, Senator. I can confirm, having read the recommendation in the ANAO report, that the information is distributed: by and large, the summary report within one day, when that is available from an immediate seizure, and a more detailed analysis happens over a week. With regard to 2(a) on recruitment, we are currently in the early stages of a survey of current and past analysts to try to have a look at some of the reasons that they are moving either inside Customs or to another agency. We are still in the early stages of that but there is not a huge number of officers involved so we are still anticipating that we ought to be able to do that within a few months. We have also commenced a training needs analysis of analysts to try to understand that area better.

**Senator LUDWIG**—At what stage is the survey?

**Ms Batman**—We are just at the survey design stage. We have not yet commenced any questionnaire collection of data.

**Senator LUDWIG**—So, effectively, you will not know at this stage what the timetable is, if you are only just preparing the survey. Will we have a better picture in May?

**Ms Batman**—Yes. As I said, there are not many officers to survey; it is a fairly small group overall. We are doing the early design work with a bit of a pilot of some of the questions, but we still anticipate concluding it within a few months. So by May we will certainly be at another stage of it, quite well developed if not fully complete.

**Senator LUDWIG**—You might want to take on notice whether there is anything of assistance that the original ANAO report looked at out of the New South Wales trial.

Otherwise we might wait until May. Recommendation 3(b) stated that the ACS ‘undertake a benchmarking exercise to determine the optimum number of reports’ and so on. In response to question No. 101, the ACS indicated that a number of desktop exercises were conducted during 2002 to establish a benchmark for screening and targeting sea cargo in the regions in which container X-rays will be used. Are you able at this point to provide further details on the conduct of these desktop exercises?

**Ms Batman**—I could probably provide some on notice. I do not have any more detail with me.

**Senator LUDWIG**—Yes. Part of that, at least in broad terms, is some information about the resulting parameters which it is indicated will be used for this and similar exercises.

**Ms Batman**—Okay.

**Senator LUDWIG**—In the same area, recommendation 5(c) was that the ACS publish a simplified guide to assist boarding officers. Customs said that the matter would be addressed early in 2003. We are now in 2003.

**Ms Batman**—I will ask my colleague to assist me.

**Senator LUDWIG**—I was more interested in how that was progressing.

**Mr Hawksworth**—Recommendation 5(c) was for a guide for boarding officers. We have a draft of the guide. That is as far as the project has moved since November. We hope to be able to issue it shortly.

**Senator LUDWIG**—When it is available, perhaps you would make it available to the committee.

**Mr Hawksworth**—Certainly.

**Senator LUDWIG**—We do not really want a draft. Recommendation 8 was that the ACS, in conjunction with its partner agencies, review its performance measures for detecting illicit drugs and move towards developing a range of performance indicators. I am looking for some more specific information on these projects, if you have that. I am happy for you to take it on notice.

**Ms Batman**—This is an area with which we, along with several other law enforcement agencies in Australia and around the world, struggle a lot. It is a very difficult area in which to develop performance measures. Basically, illicit drug activity, by its nature, is hard to quantify. The sort of work that we have been doing is trying to get a better knowledge of the Australian drug market, through sponsorship of and involvement in a range of research projects that are funded by the National Drug Law Enforcement Research Fund. There is also—

**Senator LUDWIG**—I am sorry to interrupt you, but that is the information I was trying to understand. What are those several research projects, what is the nature of them and what is your involvement in them? What caught our attention was the mention of several research projects, so we would like to know what they are. That is all we are looking for, please.

**Ms Batman**—That sort of information is best in writing.

**Senator LUDWIG**—I am happy for you to take that on notice. Thank you very much. Is SmartGate in your area?

**Ms Batman**—Yes.

**Senator LUDWIG**—I thought it was. Thank you for this opportunity to have a look at it and understand it a little more. The SmartGate facial recognition system was launched on 29 January 2003 by Mr Max Moore-Wilton, and a news release was issued. It then received some press in the *Australian* on Tuesday, 4 February. How much has the development of this system cost to date? Is there a quantifiable figure available?

**Ms Batman**—We have aggregated the costs, including the staff and the technology costs, to be about \$1.2 million to date.

**Senator LUDWIG**—Has the pilot now been completed? Has there been an evaluation of that?

**Ms Batman**—There is an evaluation which is ongoing and which will continue. While it is a pilot, it is not a terminating pilot. So, in the absence of something that would cause alarm and make us stop, the intention is to continue to use that system and collect data along the way. We have been doing that. We have now done over 12,000 transactions through the system. In that time, we have not found one false acceptance: there has not been one occasion in which it has recognised and accepted a person when it should not have. It has falsely rejected people, if you like, at a rate of about two to three per cent so far. Essentially, you have to set the balance between false acceptance and false rejection, and we have chosen to set the balance so that it is better to reject somebody. The consequence of that is that they go to a manual process nearby. The consequence of accepting somebody falsely is more serious. Even so, the false rejection rate is only two to three per cent to date.

**Senator LUDWIG**—Can you provide the committee with the results of that? Is there a document that provides a summary of the findings of the pilot?

**Ms Batman**—We have not published a document; we are still collecting the data. But I could flesh that out in terms of some more information for you.

**Senator LUDWIG**—Perhaps not. Is it going to be published? If the results of the pilot program are going to be published in a short while, I am happy to wait for that.

**Ms Batman**—Probably it is a question of the term ‘published’. We will make it public rather than necessarily publish a specific report on it. We will be making the results public at various points. It is just that we intend to continue rather than stop at any particular point.

**Senator LUDWIG**—I might rely on your offer to flesh it out then, thank you. How extensively is it being used now, post the launch? I could not find any details on that.

**Ms Batman**—It is still the one unit at Sydney airport, but it is being used by over 3,200 Qantas crew on a regular basis as they pass through the airport in Sydney.

**Senator LUDWIG**—Is there the intention to broaden that at this point in time or in the short term?

**Ms Batman**—Yes. We are currently looking at putting a unit in at another airport. We have not yet decided which airport that might be. We are also talking to other airlines who are interested in processing and enrolling their crew in that way. We are also considering the option of using it for frequent flyers in conjunction with some of the airlines.

**Senator LUDWIG**—Is a time line available for that?

**Ms Batman**—It is parallel development. We are doing the work for the border processing aspect and the Passports Office is doing parallel development on a chip in the Australian passport. The ultimate intention would be to bring these two together at some point so that all Australians with the new passport that had the biometric chip in it would be able to be processed in this way. At the moment, it is still in an R&D phase, both in parallel. As yet there is no timetable for implementation beyond the trial work I have described.

**Senator LUDWIG**—Is there any cost benefit analysis being done in terms of what you have expended so far?

**Ms Batman**—We did a business case at the beginning of the project, but we have not updated it since then and I think quite a few of the figures would have changed.

**Senator LUDWIG**—Does that business case require a validation at the end, or a reappraisal?

**Ms Batman**—We would certainly want to have another look at it. At the stage that we did it, some of the costs of this technology were quite unknown, and we are still at the frontiers of this. This is probably the only one of these in the world at the moment, although there are other systems using fingerprint or iris recognition. The costs are unfolding as we go. We would certainly want to review those at the point of making broader decisions about implementation.

**Senator LUDWIG**—Are you able to provide any projections of the impact of the introduction of this technology on existing staffing levels—in other words, those staff currently employed at the airport security desk who may be affected by the introduction of SmartGate?

**Ms Batman**—At the present time, and certainly with the rollout plans that we are talking about, the staff who are processing crew at Sydney airport would certainly have a reduced workload on that particular module. But they are occupying any spare time with processing other passengers. There is certainly more enforcement work that is of higher value that they are being moved to. But, at the moment, it is very small—12,500 transactions to date is quite small—so there is no noticeable impact at this stage.

**Senator LUDWIG**—Have you done any work on the impact or implications for staffing if facial recognition is extended more broadly?

**Ms Batman**—We did in our original business case, but I think that is one of things we would need to revisit in terms of the timing of the costs.

**Senator LUDWIG**—Is that business case available to the committee?

**Ms Batman**—We could make that available.

**Senator LUDWIG**—I read the article in the *Australian* on 4 February, which I am sure you read as well, where Mr Geoffrey Ross, described as being head of Australia's largest IT security firm, SecureNet said:

... biometrics 'categorically' would not provide an answer to ID issues in the short term.

Would you care to respond to that comment in the light of the introduction of SmartGate?

**Ms Batman**—Yes, thank you. It is good to have that opportunity.

**Senator LUDWIG**—It was a big article.

**Ms Batman**—It was. It is just a pity that the person making the comments did not actually know anything about our system to base those comments upon. Large parts of that article talk about another use of facial recognition technology which most people are familiar with—the

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face-in-the-crowd technology—where you have a number of photographs of people who you are interested in locating, normally suspects or terrorists, and you run against these everybody who walks past or who you interact with, looking to see whether any of them are the wanted person. That is not the system that we are using at Sydney airport. The system that we are using essentially replaces a person—a customs officer—who looks at the person standing in front of them, compares them to the small photograph in their passport, which may be up to 10 years old, and decides whether that is, in fact, the same person. The fact that we are currently running at 12,500 transactions without one false acceptance of that is a pretty good indication that it is going very well.

We do not know and probably cannot know the accuracy of people doing this job. It is a very inexact science, I think. We have examples under the SmartGate system of the photo that was taken at the enrolment of the Qantas crew member and the photo that was taken at the SmartGate kiosk. I would defy a lot of people to say, ‘Yes, they are the same person,’ in a processing time of under 10 seconds. We think that it does add a great deal to the security and it is not the face-in-the-crowd technology that that article seemed to be pointed at.

**Senator Ellison**—Madam Chair, I wrote a letter to the editor about that, correcting the article, but the letter was not published.

**Senator LUDWIG**—That was my next question, but you have already taken the opportunity to respond to it. Other than the news release, is there other material or information you have put out about SmartGate, other than to the users themselves, to educate people as to what it is and how it is operating? I am sure that as passengers come through they can see what is going on over to the side.

**Ms Batman**—No, Senator. We have a number of brochures and a video but that information has mainly been targeted at the users of the system. We have not yet done what I think you are suggesting, which is to make it more widely available.

**Senator LUDWIG**—I do not know whether I am, but take it and do with it as you want.

**Ms Batman**—The news report did seem to generate quite a bit of interest.

**Mr Woodward**—May I add that it is well known in international circles and I think there is an international group meeting this week.

**Ms Batman**—That is on 23 February. I am giving a presentation on this at an APEC seminar in Bangkok towards the end of the month. It is a regional seminar with a lot of government agencies and private firms attending. It has been quite well known in circles. Also, this week the International Air Transportation Association is meeting in Sydney. They are coming to Sydney primarily to have a look at the SmartGate trial. I think there are 80 delegates attending later in this week.

**Senator LUDWIG**—On another topic, I asked a couple of questions about the privacy audit in November. Has that been signed off on? I believe there were some cabinets expected to be delivered on time in February.

**Mr Jeffery**—I checked that today. The cabinets are on order and they will be delivered, we believe, on 25 February. They have been ordered, they are being made and we expect them before the end of the month.

**Senator LUDWIG**—Is there any other work outstanding in relation to the privacy issues?

**Mr Jeffery**—I do not believe so. Some of it is ongoing to keep our processes and practices up to date, but I do not believe there is anything else out of that order.

**Senator LUDWIG**—I will keep that as a standard question for next time. In September 2002, the ACS let a contract to AC Nielsen research for \$243,000-odd. The description of this contract is to conduct international travellers and industry surveys for ACS. What was the purpose of that? What outcome was being sought from that contract? How will you utilise the outcome or the survey data?

**Ms Batman**—Basically, it was a survey of passengers departing and arriving, including a number that had had a customs examination, asking them about their experience and whether they were satisfied with it, including the time that it had taken. By and large the results were very good. They were in the high 80s, from memory. We have distributed it across the organisation, and we will also be tabling it to other members of the industry at the national facilitation meeting—which is organised by the department of transport and includes airlines, airports and government authorities engaged in that—for their information as well.

**Senator LUDWIG**—What will you do with it, in essence? How does it add value to your business?

**Ms Batman**—Our intention was to see where we were perhaps falling short, so that we could address those issues.

**Senator LUDWIG**—What did it identify, then?

**Ms Batman**—I guess the results were better than we expected, in that sense. They were generally quite good—actually, they were very good. It was hard to find too many areas that were identified where we needed to do better. The intention going in, I suppose, was either to confirm that our processes were reasonable or to identify that they needed some adjustment.

**Senator LUDWIG**—So you are telling me that you spent \$243,000 on a good-news story?

**Ms Batman**—We had hoped to have an independent survey that would identify any problems. We keep our eye on it, and generally we had felt that officers were being polite; we measure the time lines and that sort of thing. But until you have an independent survey done you can sometimes delude yourself by looking only at the good news without seeing the bad news. So to get that was some comfort for us.

**Senator LUDWIG**—Contract ID10410697, for \$1.7 million, was let to a company called National Property and Investments. The contract is described as being for a container examination facility, Botany. Would you quickly describe, if you can, what that provided.

**Mr Woodward**—We may need to take that one on notice, but it was all of the work that was associated with getting a container X-ray from a plot of very barren land. I think you have now seen what was involved in that process. What particularly went to that company I am not sure, so could we take that on notice?

**Senator LUDWIG**—Yes, please. I thought it could have been for the lease of the property, or part of the process.

**Mr Woodward**—I think it was the management of the process, but we will check.

**Senator LUDWIG**—It dawned on me that it could be, because it talked about ‘other special purpose machinery and parts thereof’. I was trying to ascertain what their help was. It would be helpful if you would detail that for the committee, please.

**Mr Jeffery**—Senator, could I just clarify that the AC Nielsen survey was in at least two parts, maybe three. The part Ms Batman spoke about was passengers; there was a part dealing with industry and industry clients as well. I am not as au fait with the outcome of that as Ms Batman was, so if you want further information on it we will have to take the question on notice. But it was not solely on the passenger environment; some of it was on our client relationship with industry and with sectors of industry.

**Senator LUDWIG**—I have got contract ID984088. You are the agency. The description is to conduct international traveller and industry surveys for ACS, and to provide a market research and public opinion polling service.

**Mr Jeffery**—The part that Ms Batman spoke about was just the traveller side. The industry side deals with a lot of our commercial side as well.

**Senator LUDWIG**—That is ‘and industry surveys for ACS’?

**Mr Jeffery**—Yes.

**Senator LUDWIG**—I understand, so I correct that: only half of the \$240,000-odd was spent on good news.

**Mr Jeffery**—I am not sure what proportion of it was spent on that, but it was not \$243,000 spent solely on a good-news survey of passengers, unfortunately. Some of it was in the industry side.

**Senator LUDWIG**—I am happy to be corrected. Could you detail, then, how that was broken up, and what the outcome of the industry surveys was for ACS.

**Mr Jeffery**—I will take that on notice, because I am not as au fait with it as Ms Batman was.

**Senator LUDWIG**—What I was looking for was whether anything identified in terms of the industry surveys for ACS goes to matters in the same vein as those I was asking about in relation to the conduct of international travellers. That agreed with—my words—where you are at. Is that similar in terms of the industry surveys for ACS?

**Mr Woodward**—This is not something that we have got into because we necessarily thought it was a good idea. If you go back to Midford, there were many criticisms of Customs in the Midford era. One was that we did not know and did not understand industry’s views, that we did not have a close enough feel for industry and we did not have a close enough feel for staff. Several of the 106 recommendations considered by the then government required us to periodically undertake surveys of industry and of our staff, and we have been doing those at intervals since then.

In relation to air travellers, we used to rely on surveys conducted particularly by Sydney airport but also by other airports. We then discovered that some of the findings suggested that the delays in luggage arriving was due to Customs and the way they formulated the questionnaire. We thought there was a need to formulate some questions devised around what travellers think of Customs and the industry and how we might improve. So there is a history of this and it has in fact proven to be worthwhile—all three of those exercises.

**Senator LUDWIG**—Who gets the industry’s survey?

**Mr Woodward**—It comes to us. We prepare at least summaries of it, I think, that go back out to industry. Certainly in relation to staffing there is a—

**Senator LUDWIG**—I wonder whether you could make those available to the committee in particular in relation to staff.

**Mr Woodward**—We can give you the historical one. There is one at the moment that we have which has not gone anywhere, so we would not give you that yet. When it is finalised I see no reason why we would not want to give it to you.

**Senator LUDWIG**—Thank you. In relation to the integrated cargo system, in response to question 102 you informed us that the software build was scheduled for completion on 21 January, 2003. Is that now complete?

**Mr Drury**—Release 2 software will be completed on 14 February.

**Senator LUDWIG**—Forgive me if I do not understand that. How many others have not been then—or is that it? Will it be completed—

**Mr Drury**—Sorry, I thought I was answering the question.

**Senator LUDWIG**—It says that the software build was scheduled for completion. That was the answer you gave for 102. Will it now be scheduled for completion on 14 February?

**Mr Drury**—That is correct.

**Senator LUDWIG**—And that is all of the software?

**Mr Drury**—That is for release 2.

**Senator LUDWIG**—So that is the component that will be up and running on 14 February?

**Mr Drury**—Yes. Although we have testing expected to be completed in May, the build will be done by 14 February.

**Senator LUDWIG**—You also noted that the ‘planning for the integration of the integrated cargo system and the Customs Connect Facility is currently under way and may impact the industry scheduled for May but up to six weeks’—is that later or earlier?

**Mr Drury**—We are still aiming for May.

**Senator LUDWIG**—Why do you say it ‘may impact’ in your answer? What do you mean by ‘may impact’?

**Mr Jeffery**—I am trying to pick up where we used it.

**Senator LUDWIG**—What I have is that the response to question No. 102 also notes that: Planning for the Integrated Cargo System in the Customs Connect Facility is currently under way and may impact the early industry exposure presently scheduled for May 2003 by up to six weeks.

That is the quote I have taken out.

**Mr Drury**—I think all we are saying is that, depending on how the exposure turns out, the consequence of that may be that date or we might be either earlier or later than that date.

**Senator LUDWIG**—So it is your best guesstimate.

**Mr Drury**—Yes, that is what we are aiming for.

[6.11 p.m.]

**Senator LUDWIG**—They are all the questions I have in this area. I would like to move to Coastwatch. That is all I have on 1.1 and 1.2. I have only a couple on Coastwatch. Coastwatch keeps a register of volunteers. How many volunteers do you have on the register? Is that updated annually, or how is it dealt with?

**Mr Marshall**—That is a question that I will have to take on notice.

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**Senator LUDWIG**—While you are having a look at that, perhaps we could go back to, say, 1999 and have a look for each year. What I am trying to ascertain is what the register is, how you keep the names and addresses, how you keep it up to date—if you do—or whether it is a voluntary matter and people put their name on it, and what sort of role they play within the organisation. I am trying to ascertain whether you utilise them and whether they are deployed in some way, what sort of work they might assist you with and where they might be found. Or is it a looser collection than that?

**Mr Drury**—For clarification: are we talking about Customs Watch here or Coastwatch? Customs Watch is a scheme of volunteerism that we have been encouraging for quite some time. Perhaps that is what we are talking about. I thought your first question was about Coastwatch.

**Senator LUDWIG**—I should have said ‘marine surveillance’. I made the mistake of putting it all in the same area, but I need to understand you more clearly. It is the civil marine surveillance and response area. Is it Coastwatch?

**Mr Drury**—No, we have a scheme called Customs Watch. In fact, when you launch a boat from a ramp or somewhere like that around the coast, you will see a sign which is erected near the boat ramp saying, ‘If you see anything suspicious, report it to the following number.’ That allows us to compile data, which we put under the Customs Watch program.

**Senator LUDWIG**—I have not seen that; I will have to look out for it.

**Mr Drury**—I can tell you where there is one—where I launched my boat last. They are around; I can tell you that.

**Senator LUDWIG**—I am trying to understand how that scheme has been going. How many people are in it? How are they used or deployed? It is clearly voluntary, but do you provide training or any assistance? What role do they play? Is there any insurance if they have an accident?

**Mr Woodward**—We can provide you with some more information, Senator, but we are in the process of a major revamp of Customs Watch and Frontline which is aimed at industry, against the background or view that we perhaps ought to be integrating them. We would be able to give you an indication of where we are and where we have been, but we think that in the future we might need to head in a slightly different direction and take a more integrated approach to our relations with the community.

**Senator LUDWIG**—I would be happy with some historical data, which would be helpful to understand it, both in relation to Customs Watch and Frontline. I suspect you cannot identify the businesses or the people in relation to those two organisations, but the nature or the type—

**Mr Woodward**—We can give you something about the dimensions and we can give you some indication, without being too specific, of some of the successes that have actually flowed to the Commonwealth as a result of information we have got. Some people want to keep it to themselves and to us and not to publicise it.

**Senator LUDWIG**—Yes, I understand that. Provide only what you can assist the committee with, being prudent with people’s privacy, for both Customs Watch and Frontline. I am more interested in the extent or the size of what you have. If you are having a review, how are you conducting the review? Would you have any idea about what you intend to do in the future in relation to both of those? If it is too early then tell me that as well. Those are all the questions that I have in relation to Customs. Thank you very much.

**CHAIR**—Mr Woodward and departmental officers, thank you very much for assisting the committee this evening.

[6.19 p.m.]

**Office of Parliamentary Counsel**

**CHAIR**—Welcome, Ms Penfold and Mr Quiggin.

**Senator LUDWIG**—I appreciate the information you provided to the committee at the last estimates. It gave me a better understanding of the categories you use, which are T, A, B and C. I do not know how you get T before A, B and C, but I will leave that for you. I am happy for you to take these questions on notice. In each category, how many bills were introduced into parliament? In each category, for how many bills did you receive no instructions by the end of those sittings? Could you identify which bills they were

**Ms Penfold**—Is this for the most recent parliamentary sittings—the spring sittings—or going back to the information?

**Senator LUDWIG**—Yes, going back to that. I was going to come to both—the recent one and I want the historical one as well—and then the one we have now commenced, because we have not got to the end of this one yet.

**Ms Penfold**—We have not got to the end of this financial year.

**Senator LUDWIG**—No, but we deal with sitting periods.

**Ms Penfold**—Yes, I was thinking in terms of the spring sitting, which is the one that finished in December.

**Senator LUDWIG**—Yes.

**Ms Penfold**—It is the only one we have not yet reported on. How far back would you like us to go?

**Senator LUDWIG**—At least to the spring and the one before that.

**Ms Penfold**—So spring 2002 and the budget sittings 2002?

**Senator LUDWIG**—I think if we just use those. If we want any more I can put that on notice.

**Ms Penfold**—You have the numbers of bills that were introduced.

**Senator LUDWIG**—Yes, we have got the numbers. I was trying to paint a bit more of a picture of the nature of those bills. In each category, how many bills did you receive no instructions for by the end of those sittings?

**Ms Penfold**—Again, the numbers are there—but you would like the names?

**Senator LUDWIG**—Yes, which ones? And then, in each category, how many bills were you unable to finish drafting, despite receiving timely instructions?

**Ms Penfold**—Again, the numbers are there but you would like the names?

**Senator LUDWIG**—Yes. Specifically, with the autumn 2003 sittings, you can divide those into the T, A, B and C categories, can't you?

**Ms Penfold**—I can certainly divide them by priority category, yes.

**Senator LUDWIG**—And then in each category you can tell me how many bills have been completed.

**Ms Penfold**—I can tell you how many at the end of the autumn sittings. I can tell you right now that one bill was introduced last week and another eight or nine-odd will be introduced this week.

**Senator LUDWIG**—Perhaps you could tell—and I am happy for you to take it on notice—how many there are up to today as the cut-off date; then, at the end of that sitting period, I can ask for a summary again. We can do it that way, can't we?

**Ms Penfold**—We could. So, for the autumn sittings up until today—

**Senator LUDWIG**—In each category, how many bills have been completed and their names.

**Ms Penfold**—Completed will mean that they are introduced?

**Senator LUDWIG**—Yes.

**Ms Penfold**—We cannot regard the bill as completed until it is introduced, and generally not then.

**Senator LUDWIG**—No, you cannot tell me ahead of time. And, in each category, how many bills have you received no instructions for, and which ones? And then, in each category, for how many bills have you received some but incomplete instructions?

**Ms Penfold**—Incomplete instructions is a very difficult concept. I could identify the bills for which we have received written instructions that specifically say, 'And we will be sending further instructions on X.' But almost every bill, once the work starts, generates further instructions.

**Senator LUDWIG**—Just the first category then.

**Ms Penfold**—Just the ones where clearly there are instructions outstanding.

**Senator LUDWIG**—And which ones. Then, more specifically, in relation to the classified information procedures bill which appeared on the government's legislative program for the autumn, winter and spring sittings last year and again for the autumn sitting this year, in each set of sittings which category was the bill placed in—T, A, B or C? And can you say whether drafting instructions have been received for that bill, and whether drafting has been completed and, if not, why not? I ask that in the sense that there are, I suspect, at least three possibilities: one is that you have not got the time, and I do not think that is the case because I know you are diligent; two is that you may have sent drafting instructions and are waiting further—it might be in that 'to and fro' category; or three it is in the early category, where you have been sent some instructions but there are more to follow. In each of those periods, which would it fall in, if at all? Does that make sense?

**Ms Penfold**—I think so, Senator, yes.

**Senator LUDWIG**—Forgive me if it has been a little bit cumbersome. That is all I have for you, thank you.

**CHAIR**—Thank you very much, Ms Penfold and Mr Quiggin. There are a number of questions you have taken on notice there. I said at the beginning of proceedings that our return date for questions on notice is Wednesday, 19 March. Your assistance in meeting that deadline would be helpful. Thank you.

**Proceedings suspended from 6.27 p.m. to 7.31 p.m.**

**Australian Federal Police**

**CHAIR**—I welcome Mr Mick Keelty, Commissioner of the Australian Federal Police, and his officers. We will begin consideration of additional estimates for the Australian Federal Police with questions from Senator Ludwig.

**Senator LUDWIG**—Which states or territories have signed memoranda of understanding or joint agency agreements to establish joint counter-terrorism teams and which states or territories have not? Are you able to assist the committee with that?

**Mr Keelty**—All states and territories apart from the Northern Territory and New South Wales.

**Senator LUDWIG**—Have reasons been provided by either of those two jurisdictions?

**Mr Keelty**—There is in-principle agreement; we are just working through the detail.

**Senator LUDWIG**—Are copies of that available? Perhaps you could have look at it and, if it is available, provide it to the committee and, if not, give an explanation as to why it cannot be provided. That would be easiest way of dealing with it.

**Mr Keelty**—Yes, Senator.

**Senator LUDWIG**—Which joint teams have been established to date? I am happy for you to take that on notice if there is a range of them.

**Mr Keelty**—I think I might be able to provide you with that advice now. As I understand it, the ones that have been established are in all the states and territories apart from the two jurisdictions I mentioned.

**Senator LUDWIG**—If they are established, I take it that there will be one per state?

**Mr Keelty**—That is correct.

**Senator LUDWIG**—Can you outline—similarly you may take this on notice—how many personnel have been or will be committed when all the planned teams are established?

**Mr Keelty**—In terms of the number committed, there will be 27 federal agents from the AFP, 14 state and territory police detectives and six investigative support staff.

**Senator LUDWIG**—Aside from the memorandum of understanding, is there an outline of the role or function of the joint teams? Are you able to inform the committee or is that tied up with the memorandum of understanding?

**Mr Keelty**—It would be in the memorandum of understanding, but I can give you a broad description. The idea of the teams is to work proactively on the intelligence that is made available through operations conducted by the AFP or by state or territory police, and also from intelligence provided by the Australian intelligence community.

**Senator LUDWIG**—What powers will they exercise in respect of intelligence collection and investigation?

**Mr Keelty**—Intelligence collection will be conducted with normal police powers. There are no special powers being attributed to these teams. The powers that they will use to gather intelligence are the same as we use for criminal intelligence in every other respect.

**Senator LUDWIG**—How will their operations relate to the counter-terrorism roles of the AFP, ASIO and the dedicated police counter-terrorism established in New South Wales,

Victoria and South Australia and the one that is, I think, planned for Queensland? How will they relate to those? Will there be no relationship or will you work with them?

**Mr Keelty**—I am sorry, Senator, I did not hear the description of the other group.

**Senator LUDWIG**—The dedicated police counter-terrorism established in New South Wales, Victoria and South Australia and the one planned in Queensland. Or are we all talking about the same thing?

**Mr Keelty**—We may be talking about the same thing. These are the proactive groups as opposed to any response teams that might have been established in each of the jurisdictions to respond to an act of terrorism. This is quite separate from that. But without knowing the precise detail of the group you are describing, it may well be that we are describing the same group. The proactive group involved in the joint terrorist team set up through negotiation by the AFP in each of the states and territories will be proactive teams of the numbers with the resources that I just mentioned.

**Senator LUDWIG**—It might become a little bit clearer when we have a look at the understanding, if that is available, or we can come back to it in May. In respect of the transnational crime coordination centre, what are the projected running costs of the TCCC—that is, over the current financial year or at least for six months from December 2002 to June 2003?

**Mr Keelty**—I do not have those figures in front of me. I can give you those on notice.

**Senator LUDWIG**—Yes, please. Do you know how many AFP personnel are committed to staffing the transnational crime coordination centre?

**Mr Keelty**—I will have to take that on notice. To explain the operation of that coordination centre, it may well be that existing investigation teams on other operations are brought into the coordination centre for that very basis of coordination.

**Senator LUDWIG**—Which other Commonwealth agencies liaise with the transnational crime coordination centre? Is there an agreement with other agencies?

**Mr Keelty**—Not specifically an agreement with other agencies, but other agencies can come in on an as required basis. At the moment we have three members of the London Metropolitan Police. There is a plan for a number of FBI agents to participate, there is a request from the BKA in Germany who want to send out one member, and also the Dutch police want to have one member located there. In addition to that, we are seconding one member of AUSTRAC and we are negotiating with ASIO to see whether they want a position there.

**Senator LUDWIG**—Are they the only secondees?

**Mr Keelty**—At the moment they are. But the centre is dynamic in the sense that, as the crime requires more people to be attached to it or a particular level of expertise from whatever area, we will be seeking to have those people attached.

**Senator LUDWIG**—In respect of people trafficking, have there been any investigations into people trafficking over the past two years? If there have, withstanding operational requirements, can you provide some details of that? That may be easier taken on notice.

**Mr Keelty**—I will take that on notice, thank you, Senator.

**Senator LUDWIG**—It is easier to say that I have a series of questions around that, so I will go through them and then you can have an opportunity to perhaps take them on notice. Are there specific identifiable resources, both financial and human, to aid the investigations in

relation to people trafficking and the prosecution of any such people who may have been caught in relation to people trafficking? That is not people-smuggling; it is distinct from that.

**Mr Keelty**—I understand what you mean.

**Senator LUDWIG**—I knew you would but not everybody listening, including me, sometimes understands the difference. What are the identifiable resources, if any? In addition, if there have been no prosecutions of people traffickers, could you advise what the impediments are to successful investigation and prosecution? In other words, there are investigations which are in the process of leading to prosecutions—which might be an operation you cannot discuss—or there are impediments to successful prosecutions. Could you advise the committee about that?

**Mr Keelty**—We will advise the committee on that. Are you talking about the past two years?

**Senator LUDWIG**—Yes. What procedures do you have in place for dealing with people who say they have been trafficked? In other words, are there formal arrangements in place between the AFP and DIMIA in relation to people trafficking, both in terms of the people who claim they have been trafficked and in terms of the people who might be identified as people traffickers? What priority do the Australian Federal Police give to investigation of potential offences pursuant to the Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999? I understand you have PROMIS, and I was wondering how you work through these sorts of issues to determine the priority not only of the cases but also the priority of the areas that you then pursue? I understand there are different programs, but do you have a program dealing specifically with this area? If so, the earlier questions about finance and personnel relate to that.

**Mr Keelty**—I will give you a comprehensive reply.

**Senator LUDWIG**—Finally, where women have reported victimisation in relation to slavery and sexual servitude and made statements to, for argument's sake, DIMIA, the AFP or other bodies, are there protective measures that can be implemented to ensure their safety? What support has been offered to them as alleged victims of those crimes?

**Mr Keelty**—You may prefer to get this as a comprehensive answer rather than have me provide it piecemeal now.

**Senator LUDWIG**—Given the time and the range of questions that I have asked, it may be worthwhile taking it away and having a look at the questions I have raised. We have estimates in May that we can come back to if there are any matters which I need to examine further.

**Mr Keelty**—Certainly.

**Senator LUDWIG**—In relation to detention centres, have there been any negotiations between the AFP and relevant state police forces to determine jurisdictional responsibility for offences occurring within those detention centres?

**Mr Keelty**—Yes, there have been. The AFP, the New South Wales Police and DIMIA have developed a draft protocol covering the provision of policing services to the Villawood immigration detention centre, which it is hoped will provide the basis for a similar agreement in Western Australia. This protocol identifies agency responsibilities for responding to various types of incidents occurring at the immigration detention centres. We are currently reviewing amendments requested very recently by DIMIA. I understand that these amendments are minor in nature.

The discussions on the finalisation of the draft protocol have been taking place over a period, and the most recent meeting was on 5 February this year. Pending finalisation, major incidents at detention centres are responded to by the AFP and the relevant state police service. Minor infringements referred to the AFP which do not satisfy our case categorisation and priority model are referred to Gynea for attention.

**Senator LUDWIG**—Is a copy of the Villawood one available to the committee?

**Mr Keelty**—Could I take that on notice, Senator, to ensure that the parties—

**Senator LUDWIG**—Yes, I understand a number of parties are involved in relation to that. Are there no plans in relation to other detention centres?

**Mr Keelty**—There are, Senator. The deputy commissioner might want to update you on those.

**Mr Davies**—In relation to the other states, there has been agreement amongst commissioners that we are waiting to see the Villawood protocol, which would hopefully be a protocol for all jurisdictions. Each of the states—at least in the sense of New South Wales, South Australia and Western Australia—have been pretty much operating as per the intentions of the draft protocol. As a result of the meeting on 5 February we are close to also moving ahead to finalisation in South Australia. That should not be too far away. There might be slight differences between the models for New South Wales and South Australia because South Australia have indicated that they have a position on some matters that they might not have taken into account, which they may do on a cost recovery basis. That is a matter for negotiation between DIMIA and South Australia. It would not impact on the work that the AFP would do, as just indicated by the commissioner. Again, we suspect that that will all be in agreement in a very short order of time. Whilst there is no protocol in place at the moment with Western Australia, it has obviously been the subject of ongoing discussion and is, as I said, effectively in practice on the ground and working very similarly to the intentions of the Villawood protocol. So there is good cooperation in Western Australia between DIMIA, the Western Australian and South Hedland police stations, and the AFP resident agent in Port Hedland.

**Senator LUDWIG**—Where do you currently draw the jurisdictional line? What is the agreement designed to overcome?

**Mr Davies**—In the main, that is the reason why these have not quite been signed off. Generally it would be fair to say that agreement has pretty much been reached. There was some middle ground as to some minor matters about where they might be taken, but essentially the states are still looking at serious issues against the person within the states. The AFP will look at serious matters against Commonwealth property and Commonwealth offences. Some of the minor matters are falling to DIMIA, whereas in the case of South Australia I think the intention is that some of that will be picked up by South Australia. We would have to take it on notice, but when the Villawood protocol is agreed I see no reason why that could not be made available, with the agreement of the parties. That clearly has a schedule of offences attached, which shows a differentiation between who picks up what responsibility.

**Senator LUDWIG**—That would be helpful. One of the issues that has been reported—this may or may not be accurate, but you can have the opportunity of advising the committee—is that the AFP has investigated, as I understand it, reports of arson at a detention centre and assaults on detention centre staff. So they are offences against Commonwealth property and the staff would presumably not be Commonwealth staff—they are offences against a person.

In this case, it seems to suggest that there is more than a grey area than just between property and persons.

**Mr Davies**—The agreements, obviously, that are being negotiated are clearly designed to take out the grey area. It is true to say that there has been a grey area. Generally, the cooperation between the agencies has been good, but this is to ensure that everyone clearly understands the role and what will occur regarding the various issues. I have to say, at the end of the day—and I am probably preempting an outcome; there may be some minor issues that fall into a gap—the reality is that the negotiation is to set down in concrete who will pick up what responsibility.

**Senator LUDWIG**—We might pursue that again following the information that is provided to us. If necessary, we can come back to it in May.

**Senator CARR**—Mr Keelty, could you give me some advice about the AFP relationship with the Australian Government Analytical Laboratories? Do you have someone who can help me with that?

**Mr Keelty**—Is there any specific area?

**Senator CARR**—In particular, the area of drug testing.

**Mr Keelty**—Drug testing?

**Senator CARR**—I understand drug testing is a key role of the Australian Government Analytical Laboratories as far as the Australian Federal Police is concerned? Is that the basis of your relationship?

**Mr Van Dam**—The relationship with AGAL is multifaceted but the two core components of that relationship revolve around the verification and testing of narcotics for the purposes of prosecution after interception. The second area of major engagement with AGAL is in relation to the establishment of the Heroin Signature Program.

**Senator CARR**—Has the AFP changed its financial commitments to AGAL in the last year?

**Mr Van Dam**—Not that I am aware of. We have been putting money towards the establishment of the Heroin Signature Program. That has not proceeded at a pace that either ourselves or AGAL would like. But there has been no change to the commitment of resources in that area.

**Senator CARR**—So no decision has been taken by the AFP to stop funding that program?

**Mr Van Dam**—No, not that I am aware of.

**Senator CARR**—I want to be clear about this: as far as you are concerned, is the AFP continuing to make payments for the profiling program?

**Mr Van Dam**—My apologies. We have not changed our financial commitment to AGAL at all. As I understand it, we have not made some payments to AGAL while there is a question about some work that is outstanding in relation to the Heroin Signature Program, but that does not mean that there is not an intention or an ongoing commitment.

**Senator CARR**—It is just that that is slightly different from the previous exchange. How much money is involved in these payments that you have stopped?

**Mr Van Dam**—I would have to take that on notice.

**Senator CARR**—For what period has there been a suspension of payments?

**Mr Van Dam**—I would also have to take that on notice.

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**Senator CARR**—Can you tell me why you have suspended payments?

**Mr Van Dam**—My understanding is that there were some concerns about whether or not the program was being delivered in the terms that were expected, so the suspension of payment was until those matters had been resolved.

**Senator CARR**—Are you able to give me more detail, Mr Keelty?

**Mr Keelty**—Mr Van Dam has described the situation but to add to that, it appears there are industrial relations issues within AGAL that have affected the service to the AFP. As Mr Van Dam pointed out, that is the issue in contention.

**Senator CARR**—How long has this been going on?

**Mr Keelty**—I have not got the dates, but we can provide them to you.

**Senator CARR**—Are you able to tell me if you have provided AGAL with \$4 million worth of new equipment?

**Mr Van Dam**—I would have to take that on notice.

**Senator CARR**—In the last AGAL report there was a reference to \$4 million being invested in capital equipment to support AGAL's capabilities and capacities. How much of that was provided by the AFP?

**Mr Van Dam**—I will happily take that on notice and get back to you.

**Senator CARR**—As I understand it, the AFP is one of the major service clients, if you like, of AGAL. Would that be your understanding?

**Mr Van Dam**—I think the Heroin Signature Program is a major joint development between the two agencies.

**Senator CARR**—In fact it is identified here as one of their four major programs. I would be interested to know why the Federal Police feels that it is not able to make payments at this time.

**Mr Keelty**—As Mr Van Dam and I have stated, it is in relation to not receiving a service for which we are paying. We are happy to provide the full information to you.

**Senator CARR**—The money for this came from the Commonwealth government's drugs program, did it not?

**Mr Keelty**—That is correct. There was \$4.72 million made available for the Heroin Signature Program in the 2002 budget.

**Senator CARR**—That was \$4.72 million in just one year. Most of that would have ended up with AGAL, would it not?

**Mr Keelty**—There would be other aspects of the program that I may not be aware of to give you detail on tonight. I assume that there are issues about where samples are taken from and how these samples are transported to AGAL. There may be some ongoing costs in relation to getting the samples to AGAL before they do some analysis.

**Senator CARR**—There would presumably be some security matters with transferring samples.

**Mr Keelty**—I am happy to give you a breakdown of that.

**Senator CARR**—Thank you, I appreciate that. It strikes me that the Mercer report into the operations of AGAL identified the need for independent laboratories to be established in this country under government ownership, which have integrity and authority in terms of the legal

process. This was extremely important. When a dispute of this nature arises, naturally enough there are serious implications. Could you provide me with that information as quickly as possible? Furthermore, a question has been put to me that relates to the role the AFP has played in the establishment of a new position at AGAL, called the lead scientist, at the national forensic drug laboratory. Are you or any of the officers able to help me with that?

**Mr Keelty**—I can give you some information on that. Since 1997, all AFP heroin seizures over 25 grams have been physically and chemically profiled by AGAL using one analysis method, resulting in a total of 1,500 chemical signatures of heroin in the AGAL database. However, application of a second chemical analysis process to those samples has been slower than expected, and 1,300 samples remain to be done. Senior AFP staff met with AGAL management in January this year to resolve the problems of the work that was not completed. It was during those discussions that it was identified that a lead scientist position at AGAL, which has been advertised, would be created to be responsible for the signature programs. The strategy for completing the backlog of heroin signature analysis within three months has been settled, and a new memorandum of understanding and business plan to cover all aspects of AGAL's service with respect to the expanded signature program are being prepared.

**Senator CARR**—There are a number of matters I would like to put to you, because I have had representations concerning these matters and, as you indicated, there is a serious industrial relations dispute at AGAL. A matter has been raised through the commission, so a lot of these things are subject to, and verifiable through, public proceedings. Has there been any discussions with any staff, including Dr James Robertson, involving the appointment of a lead scientist, other than the meeting you referred to?

**Mr Keelty**—Dr Robertson heads up our forensic sciences area. I am unaware of his role in all this. Mr Van Dam may be more aware of the details.

**Mr Van Dam**—As part of the establishment of the program, I think it would be fair to say that there has been ongoing discussion between Dr Robertson and senior personnel at AGAL. My understanding is that Dr Robertson was not engaged in the selection exercise that is currently the subject of some ongoing issues within AGAL. I attended the meeting with AGAL representatives some little while ago at which time they advised that they were recommencing the process of filling the lead scientist position and there was some broad discussion about the importance of getting that position filled as soon as possible to give the program the leadership and direction it needed.

**Senator CARR**—Is the AFP representative on the interview panel for the lead scientist a Dr Chris Lennard?

**Mr Van Dam**—I am not quite sure whether you mean the new process or the previous process. I would have to check whether Dr Lennard is engaged in the current process. I could take that on notice and certainly come back to you.

**Mr Keelty**—Senator, just to assist you in understanding who is who here, Dr Lennard is 2IC to Dr Robertson. It would not come as a surprise to me that Dr Lennard may well be involved in the process. However, as Mr Van Dam said, we will get the details for you.

**Senator CARR**—Thank you. I suspect that there are a number of matters that you will want to take on notice. It has been put to me that, in addition to being a member of the interview panel, Dr Lennard personally approached two scientists to apply for the position. Can that be confirmed?

**Mr Van Dam**—I am happy to take it on notice.

**Senator CARR**—That is, he approached a Dr Adam McCluskey from the University of New South Wales and a Dr Michael Collins. Was that approach made to either of those persons and was that approach sanctioned by the AFP?

**Mr Van Dam**—We will take those questions on notice.

**Senator CARR**—Did one of the persons approached make a late application for the selection and was that late application accepted?

**Mr Van Dam**—The last question should perhaps be appropriately addressed to AGAL. They are running the selection process and I do not think that it would be appropriate.

**Senator CARR**—Fair enough. In regard to members of selection panels, is that in conformity with what is understood within the AFP to be approved public service practice—namely, members of selection panels going out trying to recruit candidates for appointments?

**Mr Keelty**—It is not approved public sector practice per se. I do not know the detail of what you are describing and obviously we need to go into that for you. However, it is not uncommon, particularly in the professional area, if there are persons who might have a particular expertise or particular field to be canvassed as to whether they have an interest in the job, but I am not saying that that has happened on this occasion nor am I saying that anything out of the ordinary might have happened on this occasion. However, we will look into it and find out what the detail is.

**Senator CARR**—I am interested because it has been put to me that the independence of the laboratory is critical to the success or otherwise of potential prosecutions. It is obviously extremely important to the government's drug strategy insofar as multimillions have been allocated for expenditure for the signature program. It seems to me that if it is the case that these events have occurred, there might be matters of interest broader than just AGAL's management.

**Mr Keelty**—I understand what you are saying, Senator. We will look into it. It is the first I have heard of any suggestion that something out of the ordinary has occurred in this matter. But it is not uncommon for unsuccessful candidates in selection processes—

**Senator CARR**—To make allegations, yes.

**Mr Keelty**—to make allegations.

**Senator CARR**—Yes, I understand that. Nonetheless, you can confirm whether these approaches were being made.

**Mr Keelty**—Certainly.

**Senator CARR**—It was further put to me that candidates were told that if they did not apply they would not get any more money out of the drug strategy. Would that be right? Can that be confirmed?

**Mr Keelty**—We can find out whether that has happened. It certainly has not happened from Mr Van Dam or myself, I am sure.

**Senator CARR**—No. These are serious matters and I thought it appropriate to put it directly to you to establish whether there is any basis to it from your point of view. Clearly, these are matters I will also raise with the management of AGAL.

**Mr Keelty**—That is correct. I simply point out that if these sorts of allegations are being made to you we do not need to wait for a committee hearing like this. I am more than happy to have direct contact on issues that affect the integrity of the organisation.

**Senator CARR**—Thank you. I appreciate that. I look forward to your responses.

**Senator JACINTA COLLINS**—At the previous estimates I asked Commissioner Keelty to update the committee on the pursuit of Abu Qussey. Given some of the more recent developments, it may be appropriate for the minister to deal with that in the broader context than just the AFP.

**Senator Ellison**—There is, of course, an AFP side to it as well as Attorney-General's and Foreign Affairs. Perhaps I can give you a broader picture and then Commissioner Keelty can fill in the details in relation to the AFP.

**Senator JACINTA COLLINS**—I was just hoping to avoid duplication.

**Senator Ellison**—I can certainly say that the question of Mr Abu Qussey was a matter that I raised with the Indonesian minister for justice, when I visited Indonesia, and with the minister for foreign affairs in Indonesia.

**Senator JACINTA COLLINS**—When was it that you visited the minister for justice?

**Senator Ellison**—I visited Indonesia in December last year and also after the Bali bombing—I will double-check that and alter that if it is incorrect but I think it is right. Certainly I believe that Minister Downer raised it with the Indonesian government as well. The government is firmly committed to having Mr Abu Qussey front an Australian court and answer the charges against him. The government, as recently as a few days ago—last week—sent a team of experts to Jakarta for extensive discussions with Indonesian officials to examine a possible means of extraditing Mr Abu Qussey. Those officials met with Indonesian officials.

I believe that we have had good cooperation from the Indonesians. The trouble we have is that the extradition arrangements that we have with Indonesia provide for dual criminality, like other extradition arrangements with other countries, and people-smuggling is not a crime in Indonesia, albeit that there is proposed legislation in the Indonesian parliament dealing with people-smuggling. We have taken a number of steps to take measures in case Mr Abu Qussey is returned to Egypt. He is an Egyptian national and there has been discussion on whether he goes back to Egypt. In fact, where he goes is a matter for the Indonesians. We have taken measures in relation to transit countries which might be places where Mr Abu Qussey would go in any prospective return to Egypt. Our priority is that he would come to Australia, but if there is a decision by the Indonesian government to send him to Egypt then we have other measures in hand.

We have issued a red alert with Interpol. That is another measure that we have taken in relation to Mr Abu Qussey. I think it is fair to say that throughout this whole matter we have stressed with the Indonesian government that we want Mr Abu Qussey to face justice in Australia. I also signed a provisional warrant for his arrest. That was delivered to the Indonesian government just a few days ago, and I believe the justice minister in Indonesia has confirmed that.

On 15 January, we also made a request to the Indonesian government for mutual assistance. That is under mutual assistance arrangements that we have with Indonesia. That sought the provision of copies of documents seized by Indonesian officials, permission to interview Mr Abu Qussey and several other matters which would assist us. There are four summonses, and I will leave it to the AFP to discuss what he is wanted for and the steps that the Australian Federal Police have taken. Suffice to say that the minister for foreign affairs and I have made it personally known to the Indonesian government that we are keenly interested in having this man front justice in Australia.

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**Senator JACINTA COLLINS**—Perhaps before we move into the detail of some of what you have just covered there—and I understand Mr Keelty would probably be best to deal with some aspects of it—can I ask you to address a concerning report in the *Sydney Morning Herald* on 1 February, suggesting that Australia’s ambassador had never talked to the minister for justice in relation to the case of Abu Qussey. Is that your understanding of the matter?

**Senator Ellison**—Mr Ritchie, I understand, spoke to the minister for justice the other day. I am not sure if he has been made ambassador yet or if he is the charge d’affaires, but certainly he is our representative in Jakarta, and he spoke to the minister for justice about this matter.

**Senator JACINTA COLLINS**—The reason I have a concern is that there seems to be some contradictory reporting on this case.

**Senator Ellison**—You might want to check the date of that article. What is the date?

**Senator JACINTA COLLINS**—The date was 1 February, but bear with me for a moment because, for instance, by the time I get to a report in the *Jakarta Post* on 6 February, it is reported that the minister for justice is claiming the Australian Ambassador to Indonesia, David Ritchie—so he may have been ambassador at that stage—had met with him several times to discuss the matter. I am unclear as to whether this confusion is because there have been several more recent meetings or whether the minister for justice is describing meetings in relation to his other concerns—extradition of Raharja—as matters of earlier discussion with the Australian ambassador.

**Senator Ellison**—I have discussed Raharja both with the Indonesian Minister for Foreign Affairs and Dr Mahendra. In the discussions that I previously had, Mr Ritchie was at one lot of discussions and I am sure that the previous ambassador, who is now Secretary of Defence, Mr Ric Smith, was present. So certainly I have been present when our ambassadors, our diplomatic representatives, have been present and there have been discussions. I am aware of another meeting taking place—the one I have just mentioned in relation to Mr Ritchie, where he met with the minister himself. There may have been some other meetings which I am not aware of, and I would have to take that on notice and check with Foreign Affairs.

**Senator JACINTA COLLINS**—The reason that I am concerned about this report on 1 February by Matthew Moore, who is the Herald correspondent in Jakarta, is that it also indicates that no Australian minister had been in direct contact about the matter, and he was suspicious about the reasons why Canberra had not made a more determined effort to bring Qussey to Australia. From what you said a moment ago, you dispute that assertion.

**Senator Ellison**—Certainly I know what I said. I was at the meeting in December. I remember it vividly and I remember raising the matter of Mr Abu Qussey. In fact, at the other meeting in October there were many officials meeting—Ms Fagan was at the same meeting and recalls that too, I believe. That is at the December meeting and it was certainly at the October meeting as well. I do not know what the journalist had in mind when he reported that in the *Jakarta Post*, but I know what I said and what was said at the meeting.

**Senator JACINTA COLLINS**—There were a number of similar reports around that time. This particular one in the *Sydney Morning Herald* was perhaps the most detailed. The reason I am asking these questions concerns the extent that you believe there is cooperation on the Indonesian side to further our concern in relation to Abu Qussey. Perhaps you could comment on that point. You mentioned in your earlier remarks that you believed that there was cooperation, but the nature of these reports coming from the minister of justice would, I think, leave any reasonable person with questions.

**Senator Ellison**—There are, of course, reports in the press and I always check what I read in papers these days, whether they are Indonesian or Australian. You often get lazy journalists who just write stories about what other journalists write. Unfortunately, you get that all the time these days, and a lot of them never bother to check with the people they are writing about. I am frequently writing to editors about things that are written in the paper without even having been checked with me.

**Senator JACINTA COLLINS**—As you noted earlier this evening.

**Senator Ellison**—Yes, as I noted earlier this evening. I always say I would rather hear it from the person themselves rather than going off half-cocked in relation to a report in the paper. But can I say this: with that level of officials I believe we had a constructive discussion the other day. The Australian Federal Police can touch on the cooperation we have had at a law enforcement level.

**Senator JACINTA COLLINS**—Sorry, minister, which day is this that you are referring to?

**Senator Ellison**—It is that of the recent visit by officials. I can get the dates for you. We had Attorney-General's reps there. It was last week, about 3 February. I believe there has been cooperation with the Australian Federal Police. The police can touch on that. Certainly it was not a case of Mr Abu Qusey serving his sentence and then being released from Indonesia without notice to Australia. That did not happen. He has been detained in Indonesia, the Indonesians have been looking at the situation and it has been indicated to us that a decision has not been made. That was my last information as to whether he would be sent back to Egypt or what would be done with him. I take that as a government taking the matter seriously. I understand there have been discussions between the Indonesian government and Egypt as to whether Mr Abu Qusey would be prosecuted in Egypt. I think that indicates on the part of the Indonesians a concern as to the matters alleged against Mr Abu Qusey.

**Senator JACINTA COLLINS**—Minister, the most recent media reports suggest that the Indonesian government is looking to make its decision before the Prime Minister visits there next Friday. Is that also your understanding?

**Senator Ellison**—I would not pre-empt—it would be inappropriate for me to do so—any decision by the Indonesian government. As I say, the matter of where Mr Abu Qusey goes is a matter for the Indonesians. Unfortunately, the extradition arrangements do not have dual criminality here. There are a number of options that we are looking at. I am not going to canvass them, for obvious reasons—I am not going to signal our shots to Mr Abu Qusey or his lawyers—but certainly the Prime Minister will be meeting President Megawati when he goes to Indonesia in a few days time.

**Senator JACINTA COLLINS**—Given the previous reporting, you can understand why I would ask the question: is the press being accurate in its report that before our Prime Minister visits the country they would make a decision on this matter. Can I take it as your answer that you have no knowledge that that is their position at this stage?

**Senator Ellison**—That is a really a matter for the Indonesians. I have no knowledge as to whether a decision will be made or what that will be.

**Senator JACINTA COLLINS**—The Indonesian government has not said directly to you, 'We will be making a decision before next Friday'?

**Senator Ellison**—No, it has not said that.

**Senator JACINTA COLLINS**—Do you know if this matter is on the Prime Minister's agenda to be discussed with the Indonesians when he is there next week?

**Senator Ellison**—I think I will have to take that on notice. Certainly what the Prime Minister raises with the President of Indonesia is a matter for the Prime Minister. I cannot speak for the Prime Minister.

**Senator JACINTA COLLINS**—I appreciate that, but equally it would be a clear signal of the level of significance Australia places on this, were that to be the case.

**Senator Ellison**—As I say, it has been raised by the Minister for Foreign Affairs and by me.

**Senator JACINTA COLLINS**—To go back to the issue of the provisional arrest: what is the nature of that warrant?

**Senator Ellison**—That warrant is normally issued in proceedings where you are about to extradite someone or seek someone's extradition. It is more or less a holding warrant, if I understand it correctly. It signifies to a country that the person is of interest, and to arrest them on that basis. Perhaps we have someone from extradition here.

**Ms Warner**—A provisional arrest warrant signals to the country, in this case Indonesia, that Australia will be making a formal extradition request. That is the purpose of that. Normally, under the treaty, that is to be done within a certain number of days.

**Senator JACINTA COLLINS**—Can you advise us why that was not made earlier in the process?

**Ms Warner**—The minister referred to the issue of dual criminality, and the fact that there is presently no people smuggling legislation in Indonesia. The provisional arrest warrant that we have is for other offences.

**Senator JACINTA COLLINS**—Is there any reason why those other offences could not have been made the basis of a holding warrant earlier?

**Ms Warner**—That is probably a question for the AFP, in terms of the nature of the warrant.

**Senator Ellison**—Could I just say at this point that one should remember that Mr Abu Qussey was in custody until 1 January, so he was not going anywhere until 1 January. The urgency of the situation arose once he had served his sentence. He was then detained on some other matters by the Indonesian government. Certainly he was serving a sentence, and the situation last year was quite different from when he had served his sentence. On the question of these other matters, the AFP can answer that.

**Mr Keelty**—We are perhaps going to be at odds here with the answer that the minister previously gave, in terms of not flagging to Qussey what is being considered. I would not want to make it public yet. In terms of other charges, obviously what we are trying to do is to exhaust every avenue. The AFP issued four further warrants for the arrest of Qussey on 6 December 2002, for offences of attempting to bring unlawful citizens into Australia—

**Senator JACINTA COLLINS**—I think we might have covered those previously.

**Mr Keelty**—Okay. So what we are doing now in the negotiations with the Indonesian government is seeing whether any other offences where dual criminality might exist could apply.

**Senator JACINTA COLLINS**—My question, Mr Keelty, is this: between 1 January and yesterday, when this provisional arrest warrant was issued—

**Senator Ellison**—It was some days ago that I signed it.

**Senator JACINTA COLLINS**—It was perhaps a few days ago, but we certainly had a period of more than a month when the only thing we were relying upon were these four further warrants that were issued on 6 December. My concern is that, as I understand the situation, Mr Qussey could have returned to Egypt without going through any country that would trigger your red alert, and he would have been able to successfully flee any net that the AFP might have thought was in place. So I am trying to understand why we would not have put this provisional arrest warrant in place sooner.

**Senator Ellison**—Perhaps Ms Warner can add to that.

**Ms Warner**—Yes. It was only recently that Indonesian officials indicated that, as there were no comparable people-smuggling offences in Indonesia, it would not be possible to satisfy the dual criminality requirement for extradition. It was not until 3 January that our officials in our embassy in Jakarta were advised that Indonesia would in principle have no objection to the Australian request for extradition. That was based on two policy changes. The first was that Indonesia would extradite under the discretionary clause in the Australia-Indonesia extradition treaty. Our treaty is what is known as a list treaty, with specified offences under it, but there is a discretionary clause. Hitherto, the Indonesians had not been willing to use that discretionary clause, but they indicated on 3 January that they would be willing to do that. The second would involve being able to establish dual criminality for Abu Qussey's conduct, based on offences other than the people-smuggling offences.

**Senator JACINTA COLLINS**—As Mr Keelty said, I would be the last person to want you to make public anything that is going to give Mr Qussey the opportunity to anticipate what we are doing, but is it possible to detail those other crimes without compromising your position?

**Senator Ellison**—That would be difficult. Madam Chair, it really does put us in a difficult position because it signals what we are doing in relation to this matter. Senator Collins, if you would undertake to keep it confidential, we would be willing to give you a private briefing on those matters. You mentioned Mr Abu Qussey going directly to Egypt. The inquiries we made found that there was no direct flight from Jakarta to Cairo and that he would have to have been in transit in another country to take that flight. We have heard second hand that the Egyptians were looking at some arrangements to return Mr Abu Qussey by a direct flight. But that information was only second hand.

**Senator JACINTA COLLINS**—Do we understand what crimes the Egyptians are proposing they might be prepared to prosecute him with?

**Ms Warner**—We do not think the Egyptians currently have people-smuggling offences on their statute books. That is about the limit of our knowledge.

**Senator JACINTA COLLINS**—So we do not know what other offences they may have contemplated in assurances to the Indonesian government?

**Ms Warner**—At this stage, no; we have no information on that.

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**Senator JACINTA COLLINS**—Thank you, Minister. I will contemplate your offer of a private meeting, but I would want to be very cautious to put some fairly clear boundaries around what issues would need to remain within a confidential briefing environment. If you will bear with me, I will give that some thought and come back to you on that. On the issue of where we are with Mr Qussey, that probably exhausts what you can deal with if you are not in a position to talk about options at this point. The other question in my mind relates to the team of experts that visited Indonesia last week, and to timing. Why did that occur well after the 1 January date expired? Why was that process not in train sooner?

**Ms Warner**—We had earlier submitted our mutual assistance request to Indonesia and they had taken a number of days to consider that and then had come back to us and said, ‘We will advise you when a delegation would be welcome.’

**Senator JACINTA COLLINS**—For instance, the request that went on 15 January, I think the minister said, was that the one that was finally successful, having regard to the visit that occurred recently?

**Ms Warner**—Yes. One of the other reasons was that Minister Mahendra, the minister for justice, said that he would be going on leave for three weeks or that he would be otherwise occupied for three weeks.

**Senator JACINTA COLLINS**—Mr Keelty, this is a point that relates to some discussions we have had in the past about what options might become available. Because I know it has been the subject of a fair amount of public discussion about what was meant there, I want to give you the opportunity to clarify these comments that you made in the CMI hearings on 11 July 2002. You said, when talking about how we might be able to prosecute Abu Qussey:

In this circumstance it is important to note that the criminal prosecution may not be dictated by where the vessel sank but it may be determined by the vessel’s intended point of arrival.

Can you explain why the intended point of arrival might have been relevant and why it may have lost its relevance in the meantime, given the discussion and the answers that were given to my last questions on notice?

**Mr Keelty**—From memory, I was trying to explain that under the Customs Act you can have an offence created for the point of departure or, if there is some question of jurisdiction, the point of arrival. It happens under the Crimes (Aircraft) Act. So there is some legislation dealing with jurisdiction regarding an intended point of arrival. The other point is that the issue of jurisdiction was unknown. I might have mentioned at the time that we were seeking advice from the Attorney-General’s Department. So it was in that context.

**Senator JACINTA COLLINS**—Does that mean that today the issue of the vessel’s intended point of arrival may still be relevant to the options that you may be able to pursue other than people-smuggling?

**Senator Ellison**—We would not want to go into that because you would be writing a defence for Mr Abu Qussey and his lawyers. I am certainly not going to do that.

**Senator JACINTA COLLINS**—As I said, Minister, it has been a matter that has been a quandary since Mr Keelty raised it publicly in the first place. I am seeking to find out whether it is resolvable without compromising the pursuit of Mr Qussey. If it is not, I can accept that. As I said, it has been a point to muse since it was raised in the first instance. If we cannot get an explanation at this stage because we cannot canvass the options, I accept that point. In dealing with that matter, Mr Keelty, you indicated that the AFP was currently interviewing witnesses in Australia. When were those interviews conducted?

**Mr Keelty**—I will take that on notice, Senator. I am happy to give you the dates of the interviews of each of the persons.

**Senator JACINTA COLLINS**—The reason that I am trying to understand that is that in your answer to my questions on notice last time you indicated, regarding my query in relation to whether there was a radio on board the ship, that one witness statement had referred to the presence of a radio being on board ship. I am wondering whether that was the same set of witness statements or when it was that we first came across an understanding that at least one witness believed there to be the presence of a radio on board the ship.

**Mr Keelty**—Senator, do you know what the number of that question on notice was?

**Senator JACINTA COLLINS**—My copy comes from the booklet and it refers only to number seven of eight. There were only three that related to my questions, as I recall. The question was: does the AFP have ex post facto knowledge from talking to survivors? Are there survivor reports that there was communication between SIEVX and the mainland? Unfortunately there is no number on it. I will check another brief.

**Mr Keelty**—Again for clarification: was this a question on notice from the hearing on 20 November last year?

**Senator JACINTA COLLINS**—Yes.

**Mr Keelty**—I do not seem to have that question as a question on notice.

**Senator JACINTA COLLINS**—I am sorry, I am wrong. It was a question on notice from the CMI hearings. My apologies.

**Mr Keelty**—So it is from July last year?

**Senator JACINTA COLLINS**—Yes.

**Mr Keelty**—I am not trying to avoid answering the question, but I would just need to have a look at those questions on notice, if I could, from July last year. I have not got them here.

**Senator JACINTA COLLINS**—Okay. There is nobody, I presume, who could deal with it at this stage? Perhaps the secretariat may be able to provide—

**CHAIR**—We have answers in questions on notice taken in relation to estimates hearings of this committee, Senator Collins, but not necessarily the CMI hearings.

**Senator JACINTA COLLINS**—Not the CMI, no. Mr Keelty, I can give you a copy of mine, but I am not sure that that then helps you take it much further.

**Mr Keelty**—You have your question and my answer?

**Senator JACINTA COLLINS**—Yes.

**Mr Keelty**—I am happy to try and help you. Now that I have read this, what was your question, Senator?

**Senator JACINTA COLLINS**—My question is: does the reference to survivor statements in that answer pertain to survivor statements that were done at about the same time that we were talking about a moment ago with respect to the answer you had also given regarding the vessel's intended point of arrival, or does it relate to earlier witness statements? I am trying to ascertain when information from a witness statement that there was believed to be a radio on board SIEVX first came to the AFP's attention.

**Mr Keelty**—I can see from the answer here that the AFP has interviewed five survivors from SIEVX and, of those, four statements have been taken. It goes on to say:

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In those accounts there have been no specific references to radio distress calls. One statement has referred to the presence of a radio being on board the ship.

What I would have to do is find out who prepared this answer and where they got that information from. In relation to where the ship was going to land, again, without the transcripts of the CMI hearing in front of me—and I put that caveat on it—I am not sure that I would have linked the two, but you might have a better context than I have.

**Senator JACINTA COLLINS**—The only reason I am linking the two is that the only time that I am aware of there being witness statements taken from four and five interviews was back in Australia well after the sinking had occurred. That answer seems to imply that that is in one of those statements. I would be pretty confident that the AFP spoke to survivors after the return of the ship to Indonesia, but that answer seems to imply that that information came to the AFP's attention through one of the written statements from five witnesses spoken to in Australia, akin to this discussion that we had earlier about your attempts to determine the vessel's intended point of arrival.

**Mr Keelty**—I see your point. Again, without knowing who prepared the answer and whether they actually prepared it from the statements given by the witnesses—I assume they did—I am not sure I can answer your question now. I would need to have a look at what these witnesses said and whether that was what was factored into this. I agree with you, though, Senator. From reading this answer, it would appear that one of the statements does refer to the presence of a radio on board the ship. I understand your question to be: was that the first time the AFP became aware of a radio possibly being used on the ship?

**Senator JACINTA COLLINS**—Yes.

**Mr Keelty**—Can I take that question on notice? Certainly, from my knowledge, I would have thought yes, but I need to check.

**Senator JACINTA COLLINS**—Unfortunately, this is an issue that arises also from a discussion that we had in PM&C this morning. We finally received a cable that we sought through the CMI process six months ago. That cable has indicated a number of things about radio contacts. That cable was sent to a very broad distribution list, including to you. I understand that you personally may not have read it, but my concern is that, in the conversation that we had about radio contacts and your response to that question, you were quite clear that in your view you had no knowledge of there having been a radio or radio calls, but you took it on notice and took it back to the AFP to clarify that point. That answer was the result.

What we now know is that, according to a DFAT cable of 23 October—and keep in mind that 23 October is very shortly after the incident—there was a radio communication made between the ship's crew and Abu Qussey. I think it was about five kilometres out from their original departure point. There was another radio contact that we were aware of from the crew of one of the vessels that picked up the survivors, which would make one wonder why the sinking point of the vessel was so difficult to come by. If, on 23 October, we were aware that a radio call had been made from a ship from which they had picked up 44 survivors back to the owner of that vessel, I am at a loss as to why we cannot identify where that radio call had been made from. Would you care to comment?

**Mr Keelty**—I cannot comment, other than to say that, when you put those questions on notice, we got them answered and that was the answer that was provided to me. In respect of the cable, I am not sure I know which cable you are talking about. But you are quite right, Senator: I do not see all cables. In fact, I see very few cables. Other staff read the cables and bring the critical ones to my attention.

**Senator JACINTA COLLINS**—Let me go back to the issue of radio contact. The reason this is so critical is that it was raised as something about SIEVX at the time by many of the commentators, and it was an issue that I thought was important enough at the time to give AFP, amongst others, an opportunity to respond to. The question I asked back in July was whether you were aware or had any knowledge of radio calls from SIEVX to the mainland. Your response was, ‘The answer is no.’ I asked, ‘No knowledge at all?’ You replied, ‘No knowledge at all.’ I then asked, ‘Ex post facto knowledge from talking to survivors?’ You said:

We don’t have specific ex post facto knowledge that we can put our hands on tonight, but I undertake to you that if we do I will come back to Senator Cook and advise him.

You then took that away and we now understand from this cable that has been lost for six months that a communication did go to the AFP. In fact, the communication went much more broadly than to the AFP. The concerning aspect of this particular cable is that it went to the Prime Minister, the Attorney-General, the Minister for Justice and Customs, yourself, the Minister for Foreign Affairs, the Minister for Defence, Mr Cornall at A-G’s, Mr Woodward, the Minister for Trade, the Minister for Immigration and Multicultural and Indigenous Affairs, Mr Richardson at ASIO, Rear Admiral Bonser—I could continue through an extremely broad list right across bureaucracy and government that appeared before the CMI committee. Despite that, the answer to the question that I asked, which was fairly straightforward—whether we had any knowledge of radio communication from the SIEVX—was no, and remained no once I had given an invitation to please check and assure yourselves that there was not something that indicated to the contrary. Six months later, finally, a document appears that was given very broad and quite important circulation which says, ‘Yes, we did.’ As you said, you may not have read every cable to the AFP, but I seek an explanation because it was you that I asked directly the question as to why, when this question was taken on notice, this cable did not come to attention.

**Mr Keelty**—Senator, all I can say is that I answered, and always have answered, questions in relation to this and any other questions asked before this committee honestly and to the best of my knowledge. It has always been my understanding that the first we knew of SIEVX was when survivors reached shore and word started to get around regarding what had occurred. Let me make sure that I have got this right: you are telling me that that cable says definitively that there was radio communication between SIEVX and Abu Qussey and that there was radio communication between one of the fishing vessels and the shore.

**Senator JACINTA COLLINS**—Yes.

**Mr Keelty**—That is the first that I have heard of that. I now need to ask who prepared this answer and whether they had access to that cable in the preparation of the answer—and, if they did not, why not. I undertake to do that, Senator.

**Senator JACINTA COLLINS**—Yes please.

**Senator Ellison**—Can I confirm my evidence, Madam Chair, now that I have checked the matter. I raised the matter of Mr Abu Qussey with the Indonesian government when I visited Indonesia in October with the Minister for Foreign Affairs. I can confirm that. I think I said I would check it.

**CHAIR**—Yes, you did, Minister. Thank you for that.

**Senator Ellison**—It was well before his release from prison, and I raised it in December with the Minister for Foreign Affairs and the minister for justice.

**CHAIR**—Thank you for confirming that, Minister.

**Senator JACINTA COLLINS**—Mr Keelty, I am in a broader quandary over this cable because it provides some far more detailed information as well which leads one to question what intelligence was available in relation to the SIEVX. One example of that is that it discusses a makeshift upper deck that had been added, with the afterdecks enclosed by chipboard. The comment is ‘presumably to enhance seaworthiness’. My question on reading that would be: how, on 23 October, were we aware that this makeshift upper deck had been added and when had it been added? Was it because we had prior knowledge before the ship’s departure that it had been added, as appears to be implied, or was it because a survivor report said, ‘We think it was added’? There are a series of other questions in relation to this cable that I think raise some very serious concerns about the quality of information that was provided to the CMI inquiry. I can go through them now one by one, but from what I can gather you are not in a position to comment because you do not recall this cable at all. Is that correct?

**Mr Keelty**—That is correct, Senator. You are giving me information tonight that I was not in possession of. Not only did I not possess the knowledge of the contents of the cable; I was not provided with them in the briefings that I was given. Clearly this answer that was prepared in response to your question on notice does not canvass that issue; it canvasses the issue of what appears to be a witness statement referring to the presence of the radio being on board the ship. It does not point out anything beyond that in terms of transmissions or what have you.

**Senator JACINTA COLLINS**—Let me give you one example of the detail of this report. I am sure you will understand why I am as concerned as I am having now received that detail. This communication, by the way, was restricted so its classification is not significantly high in terms of our request for it to be declassified. Item 4 of this communication read as follows:

Thursday 18 October—The vessel departed Bandar Lampung at approximately 0130. At this time, due to the size of the vessel, 10 PIIs refused to embark, leaving 421 PIIs on board. Approximately one hour after departure, PIIs apparently became apprehensive about the ability of the vessel to remain afloat with the numbers onboard. The vessel stopped approximately 5 kilometres from the point of departure, during which time the crew was in radio contact with Abu Quassey. The vessel then resumed its passage and about 0900 again stopped near an island ‘due to high seas’. A nearby fishing boat came alongside the vessel to remove 24 PIIs (397 pax remaining).

That is the first reference to radio communication from the vessel to Qussey.

**CHAIR**—Senator Collins, are you reading from a cable that was given to you in the PM&C estimates this morning?

**Senator JACINTA COLLINS**—No. The cable was provided to the CMI committee last Monday.

**CHAIR**—Last Monday?

**Senator JACINTA COLLINS**—Yes.

**CHAIR**—By PM&C?

**Senator JACINTA COLLINS**—Yes.

**CHAIR**—But it is not a cable that Commissioner Keelty has been provided with for the purposes of this discussion, is it?

**Senator JACINTA COLLINS**—No. It is a cable that he has seen, or that his office had received, in the past.

**CHAIR**—I am concerned that in terms of this evening's discussion he is at a significant disadvantage when you are reading lengthy quotes from a document he is not privy to.

**Senator JACINTA COLLINS**—In the past, Mr Keelty has always let us know if he feels that that is compromising his position.

**CHAIR**—I am sure that is the case, Senator Collins, but I would prefer to make sure that the witnesses before the committee have as much information as possible is available to them.

**Senator JACINTA COLLINS**—I am happy for a copy of this to be provided.

**Senator Ellison**—It might make it easier. What was the date of the cable?

**Senator JACINTA COLLINS**—23 October.

**Senator Ellison**—Which year?

**Senator JACINTA COLLINS**—2001. It was the day that the sinking became known. Mr Keelty, so that you are not at some level of disadvantage, the reason this matter was before the PM&C this morning was that we sought an explanation for why it had taken six months for this cable to be made available. The explanation we received was that there was, firstly, an administrative error within the PM&C and, secondly, a dispute over whether all the recipients should have been blanked out before it was provided. That dispute was eventually resolved earlier this year and we were provided with a copy of the cable, without the recipients having been blanked out, on Monday last week.

**Senator Ellison**—I might remind the committee that the time of the cable issue was during the election campaign. Of course, mention is made of it going to a number of ministers, but the government was in caretaker mode and the dissemination of information was not as it usually is. I want us to remember that the government was in caretaker mode at that time, so it would not have enjoyed the same circumstances as it otherwise would have in the course of normal government time.

**CHAIR**—The document has been passed to Commissioner Keelty.

**Senator Ellison**—I want to add to the record. I mentioned a red notice that had been issued through Interpol. That was issued on 11 September last year—it was not recently done.

**CHAIR**—Thank you for clarifying that, Minister.

**Senator JACINTA COLLINS**—Mr Keelty, the point I was making about the radio contact is at point 4 in that document. The next discussion of radio contact at this time from one of the vessels that collected survivors is at point 8. The question that remains in my mind, and there may well be a reasonable explanation, is: if on 23 October we were aware that radio contact occurred between one of the vessels collecting survivors and the Chinese owner, why couldn't we be aware of their precise location?

**Mr Keelty**—Can I go back over that again?

**Senator JACINTA COLLINS**—Halfway through paragraph 4 it says:

The vessel stopped approximately 5 kilometres from the point of departure, during which time the crew was in radio contact with Abu Qussey.

Again, without compromising any pursuit of Abu Qussey, my concern is that that is a pretty clear indication that on 23 October we were aware that the crew was in radio contact with Abu Qussey. The obvious question that follows from that is: what communications occurred around the time of the sinking if there was an operational radio on board the ship?

**Mr Keelty**—Yes, and whether it was able to contact anyone. Paragraph 8 says that the crew of the first boat contacted their Chinese owner for instructions. You are making an assumption that that was by radio.

**Senator JACINTA COLLINS**—Yes, it could have been a mobile phone. But the point remains: we were aware that that communication occurred. If we were aware that that communication occurred, why could we not be aware of the precise latitude and longitude, whatever the seamen terms are, of where it occurred?

**Mr Keelty**—I understand what you mean now. Sorry, I had not read the full cable. Paragraph 7 puts that into context because that is the fishing vessel.

**Senator JACINTA COLLINS**—Yes. I now want to go to the point that I was asking earlier in relation to the makeshift upper deck, which is at point 3. How did we understand that a makeshift deck had been added to the ship? Did we have intelligence about the ship before the deck had been added?

**Mr Keelty**—I understand why you have those concerns, and I share those concerns. What troubles me is why, in preparing that answer to your question on notice, this was not referred to. I need to find out why.

**Senator JACINTA COLLINS**—You now understand that I have a series of broader questions about intelligence which was not brought to our attention earlier but which is now before us—although it is not available for the CMI because that inquiry has closed down—and why that material was withheld, particularly in terms of the level of intelligence we had about the ship before its departure, if that is the case. As I said, there may be some reasonable explanation for the implications that are in this document.

**Mr Keelty**—For why this has happened, yes. But certainly, Senator, I would just repeat what I said before about the evidence that I have given. I would just point out that last year I answered questions about this on 19 February, 28 May and 20 November before this committee, on 11 July before the Senate Select Committee on A Certain Maritime Incident and on 6 August before the Senate Legal and Constitutional References Committee hearing on migration legislation, and I provided a private briefing to members of this committee on related issues on 23 October, but this is the first I have ever become aware that, according to the cable, there appears to have been radio contact between the vessel and the shore, and whether in fact that extended to where the vessel sank. I do not resile from my earlier evidence in all of those hearings that the AFP did not know the time or point of departure of SIEVX before it went. We had no way of monitoring that. Nor do we know the precise position where it actually sank. I do not think this changes that view, unless there are parts of this which I have not read. If my evidence is not correct, I will advise the committee, as I have done on previous occasions, at the first available opportunity.

**Senator JACINTA COLLINS**—As I said to you in relation to the radio issue, that opportunity had been taken up—and the response according to this cable was unsatisfactory. There are other issues in this cable that lead to some other questions that I would like dealt with. I am still at a loss that on 23 October we can have intelligence that tells us there was communication between the fishing vessel that collected survivors but it cannot tell us where it collected the survivors from.

**Senator Ellison**—This is a DFAT cable, I understand, from the look of it. I do not think I have seen it, either, before. But one normally questions the author of a document. You have to

remember that Commissioner Keelty is not the author, nor is the AFP, of this document. It is a Foreign Affairs cable, and the reason for certain statements being made is only in the knowledge of the person who sent the cable.

**Senator JACINTA COLLINS**—Yes. Minister, I understand that aspect of it. I am trying to avoid our having to go in a full circle, because, as Mr Keelty understands, DFAT intelligence is part of what would have informed that cable. So he has the opportunity to address it now, or I go back to DFAT and then I come back again. That would waste everybody's time.

**Senator Ellison**—I think what Commissioner Keelty is saying is that he will take it on notice and make inquiries. I think that is as far as you can go.

**CHAIR**—In terms of the proceedings to this point, Senator Collins, I think the minister is right.

**Senator JACINTA COLLINS**—I agree. When I say he can answer it now, I mean he can take it on notice now—or I can go to DFAT, I can ask it again and then come back again, and that wastes everyone's time.

**CHAIR**—The commissioner has indicated that he will take it on notice.

**Senator JACINTA COLLINS**—Mr Keelty, do we have any understanding—again with the caveat not to compromise a pursuit of Abu Qussey—of what happened to the crew?

**Mr Keelty**—In the absence of any comment from any of my staff here, I understand the crew sank with the vessel.

**Senator JACINTA COLLINS**—The reason I ask this question is this: if, again, there is the potential that there was radio communication when the vessel was sinking, is there any potential explanation for the lights that some of the survivors report, and what may have happened with the crew? You understand now why I ask that question, I am sure.

**Mr Keelty**—Yes, Senator. I will take that question on notice with the previous question.

**Senator JACINTA COLLINS**—I also want to clarify some issues in relation to surveillance. I understand the discussion that occurred at the last estimates, and so please let me know if you think that there are issues of national interest or national security that need to complicate matters. Back in the CMI hearings, when we were investigating what surveillance technology there was and what might be the source of intelligence that could inform us about SIEVX, Commissioner Keelty, you indicated that we do not have any surveillance technology. Would you like to elaborate on precisely what you meant then, given the consequent discussions we have had about whether tracking devices may or may not be used and in view of the IMP surveillance equipment that was provided to the Indonesians? It was presumably surveillance equipment. Were you talking about a narrow 'we', or were you saying that in a broader sense in our cooperative relationship with the Indonesians we had no surveillance equipment?

**Mr Keelty**—You are talking about evidence that I gave over six months ago.

**Senator JACINTA COLLINS**—Let me give you the reference and you can take it on notice. That is fine.



**Mr Keelty**—I would be surprised if I gave an answer that the AFP does not have surveillance equipment. There must be a context for that.

**Senator JACINTA COLLINS**—Please take it on notice, but at the moment I will read you this excerpt. This is from page 1962 of 11 July and it is in relation to the information that came back from passengers. You said:

But, if passengers were then returned from whence they came and the information came back that the other passengers drowned or whatever, because we do not have any surveillance technology, the only real way we were dealing with anything was through human sources; it was by word of mouth.

**Mr Keelty**—Perhaps that was a poor use of tense by me. On reflection and given how you have now read it in context, what I was saying was that we did not have any surveillance technology applied to SIEVX. So the only way we were finding out—which is what I said earlier, based on what I have been briefed as to what had happened—was when the survivors reached shore. You have put a different context to that tonight with the cable. But as for the evidence I gave at the time, as I said to you a brief time ago, my full understanding of this has been that we only ever became aware of what had really happened after the survivors had returned to the mainland.

**Senator JACINTA COLLINS**—At another stage, for instance, you say on page 1930:

We did not know about the departure of SIEVX until after the vessel had returned. We had no way of surveilling SIEVX as I pointed out earlier. We had no way of receiving any distress call.

Is that a narrow ‘we’ or does that ‘we’ include surveillance that the Indonesians may have been conducting with the equipment that we had assisted them with?

**Mr Keelty**—My recollection is that I was talking about the AFP. If you like, I will take on notice what equipment was provided to the Indonesian National Police and whether that equipment was such that they would have received anything. In the absence of anyone informing me immediately, I am not aware that the Indonesian National Police were supplied with any equipment by the AFP that would have enabled them to have received anything of that nature in terms of surveillance. Let me say this, in case this is what you are asking: the AFP has not, to my knowledge, provided the Indonesian National Police with any technical surveillance equipment, in the absence of someone advising me to the contrary here and now.

**Senator JACINTA COLLINS**—In answer to question on notice No. 62—

**CHAIR**—Is that from estimates, Senator Collins?

**Senator JACINTA COLLINS**—I believe so because it was, I think, in response to Senator Faulkner’s questions about surveillance. Yes, it is.

**CHAIR**—Thank you.

**Senator JACINTA COLLINS**—The response is:

To enhance the cooperative relationship between AFP and INP on people-smuggling issues, in the period February 2000 to September 2001 LECP funding of \$99,800 was provided to the INP to assist with the establishment of a special intelligence unit ... The funding included the provision of computers, facsimile machine communications equipment and basic surveillance equipment.

What would have been meant there by ‘basic surveillance equipment’?

**Mr Keelty**—I will check what that means, but I would assume it means simply a surveillance kit, which is a mobile vehicle—it has nothing to do with the sort of surveillance of vessels or anything like that—binoculars, cameras and that sort of equipment. That is my understanding but I will check.

**Senator JACINTA COLLINS**—So, to your understanding, we have not provided the Indonesians with tracking devices?

**Mr Keelty**—No.

**Senator JACINTA COLLINS**—And in the case of SIEVX we did not use them?

**Mr Keelty**—That is correct.

**Senator JACINTA COLLINS**—In terms of the cable, the question which I need to ask and which you will need to address on notice is this: is there intelligence in that cable that, to your understanding, relates to information other than that of survivors once they had returned, so it may include surveillance detected by INP but reported after the departure or after the return?

**Mr Keelty**—I am sorry, it may include surveillance by the INP, did you say?

**Senator JACINTA COLLINS**—Yes. Can we exclude that possibility? That is the question.

**Mr Keelty**—I will have an answer prepared for you.

**CHAIR**—Senator Collins, I understand that the questions that you are asking are extremely important and are of great relevance to the committee in the broadest sense, but at the end of the day the purpose for which we are here is additional estimates. By far the overwhelming majority of your questions do not go to the question of additional estimates.

**Senator JACINTA COLLINS**—I think I could make them go to additional estimates. It would take a long time to do it but I am sure I could.

**CHAIR**—Senator Collins, I am just trying to seek some guidance from you as to what period of time the rest of your questioning in this area might take. There are other senators who are members of the committee who wish to continue with questioning on additional estimates.

**Senator JACINTA COLLINS**—I do not believe I will be much longer. In terms of what else I have, I am happy, given that Mr Keelty needs to take on notice a number of issues, to see if I can put them on notice without going through them here.

**CHAIR**—I appreciate that. The commissioner has been very helpful in what he has endeavoured to provide to us this evening, so I would appreciate your assistance also. Thank you.

**Senator JACINTA COLLINS**—If anybody else has questions for the AFP, I am happy to take the next few moments to do that review.

**CHAIR**—They certainly do. Senator Ludwig certainly has further questions for the AFP which relate to additional estimates.

**Senator JACINTA COLLINS**—Why don't we go to Senator Ludwig and then I will come back with anything, otherwise I will provide questions in writing.

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

**Senator LUDWIG**—In respect of Jemaah Islamiah, does the AFP anticipate that charges will be brought against that organisation or the leader, Abu Bakar Bashir? Are you aware of press reports that have indicated that evidence is mounting against Abu Bakar Bashir?

**Mr Keelty**—The head of the Indonesian National Police, General Da'i Bachtiar, made an announcement in the Indonesian parliament early the week before last that, as I understand it—I have not seen a transcript of his address to parliament; he is a cabinet minister—a case is

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being made against Bashir. General Made Pastika, who is the Indonesian National Police person in charge of the operation, has told our people that there is a likelihood that Bashir will be charged on the evidence of co-offenders for having been a party to the planning of the bombing. Also, there is an indication that some members of the terrorist group had contacted Bashir following the bombing.

**Senator LUDWIG**—How would you characterise the nature of cooperation between the AFP and the Indonesian police in relation to the investigation of the Bali bombing?

**Mr Keelty**—It has been excellent.

**Senator LUDWIG**—Have any problems arisen that have needed to be addressed in respect of the conduct of the joint investigation?

**Mr Keelty**—No.

**Senator LUDWIG**—I understand that on 31 January you told the ABC that the Bali bombing investigation had disrupted a further attack planned by JI. I understand that they may be operational issues, but are you able to explain what the nature of the planned attack was, what the target was or how advanced the preparations were?

**Mr Keelty**—I can. The investigation, in examining the material that has been seized, discovered plans for another bombing to have taken place in Indonesia—the bombing of Western targets similar to the Bali bombing, without going into the specifics of exactly what the target was—but that was thwarted by the arrest by the Indonesian National Police particularly of Imam Samudra. It is our understanding that that planned bombing will now not take place, basically through the arrest of Samudra and some other key people.

**Senator LUDWIG**—I understand you recently said the investigation following the Bali bombing had uncovered a depth of knowledge about Jemaah Islamiah that was—I think these are your words but I am open to correction—beyond the comprehension of many security agencies in the region. This may go to operational matters, but I know you will take that on board in any event: can you provide the committee with an overview of the AFP's understanding of the nature and scope of the JI network?

**Mr Keelty**—The extent of the network is similar to what has been described publicly in terms of the establishment of the four mantiqis, albeit that the fourth mantiqi, which is alleged to take in the northern part of Australia, Papua and that region, has not been firmly established. Certainly there are a large number of people who have been identified through this investigation process, largely through association, who were hitherto unknown to the Indonesian National Police and, as I understand it, the Indonesian intelligence authorities and therefore the other intelligence authorities in the region. So the extent to which the investigation has exposed Jemaah Islamiah has been quite significant. The point I was making in that interview was that it has been a significant outcome in terms of what we now know collectively in the region about Jemaah Islamiah, its size and its capacity.

**Senator LUDWIG**—Are you able to comment on what degree JI has been disrupted by arrests of its members in Indonesia, Singapore and the Philippines?

**Mr Keelty**—There has been significant disruption and, more particularly, an exposure of Jemaah Islamiah. That is the point I was making when I was talking about the intelligence that is now known about the group that hitherto was unknown. The extent of the activities of Jemaah Islamiah in southern Thailand, Singapore and Malaysia means that it has been exposed significantly. I think one of the things that points to that is the fact of the failed bombing of the Australian High Commission and the US Embassy in Singapore in December 2001 and that the indications are now that the group then regrouped under the direction of

Hambali and, at around that time, the plans were made to look at a softer target, being Bali. That is what precipitated the attack. That is certainly the view of the investigators.

**Senator LUDWIG**—Are you able assist the committee on the extent to which the AFP have assessed whether or not JI continues to pose a threat to Australians and Australian interests in South-East Asia or elsewhere?

**Mr Keelty**—That role, of course, in terms of the threat of the group, is within the purview of ASIO. From an AFP and law enforcement perspective, I think that what the investigation has done is expose the group and expose the ideology of the group. We have one prosecution in process here is Australia that I obviously cannot touch upon here now. In terms of disruption and further capacity, I think we have had a major impact.

I should point out that to say that someone is a member of Jemaah Islamiah is not as black and white as that. A number of groups share the ideology and a number of things are done in the name of Jemaah Islamiah or al-Qaeda that do not necessarily point to the fact that it was an edict or direction from someone within a hierarchy within the group that something might occur. In the way I can best describe it—and the intelligence agencies are far better at this than I am—in terms of people's membership of these groups, that membership is rather amorphous in the sense that they do not walk around carrying something that readily identifies them as a member of a particular group; they simply share the ideologies and meet and consort with—which is the best way I can put it—others of a shared ideology. In one sense, the difficulty of dealing with this issue is that you are dealing with a group which sometimes is not readily identifiable.

**Senator LUDWIG**—With respect to the matter you referred to earlier about a prosecution pending, what can you say about that?

**Mr Keelty**—A person by the name of Jack Roche, whose premises were searched as part of a joint operation between ASIO and the AFP, was arrested and charged on 18 November 2002 for his alleged involvement in a plot to attack key Israeli interests in Australia, specifically the Israeli Embassy here in Canberra and the Israeli Consulate in Sydney. The matter is next listed to be heard for committal mention tomorrow in the Western Australian court. He has been charged pursuant to sections 8 and 3 of the Crimes (Internationally Protected Persons) Act 1976. I am sorry, the date for committal mention is Wednesday, 12 February, not tomorrow.

**Senator LUDWIG**—I have a number of other questions, but given the time I might put them on notice. They relate to providing an update and status on the Bali bombing investigation. The issues I have extracted are straightforward in terms of eliciting information with which you can assist the committee. I will leave it at that.

**Senator JACINTA COLLINS**—I should not be much longer and I may not even have anything to put on notice, but I will leave that open in case I have overlooked something. Commissioner Keelty, can I just clarify something in relation to the four warrants for Abu Qussey? Are they fresh warrants or are we altering the old ones?

**Mr Keelty**—No, they are additional, fresh warrants. If you want the details of what they are for, I can give them to you.

**Senator JACINTA COLLINS**—If you could.

**Mr Keelty**—The four warrants allege a total of four offences of organising the bringing of groups of unlawful non-citizens into Australia and 76 offences of bringing, or attempting to bring, unlawful non-citizens into Australia contrary to the provisions of sections 232A and 233(1)(a) of the Migration Act 1958.

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**Senator JACINTA COLLINS**—Thank you. I have two issues remaining. One relates to an answer to a question on notice from last estimates about lists of those who boarded SIEVX, those who got off SIEVX early, those who survived the sinking and those who died in the sinking of SIEVX. You indicated in a response to a question that you were aware to some extent of that information. That was more fruitful than my informal contacts with DIMIA. I would like to be provided with a copy of any list that is available in relation to those issues. If there are reasons why some components of that material cannot be made publicly available, I would be interested in why that might be or why there is any difference between the people who were killed in that tragedy and, for instance, those who were killed in the Bali tragedy.

**Mr Keelty**—Was the question 56(d)?

**Senator JACINTA COLLINS**—Sorry, I skipped a page. The answer to question 56(e) reads:

Following the sinking of SIEV X, the AFP became aware of three lists which detail passengers purported to have boarded the vessel, those that disembarked the vessel shortly after it commenced its journey, and those that survived the tragedy.

**Mr Keelty**—Are you seeking copies of the lists?

**Senator JACINTA COLLINS**—Yes.

**Mr Keelty**—Can I take that on notice? I need to know what is on the list and what the origin of the information was, to ensure that it is not material that might be presented before a court, and any other caveats.

**Senator JACINTA COLLINS**—Yes.

**Mr Keelty**—If I can, I will provide that to you.

**Senator JACINTA COLLINS**—Thank you. My final matter relates to some material you provided last time, also with respect to intelligence about the company that owned SIEVX. I believe it was reported that the Royal Australian Navy had some investigation there? I will go to the precise question. The answer to question 58 reads:

I am advised that information was also obtained by the RAN from the company found to have owned SIEV X.

Further to that response, what was the name of the company that owned SIEVX? Who were the major shareholders of the company that owned SIEVX? What was the registered name and number of SIEVX? When and where was SIEVX registered? I will not be surprised if your caveat is that we do not want that to compromise our pursuit of Abu Qussey. You may need to make that assessment on notice.

**Mr Keelty**—I will. Subject to the caveats I mentioned earlier, if there is no reason why I cannot provide it, I will provide it.

**Senator JACINTA COLLINS**—I hope that is everything I had. If there is anything further, I will put it on notice in the morning.

**CHAIR**—Thank you very much, Senator Collins. I appreciate your assistance.

**Senator JACINTA COLLINS**—Sorry, I have one more question. Without addressing the issue of whether tracking devices were or were not used, further to our last conversation, is there any reason why the potential did not exist with SIEVX in any case?

**Mr Keelty**—Simply because, as I understand it—and subject to correcting this if I need to—we did not know what vessel SIEVX was until after it sank. There was neither the opportunity to do anything with it nor the ability to identify it.

**CHAIR**—Commissioner Keelty, thank you to you and your colleagues and officers for your assistance this evening. This concludes questions to the Australian Federal Police. There are some further questions from Senator Ludwig which have been placed on notice.

[9.32 p.m.]

#### **Attorney-General's Department**

**CHAIR**—We will move on now to the consideration of the additional estimates as they pertain to the department. We will start with output 1.1, Legal services and policy advice on courts and tribunals, alternative dispute resolution, administrative law, human rights evidence and procedure.

**Senator LUDWIG**—According to my calculation, it is now 11 months since Senator Heffernan attacked Justice Kirby under parliamentary privilege. On 13 March last year the Prime Minister told parliament:

It is therefore time that the parliament, and in particular the government, gave more urgent consideration to a recommendation of the Law Reform Commission—most recently in recommendation 12, where it was recommended that the federal parliament should develop and adopt a protocol governing the receipt and investigation of serious complaints against federal judicial officers.

I am sure you recall that. What progress has the government made on developing a protocol for consideration of serious complaints against judges to prevent a repeat of the Heffernan matter?

**Ms Leigh**—The department has been working in consultation with the Department of the Prime Minister and Cabinet on the development of a possible draft protocol. The stage we have reached is that the Attorney-General is in the process of consulting with the judiciary on that draft.

**Senator LUDWIG**—When is it likely that parliament can expect a concrete proposal from the government?

**Ms Leigh**—At this stage we do not have any responses back from the judiciary. The earliest we would expect those responses would be late February but it may take longer than that. So it will depend on when we get those responses back and how much further work those responses lead us to do. Then, of course, the government will want to consider that draft and satisfy its mind that it is putting forward the best possible draft to the parliament.

**Senator LUDWIG**—When was the proposed draft forwarded to the judiciary for consideration?

**Ms Leigh**—Late last year.

**Senator LUDWIG**—Nine or 10 months after the matter you have put a proposal together and forwarded it for consideration to the judiciary. Is that right?

**Ms Leigh**—Yes, I confirm that it was late last year.

**Senator LUDWIG**—What options have been canvassed by the government in the paper—for example, the tribunal to make findings of fact to assist parliamentary deliberations, or aren't you able to say at this stage?

**Ms Leigh**—Those are the sorts of issues that obviously we would have been considering, but I think it is premature for me to go into the detail at this stage.

**Senator LUDWIG**—Could it be made available to the committee if it is finalised before May? I suspect that is the next time I will get an opportunity to ask about it.

**Ms Leigh**—I will raise that with the Attorney, Senator.

**Senator KIRK**—As I understand it, Australia has yet to ratify the optional protocols on the involvement of children in armed conflict and the sale of children, child prostitution and child pornography. Is that correct?

**Ms Leigh**—That is correct, Senator.

**Senator KIRK**—Has it been signed?

**Ms Leigh**—Australia signed the optional protocol to the Convention on the Rights of the Child on the sale of children on 18 December 2001. In relation to the optional protocol on the involvement of children in armed conflict, that instrument is actually primarily the responsibility of the Department of Foreign Affairs and Trade, but I am able to tell you that Australia signed it on 21 October 2002.

**Senator KIRK**—Could you point out exactly what those protocols seek to do?

**Ms Leigh**—The optional protocol on the sale of children was developed to protect children from the worst forms of commercial sexual exploitation. The optional protocol in relation to the involvement of children in armed conflict relates to the minimum age for participation and recruitment of persons in the armed forces.

**Senator KIRK**—What progress has the department made towards the ratification of these instruments?

**Ms Leigh**—As I mentioned, Senator, the protocol relating to armed conflict is the responsibility of the Department of Foreign Affairs and Trade. With respect to the protocol in relation to the sale of children, we have been doing some preliminary work on compliance of Australian domestic law with that instrument. It is also a matter that has been on the SCAG agenda for some time.

**Senator KIRK**—Did you say that it was signed on 18 December 2001 or 2002?

**Ms Leigh**—2001.

**Senator KIRK**—Will that instrument go before the treaties committee?

**Ms Leigh**—Yes.

**Senator KIRK**—Has any work commenced on producing a national interest analysis in relation to the second one—the sale of children instrument?

**Ms Leigh**—No, Senator. There has been preliminary work, as I say, on the issue of compliance, but in terms of actually drafting that document, no, Senator.

**Senator KIRK**—What is the normal time frame for presentation of such an instrument to the treaties committee?

**Ms Leigh**—It would vary with every instrument because it would depend on those issues of compliance et cetera.

**Senator LUDWIG**—You have said that the national interest analysis in relation to the sale of children instrument has not been finalised and it has not been to the treaties committee yet.

**Ms Leigh**—That is correct.

**Senator LUDWIG**—Minister, we have been talking about the optional protocol on the sale of children, child prostitution and child pornography and have ascertained that it has been

signed but not ratified. To date, the department is working on a national interest analysis but it has not been to the treaties committee. It was signed in December 2001, so it has been around for some time. We are inquiring as to the priority being given to the ratification of that protocol by the government.

**Ms Leigh**—Senator, I would make it clear that what I said was that we have been doing some preliminary work on compliance with the protocol but that we had not commenced work on actually drafting the national interest statement.

**Senator LUDWIG**—That is what you said; I misheard you—it is late at night. I do now recall exactly what you said. In terms of compliance, that would be in relation to whether or not there are current laws that would cover the situation or whether you would need to draft laws. In terms of the national interest analysis, no work has been done?

**Ms Leigh**—Only in relation to the compliance issue. That is my understanding.

**Senator LUDWIG**—I see.

**Ms Leigh**—You have to do that preliminary work in order to do your national interest analysis. As far as I am aware, the drafting of that document has not commenced.

**Senator LUDWIG**—We both agree that it is in very early days.

**Ms Leigh**—Exactly.

**Senator LUDWIG**—Minister, the issue still is: what level of priority does this have for the government? It has been around for more than 12 months since signing.

**Senator Ellison**—The period of time is not indicative of any lack of regard by the government for this matter, because it is a very important matter. Australia's efforts in relation to this problem are widely recognised. I attended a conference in Tokyo, in December 2001, where that was recognised. As to the detail of where that is at and what progress is being made, I would have to take on notice. That is not in my area of responsibility but I will certainly try to get an answer to you as soon as I can, before we finish these estimates.

**Senator LUDWIG**—Thank you, Minister. As I understand it, the Optional Protocol on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the UN General Assembly on 10 November 2002 and is now open for signature. Can you confirm that that is the case and clarify for the committee what this protocol does?

**Ms Leigh**—I understand that it was adopted by the General Assembly on 7 November 2002.

**Senator LUDWIG**—I am happy to be corrected.

**Ms Leigh**—That is the information I have, but I could check that if you believe it was on a different date.

**Senator LUDWIG**—No, I will take your date.

**Ms Leigh**—I was just checking exactly what the procedure is in relation to that instrument, but I assume you are correct in saying that it would now be open for signature. At this stage the government has concerns about that protocol because it automatically establishes a right to visit places of detention, and if you became a party to the protocol that would constitute a standing invitation for the relevant subcommittee to visit. That is not consistent with the position the Australian government has taken in relation to UN treaty bodies.

**Senator LUDWIG**—What does the protocol do?

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**Ms Leigh**—The protocol establishes a mechanism for a subcommittee of the Committee Against Torture to visit places of detention in countries that are parties to the protocol.

**Senator LUDWIG**—Australia, as you have just indicated, voted against the text of this optional protocol in the UN Economic and Social Council, in the company of such regimes—as I understand it—as China, Cuba, Libya, Nigeria and the Sudan. Is that correct?

**Ms Leigh**—Yes, we voted against the protocol. Which countries did you mention, Senator? You mentioned Japan—

**Senator LUDWIG**—China, Cuba, Libya, Nigeria and the Sudan.

**Ms Leigh**—That is correct. Japan also voted against it.

**Senator LUDWIG**—I understand that the protocol has now been adopted by the UN General Assembly and, therefore, it is open for signature. Is that correct to date?

**Ms Leigh**—That would be my understanding; that would be the normal process.

**Senator LUDWIG**—So Australia voted against the protocol?

**Ms Leigh**—In ECOSOC but then, in the UN General Assembly, Australia abstained.

**Senator LUDWIG**—So, in technical terms, it did not vote? It abstained?

**Ms Leigh**—In the UN General Assembly? That is correct.

**Senator LUDWIG**—In terms of the specific reasons why the Australian government abstained, is that a matter that would be better directed to you or to the minister?

**Ms Leigh**—As I indicated, the government considered that it was not consistent with its broader concerns about UN treaty bodies insofar as it constituted a standing invitation for the relevant subcommittee to visit.

**Senator LUDWIG**—Yes, but that does not explain why.

**Senator Ellison**—I think it is a foreign affairs question better asked of the Minister for Foreign Affairs. I can take that on notice and, albeit that it is not in these estimates. To save time, I will take it on notice.

**CHAIR**—That would be helpful, Minister, thank you. Will that help you, Senator Ludwig?

**Senator LUDWIG**—Yes, it certainly would. The issue from my perspective is whether or not there is going to be reconsideration of that explanation. Perhaps it might be preceded by an explanation as to whether or not there is going to be a reconsideration. If there is not, then would you convey to the minister—or I will at the next opportunity we have at estimates—that I want to know why the government does not support international efforts to combat the nature of the protocol relating to torture. That is the nub of the issue.

**Senator Ellison**—I respect and understand that. I will certainly convey that to the minister.

**Senator LUDWIG**—Thank you. I have a couple of questions that, given the time, I may put on notice so that we can speed up the process. What is the current status of the classified information bill? Is the draft complete? Do we need someone else to answer now?

**Ms Leigh**—We do.

**Senator LUDWIG**—Have I jumped outputs?

**Ms Leigh**—That is 1.2 that you have just asked about.

**Senator LUDWIG**—Then I do not require any more in 1.1.

[9.48 p.m.]

**CHAIR**—We can then move, entirely logically, to 1.2.

**Mr Cornall**—Senator, could you repeat the question please. I am sorry, I missed it.

**Senator LUDWIG**—It is in relation to the classified information procedures bill. I was seeking the status of that classified information. It is late at night I know.

**CHAIR**—We have ‘classifications’ versus ‘classified information’.

**Senator LUDWIG**—I might have said ‘classifications’. It would be my error, not yours, I am sure.

**CHAIR**—We will get the answer in the end; it is okay.

**Mr Ford**—The issues are under consideration. I do not think there is much more I can add to that.

**Senator LUDWIG**—Do you know whether the drafting of that bill has been complete?

**Mr Ford**—No, the drafting is not complete.

**Senator LUDWIG**—When will it be completed? Do you have time line?

**Mr Ford**—Not at this stage.

**Senator LUDWIG**—This is a question to you, Minister. Is this a priority for the government—the classified information procedures bill?

**Senator Ellison**—I believe it is.

**Senator LUDWIG**—When is it likely to be introduced? In this sitting?

**Senator Ellison**—It is too early to say at this stage, but it is a priority. Of course, we have these sittings jam-packed with legislation and then we have the budget coming up with the appropriation bills, so it is also a question of when we can deal with it.

**Senator LUDWIG**—I am sure you could speak to Minister Abbott about his legislative program.

**Senator Ellison**—No, it is the Senate I am thinking about.

**Senator LUDWIG**—Some of his bills are there. Chair, I have a couple of questions on age discrimination and on a couple of other areas, but given the time we might be able to put those on notice.

[9.51 p.m.]

**CHAIR**—If you are going to put your questions on output 1.2 on notice, we will now move to output 1.3.

**Senator KIRK**—In the supplementary estimates last November, you indicated that as at 18 November \$657,808 had been spent on financial assistance to witnesses at the building royal commission and \$704,448 to witnesses at the HIH royal commission. Could you update these aggregate figures and also update the table provided in response to question on notice No. 78?

**Ms Lynch**—I can provide you with an update of the table that was attached to our answer to the question on notice. This table shows the expenditure and commitments from 29 August 2001 to 31 January 2003. The answer that we gave you last year was to 30 November 2002. That shows you the updates in commitments that have been made to 31 January and actual payments paid to solicitors by 31 January.

**Senator KIRK**—I also want to ask about the funding of this financial assistance. I understand that the initial appropriation for financial assistance in the 2001-02 additional

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estimate statement was \$10.706 million. However, the additional estimate 2002-03 statement lists a rephasing of \$10.587 million from 2001-02 for this financial assistance. Does that mean that only \$119,000—that is the difference between these funds—was actually spent in the 2001-02 financial year?

**Ms Lynch**—I understand that would be right but there is a distinction to be drawn regarding the funds committed where we had agreed that assistance or approved assistance be given but the assistance is not actually paid until appropriate invoices are received from the applicants. So there is a timelag between the time at which the commitment is made and the time at which payments are actually made to the solicitors.

**Senator KIRK**—So that explains it.

**Ms Lynch**—That is why there is such a small amount paid in that year and the figure has gone up already this year in the table I have handed to you.

**Senator KIRK**—So it is going to catch up and it will eventually be expended. How much in total does the department expect to spend on financial assistance by the completion of both royal commissions?

**Ms Lynch**—The table I have just handed to you shows the commitments to 31 January. There are still some applications for assistance which are outstanding or on which we are waiting for further information. I would expect the commitment figure to go up as those matters are resolved, but at this stage I could not give you a clear indication of how much we expect, because we are still waiting on information from some applicants.

**Senator KIRK**—Can that be provided to the committee when it becomes available?

**Ms Lynch**—That would become available on a case-by-case basis as we made further decisions, but we would be happy to update this on a regular basis for you. Commitments would go up as decisions were made or as further information came in, so I do not know the best way to do that.

**Senator KIRK**—Perhaps in May we will ask some questions on that.

**Ms Lynch**—I can give you a further update in May.

**Senator KIRK**—That would be good, thank you. What will happen to any surplus funds that might be left over that had been appropriated for this purpose?

**Ms Lynch**—We would anticipate that money that was unspent by the end of this financial year, but nevertheless for which commitments had been made, would be rephased. We would anticipate that unspent money would be returned to budget at the end of it once the commitments and all applications had been dealt and all payments had been made, but there will be that timelag between commitment and payment.

**Senator KIRK**—The committee would like you again to explain the process of rephasing.

**Mr Cornall**—Basically, it is taking money allocated for expenditure in one year into the following year if it has not been expended but the commitment is on foot.

**Senator LUDWIG**—We sometimes say, on the one hand, that it will be rephased and, on the other hand, that it will be returned. It would not be discretionary, so there must be a view that is adopted about whether the lump of money can be rephased or whether it must be returned.

**Mr Cornall**—I think Ms Lynch was saying that, to the extent that we expect to have to pay the money but have not yet received a bill, that amount would be carried forward into the following year to enable us to meet that liability when it crystallised but, if we had got to a

point where we did not anticipate spending the whole of the money, the balance of the money that was not going to be spent would be returned to the budget.

**Senator LUDWIG**—That is helpful, thank you. The additional estimates statements list a \$770,000 adjustment for the legal aid program. Page 24 states:

A transfer of \$0.770m will be made between grants to family relationship support organisations in Appropriation Act No. 1 and the Legal Aid Program in Appropriation Act No. 2. The transfer is in relation to the 2002-03 Budget measure 'Keeping people out of the courts' for the provision of counselling and mediation services by the Legal Aid Commissions funded through the Legal Aid Program.

Could you explain in perhaps a little more detail why this transfer is required?

**Mr Kennedy**—This is a movement of funds between the two bills. In bill No. 1 grants to family relationship support organisations are funded, and that will provide for some primary dispute resolution services. Some services are also provided through the legal aid commissions. Initially, in the budget measure all the funding was provided in bill No. 1 and some of it should have been appropriated in bill No. 2 for the legal aid commissions to provide some PDR services.

**Senator LUDWIG**—Why is that? I am still missing it. Is it a mistake?

**Mr Kennedy**—No, it is not a mistake. In the original funding, the budget measure in the 2002-03 budget, all the money was put into one bucket, which was bill No. 1, instead of splitting up between—

**Senator LUDWIG**—Why 'instead of'? That is the point. Why couldn't it have stayed in the appropriation bill No. 1?

**Mr Kennedy**—Because the legal aid commissions are funded as payments to the states, and under the appropriations structure the payments to the states are made out of appropriation bill No. 2.

**Senator LUDWIG**—Right. So, of the total amount of the grant to the family relationship support organisations in appropriations No. 1, a portion—that is, \$770,000—goes to the legal aid program. Therefore, as a consequence, it has to be put in appropriation bill No 2.

**Mr Kennedy**—That is correct.

**Senator LUDWIG**—So when you first looked at the output you put it in appropriation bill No. 1. On further reflection, because grants to the states go in appropriation bill No. 2, you split it off subsequently and put it in there?

**Mr Kennedy**—That is correct.

**Senator LUDWIG**—Thank you. When will the government commence negotiations with states and territories on new legal aid agreements?

**Ms Lynch**—Those negotiations have not commenced, but I would envisage they would commence later this year.

**Senator LUDWIG**—The termination date is?

**Ms Lynch**—The agreements terminate in June 2004.

**Senator LUDWIG**—So you will start sometime this year. Has any preliminary work been done by the department in relation to models or what will be the funding models used?

**Ms Lynch**—Yes, work has commenced with assistance from the Australian Grants Commission and in consultation with the legal aid commissions about distribution models. That is what you are asking about?

**Senator LUDWIG**—Yes. What can you tell me about that?

**Ms Lynch**—A number of options have been looked at and a number of different models have been looked at but nothing has been agreed or determined or settled on at this stage. There is still some further consultation to take place with the states.

**Senator LUDWIG**—The states are aware of the various models that have been examined?

**Ms Lynch**—Various models have been put to them or discussed with them. I think there will be another one put to them shortly.

**Senator LUDWIG**—It may be better that we wait until it firms up a little better.

**Ms Lynch**—There may be more to report in May.

**Senator LUDWIG**—Would we have more information by May?

**Ms Lynch**—There will have been further consultations by May.

**Senator LUDWIG**—But you do not expect it to have been sufficiently under way?

**Ms Lynch**—You mean negotiations?

**Senator LUDWIG**—Yes.

**Ms Lynch**—I would not necessarily anticipate that there would be any—

**Senator LUDWIG**—So when we are talking about later on in the year we are talking post—

**Ms Lynch**—If you are talking about distribution models we might have more by May, but if you are talking about negotiations of agreements then at this stage I am not sure that much would have been progressed by May.

**Senator LUDWIG**—We might revisit it in May and see how we go. In relation to community legal service programs, which I think is still within output 1.3, the government has budgeted \$22.346 million for community legal services; is that correct?

**Ms Lynch**—The Commonwealth legal services program appropriation for this year was \$22,293,000.

**Senator LUDWIG**—What community legal services or centres are receiving Commonwealth funding this financial year? I am happy for you to take this on notice. There is a list somewhere.

**Ms Lynch**—There is a list. I do not have one with me in my brief but I can certainly provide that.

**Senator LUDWIG**—I am happy for you to take those on notice because there is a little bit of information that I was trying to elicit from you, including how much each is budgeted to receive and how much they have actually used. Is there an account or is it provided in a lump sum and then acquitted?

**Ms Lynch**—Ms Ellims may be able to help you in relation to whether they get a lump sum or whether they acquit it.

**Ms Ellims**—My understanding is that the funding is provided in quarterly payments in advance.

**Senator LUDWIG**—So we can look at what has been promised and then how much they have received to date.

**Ms Ellims**—Yes.

**Senator LUDWIG**—Could I have a copy, if it is available, of the new three-year service agreement for community legal centres. Has that been finalised?

**Ms Lynch**—That has been finalised and the Attorney launched it a couple of weeks ago. I think I have the figure here regarding the number of community legal centres that have signed it. It has been negotiated with the National Association of Community Legal Centres and has been agreed to. One by one, community legal centres are signing it.

**Senator LUDWIG**—I am happy for you to take that on notice. It is not critical that it be provided this evening.

**Ms Lynch**—I have a figure somewhere regarding the number that have actually signed to date.

**Senator LUDWIG**—Law by Telecommunications: is that still in the same area?

**Ms Lynch**—Yes, it is.

**Senator LUDWIG**—You provided some information at the supplementary estimates hearings in November.

**Ms Lynch**—I have an update on that which takes you through to December.

**Senator LUDWIG**—I have a lot of questions and I am running short of time.

**Ms Lynch**—I am also conscious of the fact that you put some questions on notice. With respect to some of this information, you sought further breakdowns in your questions on notice but there was not time to go into the detail.

**Senator LUDWIG**—Do you receive questions that I put on notice?

**Ms Lynch**—Yes.

**Senator LUDWIG**—I will remember that. They were extensive.

**Ms Lynch**—I have an update regarding what we handed over in November. It takes you through to 30 December, if that is of use to you now.

**Senator LUDWIG**—Thank you. I might run through some of them, but by all means if they have been answered, tell me that, or you can take them on notice; I am happy for you to do so.

**Ms Lynch**—Is this relating to your questions on notice?

**Senator LUDWIG**—No, these are further questions but they may have already been dealt with in part. The individual organisations that have received funding under the Law by Telecommunications program: how much has each received and for what purpose? I am sure we have dealt with some of that in part, so I will leave that, rather than have you answer it, and we will keep going. It will be in the transcript and we can come back to it if necessary.

**Ms Lynch**—I will take it on notice.

**Senator LUDWIG**—If it has already been answered, you can advise us accordingly. How much of that funding has been provided to community legal centres or services? Which community legal centres or services have received money, how much has each received and for what purpose? In particular, which community legal centres or services have employed someone under this funding to deliver services connected with the Law by

Telecommunications program? How many people did each employ? I do not know whether you have that data or whether it is something that the community legal centre collects.

**Ms Lynch**—Can I take that on notice? I do not think it is in the information that I have just handed over.

**Senator LUDWIG**—Yes. Are you aware of how much has been provided to state legal aid commissions or other state government agencies out of that funding?

**Ms Lynch**—I will see whether I have got the figure regarding the breakdown between legal aid commissions and community legal centres. This is for the regional hotline?

**Senator LUDWIG**—Yes, in relation to the overall Law by Telecommunications program.

**Ms Lynch**—What I have just given you is a breakdown of payments more broadly between Centrelink and service providers. I do not have the individual breakdowns but I can take that on notice.

**Senator LUDWIG**—Thank you. This may have already been dealt with: how many telephone calls have been taken by the family law hotline by month since April 2002? I am fairly sure we have dealt with that one.

**Ms Lynch**—I will take it on notice but I think I have just handed an update to you.

**Senator LUDWIG**—One of the difficulties is that not all callers can be identified by their postcode or provide their postcode.

**Ms Lynch**—They do not always provide their postcode.

**Senator LUDWIG**—Can it be broken down by federal electorate area, or how else do you break the figures down?

**Ms Lynch**—What I have just handed you gives you a breakdown by federal electorate area and updates the answer we gave to Senator McKiernan some time ago.

**Senator LUDWIG**—I would also like to know how many callers have been referred to community legal service centres—

**Ms Lynch**—Can I take that on notice?

**Senator LUDWIG**—and all state legal aid commissions or other government bodies by month since the program began. I would like a breakdown of the Regional Law Hotline by month since April 2002.

**Ms Lynch**—I think that is what I have just handed to you—that breakdown.

**Senator LUDWIG**—And the same would apply in relation to people identified by postcode.

**Ms Lynch**—I will take that on notice.

**Senator LUDWIG**—Similarly, I would like to know how many callers have been referred to community legal service centres and state legal aid commissions or other government bodies by month since the program began. We seem to have a new name for it, but how many page impressions or hits were recorded by the Family Law Online web site?

**Ms Lynch**—I think that is discussed in this document.

**Senator LUDWIG**—Yes, but one that I may not have included is whether they are identified by a unique or non-unique user, for each month since the web site became operational.

**Ms Lynch**—We will take that on notice.

**Senator LUDWIG**—This question is perhaps more for you, Minister. The government has indicated that the \$1.3 million in the 2002-03 budget for Australian Law Online will enable the service to continue until 30 June 2003. Secondly, the ongoing operation of Australian Law Online will be considered in the context of the government's response to the report of the Family Law Pathways Advisory Group. Does the government expect to be able to provide its response to that report before the budget or before the end of the financial year?

**Senator Ellison**—Are you talking about the response?

**Senator LUDWIG**—Yes. The context is that the ongoing operation of Australian Law Online will be considered in the context of the government's response to the Family Law Pathways Advisory Group. That, as I understand it, is what you indicated. So of course it begs the question: does the government expect to be able to provide its response to the report before the budget or before the end of the financial year?

**Senator Ellison**—As I understand it, the response could be part of the budget process as it could entail new funding. I am not aware of the timetable for that response—I will have to take that on notice. But I flag the fact that it could have some aspect of new funding and that it could be involved in the budget process.

**Senator LUDWIG**—We will risk that. I guess the catch-all in the end, though, is: Minister, can you guarantee that the Australian Law Online service will continue in its current form beyond 30 June 2003?

**Mr Cornall**—The answer is that the service can continue in some form into the new year, but it will obviously require some funding to continue at the same level. That funding issue was the budget issue.

**Senator LUDWIG**—We will have to examine it again in May after we have also been able to have a look at the answers given to date. I have a few more questions on output 1.3, but I will put them on notice in view of the time. I have some questions on output 1.6, but none on output 1.5. If there is anything in there, I will come back with questions tomorrow morning.

[10.15 p.m.]

**CHAIR**—We will now move to 1.6, legal services and policy advice on information law.

**Senator LUDWIG**—What is the status of the department's review of the application of the Privacy Act to employee records? It is a matter that we have been following for some time. Does the government expect to complete that review by the commencement of the general review of the Privacy Act, which I think is due out at the end of 2003?

**Mr Ford**—Yes, Senator. There was a question you might recall earlier when the Privacy Commissioner was here. As I said then, the review is being undertaken jointly by this department and the Department of Employment and Workplace Relations. It will commence with a publication of an issues paper, then there will be consultations with business, unions, state and territory governments, the Privacy Commissioner and other key stakeholders. We expect the report to be available for ministers later this year. That will then be taken account of in the review of the Privacy Act that the Privacy Commissioner has been charged with.

[10.17 p.m.]

**CHAIR**—Thank you, Mr Ford. Having completed that, we are going to move to outcome 2, coordinated federal criminal justice, security and emergency management activity, for a safer Australia. The weight of the material, as I understand it, is located in outcome 2.

**Mr Cornall**—Madam Chair, we are just considering whether, with your permission, officers involved in outcome 1 could now leave.

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**CHAIR**—Yes, that is my understanding. There may be further questions placed on notice by Senator Ludwig and Senator Kirk, but they will not be asked this evening. I thank those officers for their attendance today and for waiting till this hour.

**Senator KIRK**—I have some questions in relation to trafficking in women and children. Minister, do you consider that people-trafficking is a significant problem in Australia?

**Senator ELLISON**—Internationally it certainly is a very big problem and Interpol has placed it in the top three, with illegal guns and the illegal drug trade. But if your question means internally, domestically, in Australia, certainly we have not seen evidence of large scale trafficking in people, if you like. There may be a question of people who have been employed in the sex industry and have come here under false pretences. I do not think that is really in the guise of people-trafficking; it is more sexual exploitation and servitude. That is an issue, but people-trafficking and people-smuggling we associate more with the movement of people across borders, not so much domestically. Of course, there is also the question of the exploitation of people who have been brought here from overseas—enticed here from overseas.

**Senator KIRK**—In estimates last year, when the government was asked whether it collects information to show whether there has been an increase in the level of trafficking of women and children, the committee was told that the government:

... cannot say specifically whether we are, at the moment, collecting that information.

That was from Ms Blackburn. Has that changed at all since last time we asked?

**Ms Blackburn**—I would have to take that on notice because I do not know. I have not specifically followed up whether anything has changed since that last answer.

**Senator KIRK**—So your answer remains the same as last time?

**Ms Blackburn**—My current state of knowledge is that it remains the same, but I do not have any information as to whether it has changed. I would rather take that on notice and respond.

**Senator KIRK**—Sure. At the last estimates when the government was questioned it was stated that there have been no prosecutions under the Criminal Code relating to the trafficking of persons. Does that also still remain the case?

**Ms Blackburn**—I will take that on notice.

**Senator Ellison**—There have certainly been charges for people-smuggling—just to make that clear. There have been charges and convictions for people-smuggling.

**Senator KIRK**—Do you consider there are any problems or changes that might need to be made to legislation such as the Criminal Code Amendment (Slavery and Sexual Servitude) Act and or the Migration Act? Have any defects been revealed that might need to be addressed?

**Senator Ellison**—Certainly immigration is something we could perhaps address tomorrow when the department is here. In relation to the defects you mention in relation to the Criminal Code, what were you referring to?

**Senator KIRK**—In answers to questions you have said that there have not been any prosecutions and I wonder if that might be because there is some flaw or failing in the legislation which is preventing you from bringing prosecutions. That is the nature of the questioning.

**Mr Carnell**—Regarding those offences of sexual servitude and deceptive recruiting, the briefing I have says that since the creation of the offences in 1999 the AFP has investigated 13 matters reported to it. Four are still under investigation but the remainder did not disclose a case to answer or did not have a reasonable prospect of securing a conviction. This is due in part to the reluctance of potential witnesses, many of whom were in the country illegally, to testify. That is one of the obstacles to cases appearing in court.

**Senator KIRK**—You are saying it is due more to the difficulty in obtaining the evidence you need than to any flaws in the legislation.

**Mr Carnell**—Yes.

**Senator KIRK**—Are there any specific, identifiable resources—financial or human—that might be able to aid the investigation and prosecution of people traffickers as opposed to people smugglers? Are there any resources that might be of assistance in investigating and prosecuting people traffickers?

**Senator Ellison**—There is certainly AUSTRAC, if you are talking about financial transactions. AUSTRAC is perhaps at the forefront internationally in relation to money laundering and the detection of financial transactions, so much so that many people have come from overseas to study how AUSTRAC works. That is a starting point in relation to that and AUSTRAC has been used in the whole spectrum of investigation, from white collar fraud right through to drugs and people-smuggling—in fact, anywhere where there is the transfer of moneys.

**Senator KIRK**—Are there any other sorts of resources—human resources or people type resources or tracking devices?

**Senator Ellison**—That is a question for the AFP. They have all gone now. I will take that on notice.

**Senator KIRK**—Can people who have been victims of people-trafficking be removed from detention to testify against people traffickers in court?

**Senator Ellison**—We do have a witness protection program. The incarceration of people is the responsibility of the states and territories, not the Commonwealth. We do have a program for the protection of witnesses, be they in or out of prison. I will take that on notice again; the AFP would be the one to answer your question.

**Senator KIRK**—You might also like to take on notice how many and in what cases over the past two years people have been taken out of detention in order to testify. I am trying to gauge the types of cases and how often this occurs.

**Senator Ellison**—I will take that on notice.

**Senator KIRK**—What funding is available to non-government organisations to assist people who have been trafficked?

**Senator Ellison**—The counselling of victims is not really in the portfolio. I will take it on notice and see what we can come up with for you.

**Senator KIRK**—Is there a definition of trafficking in the Australian legislation? Does the legislation provide an exact definition?

**Senator Ellison**—I will see if there is someone who can answer that question for you.

**Mr Carnell**—I would assume that there is, but unfortunately the officer who would know the answer is not here. Can we take that on notice?

**Senator KIRK**—You may also have to take on notice whether you have any information about the trafficking of children into Australia, such as the numbers that have been trafficked over the past three years, whether or not those numbers are increasing, where the children are coming from and the purpose for which they are trafficked.

**Senator Ellison**—We will take that on notice.

**Mr Carnell**—These are operational questions; it is not really information we would have primary access to.

**Senator Ellison**—That is an AFP question again.

**CHAIR**—Rather than the department take that on notice, we will just direct it to the AFP as a question on notice.

**Senator Ellison**—Yes, that is right; where it is appropriate, we direct it to the right people.  
[10.28 p.m.]

**Senator LUDWIG**—Shall we move to output 2.3?

**CHAIR**—The Senator is going to put those questions on notice in relation to output 2.2, so we will move to 2.3.

**Senator LUDWIG**—In the 2002-03 budget, \$150.2 million over four years was allocated to address chemical, biological, radiological, nuclear and explosive threats. As I understand it, 11 per cent of this funding—\$17.8 million over four years—was allocated to Emergency Management Australia. How much of the \$17.8 million has been spent so far?

**Mr Templeman**—The \$17.8 million was allocated over a four-year period: \$8.4 million to be spent in 2002-03, \$8.4 million in the subsequent year and the remaining \$500,000 in the other two years. Of the \$8.4 million which has been allocated this financial year, none has been spent as yet. It is expected that it will be fully expended this year. A process of tenders has been recently completed for the purchase of fairly sophisticated technical equipment, which covers a range of issues. I can give you an indication of the sorts of equipment we are talking about: equipment procured for detection, personal protection, decontamination, casualty extraction, casualty management and general support for chemical and biological response.

**Senator LUDWIG**—When will the tenders close?

**Mr Templeman**—They have closed. The tender evaluation committee has completed its examination. There have been 10 assessments undertaken, and purchasing and financial approval to start the process of actually getting the kit this year has commenced.

**Senator LUDWIG**—Who is on the evaluation committee?

**Mr Templeman**—The chair of the tender evaluation committee was an officer from Emergency Management Australia, there was another officer from the Attorney-General's Department, and there were two other personnel from Emergency Management Australia, together with someone who was a representative of the user, from the New South Wales Fire Brigades.

**Senator LUDWIG**—Did you say that the tenders are at the evaluation stage?

**Mr Templeman**—The evaluation stage has been completed. The process now is actually purchasing the kit from the company—

**Senator LUDWIG**—So that kit has been selected? The preferred tenderer has been found—

**Mr Templeman**—Yes.

**Senator LUDWIG**—the kit has been identified—

**Mr Templeman**—Some of the kit is an off-the-shelf type kit; some of it has been selected through a competitive process.

**Senator LUDWIG**—Can you tell us the type of specialised equipment, and I guess the associated training that might then go with it?

**Mr Templeman**—Part of the \$17.8 million does include an element of training, to ensure that the first responders in receipt of this equipment in the states and territories do get access to training.

**Senator LUDWIG**—What is the nature of the specialised equipment that has been at least purchased to date?

**Mr Templeman**—I tried to cover it, in fairly brief terms. I can go into a lot more detail if you wish.

**Senator LUDWIG**—Perhaps just to help the committee understand what you mean.

**Mr Templeman**—We are talking about detection which involves very sophisticated gear to detect the occurrence of a chemical or biological or radiological substance or event—

**Senator LUDWIG**—Is that what Customs is buying too?

**Mr Templeman**—I have got no idea, Senator, what Customs is buying. But certainly with regard to chemical, biological or radiological equipment for first response, for core health and first response people in relation to dealing with a CBR incident, I would not necessarily see that that is Customs business.

**Senator LUDWIG**—No, so can you just tell me what it is that you are buying? Is there a layman's term?

**Mr Templeman**—There is a layman's term. Some of it involves suits, protective gear, equipment which you probably would have seen in some of the advertisements recently to do with the public campaign.

**Senator LUDWIG**—Have they been purchased, or are they on loan yet? I refer to the ones in the advertisement.

**Mr Templeman**—The ones that are being used in the advertisement some of the states already have through their hazmat teams, and the police already hold some of that equipment. We are fortunate that we do have some of that already available.

**Senator LUDWIG**—And so they are off-the-shelf type purchases?

**Mr Templeman**—Some of them are off the shelf; some are not. To go back to your question: with the shower facilities, the decontamination facilities, the idea is really to make sure that we isolate people in a particular circumstance, if there is an event, so that they do not actually pass or carry the nature of the substance which might be impacting on them to other people involved. That can be particularly severe in a hospital type scenario.

**Senator LUDWIG**—What other types of equipment?

**Mr Templeman**—The casualty extraction equipment, the casualty management and general support of the CBR response. That involves showers, it involves a particular type of setting up so that you can isolate people who are affected and the like.

**Senator LUDWIG**—How much of the equipment is able to be purchased—or is ordered, I guess, in the sense that you are in the purchasing part of the equation—in Australia, or is it mostly from overseas?

**Mr Templeman**—Unfortunately, it is purchased mostly from overseas.

**Senator LUDWIG**—Is there any indication of delivery times regarding the material that is off the shelf or has to be assembled?

**Mr Templeman**—I am expecting that the first materials will arrive in about April-May, to meet the first part—the \$8.4 million to be expended in this financial year. It involves the establishment of a cache for each state and territory. There are nine caches. Each cache costs about \$1.7 million. That is \$15.3 million of the \$17.8 million. So there has to be a management process with regard to how we procure most of this gear over the two-year period. Not all states and territories will have the full complement of the cache until the end of the first two years.

**Senator LUDWIG**—Is the cache an inventory of equipment that each state and territory would have at a particular location or is it dispersed through the state at various locations?

**Mr Templeman**—Each state and territory would have a cache which would most likely be managed by a fire, health or ambulance arrangement. The responsibility for that sort of response in the states and territories varies.

**Senator LUDWIG**—It would be kept in a secure location or in a particular location in each state and then used or not used?

**Mr Templeman**—That is correct. It would certainly be available for all people involved in first response.

**Senator LUDWIG**—You have identified a training component. Is that early in the process or will that be subsequent to the first year of expenditure?

**Mr Templeman**—No, there is training to be undertaken over the four years to ensure that all first responders get access to that training. There is an element of about half a million dollars for each of the four years for training. So \$15.3 million for the year plus \$2 million over the four years adds up to \$17.3 million, and there is \$500,000 for project management costs.

**Senator LUDWIG**—Do we know how many personnel of that type have been identified to receive training under the program and in which state or territory they will—

**Mr Templeman**—All states and territories will benefit from the training. All states and territories will nominate high priority people they feel need the training, both in the health and in the emergency services areas. The numbers will vary from state to state.

**Senator LUDWIG**—What do you expect the numbers to be?

**Mr Templeman**—My expectation over the four years is that we would need to train up to 500 people.

**Senator LUDWIG**—Is that an agreement that you have with the states? Is it reflected in an agreement with the states and territories?

**Mr Templeman**—Part of the management of the equipment will involve a memorandum of understanding between the Commonwealth and states and territories with respect to the allocation of this equipment. There is also flexibility within the agreement so that we can deploy the gear at very short notice should there be an event requiring additional capacity in another jurisdiction. We would need to be able to deploy the gear within 72 hours.

**Senator LUDWIG**—Has that memorandum of understanding been completed yet?

**Mr Templeman**—The draft has been completed and it is with the states and territories for consultation at the moment.

**Senator LUDWIG**—When is it likely to be returned or finalised?

**Mr Templeman**—Within two months.

**Senator LUDWIG**—We might come back to that in May. What section or branch of EMA is responsible for planning to deal with the chemical, biological and radiological nuclear explosive contingencies?

**Mr Templeman**—The planning and operations area of Emergency Management Australia.

**Senator LUDWIG**—Whereabouts are they located?

**Mr Templeman**—In Northbourne House in Canberra.

**Senator LUDWIG**—Will that also cover the planning in relation to visits of nuclear powered warships?

**Mr Templeman**—Visits by nuclear powered warships are essentially a defence function which is managed by Defence. EMA participates on the committee which assesses ports prior to a visit of a vessel of that nature.

**Senator LUDWIG**—How many EMA personnel are engaged in full-time work on the chemical, biological, nuclear and explosive issues?

**Mr Templeman**—At the moment we have a project team comprising two permanent APS officers, one at the EO1 level and one at APS6 level, including one consultant in an advisory capacity.

**Senator LUDWIG**—The equipment that you intend to purchase will be cached in each state so there will be an inventory. I am trying to understand the nature of the equipment. You have gone into the suits and the showers—if we can call them that; chemical washes might perhaps be a better term. How transportable are they? Are they designed to be transportable?

**Mr Templeman**—Ideally, yes. They are designed to be transported quickly and effectively. We are also working in conjunction with Defence to get the best opportunity and the best advantage of buying and linking to other defence projects so we can reduce costs and get the best flexibility in this process. When the equipment arrives, it will come through the defence logistics system. It will be managed through that process and then allocated and forwarded to states and territories with us working in partnership with Defence to ensure it happens.

**Senator LUDWIG**—Thank you.

**CHAIR**—What do you wish to move on to now, Senator Ludwig?

**Senator LUDWIG**—Nothing, thank you. I will put the rest on notice; I have run out of steam.

**CHAIR**—Thank you for your assistance in that area, Mr Templeman. Senator Ludwig and Senator Kirk have advised that any further questions will be placed on notice. I thank Mr Cornall and his officers for their assistance today, my colleagues for ensuring that the

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committee ran well and the minister for his time. We will start with HIH at 9 a.m. tomorrow. I understand that some people have commitments in relation to the ceremony in the High Court. The committee is apprised of those and very comfortable with whatever arrangements have been made.

**Committee adjourned at 10.42 p.m.**